

**HOUSE BILL NO. 1362**

Introduced by

Representatives DeKrey, Delmore

Senators Nelson, Traynor

1 A BILL for an Act to create and enact sections 10-19.1-01.1, 10-19.1-100.1, 10-19.1-149.1,  
2 10-32-02.1, 10-32-153.1, 10-33-01.1, 10-33-142.1, 45-10.1-01.1, 45-10.1-63, 45-10.1-64,  
3 45-10.1-65, 45-10.1-66, 45-10.1-67, 45-10.1-68, 45-10.1-69, 45-10.1-70, 45-10.1-71,  
4 45-10.1-72, 45-13-01.1, 45-16-07, 45-16-08, 45-22-01.1, 45-23-01.1, and 45-23-07 of the North  
5 Dakota Century Code, relating to business corporations, limited liability companies, nonprofit  
6 corporations, limited partnerships, partnerships, limited liability partnerships, and limited liability  
7 limited partnerships; to amend and reenact section 10-19.1-01, subsection 4 of section  
8 10-19.1-13, sections 10-19.1-14 and 10-19.1-19, subsection 2 of section 10-19.1-31,  
9 subsections 1 and 2 of section 10-19.1-43, subsections 1 and 2 of section 10-19.1-47,  
10 subsection 1 of section 10-19.1-63, subsection 3 of section 10-19.1-71, subsection 3 of section  
11 10-19.1-72, sections 10-19.1-75 and 10-19.1-75.2, subsection 1 of section 10-19.1-76.2,  
12 subsection 1 of section 10-19.1-87, section 10-19.1-100, subsection 1 of section 10-19.1-110,  
13 subsections 2 and 3 of section 10-19.1-113.1, subsection 3 of section 10-19.1-129,  
14 subsection 2 of section 10-19.1-146, section 10-32-02, subsections 2, 3, and 4 of section  
15 10-32-07, subsection 5 of section 10-32-10, section 10-32-11, subsection 1 of section 10-32-13,  
16 section 10-32-15, subsection 6 of section 10-32-17, subsection 1 of section 10-32-22,  
17 subsection 17 of section 10-32-23, sections 10-32-36 and 10-32-37, subsections 2 and 3 of  
18 section 10-32-38, subsections 2 and 3 of section 10-32-39, subsection 3 of section 10-32-40,  
19 sections 10-32-40.1, 10-32-43, and 10-32-43.2, subsection 1 of section 10-32-48, subsection 1  
20 of section 10-32-50, section 10-32-51, subsection 1 of section 10-32-54, subsection 4 of section  
21 10-32-55, section 10-32-56, subsection 2 of section 10-32-57, subsection 3 of section 10-32-58,  
22 subsection 1 of section 10-32-59, sections 10-32-60 and 10-32-61, subsection 1 of section  
23 10-32-64, section 10-32-67, subsections 2 and 3 of section 10-32-68, sections 10-32-69,  
24 10-32-70, 10-32-73, and 10-32-74, subsection 2 of section 10-32-76, subsection 2 of section  
25 10-32-77, subsections 2 and 3 of section 10-32-78, subsection 2 of section 10-32-78.1,

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

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

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

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

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

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

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

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

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

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

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

8     ~~47.~~ 23. "Foreign corporation" means a corporation organized for profit which is  
9                    incorporated under laws other than the laws of this state for a purpose for which a  
10                    corporation may be incorporated under this chapter.

11     ~~48.~~ 24. "Foreign limited liability company" means a limited liability company organized for  
12                    profit which is organized under laws other than the laws of this state for a purpose  
13                    for which a limited liability company may be organized under chapter 10-32.

14     ~~49.~~ 25. "Foreign organization" means an organization created under laws other than the  
15                    laws of this state for a purpose for which an organization may be created under the  
16                    laws of this state.

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

18     ~~20.~~ 27. "Intentionally" means that the person referred to has a purpose to do or fail to do  
19                    the act or cause the result specified or believes that the act or failure to act, if  
20                    successful, will cause that result. A person "intentionally" violates a statute if:

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

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

27     ~~24.~~ 28. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A  
28                    person does not "know" or have "knowledge" of a fact merely because the person  
29                    has reason to know of the fact.

30     ~~22.~~ 29. "Legal representative" means a person empowered to act for another person,  
31                    including an agent, a manager, an officer, a partner, or an associate of an

- 1 organization; a trustee of a trust; a personal representative; a trustee in  
2 bankruptcy; and a receiver, guardian, custodian, or conservator.
- 3 ~~23.~~ 30. "Limited liability company" means a limited liability company, other than a foreign  
4 limited liability company, organized under chapter 10-32.
- 5 ~~24.~~ 31. "Nonprofit corporation" means a corporation, whether domestic or foreign,  
6 incorporated under or governed by chapter 10-33.
- 7 ~~25.~~ 32. "Notice" is:
- 8 a. Is given by a shareholder of a corporation to the corporation or an officer of  
9 the corporation when:
- 10 (1) When in writing and mailed or delivered to the corporation or the officer  
11 at the registered office or principal executive office of the corporation:
- 12 a. ~~In all other cases, "notice" is; or~~
- 13 (2) When given by a form of electronic communication consented to by the  
14 corporation to which the notice is given if by:
- 15 (a) Facsimile communication, when directed to a telephone number  
16 at which the corporation has consented to receive notice.
- 17 (b) Electronic mail, when directed to an electronic mail address at  
18 which the corporation has consented to receive notice.
- 19 (c) Posting on an electronic network on which the corporation has  
20 consented to receive notice, together with separate notice to the  
21 corporation of the specific posting, upon the later of:
- 22 [1] The posting; or  
23 [2] The giving of the separate notice.
- 24 (d) Any other form of electronic communication by which the  
25 corporation has consented to receive notice, when directed to the  
26 corporation.
- 27 b. Is given by a publicly held corporation to a shareholder if the notice is  
28 addressed to the shareholder or group of shareholders in a manner permitted  
29 by the rules and regulations under the Securities Exchange Act of 1934, as  
30 amended, provided that the corporation has first received any affirmative  
31 written consent or implied consent required under those rules and regulations.

- 1           c. ~~Is given to a person,~~ in all other cases:
- 2           (1) When mailed to the person at an address designated by the person or
- 3           at the last-known address of the person;
- 4           (2) When handed to the person; ~~or~~
- 5           (3) When left at the office of the person with a clerk or other person in
- 6           charge of the office; ~~or;~~
- 7           (a) If there is no one in charge, when left in a conspicuous place in
- 8           the office; or
- 9           (b) If the office is closed or the person to be notified has no office,
- 10          when left at the dwelling house or usual place of abode of the
- 11          person with some person of suitable age and discretion then
- 12          residing there; ~~or~~
- 13          (4) When given by a form of electronic communication consented to by the
- 14          person to whom the notice is given if by:
- 15          (a) Facsimile communication, when directed to a telephone number
- 16          at which the person has consented to receive notice.
- 17          (b) Electronic mail, when directed to an electronic mail address at
- 18          which the person has consented to receive notice.
- 19          (c) Posting on an electronic network on which the person has
- 20          consented to receive notice, together with separate notice to the
- 21          person of the specific posting, upon the later of:
- 22                [1] The posting; or
- 23                [2] The giving of the separate notice.
- 24          (d) Any other form of electronic communication by which the person
- 25          has consented to receive notice, when directed to the person.
- 26          ~~b. d. Notice is~~ Is given by mail when deposited in the United States mail with
- 27          sufficient postage affixed.
- 28          ~~e. e. Notice is~~ Is deemed received when it is given.
- 29   26. 33. "Officer" means an individual who is eighteen years of age or more who is ~~elected;~~
- 30          a. Elected, appointed, or otherwise designated as an officer by the board; ~~or~~
- 31          deemed

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

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

- 1                    document, is placed on a document, as provided ~~in subsection 39 of~~ under  
2                    section ~~41-01-14, 41-01-09~~; and:
- 3            a. ~~b.~~ With respect to a document required by this chapter to be filed with the  
4                    secretary of state, ~~means that the~~:
- 5                    (1) The document is signed by a person authorized to do so by this  
6                    chapter, the articles or bylaws, or a resolution approved by the directors  
7                    as required under section 10-19.1-46 or the shareholders as required  
8                    under section 10-19.1-74; and
- 9                    ~~b. With respect to a document not required by this chapter to be filed with the~~  
10                    ~~secretary of state, the signature may be a facsimile affixed, engraved, printed,~~  
11                    ~~placed, stamped with indelible ink, transmitted by facsimile telecommunication~~  
12                    ~~or electronically, or in any other manner reproduced on the document.~~
- 13                    (2) The signature and the document are communicated by a method or  
14                    medium of communication acceptable by the secretary of state.
- 15    ~~40.~~ 49. "Subscriber" means a person who subscribes for shares in a corporation, whether  
16                    before or after incorporation.
- 17    ~~41.~~ 50. "Subsidiary" of a specified corporation means:
- 18                    a. A corporation having more than fifty percent of the voting power of the  
19                    corporation's shares entitled to vote for directors owned directly, or indirectly  
20                    through related ~~corporations or limited liability companies~~ organizations, by  
21                    the specified corporation; or
- 22                    b. A limited liability company having more than fifty percent of the voting power  
23                    of the limited liability company's membership interests entitled to vote for  
24                    governors owned directly, or indirectly through related limited liability  
25                    companies or corporations, by the specified limited liability company.
- 26    ~~42.~~ 51. "Surviving corporation" means the domestic or foreign corporation resulting from a  
27                    merger.
- 28    ~~43.~~ 52. "Surviving organization" means the corporation or foreign corporation or domestic  
29                    or foreign limited liability company resulting from a merger.
- 30    ~~44.~~ 53. "Vote" includes authorization by written action.
- 31    ~~45.~~ 54. "Written action" means a:



- 1           b. Is authorized to transact business or conduct activities in this state;
- 2           c. Holds a reserved name in the manner provided in section 10-19.1-14,
- 3                 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- 4           d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
- 5           e. Holds a trade name registered in the manner provided in chapter 47-25.

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

8           **10-19.1-14. Reserved name.**

- 9           1. The exclusive right to the use of a corporate name otherwise permitted by section  
10                 10-19.1-13 may be reserved by any person.
- 11           2. The reservation must be made by filing with the secretary of state a request that  
12                 the name be reserved, together with the fees provided in section 10-19.1-147:
  - 13                 a. If the name is available for use by the applicant, the secretary of state shall  
14                         reserve the name for the exclusive use of the applicant for a period of twelve  
15                         months.
  - 16                 b. The reservation may be renewed for successive twelve-month periods.
- 17           3. The right to the exclusive use of a corporate name reserved pursuant to this  
18                 section may be transferred to another person by or on behalf of the applicant for  
19                 whom the name was reserved by filing with the secretary of state a notice of the  
20                 transfer and specifying the name and address of the transferee, together with the  
21                 fees provided in section 10-19.1-147.
- 22           4. The right to the exclusive use of a corporate name reserved pursuant to this  
23                 section may be canceled by or on behalf of the applicant for whom the name was  
24                 reserved by filing with the secretary of state a notice of the cancellation, together  
25                 with the fees provided in section 10-19.1-147.
- 26           5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed~~  
27                 ~~original of any request for reserved name.~~
- 28           6- The secretary of state may destroy all reserved name requests and index thereof  
29                 one year after expiration.

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

1           **10-19.1-19. Procedure for amendment after issuance of shares.**

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

1 necessary to add the provision to, or to amend an existing provision in, the  
2 articles is the larger of:

3 (1) The specified proportion or number or, in the absence of a specific  
4 provision, the affirmative vote necessary to transact the type of  
5 business described in the proposed amendment at a meeting  
6 immediately before the effectiveness of the proposed amendment; or

7 (2) The specified proportion or number that would, upon effectiveness of  
8 the proposed amendment, be necessary to transact the specified type  
9 of business at a meeting.

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

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

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

24 2. Initial bylaws may be adopted by the first board or by the incorporators, pursuant to  
25 section 10-19.1-30. Unless reserved by the articles to the shareholders, the power  
26 to adopt, amend, or repeal the bylaws is vested in the board. The power of the  
27 board is subject to the power of the shareholders, exercisable in the manner  
28 provided in subsection 3, to adopt, amend, or repeal bylaws adopted, amended, or  
29 repealed by the board. ~~After the adoption of the initial bylaws, the board may not~~  
30 ~~adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders,~~  
31 ~~prescribing procedures for removing directors or filling vacancies in the board, or~~

1           ~~fixing the number of directors or their classifications, qualifications, or terms of~~  
2           ~~office, but may adopt or amend a bylaw to increase the number of directors.~~

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

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

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

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

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

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

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

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

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

25           b. ~~Any~~ By means of conference telephone or, if authorized by the board, by one  
26 or more other means of remote communication, in each case, through which  
27 the director, other directors so participating, and all directors physically  
28 present at the meeting may ~~simultaneously hear~~ participate with each other  
29 during the meeting. ~~Participation in a meeting by this means is personal~~  
30 ~~presence at the meeting.~~

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

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

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

- 15          1. Subject to any restrictions in the articles:
- 16           a. ~~The consideration for the issuance of shares may be paid, in whole or in part,~~  
17 ~~in money; in other property, tangible or intangible; or in labor or services~~  
18 ~~actually performed for the corporation. When payment of the consideration~~  
19 ~~for which shares are to be issued is received by the corporation, the shares~~  
20 ~~are considered fully paid and nonassessable. Neither promissory notes nor~~  
21 ~~future services constitute payment or part payment for shares of a~~  
22 ~~corporation.~~ Shares may be issued for any consideration, including, without  
23 limitation:
- 24           (1) Money or other tangible or intangible property received by the  
25 corporation or to be received by the corporation under a written  
26 agreement, or services rendered to the corporation or to be rendered to  
27 the corporation, as authorized by resolution approved by the affirmative  
28 vote of the directors required by section 10-19.1-46; or
- 29           (2) If provided for in the articles, approved by the affirmative vote of the  
30 shareholders required by section 10-19.1-74, establishing a price in

1                           money or other consideration, or a minimum price, or a general formula  
2                           or method by which the price will be determined.

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

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

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

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

27           3.   Special meetings must be held on the date and at the time and place fixed by the  
28           president, the board, or a person authorized by the articles or bylaws to call a  
29           meeting, except that a special meeting called by or at the demand of a shareholder  
30           or shareholders pursuant to subsection 2 must be held in the county where the  
31           principal executive office is located. To the extent authorized by the articles or

1            bylaws, the board may determine that a special meeting of the shareholders shall  
2            be held solely by means of remote communication in accordance with subsection 3  
3            of section 10-19.1-75.2.

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

6            **10-19.1-75. Action without a meeting.** An action required or permitted to be taken at  
7 a meeting of the shareholders may be taken without a meeting by written action signed, or  
8 consented to by authenticated electronic communication, by all of the shareholders entitled to  
9 vote on that action.

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

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

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

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

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

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

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

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

3           **10-19.1-75.2. Electronic Remote communications for shareholder meetings.**

- 4           1. This section shall be construed and applied to:
- 5           a. Facilitate remote communication consistent with other applicable law; and
- 6           b. Be consistent with reasonable practices concerning remote communication  
7           and with the continued expansion of those practices.
- 8           2. To the extent authorized in the articles or the bylaws and determined by the board:
- 9           a. ~~A conference among meeting of~~ the shareholders may be held solely by any  
10           combination of means of remote communication through which the  
11           participants may ~~simultaneously hear each other during~~ participate in the  
12           ~~conference constitutes a regular or special meeting of shareholders:~~
- 13           a. (1) ~~If the same notice of the meeting is given of the conference to every~~  
14           holder of shares entitled to vote as would be required by this chapter for  
15           a meeting; and
- 16           b. (2) ~~If the number of shares held by the shareholders participating in the~~  
17           ~~conference meeting~~ would be sufficient to constitute a quorum at a  
18           meeting.
- 19           ~~2. Participation in a conference meeting the requirements of subsection 1 constitutes~~  
20           ~~presence at the meeting in person or by proxy if all the other requirements of~~  
21           ~~section 10-19.1-76.2 are met.~~
- 22           ~~3.~~ b. A shareholder ~~may participate in~~ not physically present in person or by proxy  
23           at a regular or special meeting of shareholders not described in subsection 1  
24           may by any means of remote communication through which the shareholder,  
25           ~~other participants, and all persons physically present at the meeting may~~  
26           ~~simultaneously hear each other during the meeting. Participation in a meeting~~  
27           ~~by that means constitutes presence at the meeting in person or by proxy if all~~  
28           ~~the other requirements of section 10-19.1-76.2 are met,~~ participate in a  
29           meeting of shareholders held at a designated place.
- 30           ~~4.~~ 3. In any meeting of shareholders held solely by means of remote communication  
31           under subdivision a of subsection 2 or in any meeting of shareholders held at a

- 1           designated place in which one or more shareholders participate by means of  
2           remote communication under subdivision b of subsection 2:
- 3           a.   The corporation shall implement reasonable measures to:
- 4                 (1)   Verify that each person deemed present and entitled to vote at the  
5                         meeting by means of remote communication is a shareholder; and
- 6                 (2)   Provide each shareholder participating by means of remote  
7                         communication with a reasonable opportunity to participate in the  
8                         meeting, including an opportunity to:
- 9                             (a)   Read or hear the proceedings of the meeting substantially  
10                                 concurrently with those proceedings;
- 11                             (b)   If allowed by the procedures governing the meeting, have the  
12                                 shareholder's remarks heard or read by other participants in the  
13                                 meeting substantially concurrently with the making of those  
14                                 remarks; and
- 15                             (c)   If otherwise entitled, vote on matters submitted to the  
16                                 shareholders.
- 17           b.   Participation in a meeting by this means constitutes presence at the meeting  
18                         in person or by proxy if all of the requirements of section 10-19.1-76.2 are  
19                         met.
- 20           4.   With respect to notice to shareholders:
- 21                 a.   Any notice to shareholders given by the corporation under any provision of  
22                         this chapter, the articles, or the bylaws by a form of electronic communication  
23                         consented to by the shareholder to whom the notice is given is effective when  
24                         given. The notice is deemed given:
- 25                             (1)   If by facsimile communication, when directed to a telephone number at  
26                                 which the shareholder has consented to receive notice;
- 27                             (2)   If by electronic mail, when directed to an electronic mail address at  
28                                 which the shareholder has consented to receive notice;
- 29                             (3)   If by a posting on an electronic network on which the shareholder has  
30                                 consented to receive notice, together with separate notice to the  
31                                 shareholder of the specific posting, upon the later of:

- 1                   (a) The posting; or  
2                   (b) The giving of the separate notice.  
3                   (4) If by any other form of electronic communication by which the  
4                   shareholder has consented to receive notice, when directed to the  
5                   shareholder.  
6                   b. An affidavit of the secretary, other authorized officer, or authorized agent of  
7                   the corporation, that the notice has been given by a form of electronic  
8                   communication is, in the absence of fraud, prima facie evidence of the facts  
9                   stated in the affidavit.  
10                  c. Consent by a shareholder to notice given by electronic communication may  
11                  be given in writing or by authenticated electronic communication. The  
12                  corporation is entitled to rely on any consent so given until revoked by the  
13                  shareholder. However, no revocation affects the validity of any notice given  
14                  before receipt by the corporation of revocation of the consent.  
15                  5. Any ballot, vote, authorization, or consent submitted by electronic communication  
16                  under this chapter may be revoked by the shareholder submitting the ballot, vote,  
17                  authorization, or consent so long as the revocation is received by an officer of the  
18                  corporation at or before the meeting or before an action without a meeting is  
19                  effective according to section 10-19.1-75.  
20                  6. Waiver of notice by a shareholder of a meeting by means of authenticated  
21                  electronic communication ~~described in subsection 4 or 3~~ may be given in the  
22                  manner provided in subsection 4 of section 10-19.1-73. Participation in a meeting  
23                  by means of ~~communications~~ remote communication described in subdivisions a  
24                  and b of subsection ~~4 or 3~~ 2 is a waiver of notice of that meeting, except when the  
25                  shareholder objects:  
26                  a. At the beginning of the meeting to the transaction of business because the  
27                  meeting is not lawfully called or convened; or  
28                  b. Before a vote on an item of business because the item may not lawfully be  
29                  considered at the meeting and does not participate in the consideration of the  
30                  item at that meeting.

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

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

5           a. By filing with an officer authorized to tabulate votes a written appointment of a  
6 proxy which is signed by the shareholder,~~with,~~

7           b. By telephonic transmission or authenticated electronic communication to an  
8 officer authorized to tabulate votes, whether or not accompanied by written  
9 instructions of the shareholder, of an appointment of a proxy.

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

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

25          (2) A proxy so appointed may vote on behalf of the shareholder, or  
26 otherwise participate, in a meeting by remote communication according  
27 to section 10-19.1-75.2 to the extent the shareholder appointing the  
28 proxy would have been entitled to participate by remote communication  
29 according to section 10-19.1-75.2 if the shareholder did not appoint the  
30 proxy.



- 1           b. A sale, lease, transfer, or other disposition of all or substantially all of the  
2           property and assets of the corporation, but not including a transaction  
3           permitted without shareholder approval in subsection 1 of section  
4           10-19.1-104, or a disposition in dissolution described in subsection 2 of  
5           section 10-19.1-109 or a disposition pursuant to an order of a court, or a  
6           disposition for cash on terms requiring that all or substantially all of the net  
7           proceeds of disposition be distributed to the shareholders in accordance with  
8           their respective interests within one year after the date of disposition;
- 9           c. A plan of merger to which the corporation is a ~~party~~ constituent organization,  
10          except as provided in subsection 3 and except for a plan of merger adopted  
11          under section 10-19.1-100.1;
- 12          d. A plan of exchange, whether under this chapter or under chapter 10-32, to  
13          which the corporation is a constituent organization as the corporation whose  
14          shares will be acquired by the acquiring corporation, except as provided in  
15          subsection 3; or
- 16          e. Any other corporate action taken pursuant to a shareholder vote with respect  
17          to which the articles, the bylaws, or a resolution approved by the board directs  
18          that dissenting shareholders may obtain payment for their shares.

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

21           **10-19.1-100. Merger of subsidiary into parent.**

- 22          1. A parent owning at least ninety percent of the outstanding ownership interests of  
23          each class and series of a subsidiary directly, or indirectly through related  
24          ~~corporations or limited liability companies~~ organizations other than classes or  
25          series that, absent this section, would otherwise not be entitled to vote on the  
26          merger:
- 27          a. May merge the subsidiary into the parent or into any other subsidiary at least  
28          ninety percent of the outstanding ownership interests of each class and series  
29          of which is owned by the parent directly, or indirectly through related  
30          ~~corporations or limited liability companies~~ organizations other than classes or

- 1                   series that, absent this section, would otherwise not be entitled to vote on the  
2                   merger, without a vote of the owners of the parent or any subsidiary; or ~~may~~  
3                   **b.** May merge the parent, or the parent and one or more subsidiaries into one of  
4                   the subsidiaries under this section.
- 5                   2. A resolution approved by the present directors of the parent as required by section  
6                   10-19.1-46 or of the present governors of the parent required by section 10-32-83  
7                   must set forth a plan of merger that contains:
- 8                   a. The name of the subsidiary or subsidiaries, the name of the parent, and the  
9                   name of the surviving constituent organization;
- 10                  b. The manner and basis of converting the ownership interests of the subsidiary  
11                  or subsidiaries or the parent into securities of the parent, subsidiary, or of  
12                  another organization; or, in whole or in part, into money or other property;
- 13                  c. If the parent is a constituent organization but is not the surviving constituent  
14                  organization in the merger, a provision for the pro rata issuance of ownership  
15                  interests of the surviving constituent organization to the owners of ownership  
16                  interests of the parent on surrender of any ownership interests of the parent;  
17                  and
- 18                  d. If the surviving constituent organization is a subsidiary, a statement of any  
19                  amendments to the articles of the surviving constituent organization that will  
20                  be part of the merger.
- 21                  3. If the parent is a constituent organization and is the surviving organization in the  
22                  merger, it may change its corporate name, without a vote of its owners, by the  
23                  inclusion of a provision to that effect in the resolution of merger setting forth the  
24                  plan of merger that is approved by the affirmative vote of a majority of the board  
25                  members of the parent present. Upon the effective date of the merger, the name  
26                  of the parent must be changed.
- 27                  4. If the parent is a constituent organization but is not the surviving constituent  
28                  organization in a merger, the resolution is not effective unless the resolution is also  
29                  approved by the affirmative vote of the holders of a majority of the voting power of  
30                  all ownership interests of the parent entitled to vote at a regular or special meeting  
31                  held in accordance with section 10-19.1-98 if the parent is a domestic corporation,

- 1 section 10-32-102 if the parent is a limited liability company, or in accordance with  
2 the laws of the jurisdiction under which the parent is incorporated or organized if  
3 the parent is a foreign corporation or foreign limited liability company.
- 4 5. A Notice of the action, including a copy of the plan of merger must be ~~mailed~~ given  
5 to each owner, other than the parent and any subsidiary, of each subsidiary that is  
6 a constituent organization in the merger before, or within ten days after, the  
7 effective date of the merger.
- 8 6. Articles of merger must be prepared which contain:
- 9 a. The plan of merger;
- 10 b. The number of outstanding ownership interests of each class and series of  
11 the subsidiary that is a constituent organization in the merger, other than the  
12 classes or series that, absent this section, would otherwise not be entitled to  
13 vote on the merger, and the number of ownership interests of each class and  
14 series owned, other than the classes or series that, absent this section, would  
15 otherwise not be entitled to vote on the merger, by the parent directly, or  
16 indirectly through related constituent organizations; and
- 17 c. ~~The date a copy of the plan of merger was mailed to owners, other than the~~  
18 ~~parent or a subsidiary, of each subsidiary that is a constituent organization in~~  
19 ~~the merger; and~~
- 20 d. A statement that the plan of merger is approved by the parent under this  
21 section.
- 22 7. ~~Within thirty days after a copy of the plan of merger is mailed to owners of each~~  
23 ~~subsidiary that is a constituent organization to the merger or upon waiver of the~~  
24 ~~mailing by the owners of all outstanding ownership interests of each subsidiary that~~  
25 ~~is a constituent organization to the merger, the~~ The articles of merger must be  
26 signed on behalf of the parent and filed with the secretary of state, with the fees  
27 provided in section 10-19.1-147.
- 28 8. The secretary of state shall issue a certificate of merger to the surviving constituent  
29 organization or the surviving constituent organization's legal representative. The  
30 certificate must contain the effective date of the merger.

1           9. If all of the ownership interests of one or more domestic subsidiaries that is a  
2           constituent organization to a merger under this section are not owned by the parent  
3           directly, or indirectly through related constituent organizations, immediately before  
4           the merger, the owners of each domestic subsidiary have dissenter's rights under  
5           section 10-19.1-87 or 10-32-54, without regard to subsection 3 of section  
6           10-19.1-87 or subsection 2 of section 10-32-54, and under section 10-19.1-88 or  
7           10-32-55. If the parent is a constituent organization but is not the surviving  
8           organization in the merger, the articles of incorporation or articles of organization of  
9           the surviving organization immediately after the merger differ from the articles of  
10          incorporation or articles of organization of the parent immediately before the  
11          merger in a manner that would entitle an owner of the parent to dissenter's rights  
12          under subdivision a of subsection 1 of section 10-19.1-87 or under subdivision a of  
13          subsection 1 of section 10-32-54, and the articles of incorporation or articles of  
14          organization of the surviving constituent organization constitute an amendment to  
15          the articles of incorporation or articles of organization of the parent, that owner of  
16          the parent has dissenter's rights as provided under section 10-19.1-87 or 10-32-54.  
17          Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not  
18          apply to any merger affected under this section.

19          10. A merger among a parent and one or more subsidiaries or among two or more  
20          subsidiaries of a parent may be accomplished under sections 10-19.1-97 through  
21          10-19.1-99 instead of this section, in which case this section does not apply.

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

24           **10-19.1-100.1. Merger to effect a holding company reorganization.**

25           1. For purposes of this section:

26           a. "Holding company" means the corporation that is or becomes the direct  
27           parent of the surviving corporation of a merger accomplished under this  
28           section.

29           b. "Parent constituent corporation" means the parent that merges with or into the  
30           subsidiary constituent corporation.

- 1           c. "Subsidiary constituent corporation" means the subsidiary that the parent  
2           constituent corporation merges with or into in the merger.
- 3           2. Unless its articles expressly provide otherwise, and subject to subdivision 3, a  
4           parent constituent corporation may merge with or into a subsidiary constituent  
5           corporation without a vote of the shareholders of the parent constituent  
6           corporation.
- 7           3. A merger may be accomplished under this section only if each of the following  
8           requirements is met:
- 9           a. The holding company and the constituent corporations to the merger are each  
10           organized under this chapter;
- 11           b. At all times following the issuance of shares until the consummation of a  
12           merger under this section, the holding company was a direct wholly owned  
13           subsidiary of the parent constituent corporation;
- 14           c. Immediately before the consummation of a merger under this section, the  
15           subsidiary constituent corporation is an indirect wholly owned subsidiary of  
16           the parent constituent corporation and a direct wholly owned subsidiary of the  
17           holding company;
- 18           d. The parent constituent corporation and the subsidiary constituent corporation  
19           are the only constituent corporations to the merger;
- 20           e. Immediately after the merger becomes effective, the surviving corporation  
21           becomes or remains a direct wholly owned subsidiary of the holding company;
- 22           f. Each share or fraction of a share of the parent constituent corporation  
23           outstanding immediately before the effective time of the merger is converted  
24           in the merger into a share or equal fraction of a share of the holding company  
25           having the same designation and relative rights and preferences, and the  
26           same restrictions thereon, as the share or fraction of a share of the parent  
27           constituent corporation being converted in the merger;
- 28           g. The articles and bylaws of the holding company immediately following the  
29           effective time of the merger contain provisions identical to the articles and  
30           bylaws of the parent constituent corporation immediately before the effective  
31           time of the merger, other than provisions, if any, regarding the incorporator or

1           incorporators, the corporate name, the registered office and agent, the initial  
2           board, and the initial subscribers for shares and the provisions contained in  
3           any amendment to the articles of the parent constituent corporation that were  
4           necessary to effect an exchange, reclassification, or cancellation of shares if  
5           the exchange, reclassification, or cancellation has become effective;

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

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

25           (2) The articles of the surviving corporation may be amended in the merger  
26           to reduce the number of classes, series, and shares that the surviving  
27           corporation is authorized to issue;

28           i. The directors of the parent constituent corporation become or remain the  
29           directors of the holding company immediately after the merger becomes  
30           effective;

- 1           j. The board of the parent constituent corporation determines that the  
2           shareholders of the parent constituent corporation will not recognize gain or  
3           loss for United States federal income tax purposes; and
- 4           k. A resolution approved by the affirmative vote of a majority of the directors of  
5           the parent constituent corporation present sets forth a plan of merger that  
6           contains provisions addressing the requirements of subdivisions a through j.
- 7           4. Neither paragraph 1 of subdivision h of subsection 3, nor any provisions of the  
8           surviving corporation's articles required by that item may be construed to require  
9           approval of the shareholders of the holding company to elect or remove directors of  
10           the surviving corporation.
- 11           5. If the name of the holding company at the time the merger takes effect is the same  
12           as the name of the parent constituent corporation immediately before that time, the  
13           shares of the holding company into which the shares of the parent constituent  
14           corporations are converted in the merger must, unless new certificates are issued,  
15           be represented by the share certificates that previously represented shares of the  
16           parent constituent corporation.
- 17           6. Articles of merger must be:
- 18           a. Prepared that contain:
- 19               (1) The plan of merger; and
- 20               (2) A statement that the plan of merger was adopted under this section.
- 21           b. Signed on behalf of the parent constituent corporation and filed with the  
22           secretary of state.
- 23           7. The secretary of state shall issue a certificate of merger to the surviving  
24           corporation or its legal representative.
- 25           8. A merger between a parent and a subsidiary may be accomplished under sections  
26           10-19.1-97, 10-19.1-98, 10-19.1-99, and 10-19.1-100 instead of this section, in  
27           which case this section does not apply.

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

- 30           1. If notice to creditors and claimants is given, it must be given by:

- 1           a. Publishing the notice once each week for four successive weeks in an official  
2           newspaper, as defined in chapter 46-06, in the county or counties where the  
3           registered office and the principal executive office of the corporation are  
4           located; and
- 5           b. Giving written notice to known creditors and claimants pursuant to  
6           subsection ~~23~~ 32 of section 10-19.1-01.

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

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

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

- 21           3. If neither the corporation's registered agent nor an officer of the corporation can be  
22           found at the registered office, or if a corporation fails to maintain a registered agent  
23           in this state and an officer of the corporation cannot be found at the registered  
24           office, then the secretary of state is the agent of the corporation upon whom the  
25           process, notice, or demand may be served. ~~The~~ Service on the secretary of state:
- 26           a. Shall be made by registered mail or personal delivery to the secretary of state  
27           and not by electronic communication;
- 28           b. Shall include the return of the sheriff, or the affidavit of a person who is not a  
29           party, verifying that ~~ne~~ neither the registered agent ~~or~~ nor an officer can be  
30           found at the registered office ~~must be provided to the secretary of state.~~
- 31           Service on the secretary of state of any process, notice, or demand is; and

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

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

5           (2) The fees provided in section 10-19.1-147. The secretary of state shall  
6           immediately forward, by registered mail, addressed to the corporation at  
7           the registered office, a copy of the process, notice, or demand. Service  
8           on the secretary of state is returnable in not less than thirty days  
9           notwithstanding a shorter period specified in the process, notice, or  
10          demand.

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

13          2. The annual report must be submitted on forms prescribed by the secretary of state.  
14          The information provided must be given as of the date of the execution of the  
15          report except as to the information required by ~~subdivisions~~ subdivision g, i, and j  
16          of subsection 1 which must be given as of the close of business on December  
17          thirty-first next preceding the date herein provided for the filing of the report, or, in  
18          the alternative, data of the fiscal year ending next preceding this report may be  
19          used. The annual report must be signed as prescribed in subsection ~~39~~ 48 of  
20          section 10-19.1-01, or the articles or the bylaws or a resolution approved by the  
21          affirmative vote of the required proportion or number of the directors or holders of  
22          shares entitled to vote. If the corporation or foreign corporation is in the hands of a  
23          receiver or trustee, it must be signed on behalf of the corporation or foreign  
24          corporation by the receiver or trustee. The secretary of state may destroy all  
25          annual reports provided for in this section after they have been on file for six years.  
26          The secretary of state, or any employee or legal representative of the secretary of  
27          state, may not disclose the information reported under ~~subdivisions~~ subdivision g;  
28          ~~i, and j~~ of subsection 1 to any person, except a person who is verified to be a  
29          shareholder of the corporation or foreign corporation, a legal representative of the  
30          shareholder for which information is requested, or to the tax commissioner or any  
31          employee or legal representative of the tax commissioner, who may not disclose

1           the information and may use the information only for the administration of the tax  
2           laws.

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

5           **10-19.1-149.1. Secretary of state - Exempt records.** Any social security number of  
6 federal tax identification number disclosed or contained in any document filed with the secretary  
7 of state under this chapter is an exempt record as defined by subsection 5 of section  
8 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any  
9 social security number or federal tax identification number the secretary of state determines to  
10 be a closed record before a copy of any document is released to the public.

11           **SECTION 23. AMENDMENT.** Section 10-32-02 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13           **10-32-02. Definitions.** For purposes of this chapter, unless the context otherwise  
14 requires:

- 15           1. "Acquiring organization" means the foreign or domestic limited liability company or  
16           foreign or domestic corporation that acquires in an exchange the shares of a  
17           domestic or foreign corporation or the membership interests of a limited liability  
18           company.
- 19           2. "Address" means:
  - 20           a. In the case of a registered office or principal executive office, the mailing  
21           address, including a zip code, of the actual office location which may not be  
22           only a post-office box; and
  - 23           b. In all other cases, the mailing address, including a zip code.
- 24           3. "Articles" or "articles of organization" means:
  - 25           a. In the case of a limited liability company organized under this chapter, articles  
26           of organization, articles of amendment, a statement of change of registered  
27           office, registered agent, or name of registered agent, a statement establishing  
28           or fixing the rights and preferences of a class or series of membership  
29           interests, articles of merger, articles of abandonment, and articles of  
30           termination.

- 1                   b. In the case of a foreign limited liability company, the term includes all  
2                   documents serving a similar function required to be filed with the secretary of  
3                   state or other state office of the limited liability company's state of  
4                   organization.
- 5           4. "Authenticated electronic communication" means:
- 6           a. That the electronic communication is delivered:
- 7                   (1) To the principal place of business of the limited liability company; or  
8                   (2) To a manager or agent of the limited liability company authorized by the  
9                               limited liability company to receive the electronic communication; and
- 10           b. That the electronic communication sets forth information from which the  
11                   limited liability company can reasonably conclude that the electronic  
12                   communication was sent by the purported sender.
- 13           5. "Board" or "board of governors" means the board of governors of a limited liability  
14           company.
- 15   ~~5.~~ 6. "Board member" means:
- 16           a. An individual serving on the board of governors in the case of a limited liability  
17           company; and
- 18           b. An individual serving on the board of directors in the case of a corporation.
- 19   ~~6.~~ 7. "Bylaws" means any rule, resolution, or other provision, regardless how  
20           designated, that:
- 21           a. Relates to the management of the business or the regulation of the affairs of  
22           the limited liability company; and
- 23           b. Was expressly part of the bylaws by the action, taken from time to time under  
24           section 10-32-68, by the board ~~of governors~~ or the members.
- 25   ~~7.~~ 8. "Class", when used with reference to membership interests, means a category of  
26           membership interests which differs in one or more rights or preferences from  
27           another category of membership interests of the limited liability company.
- 28   ~~8.~~ 9. "Closely held limited liability company" means a limited liability company that does  
29           not have more than thirty-five members.
- 30   ~~9.~~ 10. "Constituent organization" means a limited liability company or a domestic or  
31           foreign corporation that:



- 1                   b. That the limited liability company must be continued as a legal entity without  
2                   dissolution.
- 3    ~~44.~~ 16. "Distribution" means a direct or indirect transfer of money or other property, other  
4                   than its own membership interests, with or without consideration, or an incurrence  
5                   or issuance of indebtedness, by a limited liability company to any of the limited  
6                   liability company's members in respect of membership interests. A distribution  
7                   may be in the form of an interim distribution or a termination distribution, or as  
8                   consideration for the purchase, redemption, or other acquisition of its membership  
9                   interests, or otherwise.
- 10 ~~45.~~ 17. "Domestic corporation" means a corporation, other than a foreign corporation,  
11                   organized for profit and incorporated under or governed by chapter 10-19.1.
- 12 ~~46.~~ 18. "Domestic organization" means an organization created under the laws of this  
13                   state.
- 14                   19. "Electronic" means relating to technology having electrical, digital, magnetic,  
15                   wireless, optical, electromagnetic, or similar capabilities.
- 16                   20. "Electronic communication" means any form of communication, not directly  
17                   involving the physical transmission of paper:
- 18                   a. That creates a record that may be retained, retrieved, and reviewed by a  
19                   recipient of the communication; and
- 20                   b. That may be directly reproduced in paper form by the recipient through an  
21                   automated process.
- 22                   21. "Electronic record" means a record created, generated, sent, communicated,  
23                   received, or stored by electronic means.
- 24                   22. "Electronic signature" means an electronic sound, symbol, or process attached to  
25                   or logically associated with a record and executed or adopted by a person with the  
26                   intent to sign the record.
- 27                   23. "Filed with the secretary of state" means except as otherwise permitted by law or  
28                   rule:
- 29                   a. That ~~either of the following~~ a document meeting the applicable requirements  
30                   of this chapter, together with the fees provided in section 10-32-150, has been  
31                   delivered or communicated to the secretary of state by a method or medium

- 1                    of communication acceptable by the secretary of state, and has been  
2                    determined by the secretary of state to conform to law:
- 3                    ~~(1) A signed original or a legible facsimile telecommunication of a signed~~  
4                    ~~original of a request for reserved name; or~~
- 5                    ~~(2) A signed original of all other documents, meeting the applicable~~  
6                    ~~requirements of this chapter, together with the fees provided in section~~  
7                    ~~10-32-150.~~
- 8                    b. That the secretary of state shall then:
- 9                    (1) ~~Endorse on the original Record the word "filed" and the month, day,~~  
10                    ~~and year actual date on which the document is filed, and if different, the~~  
11                    ~~effective date of filing; and~~
- 12                    (2) Record the document in the office of the secretary of state.
- 13    ~~47.~~ 24. "Financial rights" means a member's rights:
- 14                    a. To share in profits and losses as provided in section 10-32-36;
- 15                    b. To share in distributions as provided in section 10-32-60;
- 16                    c. To receive interim distributions as provided in section 10-32-61; and
- 17                    d. To receive termination distributions as provided in subdivision c of  
18                    subsection 1 of section 10-32-131.
- 19    ~~48.~~ 25. "Foreign corporation" means a corporation organized for profit that is incorporated  
20                    under laws other than the laws of this state for a purpose for which a corporation  
21                    may be incorporated under chapter 10-19.1.
- 22    ~~49.~~ 26. "Foreign limited liability company" means a limited liability company organized for  
23                    profit which is organized under laws other than the laws of this state for a purpose  
24                    for which a limited liability company may be organized under this chapter.
- 25    ~~20.~~ 27. "Foreign organization" means an organization created under laws other than the  
26                    laws of this state for a purpose for which an organization may be created under the  
27                    laws of this state.
- 28                    28. "Good faith" means honesty in fact in the conduct of the act or transaction  
29                    concerned.
- 30    ~~24.~~ 29. "Governance rights" means all of a member's rights as a member in the limited  
31                    liability company other than financial rights and the right to assign financial rights.

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- 1    ~~22.~~ 30. "Governing board" means:
- 2            a.    The board of governors in the case of a limited liability company; and
- 3            b.    The board of directors in the case of a corporation.
- 4    ~~23.~~ 31. "Governor" means an individual serving on the board ~~of governors~~.
- 5    ~~24.~~ 32. "Intentionally" means that the person referred to either has a purpose to do or fail
- 6            to do the act or cause the result specified or believes that the act or failure to act, if
- 7            successful, will cause that result. A person "intentionally" violates a statute:
- 8            a.    If the person intentionally does the act or causes the result prohibited by the
- 9                        statute; or
- 10            b.    If the person intentionally fails to do the act or cause the result required by the
- 11                        statute, even though the person may not know of the existence or
- 12                        constitutionality of the statute or the scope or meaning of the terms used in
- 13                        the statute.
- 14    ~~25.~~ 33. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A
- 15            person does not "know" or have "knowledge" of a fact merely because the person
- 16            has reason to know of the fact.
- 17    ~~26.~~ 34. "Legal representative" means a person empowered to act for another person,
- 18            including an agent, manager, officer, partner, or associate of an organization; a
- 19            trustee of a trust; a personal representative; a trustee in bankruptcy; and a
- 20            receiver, guardian, custodian, or conservator.
- 21    ~~27.~~ 35. "Limited liability company" means a limited liability company, other than a foreign
- 22            limited liability company, organized under this chapter.
- 23    ~~28.~~ 36. "Manager" means:
- 24            a.    An individual who is eighteen years of age or more and who is elected,
- 25                        appointed, or otherwise designated as a manager by the board ~~of governors~~;
- 26                        and
- 27            b.    An individual considered elected as a manager pursuant to section 10-32-92.
- 28    ~~29.~~ 37. "Member" means a person, with or without voting rights, reflected in the required
- 29            records of a limited liability company as the owner of a membership interest in the
- 30            limited liability company.

- 1    ~~30-~~ 38. "Membership interest" means one of the units, however designated, into which a  
2                    member's proprietary interest in a limited liability company is divided consisting of:
- 3                    a. A member's financial rights;
- 4                    b. A member's right to assign financial rights as provided in section 10-32-31;
- 5                    c. A member's governance rights, if any; and
- 6                    d. A member's right to assign any governance rights owned as provided in  
7                    section 10-32-32.
- 8    ~~34-~~ 39. "Notice" is:
- 9                    a. Is given by a member of a limited liability company to the limited liability  
10                    company or a manager of a limited liability company ~~when:~~
- 11                    (1) When in writing and mailed or delivered to the limited liability company  
12                    or the manager at the registered office or principal executive office of  
13                    the limited liability company.
- 14                    (2) When given by a form of electronic communication consented to by the  
15                    limited liability company or a manager to which the notice is given:
- 16                    (a) If by facsimile communication, when directed to a telephone  
17                    number at which the limited liability company or a manager has  
18                    consented to receive notice;
- 19                    (b) If by electronic mail, when directed to an electronic mail address  
20                    at which the limited liability company or a manager has  
21                    consented to receive notice;
- 22                    (c) If by posting on an electronic network on which the limited liability  
23                    company or a manager has consented to receive notice, together  
24                    with separate notice to the limited liability company or a manager  
25                    of the specific posting, upon the later of:
- 26                    [1] The posting; or
- 27                    [2] The giving of the separate notice; or
- 28                    (d) If by any other form of electronic communication by which the  
29                    limited liability company or a manager has consented to receive  
30                    notice, when directed to the limited liability company or a  
31                    manager.

- 1           a. ~~b.~~ ~~In all other cases, notice is~~ Is given to a person, in all other cases:
- 2                   (1) When mailed to the person at an address designated by the person or
- 3                   at the last-known address of the person;
- 4                   (2) When handed to the person; ~~or~~
- 5                   (3) When left at the office of the person with a clerk or other person in
- 6                   charge of the office; or:
- 7                   (a) If there is no one in charge, when left in a conspicuous place in
- 8                   the office; or
- 9                   (b) If the office is closed or the person to be notified has no office,
- 10                  when left at the dwelling house or usual place of abode of the
- 11                  person with some person of suitable age and discretion who is
- 12                  residing there; or
- 13                  (4) When given by a form of electronic communication consented to by the
- 14                  person to whom the notice is given:
- 15                   (a) If by facsimile communication, when directed to a telephone
- 16                   number at which the person has consented to receive notice.
- 17                   (b) If by electronic mail, when directed to an electronic mail address
- 18                   at which the person has consented to receive notice.
- 19                   (c) If by posting on an electronic network on which the person has
- 20                   consented to receive notice, together with separate notice to the
- 21                   person of the specific posting, upon the later of:
- 22                   [1] The posting; or
- 23                   [2] The giving of the separate notice.
- 24                   (d) If by any other form of electronic communication by which the
- 25                   person has consented to receive notice when directed to the
- 26                   person.
- 27           b. ~~c.~~ ~~Notice by mail is~~ Is given by mail when deposited in the United States mail
- 28                   with sufficient postage affixed.
- 29           e. ~~d.~~ ~~Notice is considered~~ Is deemed received when it is given.
- 30   ~~32.~~ 40. "Organization" means, ~~whether~~

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- 1           a. Whether domestic or foreign, a limited liability company, corporation,  
2           partnership, limited partnership, limited liability partnership, limited liability  
3           limited partnership, joint venture, association, business trust, estate, trust,  
4           enterprise, and any other legal or commercial entity; but  
5           b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation  
6           which is incorporated under chapter 10-33 or a foreign nonprofit corporation  
7           which is incorporated in another jurisdiction.
- 8   ~~33.~~ 41. "Owners" means:  
9           a. Members in the case of a limited liability company or a nonprofit corporation;  
10          and  
11          b. Shareholders in the case of a corporation.
- 12   ~~34.~~ 42. "Ownership interests" means:  
13          a. Membership interests in the case of a limited liability company or a nonprofit  
14          corporation; and  
15          b. Shares in the case of a corporation.
- 16   ~~35.~~ 43. "Parent" of a specified limited liability company means a limited liability company or  
17          corporation that directly or indirectly, through related organizations, owns more  
18          than fifty percent of the voting power of the membership interests entitled to vote  
19          for governors of the specified limited liability company.
- 20   ~~36.~~ 44. "Pertains" means a contribution "pertains":  
21          a. To a particular series when the contribution is made in return for a  
22          membership interest in that particular series.  
23          b. To a particular class when the class has no series and the contribution is  
24          made in return for a membership interest in the class.  
25          A contribution that pertains to a series does not pertain to the class of which the  
26          series is a part.
- 27   ~~37.~~ 45. "Principal executive office" means:  
28          a. If the limited liability company has an elected or appointed president, an office  
29          where the elected or appointed president of the limited liability company has  
30          an office; or

- 1                   b.    If the limited liability company has no elected or appointed president, the  
2                                    registered office of the limited liability company.
- 3    ~~38.~~ 46.   "Record" means information that is inscribed on a tangible medium or that is stored  
4                   in an electronic or other medium and is retrievable in perceivable form.
- 5                   47.    "Registered office" means the place in this state designated in the articles as the  
6                                    registered office of the limited liability company.
- 7    ~~39.~~ 48.    "Related organization" means an organization that controls, is controlled by, or is  
8                                    under common control with another organization with control existing if an  
9                                    organization:
- 10                   a.    Owns, directly or indirectly, at least fifty percent of the shares, membership  
11                                    interests, or other ownership interests of another organization;
- 12                   b.    Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or  
13                                    more of the voting members of the governing body of another organization; or
- 14                   c.    Has the power, directly or indirectly, to direct or cause the direction of the  
15                                    management and policies of another organization, whether through the  
16                                    ownership of voting interests, by contract, or otherwise.
- 17    ~~40.~~ 49.    "Remote communication" means communication via electronic communication,  
18                   conference telephone, videoconference, the internet, or such other means by  
19                   which persons not physically present in the same location may communicate with  
20                   each other on a substantially simultaneous basis.
- 21                   50.    "Required records" are those records required to be maintained under section  
22                                    10-32-51.
- 23    ~~41.~~ 51.    "Security" has the meaning given it in ~~subsection 13 of~~ section 10-04-02.
- 24    ~~42.~~ 52.    "Series" means a category of membership interests, within a class of membership  
25                                    interests, that has some of the same rights and preferences as other membership  
26                                    interests within the same class, but that differ in one or more rights and  
27                                    preferences from another category of membership interests within that class.
- 28    ~~43.~~ 53.    "Signed" means:
- 29                   a.    That the signature of a person has been, which may be a facsimile affixed,  
30                   engraved, printed, placed, stamped with indelible ink, transmitted by facsimile  
31                   telecommunication or electronically, or in any other manner reproduced on the

1                    document, is placed on a document, as provided in subsection 39 of under  
2                    section 41-01-11, and, with 41-01-09.

3                    b. With respect to a document:

4                    a. Required required by this chapter to be filed with the secretary of state,  
5                    means the that:

6                    (1) The document has been signed by a person authorized to do so by this  
7                    chapter, the articles of organization, a member-control agreement, or  
8                    the bylaws or a resolution approved by the governors as required by  
9                    section 10-32-83 or the members as required by section 10-32-42; and

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

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

16     ~~44.~~ 54. "Subsidiary" of a specified limited liability company means:

17                   a. A limited liability company having more than fifty percent of the voting power  
18                   of its membership interests entitled to vote for governors owned directly or  
19                   indirectly through related organizations by the specified limited liability  
20                   company; or

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

24     ~~45.~~ 55. "Successor organization" means an organization that, pursuant to a business  
25                   continuation agreement or an order of the court under subsection 6 of section  
26                   10-32-119, continues the business of the dissolved and terminated limited liability  
27                   company.

28     ~~46.~~ 56. "Surviving organization" means the foreign or domestic limited liability company or  
29                   domestic or foreign corporation resulting from a merger.

30     ~~47.~~ 57. "Termination" means the end of a limited liability company's existence as a legal  
31                   entity and occurs when a notice of termination is:

- 1 a. Filed with the secretary of state under section 10-32-117 together with the  
2 fees provided in section 10-32-150; or
- 3 b. ~~Is considered~~ Considered filed with the secretary of state under subdivision c  
4 of subsection 2 of section 10-32-106 together with the fees provided in section  
5 10-32-150.
- 6 ~~48.~~ 58. "Vote" includes authorization by written action.
- 7 ~~49.~~ 59. "Winding up" means the period triggered by dissolution during which the limited  
8 liability company ceases to carry on business, except to the extent necessary for  
9 concluding affairs, and disposing of assets under section 10-32-131.
- 10 ~~50.~~ 60. "Written action" means a:
- 11 a. A written document signed by every person required to take the action  
12 described; and ~~the~~
- 13 b. The counterparts of a written document signed by any person taking the  
14 action described.
- 15 (1) Each counterpart constitutes the action of the persons signing it; ~~and~~  
16 ~~all~~
- 17 (2) All the counterparts, taken together, constitute one written action by all  
18 of the persons signing them.

19 **SECTION 24.** Section 10-32-02.1 of the North Dakota Century Code is created and  
20 enacted as follows:

21 **10-32-02.1. Legal recognition of electronic records and electronic signatures.** For  
22 purposes of this chapter:

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

1           **SECTION 25. AMENDMENT.** Subsections 2, 3, and 4 of section 10-32-07 of the North  
2 Dakota Century Code are amended and reenacted as follows:

- 3           2. The following provisions govern a limited liability company unless modified in the  
4 articles of organization or a member-control agreement under section 10-32-50:
- 5           a. A limited liability company has general business purposes as provided in  
6 section 10-32-04;
  - 7           b. A limited liability company has certain powers as provided in section  
8 10-32-23;
  - 9           c. The power to adopt, amend, or repeal the bylaws is vested in the board of  
10 ~~governors~~ as provided in section 10-32-68;
  - 11           d. A limited liability company must allow cumulative voting for governors as  
12 provided in section 10-32-76;
  - 13           e. The affirmative vote of the greater of a majority of governors present or a  
14 majority of the minimum number of governors constituting a quorum is  
15 required for an action of the board of ~~governors~~ as provided in section  
16 10-32-83;
  - 17           f. A written action by the board of ~~governors~~ taken without a meeting must be  
18 signed by all governors as provided in section 10-32-84;
  - 19           g. The board may accept contributions, make contribution agreements, and  
20 make contribution allowance agreements as provided in subsection 1 of  
21 section 10-32-56 and sections 10-32-58 and 10-32-59;
  - 22           h. All membership interests are ordinary membership interests entitled to vote  
23 and are of one class with no series as provided in subdivisions a and b of  
24 subsection 5 of section 10-32-56;
  - 25           i. All membership interests have equal rights and preferences in all matters not  
26 otherwise provided for by the board of ~~governors~~ as provided in subdivision b  
27 of subsection 5 of section 10-32-56;
  - 28           j. The value of previous contributions must be restated when a new contribution  
29 is accepted as provided in subsections 3 and 4 of section 10-32-57;
  - 30           k. A member has certain preemptive rights, unless otherwise provided by the  
31 board of ~~governors~~ as provided in section 10-32-37;

- 1           l.    The affirmative vote of the greater of the owners of a majority of the voting  
2           power of the membership interests present and entitled to vote at a duly held  
3           meeting or a majority of the voting power of the membership interests with  
4           voting rights constituting the minimum voting power needed for a quorum for  
5           the transaction of business is required for an action of the members, except if  
6           this chapter requires the affirmative vote of a majority of the voting power of  
7           all membership interests entitled, to vote as provided in subsection 1 of  
8           section 10-32-42;
- 9           m.   The voting power of each membership interest is in proportion to the value  
10          reflected in the required records of the contributions of the members as  
11          provided in section 10-32-40.1;
- 12          n.   Members share in distributions in proportion to the value reflected in the  
13          required records of the contributions of members as provided in section  
14          10-32-60;
- 15          o.   Members share profits and losses in proportion to the value reflected in the  
16          required records of the contributions of members as provided in section  
17          10-32-36;
- 18          p.   A written action by the members taken without a meeting must be signed by  
19          all members as provided in section 10-32-43;
- 20          q.   Members have no right to receive distributions in kind and the limited liability  
21          company has only limited rights to make distributions in kind as provided in  
22          section 10-32-62;
- 23          r.   A member is not subject to expulsion as provided in subsection 2 of section  
24          10-32-30;
- 25          s.   Unanimous consent is required for the transfer of governance rights to a  
26          person not already a member as provided in subsection 2 of section 10-32-32;
- 27          t.   For a limited liability company whose existence begins before July 1, 1999,  
28          unanimous consent is required to avoid dissolution as provided in  
29          subdivision e of subsection 1 of section 10-32-109;
- 30          u.   The termination of a person's membership interest has specified  
31          consequences as provided in section 10-32-30; and

- 1 v. Restrictions apply to the assignment of governance rights as provided in  
2 section 10-32-32.
- 3 3. The following provisions govern a limited liability company unless modified in the  
4 articles of organization, a member-control agreement under section 10-32-50, or in  
5 the bylaws:
- 6 a. Governors serve for an indefinite term that expires at the next regular meeting  
7 of members as provided in section 10-32-72;
- 8 b. The compensation of governors is fixed by the board of ~~governors~~ as  
9 provided in section 10-32-74;
- 10 c. A certain method must be used for removal of governors as provided in  
11 section 10-32-78;
- 12 d. A certain method must be used for filling board of ~~governors~~ vacancies as  
13 provided in section 10-32-79;
- 14 e. If the board of ~~governors~~ fails to select a place for a board meeting, it must be  
15 held at the principal executive office as provided in subsection 1 of section  
16 10-32-80;
- 17 f. The notice of a board of ~~governors~~ meeting need not state the purpose of the  
18 meeting as provided in subsection 3 of section 10-32-80;
- 19 g. A majority of the board of ~~governors~~ is a quorum for a board meeting as  
20 provided in section 10-32-82;
- 21 h. A committee consists of one or more individuals, who need not be governors,  
22 appointed by affirmative vote of a majority of the governors present as  
23 provided in subsection 2 of section 10-32-85;
- 24 i. The board may establish a special litigation committee as provided in section  
25 10-32-85;
- 26 j. The president and treasurer have specified duties, until the board of ~~ef~~  
27 ~~governors~~ determines otherwise as provided in section 10-32-89;
- 28 k. Managers may delegate some or all of their duties and powers, if not  
29 prohibited by the board of ~~governors~~ from doing so as provided in section  
30 10-32-95;

- 1           l. Regular meetings of members need not be held, unless demanded by a  
2           member under certain conditions as provided in section 10-32-38;
- 3           m. In all instances when a specific minimum notice period has not otherwise  
4           been fixed by law, not less than ten days' notice is required for a meeting of  
5           members as provided in subsection 2 of section 10-32-40;
- 6           n. For a quorum at a members' meeting, there is required a majority of the voting  
7           power of the membership interests entitled to vote at the meeting as provided  
8           in section 10-32-44;
- 9           o. The board ~~of governors~~ may fix a date up to fifty days before the date of a  
10          members' meeting as the date for the determination of the members entitled  
11          to notice of and entitled to vote at the meeting as provided in section  
12          10-32-40.1;
- 13          p. Indemnification of certain persons is required as provided in section 10-32-99;
- 14          q. The board ~~of governors~~ may authorize, and the limited liability company may  
15          make, distributions not prohibited, limited, or restricted by an agreement as  
16          provided in subsection 1 of section 10-32-64; and
- 17          r. Members have no right to interim distributions except as provided through the  
18          bylaws or an act of the board ~~of governors~~ as provided in section 10-32-61.
- 19      4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of  
20      organization or a member-control agreement under section 10-32-50. The  
21      provisions in subdivisions b through f, h, i, j, k, l, m, n, and q may be included in the  
22      articles of organization, in a member-control agreement under section 10-32-50, or,  
23      in the bylaws:
- 24          a. The persons to serve as the first board ~~of governors~~ may be named in the  
25          articles of organization as provided in subsection 1 of section 10-32-69;
- 26          b. A manner for increasing or decreasing the number of governors may be  
27          provided as provided in section 10-32-70;
- 28          c. Additional qualifications for governors may be imposed as provided in section  
29          10-32-71;
- 30          d. Governors may be classified as provided in section 10-32-75;

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- 1 e. The date, time, and place of board ~~of governors~~ meetings may be fixed as  
2 provided in subsection 1 of section 10-32-80;
- 3 f. Absent governors may be permitted to give written consent or opposition to a  
4 proposal as provided in section 10-32-81;
- 5 g. A larger than majority vote may be required for board ~~of governors~~ action as  
6 provided in section 10-32-83;
- 7 h. Authority to sign and deliver certain documents may be delegated to a  
8 manager or agent of the limited liability company other than the president as  
9 provided in section 10-32-89;
- 10 i. Additional managers may be designated as provided in section 10-32-88;
- 11 j. Additional powers, rights, duties, and responsibilities may be given to  
12 managers as provided in section 10-32-89;
- 13 k. A method for filling vacant offices may be specified as provided in  
14 subsection 3 of section 10-32-94;
- 15 l. The date, time, and place of regular member meetings may be fixed as  
16 provided in subsection 3 of section 10-32-38;
- 17 m. Certain persons may be authorized to call special meetings of members as  
18 provided in subsection 1 of section 10-32-39;
- 19 n. Notices of member meetings may be required to contain certain information  
20 as provided in subsection 3 of section 10-32-40;
- 21 o. A larger than majority vote may be required for member action as provided in  
22 section 10-32-42;
- 23 p. Voting rights may be granted in or pursuant to the articles of organization to  
24 persons who are not members as provided in subsection 3 of section  
25 10-32-40.1;
- 26 q. Limited liability company actions giving rise to dissenter rights may be  
27 designated as provided in subdivision d of subsection 1 of section 10-32-55;  
28 and
- 29 r. A governor's personal liability to the limited liability company or the limited  
30 liability company's members for monetary damages for breach of fiduciary

1 duty as a governor may be eliminated or limited in the articles as provided in  
2 subsection 4 of section 10-32-86.

3 **SECTION 26. AMENDMENT.** Subsection 5 of section 10-32-10 of the North Dakota  
4 Century Code is amended and reenacted as follows:

5 5. A limited liability company that is ~~merged~~ the surviving organization in a merger  
6 ~~with another limited liability company or domestic or foreign corporation, or that is~~  
7 ~~organized by the reorganization of one or more limited liability companies or~~  
8 ~~domestic or foreign corporations~~ other organizations, or that acquires by sale,  
9 lease, or other disposition to or exchange with ~~a limited liability company~~ an  
10 organization all or substantially all of the assets of another ~~limited liability company~~  
11 ~~or domestic or foreign corporation~~ organization including its name, may have the  
12 same name, subject to the requirements of subsection 1, as that used in this state  
13 by any of the other ~~limited liability companies or domestic or foreign corporations~~  
14 organizations, if the ~~other limited liability company or domestic or foreign~~  
15 ~~corporation~~ organization whose name is sought to be used:

- 16 a. Was organized ~~or~~, incorporated, formed or registered under the laws of this  
17 state;
- 18 b. Is authorized to transact business or conduct activities in this state;
- 19 c. Holds a reserved name in the manner provided in section 10-19.1-14,  
20 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- 21 d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
- 22 e. Holds a trade name registered in the manner provided in chapter 47-25.

23 **SECTION 27. AMENDMENT.** Section 10-32-11 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25 **10-32-11. Reserved name.**

- 26 1. The exclusive right to the use of a limited liability company name otherwise  
27 permitted by section 10-32-10 may be reserved by any person.
- 28 2. The reservation is made by filing with the secretary of state a request that the  
29 name be reserved together with the fees provided in section 10-32-150.

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

18           **SECTION 28. AMENDMENT.** Subsection 1 of section 10-32-13 of the North Dakota  
19 Century Code is amended and reenacted as follows:

- 20       1.    A limited liability company may change its registered office, change its registered
- 21                    agent, or state a change in the name of its registered agent, by filing with the
- 22                    secretary of state, along with the fees provided in section 10-32-150, a statement
- 23                    containing:
- 24            a.    The name of the limited liability company;
- 25            b.    If the address of its registered office is to be changed, the new address of its
- 26                    registered office;
- 27            c.    If its registered agent is to be designated or changed, the name of its new
- 28                    registered agent;
- 29            d.    If the name of its registered agent is to be changed, the name of its registered
- 30                    agent as changed;

- 1 e. A statement that the address of its registered office and the address of the  
2 business office of its registered agent, as changed, will be identical; and  
3 f. A statement that the change of registered office or registered agent was  
4 authorized by resolution approved by the board ~~of governors~~.

5 **SECTION 29. AMENDMENT.** Section 10-32-15 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **10-32-15. Procedure for amendment before contribution.** Before any contribution is  
8 reflected in the required records of a limited liability company, the articles of organization may  
9 be amended pursuant to section 10-32-67 by the organizers or by the board ~~of governors~~. The  
10 articles of organization may also be amended by the board ~~of governors~~ to change or cancel a  
11 statement pursuant to subsection 6 of section 10-32-56 establishing or fixing the rights and  
12 preferences of a class or series of membership interests before any contribution pertaining to  
13 that class or series is reflected in the required records of the limited liability company by filing  
14 articles of amendment or a statement of cancellation, as appropriate, with the secretary of state.

15 **SECTION 30. AMENDMENT.** Subsection 6 of section 10-32-17 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 17 6. Divide the membership interests of the class into series and determine the  
18 designation of each series and the variations in the relative rights and preferences  
19 between the membership interests of each series or authorize the board ~~of~~  
20 ~~governors~~ to do so;

21 **SECTION 31. AMENDMENT.** Subsection 1 of section 10-32-22 of the North Dakota  
22 Century Code is amended and reenacted as follows:

- 23 1. Whenever a plan of reorganization of a limited liability company has been  
24 confirmed by decree or order of a court of competent jurisdiction in proceedings for  
25 the reorganization of the limited liability company, pursuant to the provisions of any  
26 applicable statute of the United States relating to reorganization of limited liability  
27 companies, the articles may be amended, in the manner provided in this section, in  
28 as many respects as may be necessary to carry out the plan and to put it into  
29 effect, so long as the articles as amended contain only provisions which might be  
30 lawfully contained in original articles of organization at the time of making the

- 1 amendment. In particular, and without limitation upon any general power of  
2 amendment, the articles may be amended to:
- 3 a. Change the limited liability company name, period of duration, or  
4 organizational purposes of the limited liability company.
  - 5 b. Repeal, alter, or amend the bylaws of the limited liability company.
  - 6 c. Change the preferences, limitations, relative rights in respect of all or any part  
7 of the membership interests of the limited liability company, and classify,  
8 reclassify, or cancel all or any part thereof.
  - 9 d. Authorize the issuance of bonds, debentures, or other obligations of the  
10 limited liability company, whether convertible into membership interests of any  
11 class or bearing warrants or other evidence of optional rights to purchase or  
12 subscribe for membership interests of any class, and fix the terms and  
13 conditions thereof.
  - 14 e. Constitute or reconstitute and classify or reclassify the board of ~~governors~~ and  
15 appoint governors and managers in place of or in addition to all or any of the  
16 governors or managers then in office.

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

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

22 **SECTION 33. AMENDMENT.** Section 10-32-36 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24 **10-32-36. Sharing of profits and losses.** Unless otherwise provided in the articles of  
25 organization, in a member-control agreement, or by the board of ~~governors~~ under subsections 5  
26 and 6 of section 10-32-56, the profits and losses of a limited liability company must be allocated  
27 among the members, and among classes and series of members, in proportion to the value of  
28 the contributions of the members reflected in the required records.

29 **SECTION 34. AMENDMENT.** Section 10-32-37 of the North Dakota Century Code is  
30 amended and reenacted as follows:

31 **10-32-37. Preemptive rights.**

- 1           1. To the extent allowed by section 9 of article XII of the Constitution of North Dakota,  
2           a member of a limited liability company has the preemptive rights provided in this  
3           section, unless denied or limited in the articles of organization, in a member-control  
4           agreement, or by the board of ~~governors~~ pursuant to subdivision b of subsection 5  
5           of section 10-32-56.
- 6           2. A preemptive right is the right of a member to make contributions of a certain  
7           amount or to make a contribution allowance agreement specifying future  
8           contributions of a certain amount before the limited liability company may accept  
9           new contributions from other persons or to make contribution allowance  
10          agreements with other persons.
- 11          3. A member has a preemptive right whenever the limited liability company proposes  
12          to accept contributions from other persons, or to make contribution allowance  
13          agreements with other persons, pertaining to membership interests of the same  
14          series or class as the series or class owned by the member.
- 15          4. Unless otherwise provided in the articles of organization or a member-control  
16          agreement, no preemptive rights pursuant to this section arise as to contributions  
17          to be accepted from others or as to contribution allowance agreements to be made  
18          with others when the contribution is:
  - 19           a. To be made in a form other than money;
  - 20           b. To be made or reflected pursuant to a plan of merger;
  - 21           c. To be made or reflected pursuant to an employee or incentive benefit plan  
22           approved at a meeting by the affirmative vote of the owners of a majority of  
23           the voting power of all membership interests entitled to vote;
  - 24           d. To be made pursuant to a previously made contribution allowance agreement;  
25           or
  - 26           e. To be made or reflected pursuant to a plan of reorganization approved by a  
27           court of competent jurisdiction pursuant to a statute of this state or of the  
28           United States.
- 29          5. The extent to which each member may make a new contribution, or obtain the right  
30          to make a new contribution under a contribution allowance agreement, by exercise  
31          of a preemptive right as to any class or series is the ratio that the value of that

- 1 member's contributions, as reflected in the required records as pertaining to that  
2 class or series before the contribution, bears to the total value of all members'  
3 contributions reflected in the required records as pertaining to that class or series  
4 before the new contribution.
- 5 6. A member may waive a preemptive right in writing. The waiver is binding upon the  
6 member whether or not consideration has been given for the waiver. Unless  
7 otherwise provided in the waiver, a waiver of preemptive rights is effective only for  
8 the proposed contribution or contribution allowance agreement described in the  
9 waiver.
- 10 7. When proposing to accept new contributions, or to make contribution allowance  
11 agreements, with respect to which members have preemptive rights under this  
12 section, the board of ~~governors~~ shall cause notice to be given to each member  
13 entitled to preemptive rights. The notice must be given at least ten days before the  
14 date by which the member must exercise a preemptive right and must contain:
- 15 a. The extent of the member's preemptive right, being:
- 16 (1) In the case of a preemptive right to make a contribution, the amount of  
17 the contribution to be made; and
- 18 (2) In the case of a preemptive right to make a contribution allowance  
19 agreement, the amount of the contribution to be allowed under that  
20 contribution allowance agreement;
- 21 b. The method used to determine the extent of the member's preemptive right;
- 22 c. The terms and conditions upon which the member may make a contribution or  
23 make a contribution allowance agreement; and
- 24 d. The time within which and the method by which the member must exercise  
25 the right.
- 26 8. If a member does not exercise preemptive rights to make a contribution or to make  
27 a contribution allowance agreement, then for a period not exceeding one year after  
28 the date fixed by the board of ~~governors~~ for the exercise of those preemptive rights  
29 and to the extent of the preemptive rights not exercised, the board of ~~governors~~  
30 may accept contributions or make contribution allowance agreements on terms no  
31 less favorable to the limited liability company than those offered to the member.

- 1           9. If the members of a limited liability company are entitled to cumulative voting in the  
2 election of governors, no amendment to the articles of organization or a  
3 member-control agreement which has the effect of denying, limiting, or modifying  
4 the preemptive rights provided in this section may be adopted if the votes of a  
5 proportion of the voting power sufficient to elect a governor at an election of the  
6 entire board ~~of governors~~ under cumulative voting are cast against the  
7 amendment.
- 8           10. A denial or limitation of preemptive rights otherwise provided in this section does  
9 not limit the power of a limited liability company to grant first refusal rights,  
10 contribution allowance rights, or other rights to make contributions to the limited  
11 liability company, to members, to persons who have entered into contribution  
12 agreements, or to other persons before accepting contributions or before making  
13 allowance agreements with any other person.

14           **SECTION 35. AMENDMENT.** Subsections 2 and 3 of section 10-32-38 of the North  
15 Dakota Century Code are amended and reenacted as follows:

- 16           2. If a regular meeting of members has not been held within the earlier of six months  
17 after the fiscal yearend of the corporation or fifteen months after its last meeting:
- 18           a. A member or members owning five percent or more of the voting power of all  
19 members entitled to vote may demand a regular meeting of members by  
20 written notice of demand given to the president or the secretary of the limited  
21 liability company.
- 22           b. Within thirty days after receipt of the demand by one of those managers, the  
23 board ~~of governors~~ shall cause a regular meeting of members to be called  
24 and held on notice no later than ninety days after receipt of the demand.
- 25           c. If the board ~~of governors~~ fails to cause a regular meeting to be called and  
26 held as required by this subsection, the member or members making the  
27 demand may call the regular meeting by giving notice as required by section  
28 10-32-40.
- 29           d. All necessary expenses of the notice and the meeting must be paid by the  
30 limited liability company.

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

9           **SECTION 36. AMENDMENT.** Subsections 2 and 3 of section 10-32-39 of the North  
10          Dakota Century Code are amended and reenacted as follows:

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

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

19          b. If the board ~~of governors~~ fails to cause a special meeting to be called and  
20          held as required by this subsection, the member or members making the  
21          demand may call the meeting by giving notice as required by section  
22          10-32-40.

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

25          3. Special meetings must be held on the date and at the time and place fixed by the  
26          president, the board ~~of governors~~, or a person authorized by the articles, a  
27          member-control agreement, or the bylaws to call a meeting, except a special  
28          meeting called by or at the demand of a member or members pursuant to  
29          subsection 2 must be held in the county where the principal executive office is  
30          located. To the extent authorized in the articles, a member-control agreement, or  
31          the bylaws, the board may determine that a special meeting of the members shall

1           be held solely by means of remote communication in accordance with  
2           subdivision a of subsection 2 of section 10-32-43.2.

3           **SECTION 37. AMENDMENT.** Subsection 3 of section 10-32-40 of the North Dakota  
4 Century Code is amended and reenacted as follows:

5           3. The notice:

- 6           a. In all instances when a specific minimum notice period has not otherwise  
7           been fixed by law, must be given at least ten days before the date of the  
8           meeting, or a shorter time provided in the articles of organization, a  
9           member-control agreement, or the bylaws, and not more than fifty days before  
10          the date of the meeting;
- 11          b. Must contain the date, time, and place of the meeting;
- 12          c. Must contain the information with respect to dissenters' rights required by  
13          subsection 2 of section 10-32-55, if applicable;
- 14          d. Must inform members if proxies are permitted at the meeting and, if so, state  
15          the procedure for appointing proxies;
- 16          e. Must contain a statement of the purpose of the meeting, in the case of a  
17          special meeting;
- 18          f. Must contain any other information:
- 19             (1) Required by the articles of organization, any member-control  
20             agreement, the bylaws, or this chapter; or
- 21             (2) Considered necessary or desirable by the board ~~of governors~~; and
- 22          g. May contain any other information considered necessary or desirable by the  
23          person or persons calling the meeting.

24          **SECTION 38. AMENDMENT.** Section 10-32-40.1 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26          **10-32-40.1. Voting rights.**

- 27          1. The board ~~of governors~~ may fix or authorize a manager to fix a date not more than  
28          fifty days, or a shorter time period provided in the articles of organization, a  
29          member-control agreement, or the bylaws, before the date of a meeting of  
30          members as the date for the determination of the owners of membership interests  
31          entitled to notice of and entitled to vote at the meeting. When a date is so fixed,

- 1           only members on that date are entitled to notice of and permitted to vote at that  
2           meeting of members.
- 3           2. A determination of the owners of membership interests entitled to notice and to  
4           vote at a meeting of members is effective for an adjournment of the meeting unless  
5           the board ~~of governors~~ fixes a new date for determining the right to notice and to  
6           vote, which it must do if the meeting is adjourned to a date more than fifty days  
7           after the record date for determining members entitled to notice of the original  
8           meeting.
- 9           3. If a court orders a meeting adjourned to a date more than one hundred twenty days  
10          after the date fixed for the original meeting:
- 11          a. It must provide the original record date for notice and voting continues in  
12          effect; or
- 13          b. It may fix a new record date for notice and voting.
- 14          4. A resolution approved by the affirmative vote of a majority of the governors present  
15          may establish a procedure whereby a member may certify in writing to the limited  
16          liability company that all or a portion of the membership interest registered in the  
17          name of the member are held for the account of one or more beneficial owners.  
18          Upon receipt by the limited liability company of the writing, the persons specified as  
19          beneficial owners, rather than the actual member, are deemed the members for the  
20          purposes specified in the writing.
- 21          5. Unless otherwise provided in the articles, in a member-control agreement, or by  
22          the board ~~of governors~~ under subsections 5 and 6 of section 10-32-56, members  
23          have voting power in proportion to the value of the contributions of the members as  
24          reflected in the required records.
- 25          6. The articles of organization or a member-control agreement may give or prescribe  
26          the manner of giving a creditor, securityholder, or other person a right to vote under  
27          this section.
- 28          7. Membership interests owned by two or more members may be voted by any one of  
29          them unless the limited liability company receives written notice from any one of  
30          them denying the authority of that person to vote those membership interests.

1           8. Except as provided in subsection 7, an owner of a membership interest entitled to  
2           vote may vote any portion of the membership interest in any way the member  
3           chooses. If a member votes without designating the proportion voted in a  
4           particular way, the member is considered to have voted all of the membership  
5           interest in that way.

6           **SECTION 39. AMENDMENT.** Section 10-32-43 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           **10-32-43. Action without a meeting.**

- 9           4. An action required or permitted to be taken at a meeting of the members may be  
10          taken without a meeting by written action signed, or consented to by authenticated  
11          electronic communication, by all of the members entitled to vote on that action.
- 12          1. If ~~provided by~~ the articles or a member-control agreement so provide, any action  
13          may be taken by written action signed, or consented to by authenticated electronic  
14          communication, by the members who own voting power equal to the voting power  
15          that would be required to take the same action at a meeting of the members at  
16          which all members were present.
- 17          2. The written action is effective when signed, or consented to by authenticated  
18          electronic communication, by the required members, unless a different effective  
19          time is provided in the written action.
- 20          3. a. When written action is permitted to be taken by less than all members, all  
21             members must be notified immediately of its text and effective date.  
22             b. Failure to provide the notice does not invalidate the written action.  
23             c. A member who does not sign or consent to the written action has no liability  
24             for the action or actions taken by the written action.
- 25          4. 3. When this chapter requires or permits a certificate concerning an action to be filed  
26          with the secretary of state, the managers signing the certificate must so indicate  
27          ~~that~~ if the action was taken under this section.

28          **SECTION 40. AMENDMENT.** Section 10-32-43.2 of the North Dakota Century Code is  
29 amended and reenacted as follows:

30          **10-32-43.2. Electronic Remote communications for member meetings.**

- 31          1. This section shall be construed and applied to:

- 1           a. Facilitate remote communication consistent with other applicable law; and  
2           b. Be consistent with reasonable practices concerning remote communication  
3             and with the continued expansion of those practices.
- 4           2. To the extent authorized in the articles, a member-control agreement or the  
5             bylaws, and determined by the board:
- 6           a. ~~A conference among~~ meeting of the members may be held solely by any  
7             combination of means of remote communication through which the  
8             participants may ~~simultaneously hear each other during~~ participate in the  
9             ~~conference constitutes a regular or special meeting of members if the same:~~
- 10           (1) If notice of the meeting is given of the conference to every owner of  
11             membership interests entitled to vote as would be required by this  
12             chapter for a meeting; and
- 13           (2) If the membership interests held by the members participating in the  
14             ~~conference meeting~~ would be sufficient to constitute a quorum at a  
15             meeting. Participation in a conference by this means constitutes  
16             presence at the meeting in person or by proxy if all the other  
17             ~~requirements of section 10-32-48 are met.~~
- 18           2. b. A member ~~may participate in~~ not physically present in person or by proxy at a  
19             regular or special meeting of members not described in subsection 4 may by  
20             any means of remote communication through which the member, other  
21             participants, and all participants physically present at the meeting may  
22             simultaneously hear each other during the meeting. Participation in a meeting  
23             ~~by that means constitutes presence at the meeting in person or by proxy if all~~  
24             ~~the other requirements of section 10-32-48 are met,~~ participate in a meeting  
25             of members held at a designated place.
- 26           3. In any meeting of members held solely by means of remote communication under  
27             subdivision a of subsection 2 or in any meeting of members held at a designated  
28             place in which one or more members participate by means of remote  
29             communication under subdivision b of subsection 2:
- 30           a. The limited liability company shall implement reasonable measures:

- 1                   (1) To verify that each person deemed present and entitled to vote at the  
2                                   meeting by means of remote communication is a member; and
- 3                   (2) To provide each member participating by means of remote  
4                                   communication with a reasonable opportunity to participate in the  
5                                   meeting, including an opportunity to:
- 6                                   (a) Read or hear the proceedings of the meeting substantially  
7   concurrently with those proceedings;
- 8                                   (b) If allowed by the procedures governing the meeting, have the  
9   member's remarks heard or read by other participants in the  
10   meeting opportunity to; and
- 11                                   (c) If otherwise entitled, vote on matters submitted to the members.
- 12                   b. Participation in a meeting by this means constitutes presence at the meeting  
13                                   in person or by proxy of all if all of the other requirements of section 10-32-48  
14                                   are met.
- 15                   4. With respect to notice to members:
- 16                                   a. Any notice to members given by the limited liability company under any  
17   provision of this chapter, the articles, a member-control agreement, or the  
18   bylaws by a form of electronic communication consent to by the member to  
19   whom the notice is given is effective when given. The notice is deemed  
20   given:
- 21   (1) If by facsimile communication, when directed to a telephone number at  
22   which the member has consented to receive notice;
- 23   (2) If by electronic mail, when directed to an electronic mail address at  
24   which the member has consented to receive notice;
- 25   (3) If by a posting on an electronic network on which the member has  
26   consented to receive notice, together with separate notice to the  
27   member of the specific posting, upon the later of:
- 28   (a) The posting; or
- 29   (b) The giving of the separate notice; and
- 30   (4) If by any other form of electronic communication by which the member  
31   has consented to receive notice, when directed to the member.

- 1            b. An affidavit of the secretary, other authorized manager, or authorized agent of  
2            the limited liability company, that the notice has been given by a form of  
3            electronic communication is, in the absence of fraud, prima facie evidence of  
4            the facts stated in the affidavit.
- 5            c. Consent by a member to notice given by electronic communication may be  
6            given in writing or by authenticated electronic communication. The limited  
7            liability company is entitled to rely on any consent so given until revoked by  
8            the member, provided that no revocation affects the validity of any notice  
9            given before receipt by the limited liability company of revocation of the  
10           consent.
- 11          5. Any ballot, vote authorization, or consent submitted by electronic communication  
12          under this chapter may be revoked by the member submitting the ballot, vote,  
13          authorization, or consent so long as the revocation is received by a manager of the  
14          limited liability company at or before the meeting or before an action without a  
15          meeting is effective according to section 10-32-43.
- 16          6. Waiver of notice by a member of a meeting by means of authenticated electronic  
17          communication ~~described in subsections 1 and 2~~ may be given in the manner  
18          provided in subsection 4 of section 10-32-40. Participation in a meeting by means  
19          of ~~remote~~ communication described in ~~subsections 1 and~~ subdivisions a and b of  
20          ~~subsection 2~~ is a waiver of notice of that meeting, except when the member  
21          objects ~~at~~:
- 22            a. At the beginning of the meeting to the transaction of business because the  
23            meeting is not lawfully called or convened; or ~~objects before~~
- 24            b. Before a vote on an item of business because the item may not lawfully be  
25            considered at the meeting and does not participate in the consideration of the  
26            item at that meeting.

27            **SECTION 41. AMENDMENT.** Subsection 1 of section 10-32-48 of the North Dakota  
28 Century Code is amended and reenacted as follows:

- 29            1. A At or before the meeting at which the appointment is to be effective, a member  
30            may cast or authorize the casting of a vote ~~by~~:

- 1           a. ~~By filing with a manager authorized to tabulate votes~~ a written appointment of  
2           a proxy ~~with a manager of the limited liability company at or before the~~  
3           ~~meeting at which the appointment is to be effective~~ which is signed by the  
4           member.
- 5           a. ~~A written appointment of a proxy may be signed by the member or authorized~~  
6           ~~by the member by transmission of a telegram, cablegram, or other means of~~  
7           ~~electronic transmission, provided the limited liability company has no reason~~  
8           ~~to believe that the telegram, cablegram, or other electronic transmission was~~  
9           ~~not authorized by the member.~~
- 10          b. By telephonic transmission or authenticated electronic communication to a  
11          manager authorized to tabulate votes, whether or not accompanied by written  
12          instructions of the member, of an appointment of a proxy.
- 13          (1) The telephonic transmission or authenticated electronic communication  
14          must set forth or be submitted with information from which it can be  
15          determined that the appointment is authorized by the member. If it is  
16          reasonably concluded that the telephonic transmission or authenticated  
17          electronic communication is valid, the inspectors of election or, if there  
18          are not inspectors, the other persons making that determination of  
19          validity shall specify the information upon which they relied to make that  
20          determination.
- 21          (2) A proxy so appointed may vote on behalf of the member, or otherwise  
22          participate, in a meeting by remote communication according to section  
23          10-32-43.2, to the extent the member appointing the proxy would have  
24          been entitled to participate by remote communication according to  
25          section 10-32-43.2 if the member did not appoint the proxy.
- 26          c. Any copy, facsimile telecommunication, or other reproduction of the original  
27          writing or transmission may be substituted or used in lieu of the original writing  
28          or transmission for any purpose for which the original transmission could be  
29          used, if the copy, facsimile telecommunication, or other reproduction is a  
30          complete and legible reproduction of the entire original writing or transmission.



- 1 c. A member-control agreement may:
- 2 (1) Allocate to the members authority ordinarily exercised by the board of
- 3 ~~governors~~;
- 4 (2) Allocate to the board of ~~governors~~ authority ordinarily exercised by the
- 5 members; or
- 6 (3) Structure the governance of the limited liability company in any agreed
- 7 fashion and may waive, in whole or in part, a member's dissenting
- 8 rights under sections 10-32-54 and 10-32-55.

9 **SECTION 43. AMENDMENT.** Section 10-32-51 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **10-32-51. Required records and information.**

- 12 1. A limited liability company shall keep at its principal executive office, or at another
- 13 place or places within the United States determined by the board of ~~governors~~:
- 14 a. A current list of the full name and last-known business, residence, or mailing
- 15 address of each member, each governor, and the president;
- 16 b. A current list of the full name and last-known business, residence, or mailing
- 17 address of each assignee of financial rights other than a secured party and a
- 18 description of the rights assigned;
- 19 c. A copy of the articles of organization and all amendments to the articles;
- 20 d. Copies of any currently effective written bylaws;
- 21 e. Copies of the limited liability company's federal, state, and local income tax
- 22 returns and reports, if any, for the three most recent years;
- 23 f. Financial statements required by section 10-32-52;
- 24 g. Records of all proceedings of members for the last three years;
- 25 h. Records of all proceedings of the board of ~~governors~~ for the last three years;
- 26 i. Reports made to members generally within the last three years;
- 27 j. Member-control agreements described in section 10-32-50;
- 28 k. A statement of all contributions accepted under subsection 3 of section
- 29 10-32-56 including for each contribution:
- 30 (1) The identity of the member to whom the contribution relates;
- 31 (2) The class or series to which the contribution pertains;



- 1 days after receipt by a manager of the limited liability company of the written  
2 demand, all documents referred to in subsection 1.
- 3 3. A member of a limited liability company who has been a member for at least six  
4 months immediately preceding the member's demand or who is the holder of  
5 record of at least five percent of all membership interests of the limited liability  
6 company has a right, upon written demand, to examine and copy, in person or by a  
7 legal representative, other limited liability company records at any reasonable time  
8 only if the member demonstrates a proper purpose for the examination. A "proper  
9 purpose" is one reasonably related to the person's interest as a member of a  
10 limited liability company.
- 11 4. On application of the limited liability company, a court in this state may issue a  
12 protective order permitting the limited liability company to withhold portions of the  
13 records of proceedings of the board of ~~governors~~ for a reasonable period of time,  
14 not to exceed twelve months, in order to prevent premature disclosure of  
15 confidential information that would be likely to cause competitive injury to the  
16 limited liability company. A protective order may be renewed for successive  
17 reasonable periods of time, each not to exceed twelve months and in total not to  
18 exceed thirty-six months, for good cause shown. In the event a protective order is  
19 issued, the statute of limitations for any action that the member might bring as a  
20 result of information withheld automatically extends for the period of delay. If the  
21 court does not issue a protective order with respect to any portion of the records of  
22 proceedings as requested by the limited liability company, it shall award  
23 reasonable expenses, including attorney's fees and disbursements, to the member.  
24 This subsection does not limit the right of a court to grant other protective orders or  
25 impose other reasonable restrictions on the nature of the limited liability company  
26 records that may be copied or examined under subsections 2 and 3 or the use or  
27 distribution of the records by the demanding member.
- 28 5. A member who has gained access under this section to any limited liability  
29 company record may not use or furnish to another for use the limited liability  
30 company record or a portion of the contents for any purpose other than a proper  
31 purpose. Upon application of the limited liability company, a court may issue a

1 protective order or order other relief as may be necessary to enforce the provisions  
2 of this subsection.

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

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

19 **SECTION 44. AMENDMENT.** Subsection 1 of section 10-32-54 of the North Dakota  
20 Century Code is amended and reenacted as follows:

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

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

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

- 1                   (2)   Creates, alters, or abolishes a right in respect of the redemption of the  
2   membership interests, including a provision respecting a sinking fund  
3   for the redemption or repurchase of the membership interests;
- 4                   (3)   Alters or abolishes a preemptive right of the owner of the membership  
5   interests to make a contribution;
- 6                   (4)   Excludes or limits the right of a member to vote on a matter, or to  
7   cumulate votes, except as the right may be excluded or limited through  
8   the acceptance of contributions or the making of contribution  
9   agreements pertaining to membership interests with similar or different  
10    voting rights;
- 11                  (5)   Changes a member's right to resign or retire; or
- 12                  (6)   Establishes or changes the conditions for or consequences of  
13    expulsion;
- 14                  b.   A sale, lease, transfer, or other disposition of all or substantially all of the  
15    property and assets of the limited liability company, but not including a  
16    transaction permitted without member approval under section 10-32-108, a  
17    disposition in dissolution described in subsection 4 of section 10-32-113, a  
18    disposition pursuant to an order of a court, or a disposition for cash on terms  
19    requiring that all or substantially all of the net proceeds of disposition be  
20    distributed to the members in accordance with the member's respective  
21    membership interests within one year after the date of disposition;
- 22                  c.   A plan of merger to which the limited liability company is a constituent  
23    organization;
- 24                  d.   A plan of exchange to which the limited liability company is a constituent  
25    organization as the organization whose ownership interests will be acquired  
26    by the acquiring organization; if the membership interests being acquired are  
27    entitled to be voted on the plan; or
- 28                  e.   Any other limited liability company action taken pursuant to a member vote  
29    with respect to which the articles of organization, a member-control  
30    agreement, the bylaws, or a resolution approved by the board of ~~governors~~

1                   directs that dissenting members may obtain payment for the dissenting  
2                   members' membership interests.

3                   **SECTION 45. AMENDMENT.** Subsection 4 of section 10-32-55 of the North Dakota  
4 Century Code is amended and reenacted as follows:

5                   4. After the proposed action is approved by the board ~~of governors~~ and, if necessary,  
6                   the members, the limited liability company shall send to all members who complied  
7                   with subsection 3 and to all members entitled to dissent if no member vote was  
8                   required, a notice that contains:

9                   a. The address to which a demand for payment must be sent in order to obtain  
10                  payment and the date by which the demand must be received;

11                  b. A form to be used to certify the date on which the member acquired the  
12                  membership interests and to demand payment; and

13                  c. A copy of section 10-32-54 and this section.

14                  **SECTION 46. AMENDMENT.** Section 10-32-56 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16                  **10-32-56. Authorization, form, and acceptance of contributions.**

17                  1. Subject to any restrictions in the articles of organization or a member-control  
18                  agreement and only when authorized by the board ~~of governors~~ or pursuant to a  
19                  member-control agreement, a limited liability company may accept contributions  
20                  under subsections 2 and 3, make contribution agreements under section 10-32-58,  
21                  and make contribution allowance agreements under section 10-32-59.

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

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

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

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

- 1           4.    The determinations of the board of ~~governors~~ as to the amount or fair value or the  
2                    fairness to the limited liability company of the contribution accepted or to be  
3                    accepted by the limited liability company or the terms of payment or performance,  
4                    including under a contribution agreement in section 10-32-58, and a contribution  
5                    allowance agreement in section 10-32-59, are presumed to be proper if they are  
6                    made in good faith and on the basis of accounting methods, or a fair valuation or  
7                    other method, reasonable in the circumstances. Governors who are present and  
8                    entitled to vote, and who, intentionally or without reasonable investigation, fail to  
9                    vote against approving a consideration that is unfair to the limited liability company,  
10                  or overvalue property or services received or to be received by the limited liability  
11                  company as a contribution, are jointly and severally liable to the limited liability  
12                  company for the benefit of the then members who did not consent to and are  
13                  damaged by the action, to the extent of the damages of those members. A  
14                  governor against whom a claim is asserted pursuant to this subsection, except in  
15                  case of knowing participation in a deliberate fraud, is entitled to contribution on an  
16                  equitable basis from other governors who are liable under this subsection.
- 17          5.    All the membership interests of a limited liability company must:
- 18                  a.    Be of one class, without series, unless a member-control agreement or the  
19                          articles of organization establish, or authorize the board of ~~governors~~ to  
20                          establish, more than one class or series within classes;
- 21                  b.    Be ordinary membership interests entitled to vote as provided in section  
22                          10-32-40.1, and have equal rights and preferences in all matters not  
23                          otherwise provided for by the board of ~~governors~~ unless and to the extent the  
24                          articles of organization or a member-control agreement fixes the relative rights  
25                          and preferences of different classes and series; and
- 26                  c.    Share profits and losses as provided in section 10-32-36 and be entitled to  
27                          distributions as provided in sections 10-32-60 and 10-32-61 and subdivision c  
28                          of subsection 1 of section 10-32-131.
- 29          6.    Subject to any restrictions in the articles of organization or a member-control  
30                  agreement, the power granted in subsection 5 may be exercised by a resolution  
31                  approved by the affirmative vote of a majority of the directors present establishing

1 a class or series, setting forth the designation of the class or series, and fixing the  
2 relative rights and preferences of the class or series established in the articles of  
3 organization, in a member-control agreement, or by resolution of the board of  
4 ~~governors~~.

5 7. A statement signed by a manager setting forth the name of the limited liability  
6 company and the text of the resolution and certifying the adoption of the resolution  
7 and the date of adoption must be filed with the secretary of state together with the  
8 fees provided in section 10-32-150 before the acceptance of any contributions for  
9 which the resolution creates rights or preferences not set forth in the articles of  
10 organization or a member-control agreement. The resolution is effective when the  
11 statement has been filed with the secretary of state unless the statement specifies  
12 a later effective date within thirty days of filing the statement with the secretary of  
13 state.

14 8. Without limiting the authority granted in this section, a limited liability company may  
15 have membership interests of a class or series:

16 a. Subject to the right of the limited liability company to redeem any of those  
17 membership interests at the price fixed for their redemption by the articles of  
18 organization or by the board of ~~governors~~;

19 b. Entitling the members to cumulative, partially cumulative, or noncumulative  
20 distributions;

21 c. Having preference over any class or series of membership interests for the  
22 payment of distributions of any or all kinds;

23 d. Convertible into membership interests of any other class or any series of the  
24 same or another class; or

25 e. Having full, partial, or no voting rights, except as provided in section 10-32-17.

26 **SECTION 47. AMENDMENT.** Subsection 2 of section 10-32-57 of the North Dakota  
27 Century Code is amended and reenacted as follows:

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

1           **SECTION 48. AMENDMENT.** Subsection 3 of section 10-32-58 of the North Dakota  
2 Century Code is amended and reenacted as follows:

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

12           **SECTION 49. AMENDMENT.** Subsection 1 of section 10-32-59 of the North Dakota  
13 Century Code is amended and reenacted as follows:

14           1. Subject to any restrictions in the articles of organization or a member-control  
15 agreement, a limited liability company may enter into contribution allowance  
16 agreements under the terms, provisions, and conditions fixed by the board ~~of~~  
17 ~~governors~~ or by a manager pursuant to board authorization.

18           **SECTION 50. AMENDMENT.** Section 10-32-60 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20           **10-32-60. Sharing of distributions.** Unless otherwise provided in the articles of  
21 organization, in a member-control agreement, or by the board ~~of governors~~ under subsections 5  
22 through 7 of section 10-32-56, distributions of cash or other assets of a limited liability company,  
23 including distributions on termination of the limited liability company, must be allocated in  
24 proportion to the value of the contributions of the members reflected in the required records.

25           **SECTION 51. AMENDMENT.** Section 10-32-61 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27           **10-32-61. Interim distributions.** Except as provided in the articles of organization or a  
28 member-control agreement, a member is entitled to receive distributions before the limited  
29 liability company's termination only as specified in the bylaws or by the act of the board ~~of~~  
30 ~~governors~~.

1           **SECTION 52. AMENDMENT.** Subsection 1 of section 10-32-64 of the North Dakota  
2 Century Code is amended and reenacted as follows:

- 3           1. The board ~~of governors~~ may authorize and cause the limited liability company to  
4 make a distribution only if the board ~~of governors~~ determines, in accordance with  
5 subsection 2, that the limited liability company will be able to pay its debts in the  
6 ordinary course of business after making the distribution and the board ~~of~~  
7 ~~governors~~ does not know before the distribution is made that the determination  
8 was or has become erroneous.
- 9           a. The limited liability company may make the distribution if it is able to pay its  
10 debts in the ordinary course of business after making the distribution.
- 11           b. The effect of a distribution on the ability of the limited liability company to pay  
12 its debts in the ordinary course of business after making the distribution must  
13 be measured in accordance with subsection 3.
- 14           c. The right of the board ~~of governors~~ to authorize, and the limited liability  
15 company to make, distributions may be, prohibited, limited, or restricted by the  
16 articles of organization, a member-control agreement, the bylaws, or an  
17 agreement.

18           **SECTION 53. AMENDMENT.** Section 10-32-67 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20           **10-32-67. Organization.**

- 21           1. If the first board ~~of governors~~ is not named in the articles of organization, the  
22 organizers may elect the first board ~~of governors~~ or may act as governors with all  
23 of the powers, rights, duties, and liabilities of governors, until governors are elected  
24 or until a contribution is accepted, whichever occurs first.
- 25           2. After the issuance of the certificate of organization, the organizers or the governors  
26 named in the articles of organization shall hold an organizational meeting at the  
27 call of a majority of the organizers or of the governors named in the articles, or take  
28 written action, for the purposes of transacting business and taking actions  
29 necessary or appropriate to complete the organization of the limited liability  
30 company, including, without limitation, amending the articles, electing governors,  
31 adopting the bylaws, electing managers, adopting banking resolutions, authorizing

1 or ratifying the purchase, lease, or other acquisition of suitable space, furniture,  
2 furnishings, supplies, and materials, approving a limited liability company seal,  
3 adopting a fiscal year for the limited liability company, contracting to receive and  
4 accept contributions, and making any appropriate tax elections.

5 a. If a meeting is held, the person or persons calling the meeting shall give at  
6 least three days' notice of the meeting to each organizer or governor named,  
7 stating the date, time, and place of the meeting.

8 b. Organizers and governors may waive notice of an organizational meeting in  
9 the same manner a governor may waive notice of meetings of the board of  
10 ~~governors~~ under subsection 5 of section 10-32-80.

11 **SECTION 54. AMENDMENT.** Subsections 2 and 3 of section 10-32-68 of the North  
12 Dakota Century Code are amended and reenacted as follows:

13 2. Initial bylaws may be adopted pursuant to section 10-32-67 by the organizers or by  
14 the first board of ~~governors~~. Unless reserved by the articles of organization or a  
15 member-control agreement to the members, the power to adopt, amend, or repeal  
16 the bylaws is vested in the board of ~~governors~~. The power of the board of  
17 ~~governors~~ is subject to the power of the members, exercisable in the manner  
18 provided in subsection 3, to adopt, amend, or repeal the bylaws adopted,  
19 amended, or repealed by the board of ~~governors~~. ~~After the adoption of the initial~~  
20 ~~bylaws, the board of governors may not adopt, amend, or repeal a bylaw provision~~  
21 ~~fixing a quorum for meetings of members, prescribing procedures for removing~~  
22 ~~governors or filling vacancies in the board of governors, or fixing the number of~~  
23 ~~governors or the governors' classifications, qualifications, or terms of office, but~~  
24 ~~may adopt or amend a bylaw provision to increase the number of governors.~~

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

1 amendment of the articles of organization. The articles or bylaws may impose  
2 different or additional requirements for the members to adopt, amend, or repeal the  
3 bylaws.

4 **SECTION 55. AMENDMENT.** Section 10-32-69 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6 **10-32-69. Board of governors.**

- 7 1. The business and affairs of a limited liability company are to be managed by or  
8 under the direction of a board of ~~governors~~, subject to the provisions of  
9 subsection 2 and section 10-32-50. The first board of ~~governors~~ may be named in  
10 the articles of organization or in a member-control agreement or may be elected by  
11 the organizers pursuant to section 10-32-67 or by the members.
- 12 2. The owners of the membership interests entitled to vote for governors of the limited  
13 liability company may, by unanimous affirmative vote, take any action that this  
14 chapter requires or permits the board of ~~governors~~ to take. As to an action taken  
15 by the members in that manner:
- 16 a. The governors have no duties, liabilities, or responsibilities as governors  
17 under this chapter with respect to or arising from the action;
- 18 b. The members collectively and individually have all of the duties, liabilities, and  
19 responsibilities of governors under this chapter with respect to and arising  
20 from the action;
- 21 c. If the action relates to a matter required or permitted by this chapter or by any  
22 other law to be approved or adopted by the board of ~~governors~~, either with or  
23 without approval or adoption by the members, the action is considered to  
24 have been approved or adopted by the board of ~~governors~~; and
- 25 d. A requirement that an instrument filed with a governmental agency contain a  
26 statement that the action has been approved and adopted by the board of  
27 ~~governors~~ is satisfied by a statement that the members have taken the action  
28 under this subsection.

29 **SECTION 56. AMENDMENT.** Section 10-32-70 of the North Dakota Century Code is  
30 amended and reenacted as follows:

1           **10-32-70. Number.** The board of ~~governors~~ consists of one or more governors. The  
2 number of governors must be fixed by or in the manner provided in the articles of organization,  
3 a member-control agreement, or the bylaws. The number of governors may be increased or,  
4 subject to section 10-32-78, decreased at any time by amendment to or in the manner provided  
5 in the articles, a member-control agreement, or the bylaws.

6           **SECTION 57. AMENDMENT.** Section 10-32-73 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           **10-32-73. Acts not void or voidable.** The expiration of a governor's term with or  
9 without the election of a qualified successor does not make prior or subsequent acts of the  
10 governors or the board of ~~governors~~ void or voidable.

11           **SECTION 58. AMENDMENT.** Section 10-32-74 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13           **10-32-74. Compensation.** Subject to any limitations in the articles, a member-control  
14 agreement, or the bylaws, the board of ~~governors~~ may fix the compensation of governors.

15           **SECTION 59. AMENDMENT.** Subsection 2 of section 10-32-76 of the North Dakota  
16 Century Code is amended and reenacted as follows:

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

22           **SECTION 60. AMENDMENT.** Subsection 2 of section 10-32-77 of the North Dakota  
23 Century Code is amended and reenacted as follows:

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

27           **SECTION 61. AMENDMENT.** Subsections 2 and 3 of section 10-32-78 of the North  
28 Dakota Century Code are amended and reenacted as follows:

29           2. A governor may be removed at any time, with or without cause, if:  
30           a. The governor was named by the board of ~~governors~~ to fill a vacancy;

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

20           **SECTION 62. AMENDMENT.** Subsection 2 of section 10-32-78.1 of the North Dakota  
21 Century Code is amended and reenacted as follows:

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

24           **SECTION 63. AMENDMENT.** Subsection 1 of section 10-32-79 of the North Dakota  
25 Century Code is amended and reenacted as follows:

- 26           1. Unless different rules for filling vacancies are provided for in the articles, a  
27           member-control agreement, or the bylaws:
- 28           a. Vacancies on the board ~~of governors~~ resulting from the death, resignation,  
29           removal, or disqualification of a governor may be filled by the affirmative vote  
30           of a majority of the remaining governors, even though less than a quorum;  
31           and

- 1           b. Vacancies on the board ~~of governors~~ resulting from newly created  
2           governorships may be filled by the affirmative vote of a majority of the  
3           governors serving at the time of the increase.

4           **SECTION 64. AMENDMENT.** Section 10-32-80 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6           **10-32-80. Board ~~of governors~~ meetings.**

- 7           1. Meetings of the board ~~of governors~~ may be held from time to time as provided in  
8           the articles of organization, a member-control agreement, or the bylaws at any  
9           place within or without the state that the board ~~of governors~~ may select or by any  
10          means described in subsection 2.
- 11          a. If the articles, bylaws, or board ~~of governors~~ fails to select a place for a  
12          meeting, the meeting must be held at the principal executive office, unless the  
13          articles, a member-control agreement, or the bylaws provide otherwise.
- 14          b. The board may determine under subsection 2 that a meeting of the board  
15          shall be held solely by means of remote communication.
- 16          c. Participation in a meeting by either of the means set forth in subdivision 2  
17          constitutes personal presence at the meeting.
- 18          2. ~~A board of governors~~ Any meeting among governors may be conducted by:
- 19          a. ~~A conference among governors using~~ Solely by any one or more means of  
20          remote communication through which all of the governors may simultaneously  
21          hear participate with each other during the ~~conference constitutes a board of~~  
22          governors meeting, if:
- 23                  (1) If the same notice is given of the conference meeting as would be  
24                  required by subsection 3 ~~for a meeting;~~ and if
- 25                  (2) If the number of governors participating in the conference meeting is a  
26                  quorum at a meeting. ~~Participation in a meeting by this means~~  
27                  constitutes personal presence at the meeting; or
- 28          b. By ~~any~~ means of conference telephone or, if authorized by the board, by such  
29          other means of remote communication, in each case, through which the  
30          governor, other governors so participating, and all governors physically  
31          present at the meeting may ~~simultaneously hear~~ participate with each other

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

3           3. Unless the articles of organization, a member-control agreement, or the bylaws  
4           provide for a different time period, a governor may call a board meeting by giving at  
5           least ten days' notice or, in the case of organizational meetings under subsection 2  
6           of section 10-32-67, at least three days' notice to all governors of the date, time,  
7           and place of the meeting. The notice need not state the purpose of the meeting  
8           unless the articles, a member-control agreement, or the bylaws otherwise require.

9           4. If the date, time, and place of a board ~~of governors~~ meeting are provided in the  
10          articles, a member-control agreement, or the bylaws, or announced at a previous  
11          meeting of the board ~~of governors~~, notice is not required. Notice of an adjourned  
12          meeting need not be given other than by announcement at the meeting at which  
13          adjournment is taken.

14          5. A governor may waive notice of a meeting of the board ~~of governors~~. A waiver of  
15          notice by a governor entitled to notice is effective whether given before, at, or after  
16          the meeting, and whether given in writing, or by attendance. Attendance by a  
17          governor at a meeting is a waiver of notice of that meeting, except when the  
18          governor objects at the beginning of the meeting to the transaction of business  
19          because the meeting is not lawfully called or convened and does not participate in  
20          the meeting after the objection.

21           **SECTION 65. AMENDMENT.** Section 10-32-81 of the North Dakota Century Code is  
22          amended and reenacted as follows:

23           **10-32-81. Absent governors.** If the articles of organization, a member-control  
24          agreement, or the bylaws so provide, a governor may give advance written consent or  
25          opposition to a proposal to be acted on at a board ~~of governors~~ meeting. If the governor is not  
26          present at the meeting, consent or opposition to a proposal does not constitute presence for  
27          purposes of determining the existence of a quorum, but consent or opposition must be counted  
28          as the vote of a governor present at the meeting in favor of or against the proposal and must be  
29          entered in the minutes or other record of action at the meeting; if the proposal acted on at the  
30          meeting is substantially the same or has substantially the same effect as the proposal to which  
31          the governor has consented or objected.

1           **SECTION 66. AMENDMENT.** Section 10-32-83 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **10-32-83. Act of the board of ~~governors~~.** The board ~~of governors~~ shall take action by  
4 the affirmative vote of the greater of a majority of governors present at a duly held meeting at  
5 the time the action is taken or a majority of the minimum proportion or number of governors that  
6 would constitute a quorum for the transaction of business at a meeting, except if this chapter, a  
7 member-control agreement, or the articles require the affirmative vote of a larger proportion or  
8 number. If a member-control agreement or the articles require a larger proportion or number  
9 than is required by this chapter for a particular action, the member-control agreement or the  
10 articles control.

11           **SECTION 67. AMENDMENT.** Subsections 1 and 2 of section 10-32-84 of the North  
12 Dakota Century Code are amended and reenacted as follows:

- 13           1. An action required or permitted to be taken at a board ~~of governors~~ meeting may  
14 be taken by written action signed, or consented to by authenticated electronic  
15 communication, by all of the governors. If the articles or a member-control  
16 agreement so provide, any action, other than an action requiring member approval,  
17 may be taken by written action signed, or consented to by authenticated electronic  
18 communication, by the number of governors which would be required to take the  
19 same action at a meeting of the board ~~of governors~~ at which all governors were  
20 present.
- 21           2. The written action is effective when signed, or consented to by authenticated  
22 electronic communication, by the required number of governors, unless a different  
23 effective time is provided in the written action.

24           **SECTION 68. AMENDMENT.** Subsections 1 and 3 of section 10-32-85 of the North  
25 Dakota Century Code are amended and reenacted as follows:

- 26           1. A resolution approved by the affirmative vote of a majority of the board ~~of~~  
27 ~~governors~~ may establish committees having the authority of the board in the  
28 management of the business of the limited liability company only to the extent  
29 provided in the resolution. Committees may include a special litigation committee  
30 consisting of one or more independent governors or other independent persons to  
31 consider legal rights or remedies of the limited liability company and whether those

1 rights and remedies should be pursued. Committees other than special litigation  
2 committees are subject at all times to the direction and control of the board of  
3 ~~governors~~.

4 3. Sections 10-32-80 through 10-32-84 apply to committees and members of  
5 committees to the same extent as those sections apply to the board of ~~governors~~  
6 and governors.

7 **SECTION 69. AMENDMENT.** Subsections 2 and 4 of section 10-32-86 of the North  
8 Dakota Century Code are amended and reenacted as follows:

9 2. A governor is entitled to rely on information, opinions, reports, or statements,  
10 including financial statements and other financial data, in each case prepared or  
11 presented by:

12 a. One or more managers or employees of the limited liability company whom  
13 the governor reasonably believes to be reliable and competent in the matters  
14 presented;

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

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

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

25 a. Objects at the beginning of the meeting to the transaction of business  
26 because the meeting is not lawfully called or convened and does not  
27 participate in the meeting after the objection, in which case the governor is not

28 considered to be present at the meeting for any purpose of this chapter;

29 b. Votes against the action at the meeting; or

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

4           **SECTION 70. AMENDMENT.** Subsections 1 and 2 of section 10-32-87 of the North  
5 Dakota Century Code are amended and reenacted as follows:

- 6           1.    A contract or other transaction between a limited liability company and one or more  
7                   of its governors or a member of the family of the governor; a director of a related  
8                   organization or a member of the family of a director of a related organization; or an  
9                   organization in or of which the limited liability company's governor or a member of  
10                  the family of the governor is a governor, director, manager, officer, or legal  
11                  representative or has a material financial interest is not void or voidable because  
12                  the governor or the other organization is a party or because the governor is present  
13                  at the meeting of the members or the board ~~of governors~~ or a committee at which  
14                  the contract or transaction is authorized, approved, or ratified, if at least one of the  
15                  requirements of subsection 2 is satisfied.
- 16          2.    The contract or transaction described in subsection 1 is not void or voidable if:
- 17            a.    The contract or transaction was, and the person asserting the validity of the  
18                   contract or transaction sustains the burden of establishing that the contract or  
19                   transaction was, fair and reasonable as to the limited liability company at the  
20                   time it was authorized, approved, or ratified;
- 21            b.    The material facts as to the contract or transaction and as to the governor's  
22                   interest are fully disclosed or known to the members, whether ~~or not~~ entitled  
23                   to vote, and the contract or transaction is approved in good faith by:
- 24                  (1)   The owners of two-thirds of the voting power of membership interests  
25                        entitled to vote which are owned by persons other than the interested  
26                        governor; or
- 27                  (2)   The unanimous affirmative vote of all members, whether ~~or not~~ entitled  
28                        to vote;
- 29            c.    The material facts as to the contract or transaction and as to the governor's  
30                   interest are fully disclosed or known to the board ~~of governors~~ or a committee,  
31                   and the board ~~of governors~~ or committee authorizes, approves, or ratifies the

1 contract or transaction in good faith by a majority of the board ~~of governors~~ or  
2 committee, but the interested governor is not counted in determining the  
3 presence of a quorum and may not vote; or

4 d. The contract or transaction is a distribution described in subsection 1 of  
5 section 10-32-64 or a merger or exchange described in subsection 1 or 2 of  
6 section 10-32-100.

7 **SECTION 71. AMENDMENT.** Section 10-32-88 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **10-32-88. Managers.** A limited liability company must consist of one or more  
10 individuals eighteen years of age or more, exercising the functions of the offices, however  
11 designated, of president and treasurer and may have one or more vice presidents and a  
12 secretary, as may be provided in the bylaws. Any other managers, assistant managers, and  
13 agents, as necessary, may be elected or appointed by the board ~~of governors~~ or chosen in  
14 such other manner as may be provided in the bylaws.

15 **SECTION 72. AMENDMENT.** Section 10-32-89 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17 **10-32-89. Duties of managers and agents.** Unless otherwise provided by the articles  
18 of organization, a member-control agreement, the bylaws, or a resolution adopted by the board  
19 ~~of governors~~ which is not inconsistent with the articles, a member-control agreement, or the  
20 bylaws, the managers have the following duties:

- 21 1. The president shall:
- 22 a. Have general active management for the business of the limited liability  
23 company;
  - 24 b. When present, preside at all meetings of the board ~~of governors~~ and of the  
25 members;
  - 26 c. See that all orders and resolutions of the board ~~of governors~~ are carried into  
27 effect;
  - 28 d. Sign and deliver in the name of the limited liability company any deeds,  
29 mortgages, bonds, contracts, or other instruments pertaining to the business  
30 of the limited liability company, except if the authority to sign and deliver is  
31 required by law to be exercised by another person or is expressly delegated

- 1 by the articles, a member-control agreement, the bylaws, or the board of  
2 ~~governors~~ to some other manager or agent of the limited liability company;
- 3 e. Maintain records of and, whenever necessary, certify all proceedings of the  
4 board of ~~governors~~ and members; and
- 5 f. Perform other duties prescribed by the board of ~~governors~~.
- 6 2. The vice president, if any, or if there is more than one, the vice presidents in the  
7 order determined by the board of ~~governors~~ shall:
- 8 a. In the absence or disability of the president, perform the duties and exercise  
9 the powers of the president; and
- 10 b. Perform other duties and have other powers as the board of ~~governors~~ may  
11 from time to time prescribe.
- 12 3. The treasurer shall:
- 13 a. Keep accurate financial records for the limited liability company;
- 14 b. Deposit all money, drafts, and checks in the name of and to the credit of the  
15 limited liability company in the banks and depositories designated by the  
16 board of ~~governors~~;
- 17 c. Endorse for deposit all notes, checks, and drafts received by the limited  
18 liability company as ordered by the board of ~~governors~~, making proper  
19 vouchers for them;
- 20 d. Disburse limited liability company funds and issue checks and drafts in the  
21 name of the limited liability company, as ordered by the board of ~~governors~~;
- 22 e. Give to the president and the board of ~~governors~~, whenever requested, an  
23 account of all transactions by the treasurer and of the financial condition of the  
24 limited liability company; and
- 25 f. Perform other duties prescribed by the board of ~~governors~~ or by the president.
- 26 4. The secretary, if any, shall:
- 27 a. Attend all meetings of the board of ~~governors~~, all meetings of the members,  
28 and, when required, all meetings of standing committees;
- 29 b. Record all proceedings of the meetings;
- 30 c. Give, or cause to be given, notice of all meetings of the members and  
31 meetings of the board of ~~governors~~; and

- 1 d. Perform other duties prescribed by the board ~~of governors~~.
- 2 5. Any other managers and agents of the limited liability company, as between the
- 3 managers and agents and the limited liability company, shall perform the duties in
- 4 the management of the limited liability company as may be provided in the articles,
- 5 a member-control agreement, or the bylaws, or as may be determined by
- 6 resolution of the board not inconsistent with the articles, a member-control
- 7 agreement, or the bylaws.

8 **SECTION 73. AMENDMENT.** Section 10-32-92 of the North Dakota Century Code is

9 amended and reenacted as follows:

10 **10-32-92. Managers deemed elected.** In the absence of an election or appointment of

11 managers by the board ~~of governors~~, the individual or individuals exercising the functions of the

12 principal managers of the limited liability company are deemed to have been elected to those

13 offices.

14 **SECTION 74. AMENDMENT.** Subsection 3 of section 10-32-94 of the North Dakota

15 Century Code is amended and reenacted as follows:

16 3. A vacancy in an office because of death, resignation, removal, disqualification, or

17 other cause, may, or in the case of the president or treasurer, must be filled for the

18 unexpired portion of the term in the manner provided in the articles, a

19 member-control agreement, or the bylaws; in the manner determined by the board

20 ~~of governors~~; or pursuant to section 10-32-92.

21 **SECTION 75. AMENDMENT.** Section 10-32-95 of the North Dakota Century Code is

22 amended and reenacted as follows:

23 **10-32-95. Delegation.** Unless prohibited by the articles, a member-control agreement,

24 the bylaws, or by a resolution adopted by the board ~~of governors~~, a manager elected or

25 appointed by the board ~~of governors~~ may, without the approval of the board, delegate some or

26 all of the duties and powers of an office to other individuals. A manager who delegates the

27 duties or powers of an office remains subject to the standard of conduct for a manager with

28 respect to the discharge of all duties and powers so delegated.

29 **SECTION 76. AMENDMENT.** Subsection 1 of section 10-32-97 of the North Dakota

30 Century Code is amended and reenacted as follows:

- 1           1. A limited liability company may lend money to, guarantee an obligation of, become  
2           a surety for, or otherwise financially assist a person, if the transaction, or a class of  
3           transactions to which the transaction belongs, is approved by the affirmative vote  
4           of a majority of the governors present and:
- 5           a. Is in the usual and regular course of business of the limited liability company;
- 6           b. Is with, or for the benefit of, a related organization, an organization in which  
7           the limited liability company has a financial interest, an organization with  
8           which the limited liability company has a relationship in the usual and regular  
9           course of its business, or an organization to which the limited liability company  
10          has the power to make donations any of which relationships constitute  
11          consideration sufficient to make the loan, guarantee, suretyship, or other  
12          financial assistance so approved enforceable against the limited liability  
13          company;
- 14          c. Is with, or for the benefit of, a member who provides services to the limited  
15          liability company, or a manager or other employee of the limited liability  
16          company or a subsidiary, including a member, manager, or employee who is  
17          a governor of the limited liability company or a subsidiary, and may  
18          reasonably be expected, in the judgment of the board of ~~governors~~, to benefit  
19          the limited liability company; or
- 20          d. Whether or not separate consideration has been promised to the limited  
21          liability company, has been approved by the owners of two-thirds of the voting  
22          power of persons other than the interested person or persons.

23           **SECTION 77. AMENDMENT.** Section 10-32-99 of the North Dakota Century Code is  
24 amended and reenacted as follows:

25           **10-32-99. Indemnification.**

- 26           1. For purposes of this section:
- 27           a. "Limited liability company" includes a domestic or foreign limited liability  
28           company that was the predecessor of the limited liability company referred to  
29           in this section in a merger or other transaction in which the predecessor's  
30           existence ceased upon consummation of the transaction.
- 31           b. "Official capacity" means:

- 1                   (1) With respect to a governor, the position of governor in a limited liability  
2                   company;
- 3                   (2) With respect to a person other than a governor, the elective or  
4                   appointive office or position held by a manager, member of a committee  
5                   of the board ~~of governors~~, the employment relationship undertaken by  
6                   an employee, agent of the limited liability company, or the scope of the  
7                   services provided by members of the limited liability company who  
8                   provide services to the limited liability company; and
- 9                   (3) With respect to a governor, manager, member, employee, or agent of  
10                  the limited liability company who, while a governor, manager, member,  
11                  or employee of the limited liability company, is or was serving at the  
12                  request of the limited liability company or whose duties in that position  
13                  involve or involved service as a governor, director, manager, officer,  
14                  member, partner, trustee, employee, or agent of another organization or  
15                  employee benefit plan, the position of that person as a governor,  
16                  director, manager, officer, member, partner, trustee, employee, or  
17                  agent, as the case may be, of the other organization or employee  
18                  benefit plan.
- 19                  c. "Proceeding" means a threatened, pending, or completed civil, criminal,  
20                  administrative, arbitration, or investigative proceeding, including a proceeding  
21                  by or in the right of the limited liability company.
- 22                  d. "Special legal counsel" means counsel who has not represented the limited  
23                  liability company or a related organization, or a governor, manager, member  
24                  of a committee of the board ~~of governors~~, employee, or agent whose  
25                  indemnification is in issue.
- 26                  2. Subject to the provisions of subsection 5, a limited liability company shall indemnify  
27                  a person made or threatened to be made a party to a proceeding by reason of the  
28                  former or present official capacity of the person against judgments, penalties, fines,  
29                  including, without limitation, excise taxes assessed against the person with respect  
30                  to an employee benefit plan, settlements, and reasonable expenses, including  
31                  attorney's fees and disbursements, incurred by the person in connection with the

- 1 proceeding, if, with respect to the acts or omissions of the person complained of in  
2 the proceeding, the person:
- 3 a. Has not been indemnified by another organization or employee benefit plan  
4 for the same judgments, penalties, fines, including, without limitation, excise  
5 taxes assessed against the person with respect to an employee benefit plan,  
6 settlements, and reasonable expenses, including attorney's fees and  
7 disbursements, incurred by the person in connection with the proceeding with  
8 respect to the same acts or omissions;
- 9 b. Acted in good faith;
- 10 c. Received no improper personal benefit and section 10-32-87, if applicable,  
11 has been satisfied;
- 12 d. In the case of a criminal proceeding, had no reasonable cause to believe the  
13 conduct was unlawful; and
- 14 e. In the case of acts or omissions occurring in the official capacity described in  
15 paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that  
16 the conduct was in the best interests of the limited liability company, or in the  
17 case of acts or omissions occurring in the official capacity described in  
18 paragraph 3 of subdivision b of subsection 1, reasonably believed that the  
19 conduct was not opposed to the best interests of the limited liability company.  
20 If the person's acts or omissions complained of in the proceeding relate to  
21 conduct as a director, officer, trustee, employee, or agent of an employee  
22 benefit plan, the conduct is not considered to be opposed to the best interests  
23 of the limited liability company if the person reasonably believed that the  
24 conduct was in the best interests of the participants or beneficiaries of the  
25 employee benefit plan.
- 26 3. The termination of a proceeding by judgment, order, settlement, conviction, or  
27 upon a plea of nolo contendere or its equivalent does not, of itself, establish that  
28 the person did not meet the criteria set forth in subsection 2.
- 29 4. Subject to the provisions of subsection 5, if a person is made or threatened to be  
30 made a party to a proceeding, the person is entitled, upon written request to the  
31 limited liability company, to payment or reimbursement by the limited liability

- 1            company of reasonable expenses, including attorney's fees and disbursements,  
2            incurred by the person in advance of the final disposition of the proceeding:
- 3            a.    Upon receipt by the limited liability company of a written affirmation by the  
4            person of a good-faith belief that the criteria for indemnification set forth in  
5            subsection 2 have been satisfied and a written undertaking by the person to  
6            repay all amounts so paid or reimbursed by the limited liability company, if it is  
7            ultimately determined that the criteria for indemnification have not been  
8            satisfied; and
- 9            b.    After a determination that the facts then known to those making the  
10           determination would not preclude indemnification under this section.
- 11           The written undertaking required by subdivision a is an unlimited general obligation  
12           of the person making it, but need not be secured and must be accepted without  
13           reference to financial ability to make the repayment.
- 14           5.    The articles of organization, a member-control agreement, or the bylaws may  
15           prohibit indemnification or advances of expenses otherwise required by this section  
16           or may impose conditions on indemnification or advances of expenses in addition  
17           to the conditions contained in subsections 2 through 4 including, without limitation,  
18           monetary limits on indemnification or advances of expenses, if the conditions apply  
19           equally to all persons or to all persons within a given class. A prohibition or limit on  
20           indemnification or advances may not apply to or affect the right of a person to  
21           indemnification or advances of expenses with respect to any acts or omissions of  
22           the person occurring before the effective date of a provision in the articles of  
23           organization, or a member-control agreement, or the date of adoption of a  
24           provision in the bylaws establishing the prohibition or limit on indemnification or  
25           advances.
- 26           6.    This section does not require, or limit the ability of, a limited liability company to  
27           reimburse expenses, including attorney's fees and disbursements, incurred by a  
28           person in connection with an appearance as a witness in a proceeding at a time  
29           when the person has not been made or threatened to be made a party to a  
30           proceeding.
- 31           7.    All indemnification determinations must be made:

- 1           a. By the board ~~of governors~~ by a majority of a quorum. Governors who are, at  
2           the time, parties to the proceeding are not counted for determining either a  
3           majority or the presence of a quorum;
- 4           b. If a quorum under subdivision a cannot be obtained, by a majority of a  
5           committee of the board ~~of governors~~, consisting solely of two or more  
6           governors not at the time parties to the proceeding, duly designated to act in  
7           the matter by a majority of the full board ~~of governors~~, including governors  
8           who are parties;
- 9           c. If a determination is not made under subdivision a or b, by special legal  
10          counsel, selected either by a majority of the board ~~of governors~~ or a  
11          committee by vote pursuant to subdivision a or b or, if the requisite quorum of  
12          the full board ~~of governors~~ cannot be obtained and the committee cannot be  
13          established, by a majority of the full board ~~of governors~~, including governors  
14          who are parties;
- 15          d. If a determination is not made under subdivisions a through c, by the  
16          affirmative vote of the members required by section 10-32-42, other than the  
17          members who are a party to the proceeding; or
- 18          e. If an adverse determination is made under subdivisions a through d or under  
19          subsection 8, or if no determination is made under subdivisions a through d or  
20          under subsection 8 within sixty days after the later to occur of the termination  
21          of a proceeding; or a written request for indemnification to the limited liability  
22          company; or a written request for an advance of expenses, as the case may  
23          be, by a court in this state, which may be the same court in which the  
24          proceeding involving the person's liability took place, upon application of the  
25          person and any notice the court requires. The person seeking indemnification  
26          or payment or reimbursement of expenses pursuant to this clause has the  
27          burden of establishing that the person is entitled to indemnification or payment  
28          or reimbursement of expenses.
- 29          8. With respect to a person who is not, and was not at the time of the acts or  
30          omissions complained of in the proceedings, a governor, manager, or person  
31          possessing, directly or indirectly, the power to direct or cause the direction of the

1 management or policies of the limited liability company, the determination whether  
2 indemnification of this person is required because the criteria set forth in  
3 subsections 2 and 3 have been satisfied and whether this person is entitled to  
4 payment or reimbursement of expenses in advance of the final disposition of a  
5 proceeding as provided in subsection 4 may be made by an annually appointed  
6 committee of the board ~~of governors~~, having at least one member who is a  
7 governor. The committee shall report at least annually to the board ~~of governors~~  
8 concerning its actions.

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

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

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

25 **SECTION 78. AMENDMENT.** Section 10-32-104 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **10-32-104. Merger of subsidiary into parent.**

28 1. A parent owning at least ninety percent of the outstanding ownership interests of  
29 each class and series of a subsidiary directly, or indirectly through related  
30 ~~corporations or limited liability companies~~ organizations other than classes or

- 1           series that absent this section would otherwise not be entitled to vote on the  
2           merger:
- 3           a.    May merge the subsidiary into the parent; or may merge the subsidiary into  
4           any other subsidiary at least ninety percent of the outstanding ownership  
5           interest of each class and series of which is owned by the parent directly, or  
6           indirectly through related ~~corporations or limited liability companies~~  
7           organizations other than classes or series that, absent this section, would  
8           otherwise not be entitled to vote on the merger, without a vote of the owners  
9           of the parent or any subsidiary; or
- 10          b.    May merge the parent, or the parent and one or more subsidiaries, into one of  
11          the subsidiaries under this section.
- 12          2.    A resolution approved by the directors of the parent as required by section  
13          10-19.1-46 or by the governors of the parent present as required by section  
14          10-32-83 must set forth a plan of merger which contains:
- 15          a.    The name of the subsidiary or subsidiaries, the name of the parent, and the  
16          name of the surviving constituent organization;
- 17          b.    The manner and basis of converting the ownership interests of the subsidiary  
18          into ownership interests of the parent or of another organization or, in whole  
19          or in part, into money or other property;
- 20          c.    If the parent is a constituent organization but is not the surviving constituent  
21          organization in the merger, a provision for the pro rata issuance of ownership  
22          interests of the surviving constituent organization to the owners of ownership  
23          interests of the parent on surrender of any ownership interests of the parent;  
24          and
- 25          d.    If the surviving constituent organization is a subsidiary, a statement of any  
26          amendments to the articles of the surviving constituent organization that will  
27          be part of the merger.
- 28          3.    If the parent is a constituent organization and is the surviving organization in the  
29          merger, it may change its limited liability company name, without a vote of its  
30          owners, by the inclusion of a provision to that effect in the resolution of merger  
31          setting forth the plan of merger that is approved by the affirmative vote of the board

- 1 members of the parent present. Upon the effective date of the merger, the name  
2 of the parent must be changed.
- 3 4. If the parent is a constituent organization but is not the surviving constituent  
4 organization in a merger, the resolution is not effective unless the resolution is also  
5 approved by the affirmative vote of the holders of a majority of the voting power of  
6 all ownership interests of the parent entitled to vote at a regular or special meeting  
7 held in accordance with section 10-19.1-98 if the parent is a corporation, section  
8 10-32-102 if the parent is a limited liability company, or in accordance with the laws  
9 of the jurisdiction under which the parent is incorporated or organized if the parent  
10 is a foreign corporation or foreign limited liability company.
- 11 5. A Notice of the action, including a copy of the plan of merger must be mailed given  
12 to each owner, other than the parent, of each subsidiary that is a constituent  
13 organization to the merger before, or within ten days after, the effective date of the  
14 merger.
- 15 6. Articles of merger must be prepared which contain:
- 16 a. The plan of merger;
- 17 b. The number of outstanding ownership interests of each class and series of  
18 the subsidiary that is a constituent organization in the merger, other than the  
19 classes or series that, absent this section, would otherwise not be entitled to  
20 vote on the merger, and the number of ownership interests of each class and  
21 series of the subsidiary or subsidiaries, other than the classes or series that,  
22 absent this section, would otherwise not be entitled to vote on the merger,  
23 owned by the parent directly or indirectly, through related constituent  
24 organizations; and
- 25 c. ~~The date a copy of the plan of merger was mailed to the owners, other than~~  
26 ~~the parent, of each subsidiary that is a constituent organization in the merger;~~  
27 ~~and~~
- 28 d. A statement that the plan of merger has been approved by the parent under  
29 this section.
- 30 7. ~~Within thirty days after a copy of the plan of merger is mailed to the owners of each~~  
31 ~~subsidiary that is a constituent organization to the merger, or upon waiver of the~~

1           ~~mailing by the owners of all outstanding ownership interests of each subsidiary that~~  
2           ~~is a constituent organization to the merger, the~~ The articles of merger must be  
3           signed on behalf of the parent and filed with the secretary of state, together with  
4           the fees provided in section 10-32-150.

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

8           9. If all of the ownership interests of one or more domestic subsidiaries that are a  
9           constituent organization to a merger under this section are not owned by the parent  
10          directly, or indirectly through related constituent organizations, immediately before  
11          the merger, the owners of each domestic subsidiary have dissenter's rights under  
12          section 10-19.1-87 or under section 10-32-54, without regard to subsection 3 of  
13          section 10-19.1-88 or to subsection 2 of section 10-32-54, and under section  
14          10-19.1-88 or 10-32-55. If the parent is a constituent organization but is not the  
15          surviving constituent organization in the merger, and the articles of incorporation or  
16          articles of organization of the surviving constituent organization immediately after  
17          the merger differ from the articles of incorporation or articles of organization of the  
18          parent immediately before the merger in a manner that would entitle an owner of  
19          the parent to dissenter's rights under subsection 1 of section 10-19.1-87 or under  
20          subdivision a of subsection 1 of section 10-32-54 if the articles of incorporation or  
21          articles of organization of the surviving constituent organization constitute an  
22          amendment to the articles of incorporation or articles of organization of the parent,  
23          that owner of the parent has dissenter's rights as provided under section  
24          10-19.1-87 or under section 10-32-54. Except as provided in this subsection,  
25          sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this  
26          section.

27          10. A merger among a parent and one or more subsidiaries or among two or more  
28          subsidiaries of a parent may be accomplished under sections 10-32-101 through  
29          10-32-103 instead of this section, in which case this section does not apply.

30           **SECTION 79. AMENDMENT.** Subsections 1 and 2 of section 10-32-108 of the North  
31          Dakota Century Code are amended and reenacted as follows:

- 1           1. A limited liability company may, by affirmative vote of a majority of the governors  
2           present, upon those terms and conditions and for those considerations, which may  
3           be money, securities, or other instruments for the payment of money or other  
4           property, as the board ~~of governors~~ considers expedient, and without member  
5           approval:
- 6           a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its  
7           property and assets in the usual and regular course of its business;
- 8           b. Grant a security interest in all or substantially all of its property and assets  
9           whether or not in the usual and regular course of its business; or
- 10          c. Transfer any or all of its property to a corporation all of the shares of which  
11          are owned by a limited liability company.
- 12          2. A limited liability company, by affirmative vote of a majority of the governors  
13          present, may sell, lease, transfer, or otherwise dispose of all or substantially all of  
14          its property and assets, including its goodwill, not in the usual and regular course of  
15          its business, upon those terms and conditions and for those considerations, which  
16          may be money, securities, or other instruments for the payment of money or other  
17          property, as the board ~~of governors~~ considers expedient, when approved at a  
18          regular or special meeting of the members by the affirmative vote of the owners of  
19          a majority of the voting power of the interests entitled to vote. Written notice of the  
20          meeting must be given to all members whether or not they are entitled to vote at  
21          the meeting. The written notice must state that a purpose of the meeting is to  
22          consider the sale, lease, transfer, or other disposition of all or substantially all of  
23          the property and assets of the limited liability company.

24           **SECTION 80. AMENDMENT.** Subsection 2 of section 10-32-112 of the North Dakota  
25 Century Code is amended and reenacted as follows:

- 26           2. When the notice of dissolution has been filed with the secretary of state, and  
27           subject to section 10-32-116, the limited liability company shall cease to carry on  
28           its business, except to the extent necessary for the winding up of the business of  
29           the limited liability company. The members shall retain the right to revoke the  
30           dissolution in accordance with section 10-32-116 and the right to remove  
31           governors or fill vacancies on the board ~~of governors~~. The limited liability company

1           existence continues to the extent necessary to wind up the affairs of the limited  
2           liability company until the dissolution is revoked or articles of termination are filed  
3           with the secretary of state.

4           **SECTION 81. AMENDMENT.** Subsection 3 of section 10-32-113 of the North Dakota  
5 Century Code is amended and reenacted as follows:

6           3.   When a notice of dissolution has been filed with the secretary of state, the board of  
7           ~~governors~~, or the managers acting under the direction of the board of ~~governors~~,  
8           shall proceed as soon as possible:

9           a.   To give notice to creditors and claimants under section 10-32-114 or to  
10           proceed under section 10-32-115;

11           b.   To collect or make provision for the collection of all known debts due or owing  
12           to the limited liability company, including unperformed contribution  
13           agreements; and

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

18           **SECTION 82. AMENDMENT.** Subsection 1 of section 10-32-114 of the North Dakota  
19 Century Code is amended and reenacted as follows:

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

26           **SECTION 83. AMENDMENT.** Subsections 2 and 3 of section 10-32-117 of the North  
27 Dakota Century Code are amended and reenacted as follows:

28           2.   When the articles of termination have been filed with the secretary of state, or on a  
29           later date within thirty days after filing if the articles of termination so provide, the  
30           limited liability company is terminated.

- 1           3. The secretary of state shall issue to the ~~dissolved~~ limited liability company or its  
2           legal representative a certificate of termination that contains:
- 3           a. The name of the limited liability company;
- 4           b. The date the ~~articles of termination were filed with the secretary of state~~ is  
5           effective; and
- 6           c. A statement that the limited liability company is terminated on the effective  
7           date of termination.

8           **SECTION 84. AMENDMENT.** Subsection 1 of section 10-32-119 of the North Dakota  
9 Century Code is amended and reenacted as follows:

- 10          1. A court may grant any equitable relief it considers just and reasonable in the  
11          circumstances or may dissolve, wind up, and terminate a limited liability company:
- 12          a. In a supervised voluntary winding up and termination pursuant to section  
13          10-32-118;
- 14          b. In an action by a member when it is established that:
- 15               (1) The governors or the persons having the authority otherwise vested in  
16               the board ~~of governors~~ are deadlocked in the management of the  
17               affairs of the limited liability company and the members are unable to  
18               break the deadlock;
- 19               (2) The governors or those in control of the limited liability company have  
20               acted fraudulently, illegally, or in a manner unfairly prejudicial toward  
21               one or more members in their capacities as members or governors of  
22               any limited liability company or as managers or employees of a closely  
23               held limited liability company;
- 24               (3) The members of the limited liability company are so divided in voting  
25               power that, for a period that includes the time when two consecutive  
26               regular meetings were held, they have failed to elect successors to  
27               governors whose terms have expired or would have expired upon the  
28               election and qualification of their successors;
- 29               (4) The limited liability company assets are being misapplied or wasted; or

- 1                   (5) An event of dissolution has occurred under subdivision a, d, or e of  
2                   subsection 1 of section 10-32-109 but the limited liability company is not  
3                   acting to wind up its affairs;
- 4                   c. In an action by a creditor when:
- 5                   (1) The claim of the creditor has been reduced to judgment and an  
6                   execution on the judgment has been returned unsatisfied; or
- 7                   (2) The limited liability company has admitted in writing that the claim of the  
8                   creditor is due and owing and it is established that the limited liability  
9                   company is unable to pay its debts in the ordinary course of business;  
10                  or
- 11                  d. In an action by the attorney general to dissolve the limited liability company in  
12                  accordance with section 10-32-122 when it is established that a decree of  
13                  termination is appropriate.

14                  **SECTION 85. AMENDMENT.** Subsection 2 of section 10-32-130.1 of the North Dakota  
15 Century Code is amended and reenacted as follows:

- 16                  2. An amendment to the articles must be approved by the board ~~of governors~~ and  
17                  must include:
- 18                  a. The date the period of duration expired under the articles;
- 19                  b. The date to which the period of duration is extended; and
- 20                  c. A statement that the limited liability company has been in continuous  
21                  operation since before the date of expiration of its original period of duration.

22                  **SECTION 86. AMENDMENT.** Subsection 3 of section 10-32-132 of the North Dakota  
23 Century Code is amended and reenacted as follows:

- 24                  3. If neither the limited liability company's registered agent nor an officer of the limited  
25                  liability company can be found at the registered office, or if a limited liability  
26                  company fails to maintain a registered agent in this state and a manager of the  
27                  limited liability company cannot be found at the registered office, then the secretary  
28                  of state is the agent of the limited liability company upon whom the process, notice,  
29                  or demand may be served. ~~The~~ Service on the secretary of state:
- 30                  a. Shall be made by registered mail or personal delivery to the secretary of state  
31                  and not by electronic communication;

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

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

14           **SECTION 87. AMENDMENT.** Subsection 2 of section 10-32-149 of the North Dakota  
15 Century Code is amended and reenacted as follows:

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

26           **SECTION 88.** Section 10-32-153.1 of the North Dakota Century Code is created and  
27 enacted as follows:

- 28           **10-32-153.1. Secretary of state - Exempt records.** Any social security number or  
29 federal tax identification number disclosed or contained in any document filed with the secretary  
30 of state under this chapter is an exempt record as defined by subsection 5 of section  
31 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any

1 social security number or federal tax identification number the secretary of state determines to  
2 be a closed record before a copy of any document is released to the public.

3 **SECTION 89. AMENDMENT.** Section 10-33-01 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **10-33-01. Definitions.** For the purposes of this chapter, unless the context otherwise  
6 requires:

7 1. "Activity" or "activities" means, in a corporation organized under this chapter, the  
8 functional equivalent of "business" in a corporation organized under chapter  
9 10-19.1.

10 2. "Address" means:

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

14 b. In any other case, the mailing address, including a zip code.

15 ~~2.~~ 3. "Articles" means:

16 a. In the case of a corporation incorporated under or governed by this chapter,  
17 articles of incorporation, articles of amendment, a resolution of election to  
18 become governed by this chapter, a statement of change of registered office,  
19 registered agent, or name of registered agent, articles of merger, articles of  
20 consolidation, articles of abandonment, articles of dissolution, and any annual  
21 report in which a registered office or registered agent has been established or  
22 changed.

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

26 ~~3.~~ 4. "Authenticated electronic communication" means:

27 a. That the electronic communication is delivered:

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

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

- 1           b. That the electronic communication sets forth information from which the  
2                    corporation can reasonably conclude that the electronic communication was  
3                    sent by the purported sender.
- 4           5. "Board" means the board of directors of a corporation.
- 5       4- 6. "Board member" means an individual serving on the board.
- 6       5- 7. "Bylaws" means the code adopted for the regulation or management of the internal  
7           affairs of a corporation, regardless of how designated.
- 8       6- 8. "Corporation" means a corporation, other than a foreign corporation, that is  
9           incorporated under or governed by this chapter.
- 10       7- 9. "Director" means a member of the board.
- 11       8- 10. "Domestic organization" means an organization created under the laws of this  
12           state.
- 13       11. "Electronic" means relating to technology having electrical, digital, magnetic,  
14           wireless, optical, electromagnetic, or similar capabilities.
- 15       12. "Electronic communication" means any form of communication, not directly  
16           involving the physical transmission of paper:
- 17           a. That creates a record that may be retained, retrieved, and reviewed by a  
18                    recipient of the communication; and
- 19           b. That may be directly reproduced in paper form by the recipient through an  
20                    automated process.
- 21       13. "Electronic record" means a record created, generated, sent, communicated,  
22           received, or stored by electronic means.
- 23       14. "Electronic signature" means an electronic sound, symbol, or process attached to  
24           or logically associated with a record and executed or adopted by a person with the  
25           intent to sign the record.
- 26       15. "Filed with the secretary of state" means except as otherwise permitted by law or  
27           rule:
- 28           a. ~~The following have been~~ That a document meeting the applicable  
29                    requirements of this chapter, together with the fees provided in section  
30                    10-33-140, was delivered or communicated to the secretary of state by a

- 1                    method or medium of communication acceptable by the secretary of state and  
2                    ~~have been~~ was determined by the secretary of state to conform to law:
- 3                    (1) ~~A signed original or a legible facsimile telecommunication of a signed~~  
4                    ~~original, of a request for reserved name; or a signed original of all other~~  
5                    ~~documents, meeting the applicable requirements of this chapter; and~~  
6                    (2) ~~The fees provided for in section 10-33-140; and~~
- 7                    b. ~~The~~ That the secretary of state has shall then:
- 8                    (1) ~~Endorsed on the original the word "filed", and the month, day, and year~~  
9                    Record the actual date on which the document is filed, and if different,  
10                    the effective date of filing; and
- 11                    (2) ~~Recorded~~ Record the document in the office of the secretary of state.
- 12                    ~~9-~~ 16. "Foreign corporation" means a corporation that is formed under laws other than the  
13                    laws of this state for a purpose for which a corporation may be organized under  
14                    this chapter.
- 15                    ~~40-~~ 17. "Foreign organization" means an organization created under laws other than the  
16                    laws of this state for a purpose for which an organization may be created under the  
17                    laws of this state.
- 18                    18. "Good faith" means honesty in fact in the conduct of an act or transaction.
- 19                    ~~44-~~ 19. "Intentionally" means the person referred to has a purpose to do or fail to do the  
20                    act or cause the result specified, or believes the act or failure to act, if successful,  
21                    will cause that result. A person intentionally violates a statute:
- 22                    a. If the person intentionally does the act or causes the result prohibited by the  
23                    statute; or
- 24                    b. If the person intentionally fails to do the act or cause the result required by the  
25                    statute, even though the person may not know of the existence or  
26                    constitutionality of the statute or the scope or meaning of the terms used in  
27                    the statute.
- 28                    ~~42-~~ 20. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended  
29                    from time to time, and successive federal revenue acts.

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- 1    ~~43.~~ 21. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A  
2                    person does not "know" or have "knowledge" of a fact merely because the person  
3                    has reason to know of the fact.
- 4    ~~44.~~ 22. "Legal representative" means a person empowered to act for another person,  
5                    including an agent, manager, officer, partner, or associate of an organization; a  
6                    trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver,  
7                    guardian, custodian, or conservator.
- 8    ~~45.~~ 23. "Member" means a person with membership rights in a corporation under its  
9                    articles or bylaws, regardless of how the person is identified.
- 10   ~~46.~~ 24. "Members with voting rights" means members or a class of members that has  
11                    voting rights with respect to the purpose or matter involved.
- 12   ~~47.~~ 25. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving  
13                    pecuniary gain to any officer, director, or member, other than a member that is a  
14                    nonprofit organization or subdivision, unit, or agency of the United States or a state  
15                    or local government.
- 16   ~~48.~~ 26. "Notice":  
17                    a.    Is given by a member of a corporation to the corporation or an officer of the  
18                    corporation ~~when:~~  
19                           (1)    When in writing and mailed or delivered to the corporation or the officer  
20                                       at the registered office or principal executive office of the corporation;  
21                                       ~~and or~~  
22                           (2)    When given by a form of electronic communication consented to by the  
23                                       corporation to which the notice is given:  
24                                       (a)    If by facsimile communication, when directed to a telephone  
25                                                          number at which the corporation has consented to receive notice.  
26                                       (b)    If by electronic mail, when directed to an electronic mail address  
27                                                          at which the corporation has consented to receive notice.  
28                                       (c)    If by posting on an electronic network on which the corporation  
29                                                          has consented to receive notice, together with separate notice to  
30                                                          the corporation of the specific posting, upon the later of:  
31                                                          [1]    The posting; or

- 1 [2] The giving of the separate notice.
- 2 (d) If by any other form of electronic communication by which the
- 3 corporation has consented to receive notice, when directed to the
- 4 corporation.
- 5 b. ~~It~~ Is given, in all other cases, is given to a person:
- 6 (1) When mailed to the person at an address designated by the person or
- 7 at the last-known address of the person;
- 8 (2) When handed to the person; ~~or~~
- 9 (3) When left at the office of the person with a clerk or other person in
- 10 charge of the office; or:
- 11 (a) If there is no one in charge, when left in a conspicuous place in
- 12 the office; or
- 13 (b) If the office is closed or the person to be notified has no office,
- 14 when left at the dwelling house or usual place of abode of the
- 15 person with some person of suitable age and discretion then
- 16 residing ~~therein~~: there; or
- 17 (4) When given by a form of electronic communication consented to by the
- 18 person to whom the notice is given:
- 19 (a) If by facsimile communication, when directed to a telephone
- 20 number at which the person has consented to receive notice.
- 21 (b) If by electronic mail, when directed to an electronic mail address
- 22 at which the person has consented to receive notice.
- 23 (c) If by posting on an electronic network on which the person has
- 24 consented to receive notice, together with separate notice to the
- 25 person of the specific posting, upon the later of:
- 26 [1] The posting; or
- 27 [2] The giving of the separate notice.
- 28 c. Is given by mail when deposited in the United States mail with sufficient
- 29 postage affixed.
- 30 d. Is deemed received when it is given.
- 31 ~~49.~~ 27. "Officer" means an individual who is more than eighteen years of age and who is:

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- 1           a. Elected, appointed, or otherwise designated as an officer by the board or the  
2           members; or
- 3           b. Considered elected as an officer pursuant to section 10-33-52.
- 4   ~~20.~~ 28. "Organization" means a corporation, whether domestic or foreign, incorporated in  
5           or authorized to do business in this state under another chapter of this code;  
6           limited liability company; partnership; limited partnership; limited liability  
7           partnership; limited liability limited partnership, joint venture; association; business  
8           trust; estate; trust; enterprise; or any other legal or commercial entity.
- 9   ~~21.~~ 29. "Principal executive office" means:
- 10          a. If the corporation has an elected or appointed president, then an office where  
11           the elected or appointed president of the corporation has an office; or
- 12          b. If the corporation has no elected or appointed president, then the registered  
13           office of the corporation.
- 14   ~~22.~~ 30. "Record" means information that is inscribed on a tangible medium or that is stored  
15           in an electronic or other medium and is retrievable in perceivable form.
- 16          31. "Registered office" means the place in this state designated in the articles of a  
17           corporation as the registered office of the corporation.
- 18   ~~23.~~ 32. "Related organization" means an organization that controls, is controlled by, or is  
19           under common control with another organization with control existing if an  
20           organization:
- 21          a. Owns, directly or indirectly, at least fifty percent of the shares, membership  
22           interests, or other ownership interests of another organization;
- 23          b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or  
24           more of the voting members of the governing body of another organization; or
- 25          c. Has the power, directly or indirectly, to direct or cause the direction of the  
26           management and policies of another organization, whether through the  
27           ownership of voting interests, by contract, or otherwise.
- 28   ~~24.~~ 33. "Remote communication" means communication via electronic communication,  
29           conference telephone, videoconference, the internet, or such other means by  
30           which persons not physically present in the same location may communicate with  
31           each other on a substantially simultaneous basis.

- 1        34. "Signed" means ~~the~~:
- 2            a. That the signature of a person, which may be a facsimile affixed, engraved,
- 3                            printed, placed, stamped with indelible ink, transmitted by facsimile
- 4                            telecommunication or electronically, or in any other manner reproduced on the
- 5                            document, is placed on a document, as provided in ~~subsection 39 of~~ under
- 6                            section ~~41-01-11, 41-01-09;~~ and:
- 7        a. b. With respect to a document required by this chapter to be filed with the
- 8                            secretary of state, ~~means the~~ that:
- 9                            (1) The document ~~has been~~ is signed by a person authorized to sign ~~do so~~
- 10                            by this chapter, the articles, ~~the~~ or bylaws, a resolution approved by the
- 11                            directors as required by section 10-33-42, or the members with voting
- 12                            rights, if any, as required by section 10-33-72; and
- 13        b. ~~With respect to a document not required by this chapter to be filed with the~~
- 14                            ~~secretary of state, the signature may be a facsimile affixed, engraved, printed,~~
- 15                            ~~placed, stamped with indelible ink, transmitted by facsimile telecommunication~~
- 16                            ~~or electronically, or in any other manner reproduced on the document.~~
- 17                            (2) The signature and the document are communicated by a method or
- 18                            medium of communication acceptable by the secretary of state.
- 19 ~~25.~~ 35. "Subsidiary" of a specified corporation means:
- 20            a. A corporation having more than fifty percent of the voting power of its shares
- 21                            entitled to vote for directors owned directly or indirectly through related
- 22                            ~~corporations or limited liability companies~~ organizations, by the specified
- 23                            corporation; or
- 24            b. A limited liability company having more than fifty percent of the voting power
- 25                            of its membership interests entitled to vote for governors owned directly, or
- 26                            indirectly through ~~related limited liability companies or corporations~~
- 27                            organizations, by the specified limited liability company.
- 28 ~~26.~~ 36. "Surviving corporation" means the domestic or foreign corporation resulting from a
- 29                            merger.
- 30 ~~27.~~ 37. "Vote" includes authorization by written action.
- 31 ~~28.~~ 38. "Written action" means:

- 1           a. A written document signed by all of the persons required to take the action; or  
2           b. The counterparts of a written document signed by any of the persons taking  
3           the action.  
4           (1) Each counterpart constitutes the action of the persons signing it; and  
5           all  
6           (2) All the counterparts are one written action by all of the persons signing  
7           them.

8           **SECTION 90.** Section 10-33-01.1 of the North Dakota Century Code is created and  
9 enacted as follows:

10           **10-33-01.1. Legal recognition of electronic records and electronic signatures.** For  
11 purposes of this chapter:

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

20           **SECTION 91. AMENDMENT.** Section 10-33-10 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22           **10-33-10. Corporate name.**

- 23           1. The corporate name:  
24           a. Must be in the English language or in any other language expressed in  
25           English letters or characters.  
26           b. Need not contain the word "company", "corporation", "incorporated", "limited",  
27           or an abbreviation of one or more of these words.  
28           c. May not contain a word or phrase that indicates or implies that it may not be  
29           incorporated under this chapter.

- 1           d.    May not contain the words "limited liability company", "limited partnership",  
2           "limited liability partnership", "limited liability limited partnership", or any  
3           abbreviation of these words.
- 4           e.    May not contain a word or phrase that indicates or implies that it is  
5           incorporated for a purpose other than a legal nonprofit purpose for which a  
6           corporation may be incorporated under this chapter.
- 7           f.    Unless a document in compliance with subsection 2 ~~of this section~~ is filed with  
8           the articles, may not be the same as or deceptively similar to:
- 9           (1)   The name, whether foreign and authorized to ~~do business~~ conduct  
10           activities in this state or domestic, of:
- 11           (a)   Another corporation;
- 12           (b)   A corporation incorporated or authorized to do business in this  
13           state under another provision of this code;
- 14           (c)   A limited liability company;
- 15           (d)   A limited partnership;
- 16           (e)   A limited liability partnership; or
- 17           (f)   A limited liability limited partnership;
- 18           (2)   A name the right to which is, at the time of incorporation, reserved in  
19           the manner provided in section 10-19.1-14, 10-32-11, 10-33-11,  
20           45-10.1-03, or 45-22-05;
- 21           (3)   A fictitious name registered in the manner provided in chapter 45-11; or
- 22           (4)   A trade name registered in the manner provided in chapter 47-25.
- 23        2.    If the secretary of state determines that a corporate name is "deceptively similar" to  
24           another name for purposes of this chapter, then the corporate name may not be  
25           used unless there is filed with the articles:
- 26           a.    The written consent of the holder of the rights to the name the proposed name  
27           is determined to be deceptively similar to; or
- 28           b.    A certified copy of a judgment of a court in this state establishing the prior  
29           right of the applicant to the use of the name in this state.

- 1           This subsection does not affect the right of a domestic corporation existing on  
2           August 1, 1997, or a foreign corporation authorized to do business in this state on  
3           that date to continue the use of its name.
- 4           3. The secretary of state shall determine whether a corporate name is "deceptively  
5           similar" to another name for purposes of this chapter.
- 6           4. This section and section 10-33-11 do not:
- 7           a. Abrogate or limit:
- 8                 (1) The law of unfair competition or unfair practices;
- 9                 (2) Chapter 47-25;
- 10                (3) The laws of the United States with respect to the right to acquire and  
11                protect copyrights, trade names, trademarks, service names, or service  
12                marks; or
- 13                (4) Any other rights to the exclusive use of names or symbols; or
- 14           b. Derogate the common law or the principles of equity.
- 15           5. A corporation that is ~~merged~~ the surviving organization in a merger with another  
16           ~~domestic one or foreign corporation, or that is incorporated by the reorganization of~~  
17           ~~one or more domestic or foreign corporations~~ other organizations, or that acquires  
18           by sale, lease, or other disposition to or exchange with ~~a domestic corporation~~ an  
19           organization all or substantially all of the assets of another ~~domestic or foreign~~  
20           ~~corporation~~ organization including its name, may have the same name, subject to  
21           the requirements of subsection 1, as that used in this state by any of the other  
22           ~~corporations~~ organizations, if the other ~~corporation was~~ organization whose name  
23           is sought to be used:
- 24           a. Was incorporated, organized, formed, or registered under the laws of, ~~or is~~  
25           ~~authorized to conduct activities in,~~ this state.
- 26           b. Is authorized to conduct activities or transact business in this state;
- 27           c. Holds a reserved name in the manner provided in section 10-19.1-14,  
28           10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- 29           d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
- 30           e. Holds a trade name registered in the manner provided in chapter 47-25.

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

16           **SECTION 92. AMENDMENT.** Section 10-33-11 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18           **10-33-11. Reserved name.**

- 19          1. The exclusive right to the use of a corporate name otherwise permitted by section  
20          10-33-10 may be reserved by any person.
- 21          2. The reservation must be made by filing with the secretary of state a request that  
22          the name be reserved, together with the fees provided in section 10-33-140:
- 23           a. If the name is available for use by the applicant, the secretary of state shall  
24           reserve the name for the exclusive use of the applicant for a period of twelve  
25           months.
- 26           b. The reservation may be renewed for successive twelve-month periods.
- 27          3. The right to the exclusive use of a corporate name reserved pursuant to this  
28          section may be transferred to another person by or on behalf of the applicant for  
29          whom the name was reserved by filing with the secretary of state a notice of the  
30          transfer and specifying the name and address of the transferee, together with the  
31          fees provided in section 10-33-140.

1           4.    The right to the exclusive use of a corporate name reserved pursuant to this  
2                    section may be canceled by or on behalf of the applicant for whom the name was  
3                    reserved by filing with the secretary of state a notice of the cancellation, together  
4                    with the fees provided in section 10-33-140.

5           ~~5.    The secretary of state may accept for filing a legible facsimile copy of the signed~~  
6           ~~original of any request for reserved name.~~

7           ~~6.~~    The secretary of state may destroy all reserved name requests and index thereof  
8                    one year after expiration.

9           **SECTION 93. AMENDMENT.** Section 10-33-21 of the North Dakota Century Code is  
10   amended and reenacted as follows:

11           **10-33-21. General powers.**

12           1.    A corporation has the powers set forth in this section, subject to any limitations  
13                    provided in any other statute of this state or in its articles.

14           2.    A corporation has perpetual duration.

15           3.    A corporation may sue and be sued, complain and defend and participate as a  
16                    party or otherwise in any legal, administrative, or arbitration proceeding, in its  
17                    corporate name.

18           4.    A corporation may purchase, lease, or otherwise acquire, own, hold, improve, and  
19                    use and otherwise deal in and with real or personal property, or any interest in  
20                    property, wherever situated.

21           5.    A corporation may sell, convey, mortgage, create a security interest in, lease,  
22                    exchange, transfer, or otherwise dispose of all or any part of its real or personal  
23                    property, or any interest in property, wherever situated.

24           6.    A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote,  
25                    use, employ, sell, exchange, mortgage, lend, create a security interest in, or  
26                    otherwise dispose of, use and deal in and with, securities or other interests in, or  
27                    obligations of, a person or direct or indirect obligations of any domestic or foreign  
28                    government or instrumentality.

29           7.    A corporation may make contracts and incur liabilities, borrow money, issue its  
30                    securities, and secure any of its obligations by mortgage of or creation of a security  
31                    interest in all or any of its property, franchises, and income.

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- 1           8.   A corporation may invest and reinvest its funds.
- 2           9.   A corporation may take and hold real and personal property, whether or not of a  
3           kind sold or otherwise dealt in by the corporation, as security for the payment of  
4           money loaned, advanced, or invested.
- 5           10.  A corporation may conduct its ~~business~~ activities, carry on its operations, have  
6           offices, and exercise the powers granted by this chapter anywhere in the universe.
- 7           11.  Except as otherwise prohibited by law, a corporation may make donations,  
8           irrespective of corporate benefit, for:
- 9           a.   The public welfare;
- 10          b.   Social, community, charitable, religious, educational, scientific, civic, literary,  
11          and testing for public safety purposes, and for similar or related purposes;
- 12          c.   The purpose of fostering national or international amateur sports competition;  
13          and
- 14          d.   The prevention of cruelty to children and animals, and for similar or related  
15          purposes.
- 16          12.  A corporation may pay pensions, retirement allowances, and compensation for  
17          past services and establish employee or incentive benefit plans, trusts, and  
18          provisions for the benefit of the corporation and the corporation's related  
19          organizations' officers, managers, directors, governors, employees, and agents  
20          and, in the case of a related organization that is a limited liability company,  
21          members who provide services to the limited liability company, and the families,  
22          dependents, and beneficiaries of any of them. It may indemnify and purchase and  
23          maintain insurance for a fiduciary of any of these employee benefit and incentive  
24          plans, trusts, and provisions.
- 25          13.  A corporation may participate in any capacity in the promotion, organization,  
26          ownership, management, and operation of any organization or in any transaction,  
27          undertaking, or arrangement that the participating corporation would have power to  
28          conduct by itself, whether or not the participation involves sharing or delegation of  
29          control.
- 30          14.  A corporation may provide for its benefit life insurance and other insurance with  
31          respect to the services of its officers, directors, employees, and agents, or on the

- 1           life of a member for the purpose of acquiring, at the death of the member, any  
2           membership interests in the corporation owned by the member.
- 3       15.    A corporation may have, alter at pleasure, and use a corporate seal as provided in  
4           section 10-33-22.
- 5       16.    A corporation may adopt, amend, and repeal bylaws relating to the management of  
6           the ~~business~~ activities or the regulation of the affairs of the corporation as provided  
7           in section 10-33-26.
- 8       17.    A corporation may establish committees of the board of directors, elect or appoint  
9           persons to the committees, and define their duties as provided in section 10-33-44  
10          and fix their compensation.
- 11      18.    A corporation may elect or appoint officers, employees, and agents of the  
12          corporation, and define their duties and fix their compensation.
- 13      19.    A corporation may lend money to, guarantee an obligation of, become a surety for,  
14          or otherwise financially assist persons as provided in section 10-33-82.
- 15      20.    A corporation may make advances to its directors, officers, and employees and  
16          those of its subsidiaries as provided in section 10-33-83.
- 17      21.    A corporation shall indemnify those persons identified in section 10-33-84 against  
18          certain expenses and liabilities only as provided in section 10-33-84 and may  
19          indemnify other persons.
- 20      22.    A corporation may conduct all or part of its ~~business~~ activities under one or more  
21          trade names as provided in chapter 47-25.
- 22      23.    A corporation may take, receive, and hold real and personal property, including the  
23          principal and interest of money or other fund, that is given, conveyed, bequeathed,  
24          devised to, or vested in the corporation in trust when the corporation or a related  
25          organization has a vested or contingent interest in the trust.
- 26      24.    Except when the trust instrument prescribes otherwise, a corporation may invest  
27          trust property or its proceeds in accordance with sections 59-02-08.1 through  
28          59-02-08.11.
- 29      25.    A corporation may be a member of or the owner of the ownership interest in  
30          another domestic or foreign organization.
- 31      26.    A corporation may dissolve and wind up.

1           27. A corporation may merge and consolidate with other domestic or foreign nonprofit  
2           corporations organized for related purposes.

3           28. A corporation ~~doing business~~ conducting activities as a hospital may merge with a  
4           corporation incorporated for profit and form a corporation under this chapter.

5           29. A corporation may acquire an owner's interest in another organization.

6           30. A corporation may have and exercise all other powers necessary or convenient to  
7           effect any or all of the purposes for which the corporation is incorporated.

8           **SECTION 94. AMENDMENT.** Subsection 3 of section 10-33-23 of the North Dakota  
9 Century Code is amended and reenacted as follows:

10           3. In a proceeding by the attorney general, as provided in this chapter, to dissolve the  
11           corporation or to enjoin the corporation from the transaction of unauthorized  
12           ~~business~~ activities.

13           **SECTION 95. AMENDMENT.** Subsection 2 of section 10-33-25 of the North Dakota  
14 Century Code is amended and reenacted as follows:

15           2. After the issuance of the certificate of incorporation, the incorporators or the  
16           directors named in the articles shall, within a reasonable time, either hold an  
17           organizational meeting at the call of a majority of the incorporators or of the  
18           directors named in the articles, or take written action, for the purposes of  
19           ~~transacting business~~ conducting activities and taking actions necessary or  
20           appropriate to complete the organization of the corporation. If a meeting is held,  
21           the person or persons calling the meeting shall give at least three days' notice of  
22           the meeting to each incorporator or director named, stating the date, time, and  
23           place of the meeting. Incorporators and directors may waive notice of an  
24           organizational meeting in the same manner that a director may waive notice of  
25           meetings of the board pursuant to subsection 5 of section 10-33-39.

26           **SECTION 96. AMENDMENT.** Subsection 1 of section 10-33-27 of the North Dakota  
27 Century Code is amended and reenacted as follows:

28           1. The ~~business~~ activities and affairs of a corporation must be managed by or under  
29           the direction of a board.

30           a. All directors are entitled to vote and have equal rights and preferences except  
31           as otherwise provided in the articles or bylaws.

- 1           b. The members of the first board may be named in the articles, designated or  
2           appointed pursuant to the articles, or elected by the incorporators under  
3           section 10-33-25.

4           **SECTION 97. AMENDMENT.** Subsections 1 and 2 of section 10-33-39 of the North  
5 Dakota Century Code are amended and reenacted as follows:

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

9           a. Unless the articles or bylaws provide otherwise, a meeting of the board must  
10           be held at least once per year.

11           b. If the articles, bylaws, or board fails to select a place for a meeting, the  
12           meeting must be held at the principal executive office, ~~unless the articles or~~  
13           ~~bylaws provide otherwise.~~

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

16           d. Participation in a meeting by either of the means set forth in subsection 2  
17           constitutes presence at the meeting.

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

19           a. ~~A conference among directors using any~~ Any meeting among directors may  
20           be conducted:

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

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

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

29           b. ~~Any means of communication through which the director, other directors so~~  
30           ~~participating, and all directors physically present at the meeting may~~  
31           ~~simultaneously hear each other during the meeting. Participation in a meeting~~

1                   ~~by this means is personal presence at the meeting.~~ By means of conference  
2                   telephone or, if authorized by the board, by such other means of remote  
3                   communication, in each case through which that director, other directors so  
4                   participating, and all directors physically present at the meeting participate  
5                   with each other during the meeting.

6                   **SECTION 98. AMENDMENT.** Subsections 1 and 2 of section 10-33-43 of the North  
7 Dakota Century Code are amended and reenacted as follows:

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

18                   **SECTION 99. AMENDMENT.** Subsection 1 of section 10-33-44 of the North Dakota  
19 Century Code is amended and reenacted as follows:

- 20                   1. A resolution approved by the affirmative vote of a majority of the board may  
21                   establish committees having the authority of the board in the management of the  
22                   ~~business~~ activities of the corporation to the extent provided in the resolution.  
23                   Committees may include a special litigation committee consisting of one or more  
24                   independent directors or other independent persons to consider legal rights or  
25                   remedies of the corporation and whether those rights or remedies should be  
26                   pursued. Committees other than special litigation committees are subject at all  
27                   times to the direction and control of the board.

28                   **SECTION 100. AMENDMENT.** Subsection 1 of section 10-33-50 of the North Dakota  
29 Century Code is amended and reenacted as follows:

- 30                   1. The president shall:

- 1 a. Have general active management for the ~~business~~ activities of the
- 2 corporation;
- 3 b. When present, preside at all meetings of the board and of members;
- 4 c. See that all orders and resolutions of the board are carried into effect;
- 5 d. Sign and deliver in the name of the corporation, any deeds, mortgages,
- 6 bonds, contracts, or other instruments pertaining to the business of the
- 7 corporation, except in cases in which the authority to sign and deliver is
- 8 required by law to be exercised by another person or is expressly delegated
- 9 by the articles or bylaws or by the board to some officer or agent of the
- 10 corporation;
- 11 e. Maintain records of and, whenever necessary, certify all proceedings of the
- 12 board and the members; and
- 13 f. Perform other duties prescribed by the board.

14 **SECTION 101. AMENDMENT.** Subsection 3 of section 10-33-65 of the North Dakota  
15 Century Code is amended and reenacted as follows:

- 16 3. An annual meeting of members must be held at the time and place stated in or
- 17 fixed in accordance with the articles or bylaws. If a place is not stated or if a
- 18 demand for a meeting is made under subsection 2, the meeting must be held in the
- 19 county where the principal executive office of the corporation is located. To the
- 20 extent authorized in the articles or bylaws, the board may determine that an annual
- 21 meeting of the members shall be held solely by means of remote communication in
- 22 accordance with subsection 2 of section 10-33-75.

23 **SECTION 102. AMENDMENT.** Subsection 3 of section 10-33-66 of the North Dakota  
24 Century Code is amended and reenacted as follows:

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

1           **SECTION 103. AMENDMENT.** Section 10-33-73 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **10-33-73. Action without a meeting.** An action required or permitted to be taken at a  
4 meeting of the members may be taken without a meeting by written action signed, or consented  
5 to by authenticated electronic communication, by all of the members entitled to vote on that  
6 action.

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

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

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

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

16           2. The written action is effective when signed by the required members, unless a  
17 different effective time is provided in the written action.

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

23           4. When this chapter requires or permits a certificate concerning an action to be filed  
24 with the secretary of state, the certificate must indicate ~~that~~ if the action was taken  
25 under this section.

26           **SECTION 104. AMENDMENT.** Section 10-33-75 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28           **10-33-75. Electronic Remote communications for member meetings.**

29           1. ~~A conference among~~ This section shall be construed and applied to:

30           a. Facilitate remote communication consistent with the applicable law; and

- 1           b. Be consistent with reasonable practices concerning remote communication  
2           and with continued expansion of these practices.
- 3           2. To the extent authorized by the articles or bylaws and determined by the board:
- 4           a. A meeting of the members may be held solely by any one or more means of  
5           remote communication through which the participants may simultaneously  
6           hear each other during the conference constitutes a regular or special  
7           meeting of the members:
- 8           a- (1) ~~If the same notice of the meeting is given of the conference as would~~  
9           ~~be required for a meeting to every member entitled to vote; and~~
- 10          b- (2) ~~If the number of voting members participating in the conference would~~  
11          ~~be meeting is sufficient to constitute a quorum at a meeting.~~
- 12          ~~Participation in a conference by this means constitutes presence at the meeting in~~  
13          ~~person or by proxy if all the other requirements of section 10-33-77 are met.~~
- 14          2- b. A member may participate in not physically present at a regular or special  
15          meeting of members not described in subsection 1 by any may by means of  
16          remote communication through which the member, other participants, and all  
17          persons physically present at the participate in a meeting may simultaneously  
18          hear each other during the meeting. Participation in a meeting by that means  
19          ~~constitutes presence at the meeting in person or by proxy if all the other~~  
20          ~~requirements of section 10-33-77 are met~~ of members held at a designated  
21          place.
- 22          3. In any meeting of members held solely by means of remote communication under  
23          subdivision a of subsection 2 or in any meeting of members held at a designated  
24          place in which one or more members participate by means of remote  
25          communication under subdivision b of subsection 2:
- 26          a. The corporation shall implement reasonable measures:
- 27               (1) To verify that each person deemed present and entitled to vote at the  
28               meeting by means of remote communication is a member; and
- 29               (2) To provide each member participating by means of remote  
30               communication with a reasonable opportunity to participate in the  
31               meeting, including an opportunity to:

- 1                   (a) Read or hear the proceedings of the meeting substantially  
2                   concurrently with those proceedings;
- 3                   (b) If allowed by the procedures governing the meeting, have the  
4                   member's remarks heard or read by other participants in the  
5                   meeting substantially concurrently with the making of those  
6                   remarks; and
- 7                   (c) If otherwise entitled, vote on matters submitted to the members.
- 8                   b. Participating in a meeting by this means constitutes presence at the meeting  
9                   in person or by proxy if all of the other requirements of section 10-33-77 are  
10                  met.
- 11                  4. With respect to notice to members:
- 12                  a. Any notice to members given by the corporation under any provision of this  
13                  chapter, the articles, or the bylaws by a form of electronic communication  
14                  consented to by the member to whom the notice is given is effective when  
15                  given. The notice is deemed given:
- 16                   (1) If by facsimile communication, when directed to a telephone number at  
17                   which the member has consented to receive notice;
- 18                   (2) If by electronic mail, when directed to an electronic mail address at  
19                   which the member has consented to receive notice;
- 20                   (3) If by a posting on an electronic network on which the member has  
21                   consented to receive notice, together with separate notice to the  
22                   member of the specific posting, upon the later of:
- 23                   (a) The posting; or
- 24                   (b) The giving of the separate notice; and
- 25                   (4) If by any other form of electronic communication by which the member  
26                   has consented to receive notice, when directed to the member.
- 27                  b. An affidavit of the secretary, other authorized officer, or authorized agent of  
28                  the corporation, that the notice has been given by a form of electronic  
29                  communication is, in the absence of fraud, prima facie evidence of the facts  
30                  stated in the affidavit.

- 1           c. Consent by a member to notice given by electronic communication may be  
2           given in writing or by authenticated electronic communication. The  
3           corporation is entitled to rely on any consent so given until revoked by the  
4           member, provided that no revocation affects the validity of any notice given  
5           before receipt by the corporation of revocation of the consent.
- 6           5. Any ballot, vote, authorization, or consent submitted by electronic communication  
7           under this chapter may be revoked by the member submitting the ballot, vote  
8           authorization, or consent so long as the revocation is received by an officer of the  
9           corporation at or before the meeting or before an action without a meeting is  
10           effective according to section 10-33-73.
- 11           6. Waiver of notice by a member of a meeting by means of authenticated electronic  
12           communication ~~described in subsections 1 and 2~~ may be given in the manner  
13           provided in subsection 5 of section 10-33-68. Participation in a meeting by means  
14           of ~~communications~~ remote communication described in ~~subsections 1 and~~  
15           subdivisions a and b of subsection 2 is a waiver of notice of that meeting, except  
16           when the member objects:
- 17           a. ~~Objects at~~ At the beginning of the meeting to the transaction of business  
18           because the meeting is not lawfully called or convened; or
- 19           b. ~~Objects before~~ Before a vote on an item of business because the item may  
20           not lawfully be considered at the meeting and does not participate in the  
21           consideration of the item at that meeting.

22           **SECTION 105. AMENDMENT.** Subsection 1 of section 10-33-77 of the North Dakota  
23 Century Code is amended and reenacted as follows:

- 24           1. If the articles or bylaws permit proxy voting, a member may ~~appoint a proxy to cast~~  
25           or authorize the casting of a vote or otherwise act for the member by signing an:
- 26           a. Filing a nonelectronic written appointment form either personally or of a proxy  
27           signed by the member, with an ~~attorney-in-fact~~ officer of a corporation at or  
28           before the meeting at which the appointment is to be effective; or
- 29           b. Telephonic transmission or authenticated electronic communication whether  
30           or not accompanied by written instructions of the member, of an appointment

1                   of a proxy with the corporation or the corporation's duly authorized agent at or  
2                   before the meeting at which the appointment is to be effective.

3                   **SECTION 106. AMENDMENT.** Section 10-33-81 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5                   **10-33-81. Equitable remedies.** If a corporation or an officer or director of the  
6 corporation violates this chapter, a court in this state, in an action brought by at least fifty  
7 members with voting rights or ten percent of the members with voting rights, whichever is less,  
8 or by the attorney general, may grant equitable relief it considers just and reasonable in the  
9 circumstances and award expenses, including reasonable attorney's fees and disbursements,  
10 to the members, and the attorney general is entitled to an award of reasonable attorney's fees,  
11 investigation fees, costs, and expenses of any investigation and action brought by the attorney  
12 general under this chapter.

13                   **SECTION 107. AMENDMENT.** Section 10-33-93 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15                   **10-33-93. Merger of corporation ~~doing business~~ conducting activities as a**  
16 **hospital with a corporation organized for profit - Retention of property tax status.**  
17 Notwithstanding any provision of chapter 10-19.1 and this chapter, a corporation ~~doing~~  
18 ~~business~~ conducting activities as a hospital may merge with a corporation incorporated for profit  
19 and form a corporation incorporated under this chapter.

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

27                   **SECTION 108. AMENDMENT.** Subsection 1 of section 10-33-101 of the North Dakota  
28 Century Code is amended and reenacted as follows:

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

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

3                   b. By giving written notice to known creditors and claimants pursuant to  
4                   subsection ~~48~~ 26 of section 10-33-01.

5                   **SECTION 109. AMENDMENT.** Subsections 2 and 3 of section 10-33-103 of the North  
6                   Dakota Century Code are amended and reenacted as follows:

7                   2. When the certificate of dissolution has been issued by the secretary of state, or on  
8                   a later date within thirty days after filing if the articles of dissolution so provide, the  
9                   corporation is dissolved.

10                  3. The secretary of state shall issue to the dissolved corporation, or its legal  
11                  representative, a certificate of dissolution that contains:

12                  a. The name of the corporation;

13                  b. The date the articles of dissolution ~~were filed with the secretary of state~~ is  
14                  effective; and

15                  c. A statement that the corporation was dissolved as of the effective date of  
16                  dissolution.

17                  **SECTION 110. AMENDMENT.** Subsection 4 of section 10-33-104 of the North Dakota  
18                  Century Code is amended and reenacted as follows:

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

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

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

25                  **SECTION 111. AMENDMENT.** Subsection 1 of section 10-33-107 of the North Dakota  
26                  Century Code is amended and reenacted as follows:

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

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

- 1           b. In an action by a director or at least fifty members with voting rights or ten  
2           percent of the members with voting rights, whichever is less, when it is  
3           established that:
- 4           (1) The directors or the persons having the authority otherwise vested in  
5           the board are deadlocked in the management of the corporate affairs,  
6           the members cannot break the deadlock, and the corporation or the  
7           parties have not provided for a procedure to resolve the dispute;
- 8           (2) The directors or those in control of the corporation have acted  
9           fraudulently, illegally, or in a manner unfairly prejudicial toward one or  
10          more members in their capacities as members, directors, or officers;
- 11          (3) The members of the corporation are so divided in voting power that, for  
12          a period that includes the time when two consecutive regular meetings  
13          were held, they have failed to elect successors to directors whose  
14          terms have expired or would have expired upon the election and  
15          qualification of their successors;
- 16          (4) The corporate assets are being misapplied or wasted; or
- 17          (5) The period of duration as provided in the articles has expired and has  
18          not been extended as provided in section 10-33-118.
- 19          c. In an action by a creditor when:
- 20          (1) The claim of the creditor has been reduced to judgment and an  
21          execution on it has been returned unsatisfied; or
- 22          (2) The corporation has admitted in writing that the claim of the creditor is  
23          due and owing and it is established that the corporation cannot pay its  
24          debts in the ordinary course of its activities.
- 25          d. In an action by the attorney general when it is established that:
- 26          (1) The articles and certificate of incorporation were obtained through  
27          fraud;
- 28          (2) The corporation should not have been formed under this chapter;
- 29          (3) The corporation failed to comply with the requirements of sections  
30          10-33-02 through 10-33-19 essential to incorporation under or election  
31          to become governed by this chapter;

- 1 (4) The corporation has flagrantly violated a provision of this chapter, has  
2 violated a provision of this chapter more than once, or has violated  
3 more than one provision of this chapter;
- 4 (5) The corporation has engaged in an unauthorized act, contract,  
5 conveyance, or transfer or has exceeded its powers;
- 6 (6) The corporation has acted, or failed to act, in a manner that constitutes  
7 surrender or abandonment of the corporate purpose, franchise,  
8 privileges, or enterprise;
- 9 (7) The corporation has liabilities and obligations exceeding the corporate  
10 assets;
- 11 (8) The period of corporate existence has ended without extension;
- 12 (9) The corporation has failed for a period of ninety days to pay fees,  
13 charges, or penalties required by this chapter;
- 14 (10) The corporation has failed for a period of thirty days:  
15 (a) To appoint and maintain a registered agent in this state; or  
16 (b) After changing its registered office, to file with the secretary of  
17 state a statement of the change;
- 18 (11) The corporation has answered falsely or failed to answer a reasonable  
19 written interrogatory from the secretary of state or the attorney general  
20 to the corporation, its officers, or directors;
- 21 (12) The corporation has solicited property and has failed to use it for the  
22 purpose solicited; or
- 23 (13) The corporation has fraudulently used or solicited property.
- 24 e. An action may not be commenced under subdivision d until thirty days after  
25 notice to the corporation by the attorney general of the reason for the filing of  
26 the action. If the reason for filing the action is an act that the corporation has  
27 done, or omitted to do, and the act or omission may be corrected by an  
28 amendment of the articles or bylaws or by performance of or abstention from  
29 the act, the attorney general shall give the corporation thirty additional days in  
30 which to effect the correction before filing the action.

1           **SECTION 112. AMENDMENT.** Subsections 1, 2, and 3 of section 10-33-108 of the  
2 North Dakota Century Code are amended and reenacted as follows:

- 3           1. In dissolution proceedings the court may issue injunctions, appoint receivers with  
4           all powers and duties the court directs, take other actions required to preserve the  
5           corporate assets wherever situated, and carry on the ~~business~~ activities of the  
6           corporation until a full hearing can be held.
- 7           2. When a proceeding involving a corporation described in subsection 1 of section  
8           10-33-122 is begun, the court shall order that a copy of the petition be served on  
9           the attorney general. In all proceedings under this section, the attorney general  
10          has a right to participate as a party.
- 11          3. After a full hearing has been held, upon whatever notice the court directs to be  
12          given to all parties to the proceedings and to any other parties in interest  
13          designated by the court, the court may appoint a receiver to collect the corporate  
14          assets. A receiver has authority, subject to the order of the court, to continue the  
15          ~~business~~ activities of the corporation and to sell, lease, transfer, or otherwise  
16          dispose of all or any of the property and assets of the corporation either at public or  
17          private sale.

18           **SECTION 113. AMENDMENT.** Subsection 3 of section 10-33-120 of the North Dakota  
19 Century Code is amended and reenacted as follows:

- 20          3. If neither the corporation's registered agent nor an officer of the corporation can be  
21          found at the registered office, or if a corporation fails to maintain a registered agent  
22          in this state and an officer of the corporation cannot be found at the registered  
23          office, then the secretary of state is the agent of the corporation upon whom the  
24          process, notice, or demand may be served. ~~The Service on the secretary of state:~~
  - 25          a. Shall be made by registered mail or personal delivery to the secretary of state  
26          and not by electronic communication;
  - 27          b. Shall include the return of the sheriff, or the affidavit of a person who is not a  
28          party, verifying that ~~neither the registered agent or nor an~~ officer can be  
29          found at the registered office ~~must be provided to the secretary of state.~~  
30          ~~Service on the secretary of state of any process, notice, or demand is; and~~

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

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

5           (2) The fees provided in section 10-33-140.

6           The secretary of state shall immediately forward, by registered mail, addressed to  
7           the corporation at its registered office, a copy of the process, notice, or demand.

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

10           **SECTION 114. AMENDMENT.** Subsection 1 of section 10-33-128 of the North Dakota  
11 Century Code is amended and reenacted as follows:

12           1. An applicant for the certificate shall file with the secretary of state a certificate of  
13           status from the filing office in the jurisdiction in which the foreign corporation is  
14           incorporated and an application executed by an authorized person and setting  
15           forth:

16           a. The name of the foreign corporation and, if different, the name under which it  
17           proposes to conduct activities in this state;

18           b. The jurisdiction of its incorporation;

19           c. The date of incorporation in the jurisdiction of its incorporation and the period  
20           of duration of the foreign corporation;

21           d. The address of the principal executive office of the foreign corporation in the  
22           jurisdiction where it is incorporated;

23           e. The address of the proposed registered office of the foreign corporation in this  
24           state;

25           f. The name of the proposed registered agent in this state that is:

26           (1) An individual resident of this state;

27           (2) A corporation whether incorporated under this chapter or under another  
28           provision of this code; or

29           (3) A foreign corporation having a place of ~~business~~ activity in, and  
30           authorized to conduct activities in, this state whether authorized to

1                   conduct activities in this state under this chapter or under another  
2                   provision of this code;

3           g.    The purpose or purposes of the foreign corporation which it proposes to  
4           pursue in conducting its activities in this state;

5           h.    The names and addresses of the directors and officers of the foreign  
6           corporation; and

7           i.    Any additional information deemed necessary or appropriate by the secretary  
8           of state to enable the secretary of state to determine whether the foreign  
9           corporation is entitled to a certificate of authority to conduct activities in this  
10          state.

11           **SECTION 115. AMENDMENT.** Subsection 2 of section 10-33-139 of the North Dakota  
12 Century Code is amended and reenacted as follows:

13           2.    The annual report must be submitted on forms prescribed by the secretary of state.  
14           The information provided must be given as of the date of the execution of the  
15           report. The annual report must be signed as prescribed in subsection ~~24~~ 34 of  
16           section 10-33-01 or in the articles or bylaws, or in a resolution approved by the  
17           affirmative vote of the required proportion or number of the directors or members  
18           entitled to vote. If the corporation or foreign corporation is in the hands of a  
19           receiver or trustee, it must be signed on behalf of the corporation or foreign  
20           corporation by the receiver or trustee. The secretary of state may destroy all  
21           annual reports provided for in this section after they have been on file for six years.

22           **SECTION 116.** Section 10-33-142.1 of the North Dakota Century Code is created and  
23 enacted as follows:

24           **10-33-142.1. Secretary of state - Exempt records.** Any social security number or  
25 federal tax identification number disclosed or contained in any document filed with the secretary  
26 of state under this chapter is an exempt record as defined by subsection 5 of section  
27 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any  
28 social security number or federal tax identification number the secretary of state determines to  
29 be a closed record before a copy of any document is released to the public.

30           **SECTION 117. AMENDMENT.** Section 45-10.1-01 of the North Dakota Century Code  
31 is amended and reenacted as follows:

- 1           **45-10.1-01. (101) Definitions.** As used in this chapter, unless the context otherwise  
2 requires:
- 3           1. "Address" means:
- 4           a. In the case of a registered office or principal executive office, the mailing  
5           address, including the zip code, of the actual office location which may not be  
6           only a post-office box; and
- 7           b. In all other cases, the mailing address, including a zip code.
- 8           2. "Authenticated electronic communication" means:
- 9           a. That the electronic communication is delivered:
- 10           (1) To the principal place of business of the limited partnership; or  
11           (2) To a general partner or agent of the limited partnership authorized by  
12           the limited partnership to receive the electronic communication; and
- 13           b. That the electronic communication sets forth information from which the  
14           limited partnership can reasonably conclude that the electronic  
15           communication was sent by the purported sender.
- 16           3. "Business" includes every trade, occupation, and profession.
- 17           ~~3-~~ 4. "Certificate of limited partnership" means the certificate referred to in section  
18           45-10.1-08, and the certificate as amended or restated.
- 19           4- 5. "Contribution" means any cash, property, services rendered, or a promissory note  
20           or other binding obligation to contribute cash or property or to perform services,  
21           which a partner contributes to a limited partnership in that partner's capacity as a  
22           partner.
- 23           ~~5-~~ 6. "Distribution" means a transfer of money or other property from a limited  
24           partnership to a partner in the partner's capacity as a partner or to the partner's  
25           transferee.
- 26           ~~6-~~ 7. "Domestic organization" means an organization created under the laws of this  
27           state.
- 28           8. "Electronic" means relating to technology having electrical, digital, magnetic,  
29           wireless, optical, electromagnetic, or similar capabilities.
- 30           9. "Electronic communication" means any form of communication, not directly  
31           involving the physical transmission of paper:

- 1           a. That creates a record that may be retained, retrieved, and reviewed by a  
2                 recipient of the communication; and
- 3           b. That may be directly reproduced in paper form by the recipient through an  
4                 automated process.
- 5       10. "Electronic record" means a record created, generated, sent, communicated,  
6           received, or stored by electronic means.
- 7       11. "Electronic signature" means an electronic sound, symbol, or process attached to  
8           or logically associated with a record and executed or adopted by a person with the  
9           intent to sign the record.
- 10       12. "Event of withdrawal of a general partner" means an event that causes a person to  
11           cease to be a general partner as provided in section 45-10.1-26.
- 12       7- 13. "Filed with the secretary of state" means except as otherwise permitted by law or  
13           rule:
- 14           a. ~~That a signed original or a legible facsimile telecommunication of a signed~~  
15                 ~~original of a request for reserved name or a signed original of all other~~  
16                 ~~documents~~ document meeting the applicable requirements of this chapter  
17                 together with the fees provided in section 45-10.1-15 was delivered or  
18                 communicated to the secretary of state by a method or medium of  
19                 communication acceptable by the secretary of state and was determined by  
20                 the secretary of state to conform to law.
- 21           b. That the secretary of state shall then:
- 22                 (1) ~~Endorse on the original the word "filed" and the month, day, and year~~  
23                         Record the actual date on which the document is filed, and if different,  
24                         the effective date of filing; and
- 25                 (2) Record the document in the office of the secretary of state.
- 26       8- 14. "Foreign limited partnership" means a partnership formed under the laws of any  
27           state other than this state and having as partners one or more general partners  
28           and one or more limited partners.
- 29       9- 15. "Foreign organization" means an organization created under laws other than the  
30           laws of this state for a purpose for which an organization may be created under the  
31           laws of this state.



- 1                   (c) If by posting on an electronic network on which the limited  
2                   partnership or partner has consented to receive notice, together  
3                   with separate notice to the limited partnership or partner of the  
4                   specific posting, upon the later of:  
5                   [1] The posting; or  
6                   [2] The giving of the separate notice.  
7                   (d) If by any other form of electronic communication by which the  
8                   limited partnership or partner has consented to receive notice,  
9                   when directed to the limited partnership or partner.  
10                b. ~~In all other cases, is~~ Is given to a person in all other cases:  
11                (1) When mailed to the person at an address designated by the person or  
12                at the last-known address of the person;  
13                (2) When handed to the person; ~~or~~  
14                (3) When left at the office of the person with a clerk or other person in  
15                charge of the office; or:  
16                (a) If there is no one in charge, when left in a conspicuous place in  
17                the office; or  
18                (b) If the office is closed or the person to be notified has no office,  
19                when left at the dwelling house or usual place of abode of the  
20                person with some person of suitable age and discretion residing  
21                there; or  
22                (4) When given by a form of electronic communication consented to by the  
23                person to whom the notice is given:  
24                (a) If by facsimile communication, when directed to a telephone  
25                number at which the person has consented to receive notice;  
26                (b) If by electronic mail, when directed to an electronic mail address  
27                at which the person has consented to receive notice.  
28                (c) If by posting on an electronic network on which the person has  
29                consented to receive notice, together with separate notice to the  
30                person of the specific posting, upon the later of:  
31                [1] The posting; or

- 1 [2] The giving of the separate notice.
- 2 (d) If by any other form of electronic communication by which the
- 3 person has consented to receive notice, when directed to the
- 4 person.
- 5 c. Is given when deposited in the United States mail with sufficient postage
- 6 affixed.
- 7 d. Is deemed received when it is given.
- 8 ~~44.~~ 23. "Organization" means:
- 9 a. Whether domestic or foreign, a corporation incorporated in or authorized to do
- 10 business in this state under this or another chapter of this code, limited liability
- 11 company, partnership, limited partnership, limited liability partnership, limited
- 12 liability limited partnership, joint venture, association, business trust, estate,
- 13 trust, enterprise, and any other legal or commercial entity; but
- 14 b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation
- 15 which is incorporated under chapter 10-33 or a foreign nonprofit corporation
- 16 which is incorporated in another jurisdiction.
- 17 24. "Partner" means a general or limited partner.
- 18 ~~45.~~ 25. "Partnership agreement" means any valid agreement, written or oral, of the
- 19 partners as to the affairs of a limited partnership and the conduct of its business.
- 20 ~~46.~~ 26. "Partnership interest" means a partner's share of the profits and losses of a limited
- 21 partnership and the right to receive distributions of partnership assets.
- 22 ~~47.~~ 27. "Principal executive office" means:
- 23 a. An office from which the limited partnership conducts business; or
- 24 b. If the limited partnership has no office from which it conducts business, then
- 25 the registered office of the limited partnership.
- 26 ~~48.~~ 28. "Record" means information that is inscribed on a tangible medium or that is stored
- 27 in an electronic or other medium and is retrievable in perceivable form.
- 28 29. "Signed" means ~~that~~:
- 29 a. That the signature of a person, which may be a facsimile affixed, engraved,
- 30 printed, placed, stamped with indelible ink, transmitted by facsimile or
- 31 electronically, or in any other manner reproduced on the document, is placed

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

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

5 (1) The document is signed by a person authorized to sign the document  
6 by this chapter or by a resolution approved by the affirmative vote of the  
7 required proportion or number of partners; and

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

12 ~~19. "State" means a state, territory, or possession of the United States, the District of~~  
13 ~~Columbia, or the Commonwealth of Puerto Rico.~~

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

16 **SECTION 118.** Section 45-10.1-01.1 of the North Dakota Century Code is created and  
17 enacted as follows:

18 **45-10.1-01.1. Legal recognition of electronic records and electronic signatures.**

19 For purposes of this chapter:

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

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

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

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

28 **SECTION 119. AMENDMENT.** Subsection 6 of section 45-10.1-02 of the North Dakota  
29 Century Code is amended and reenacted as follows:

30 6. A limited partnership that is merged the surviving organization in a merger with  
31 another domestic one or foreign organization, or that is organized by the

1           ~~reorganization of one or more domestic or foreign~~ organizations, or that acquires  
2           by sale, lease, or other disposition to or exchange with ~~a domestic~~ an organization  
3           all or substantially all of the assets of another ~~domestic or foreign~~ organization  
4           including its name, may include in its name, subject to the requirements of  
5           subsection 1, the name of any of the other organizations, if the other organization  
6           whose name is sought to be used:

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

14           **SECTION 120. AMENDMENT.** Section 45-10.1-03 of the North Dakota Century Code  
15 is amended and reenacted as follows:

16           **45-10.1-03. (103) Reserved name.**

- 17          1. The exclusive right to the use of a limited partnership name otherwise permitted by  
18          section 45-10.1-02 may be reserved by any person.
- 19          2. The reservation must be made by filing with the secretary of state a request that  
20          the name be reserved, together with the fees provided in section 45-10.1-15:
- 21           a. If the name is available for use by the applicant, the secretary of state shall  
22           reserve the name for the exclusive use of the applicant for a period of twelve  
23           months.
- 24           b. The reservation may be renewed for successive twelve-month periods.
- 25          3. The right to the exclusive use of a limited partnership name reserved pursuant to  
26          this section may be transferred to another person by or on behalf of the applicant  
27          for whom the name was reserved by filing in the office of the secretary of state a  
28          notice of the transfer, and specifying the name and address of the transferee,  
29          together with fees provided in section 45-10.1-15.
- 30          4. The right to the exclusive use of a limited partnership name reserved pursuant to  
31          this section may be canceled by or on behalf of the applicant for whom the name

1                   was reserved by filing with the secretary of state a notice of cancellation, together  
2                   with the fees provided in section 45-10.1-15.

3                   5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed~~  
4                   ~~original of any request for reserved name.~~

5                   6- The secretary of state may destroy all reserved name requests and index thereof  
6                   one year after expiration.

7                   **SECTION 121. AMENDMENT.** Section 45-10.1-07.1 of the North Dakota Century  
8 Code is amended and reenacted as follows:

9                   **45-10.1-07.1. Registration of general partner.** A general partner must be registered  
10 separately with the secretary of state at the time of filing a certificate of limited partnership or  
11 the registration of foreign limited partnership whenever that general partner is either a domestic  
12 or foreign:

13                   1. Corporation;

14                   2. Limited liability company;

15                   3. Limited ~~liability~~ partnership;

16                   4. Limited liability partnership;

17                   5. Limited liability limited partnership;

18                   6. General partnership using a fictitious name; or

19                   6- 7. Any other organization that has a registration responsibility with the secretary of  
20 state.

21                   **SECTION 122. AMENDMENT.** Subsections 7 and 8 of section 45-10.1-09 of the North  
22 Dakota Century Code are amended and reenacted as follows:

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

28                   8. A limited partnership that changes its name and that is the owner of a trademark,  
29 or uses a fictitious name registered with the secretary of state, or is a general  
30 partner of another limited partnership or limited liability limited partnership on file  
31 with the secretary of state, or is a managing partner of a limited liability partnership

1            on file with the secretary of state, must effect a change of name in each of such  
2            registrations simultaneously with the filing of the amendments.

3            **SECTION 123. AMENDMENT.** Section 45-10.1-13 of the North Dakota Century Code  
4 is amended and reenacted as follows:

5            **45-10.1-13. (206) Secretary of state - Filing in office of secretary of state.**

6            1. A signed ~~copy~~ document of the certificate of limited partnership and of any  
7            certificates of amendment or cancellation, or of any judicial decree of amendment  
8            or cancellation, must be delivered to the secretary of state. A person who  
9            executes a certificate as an agent or fiduciary need not exhibit evidence of that  
10           person's authority as a prerequisite to filing. Unless the secretary of state finds  
11           that any certificate does not conform to law, upon receipt of all filing fees required  
12           by law the secretary of state shall ~~endorse on the copy the word "Filed" and the~~  
13           ~~day, month, and year of the filing and shall~~ file the copy document in the office of  
14           the secretary of state.

15           2. Upon the filing of a certificate of amendment or judicial decree of amendment in the  
16           office of the secretary of state, the certificate of limited partnership is amended as  
17           set forth therein, and upon the effective date of a certificate of cancellation, or a  
18           judicial decree thereof, the certificate of limited partnership is canceled.

19           **SECTION 124. AMENDMENT.** Section 45-10.1-55 of the North Dakota Century Code  
20 is amended and reenacted as follows:

21           **45-10.1-55. (905) Foreign limited partnership - Changes and amendments.**

22           1. If any statement in the application for registration of a foreign limited partnership is  
23           false when made or any arrangements or other facts described change, making the  
24           application inaccurate in any respect, the foreign limited partnership shall promptly  
25           file in the office of the secretary of state ~~a certificate~~ an amended registration,  
26           signed by a general partner, correcting the statement, and in the case of a change  
27           in the name of the foreign limited partnership, a certificate to that effect  
28           authenticated by the proper office of the jurisdiction of origin.

29           2. A foreign limited partnership that changes the foreign limited partnership's name  
30           and files ~~a statement~~ an amended registration as provided in subsection 1 and is  
31           the owner of a trademark, uses a fictitious name registered with the secretary of

1 state, or is a general partner of another limited partnership or a limited liability  
2 limited partnership on file with the secretary of state, or is a managing partner of a  
3 limited liability partnership on file with the secretary of state, shall effect a change  
4 of name in each of the foregoing registrations which is applicable when the foreign  
5 limited partnership files the ~~certificate amending the~~ amended registration of  
6 foreign limited partnership.

7 3. A foreign limited partnership shall file a ~~certificate of amendment~~ an amended  
8 registration, signed by a general partner, when a general partner that is a  
9 corporation files an amendment changing the general partner's corporate name, or  
10 when the general partner files an application for an amended certificate of  
11 authority. This ~~certificate of amendment~~ amended registration must be filed  
12 simultaneously with the amendment to the articles of incorporation or application  
13 for an amended certificate of authority.

14 4. A foreign limited partnership shall notify the secretary of state in writing when a  
15 general partner changes the address of the general partner's principal place of  
16 business. A ~~corporate~~ general partner's annual report filed by the secretary of  
17 state that reflects a change of address of a general partner may serve as a notice  
18 under this subsection. This notice is not subject to the amendment fee prescribed  
19 in section 45-10.1-15.

20 **SECTION 125. AMENDMENT.** Section 45-10.1-56 of the North Dakota Century Code  
21 is amended and reenacted as follows:

22 **45-10.1-56. (906) Foreign limited partnership - Cancellation of registration.** A  
23 foreign limited partnership may cancel its registration by filing with the secretary of state a  
24 certificate of cancellation signed ~~and sworn to~~ by a general partner. A cancellation does not  
25 terminate the authority of the secretary of state to accept service of process on the foreign  
26 limited partnership with respect to claims for relief arising out of the transactions of business in  
27 this state.

28 **SECTION 126.** Section 45-10.1-63 of the North Dakota Century Code is created and  
29 enacted as follows:

30 **45-10.1-63. Service of process on a limited partnership.**

- 1           1. A process, notice, or demand required or permitted by law to be served on a  
2           limited partnership may be served on the registered agent or on any responsible  
3           person found at the registered office or on the secretary of state as provided in this  
4           section.
- 5           2. If neither the registered agent nor a responsible person can be found at the  
6           registered office and if a responsible person affiliated with the limited partnership  
7           cannot be found at the principal place of business in this state, the secretary of  
8           state is the agent of the limited partnership on whom the process, notice, or  
9           demand may be served. Service on the secretary of state:
- 10          a. Shall be made by registered mail or personal delivery to the secretary of state  
11          and not by electronic communication.
- 12          b. Shall include the return of the sheriff or affidavit of a person not a party,  
13          verifying that neither a registered agent nor a responsible person can be  
14          found at the registered office or at the principal place of business in this state.
- 15          c. Is deemed personal service on the limited partnership and may be made by  
16          filing with the secretary of state:
- 17               (1) An original and two copies of the process, notice, or demand; and  
18               (2) The fees provided in section 45-22-22.
- 19          d. The secretary of state immediately shall forward, by certified mail addressed  
20          to the limited partnership at the limited partnership's registered office or  
21          principal place of business in this state, a copy of the process, notice, or  
22          demand.
- 23          e. Service on the secretary of state is returnable in not less than thirty days,  
24          notwithstanding a shorter period specified in the process, notice, or demand.
- 25          3. The secretary of state shall maintain a record of every process, notice, and  
26          demand served on the secretary of state under this section, including the date of  
27          service and the action taken with reference to the process, notice, or demand.
- 28          4. This section does not limit the right of a person to serve process, notice, or  
29          demand required or permitted by law to be served on a limited partnership in any  
30          other manner permitted by law.

1           **SECTION 127.** Section 45-10.1-64 of the North Dakota Century Code is created and  
2 enacted as follows:

3           **45-10.1-64. Secretary of state - Annual report of limited partnership and foreign**  
4 **limited partnership.**

- 5           1. Each limited partnership, and each foreign limited partnership authorized to  
6 transact business in this state, shall file, within the time prescribed by subsection 3,  
7 an annual report setting forth:
- 8           a. The name of the limited partnership or foreign limited partnership and the  
9 jurisdiction of origin.
- 10           b. The address of the registered office of the limited partnership or foreign  
11 limited partnership in this state and the name of the limited partnership's or  
12 foreign limited partnership's registered agent in this state at that address.
- 13           c. The address of the limited partnership's or foreign limited partnership's  
14 principal executive office.
- 15           d. A brief statement of the character of the business in which the limited  
16 partnership or foreign limited partnership is actually engaged in this state.
- 17           e. The name and respective address of every general partner of the limited  
18 partnership or foreign limited partnership.
- 19           2. The annual report must be submitted on forms prescribed by the secretary of state.  
20 The information provided in the annual report must be accurate as of the time of  
21 filing the report. The annual report must be signed as prescribed in subsection 29  
22 of section 45-10.1-01 or a resolution approved by the affirmative vote of the  
23 required proportion or number of partners. If the limited partnership or foreign  
24 limited partnership is in the hands of a receiver or trustee, the annual report must  
25 be signed on behalf of the limited partnership or foreign limited partnership by the  
26 receiver or trustee. The secretary of state may destroy any annual reports  
27 provided for in this section after the annual report is on file for six years.
- 28           3. The annual report of a limited partnership or foreign limited partnership must be  
29 delivered to the secretary of state before April first of each year, except the first  
30 annual report of a limited partnership or foreign limited partnership must be  
31 delivered before April first of the year following the calendar year in which the

- 1           registration was filed by the secretary of state. A limited partnership existing before  
2           July 1, 1999, or a foreign limited partnership registered before July 1, 1999, shall  
3           file the limited partnership's or foreign limited partnership's first annual report  
4           before April first in the year of the expiration of the limited partnership's or foreign  
5           limited partnership's registration or renewal registration in effect on December 31,  
6           1999.
- 7           a.   An annual report in a sealed envelope postmarked by the United States postal  
8           service on or before April first or an annual report in a sealed packet with a  
9           verified shipment date by any other carrier service on or before April first,  
10           complies with the delivery requirement under this subsection.
- 11           b.   The secretary of state shall file the report if the report conforms to the  
12           requirements of subsection 2.
- 13                 (1)   If the report does not conform, the report must be returned to the limited  
14                 partnership or foreign limited partnership for any necessary corrections.
- 15                 (2)   If the report is filed before the deadlines prescribed in this subsection,  
16                 penalties for the failure to file a report within the time provided do not  
17                 apply if the report is corrected to conform to the requirements of  
18                 subsection 2 and returned to the secretary of state within thirty days  
19                 after the annual report was returned by the secretary of state for  
20                 correction.
- 21           4.   After the date established under subsection 3, the secretary of state shall notify  
22           any limited partnership or foreign limited partnership failing to file an annual report  
23           that the limited partnership's or foreign limited partnership's certificate or  
24           registration is not in good standing and that the limited partnership's certificate or  
25           foreign limited partnership's registration may be terminated or revoked pursuant to  
26           subsection 5.
- 27                 a.   The secretary of state must mail notice of termination or revocation to the last  
28                 registered agent at the last registered office of record.
- 29                 b.   If the limited partnership or foreign limited partnership files an annual report  
30                 after the notice is mailed, together with the annual report filing fee and late  
31                 filing penalty fee as prescribed by section 45-10.1-15, the secretary of state

1                   will restore the limited partnership's or foreign limited partnership's certificate  
2                   or registration to good standing.

3           5. A limited partnership that does not file an annual report, along with the statutory  
4           filing and penalty fees, within six months after the date established in subsection 3,  
5           ceases to exist and is considered involuntarily terminated by operation of law.

6           a. The secretary of state shall note the termination of the limited partnership's  
7           certificate on the records of the secretary of state and shall give notice of the  
8           action to the terminated limited partnership.

9           b. Notice by the secretary of state must be mailed to the limited partnership's  
10           last registered agent at the last registered office of record.

11          6. A foreign limited partnership that does not file an annual report, along with the  
12          statutory filing and penalty fees, within six months after the date established by  
13          subsection 3, forfeits the right to transact business in this state.

14          a. The secretary of state shall note the revocation of the foreign limited  
15          partnership's registration on the records of the secretary of state and shall  
16          give notice of the action to the foreign limited partnership.

17          b. Notice by the secretary of state must be mailed to the foreign limited  
18          partnership's last registered agent at the last registered office of record.

19          7. A limited partnership that is terminated for failure to file an annual report, or a  
20          foreign limited partnership registration that is forfeited for failure to file an annual  
21          report, may be reinstated by filing a past-due report, together with the statutory  
22          filing and penalty fees for an annual report and a reinstatement fee as prescribed in  
23          section 45-10.1-15. The fees must be paid and the report filed within one year  
24          following the involuntary dissolution or revocation. Reinstatement under this  
25          subsection does not affect the rights or liability for the time from the termination or  
26          revocation to the reinstatement.

27           **SECTION 128.** Section 45-10.1-65 of the North Dakota Century Code is created and  
28   enacted as follows:

29           **45-10.1-65. Secretary of state - Fees for filing documents.** The secretary of state  
30   shall charge and collect for:

31           1. Filing a limited partnership, one hundred dollars.

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- 1           2.   Filing a limited partnership amendment, forty dollars.
- 2           3.   Filing a limited partnership dissolution, twenty-five dollars.
- 3           4.   Filing a limited partnership cancellation, twenty-five dollars.
- 4           5.   Filing a reservation of name, ten dollars.
- 5           6.   Filing a notice of transfer of a reserved limited partnership name, ten dollars.
- 6           7.   Filing a cancellation of a reserved limited partnership name, ten dollars.
- 7           8.   Filing a consent to use a deceptively similar name, ten dollars.
- 8           9.   Filing a statement of change of address of registered office or change of registered  
9           agent, or both, ten dollars.
- 10          10. Filing a statement of change of address of registered office by registered agent, ten  
11          dollars for each limited partnership affected by the change.
- 12          11. Filing a registered agent's consent to serve in the capacity of registered agent, ten  
13          dollars.
- 14          12. Filing a resignation as registered agent, ten dollars.
- 15          13. Filing a registration of foreign limited partnership, one hundred dollars.
- 16          14. Filing a certified statement of amendment of foreign limited partnership, forty  
17          dollars.
- 18          15. Filing a certified statement of dissolution of foreign limited partnership, twenty-five  
19          dollars.
- 20          16. Filing a certified statement of cancellation of foreign limited partnership, twenty-five  
21          dollars.
- 22          17. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.
- 23          18. Filing an annual report of a limited partnership or foreign limited partnership,  
24          twenty-five dollars. The secretary of state shall charge and collect additional fees  
25          for late filing of an annual report as follows:
  - 26           a. After the date prescribed in subsection 3 of section 45-10.1-14, twenty dollars;  
27           and
  - 28           b. After the termination of the limited partnership or the revocation of the  
29           registration of a foreign limited partnership, the reinstatement fee of one  
30           hundred dollars.

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

3           20. Filing any process, notice, or demand for service, twenty-five dollars.

4           **SECTION 129.** Section 45-10.1-66 of the North Dakota Century Code is created and  
5 enacted as follows:

6           **45-10.1-66. Secretary of state - Duties.** The secretary of state shall maintain an  
7 alphabetical index of all limited partnerships and foreign limited partnerships on file with that  
8 office. All documents filed with the secretary of state under this chapter must be retained in that  
9 office until the documents have been committed to microcopy, at which time the documents  
10 may be destroyed.

11           **SECTION 130.** Section 45-10.1-67 of the North Dakota Century Code is created and  
12 enacted as follows:

13           **45-10.1-67. Secretary of state - Powers - Enforcement - Penalty - Appeal.**

14           1. The secretary of state shall administer this chapter.

15           2. The secretary of state may propound to any limited partnership subject to this  
16 chapter and to any partner any interrogatory reasonably necessary and proper to  
17 ascertain whether the partnership has complied with this chapter.

18           a. Any interrogatory must be answered within thirty days after mailing or within  
19 any additional time fixed by the secretary of state. Every answer to the  
20 interrogatory must be full and complete and be made in writing and under  
21 oath.

22           b. If an interrogatory is directed:

23           (1) To an individual, the interrogatory must be answered by that individual;

24           (2) To a domestic limited partnership, the interrogatory must be answered  
25 by a managing partner; or

26           (3) To a foreign limited partnership, the interrogatory must be answered by  
27 a resident partner or, if no partner is a resident partner, a partner  
28 designated by the foreign limited partnership.

29           c. The secretary of state need not file any document to which an interrogatory  
30 relates until the interrogatory is answered, except if the answers disclose the  
31 document is not in conformity with this chapter.

- 1           d. The secretary of state shall certify to the attorney general, for any action the  
2           attorney general determines appropriate, any interrogatory and answers that  
3           disclose a violation of this chapter.
- 4           e. Each general partner of a domestic limited partnership or a resident partner or  
5           designated partner of a foreign limited partnership who fails or refuses within  
6           the time provided by this section to answer truthfully and fully every  
7           interrogatory propounded to that person by the secretary of state is guilty of  
8           an infraction.
- 9           f. Any interrogatory propounded by the secretary of state and the answers are  
10          not open to public inspection under section 44-04-18. The secretary of state  
11          may not disclose any fact or information obtained from an interrogatory except  
12          to the extent permitted by law or required for evidence in any criminal  
13          proceeding or other action by this state.
- 14          3. If the secretary of state rejects any document required by this chapter to be  
15          approved by the secretary of state before the document may be filed, the secretary  
16          of state shall give written notice of the rejection to the person who delivered the  
17          document, specifying the reasons for rejection. That person may appeal to the  
18          district court of the county in which the registered office of the domestic limited  
19          partnership or foreign limited partnership is, or is proposed to be, situated by filing  
20          with the clerk of that court a petition setting forth a copy of the document sought to  
21          be filed and a copy of the written rejection of the document by the secretary of  
22          state. The court shall try the matter de novo. The court shall sustain the action of  
23          the secretary of state or direct the secretary of state to take any action the court  
24          determines proper.
- 25          4. If the secretary of state revokes the registration of any foreign limited partnership,  
26          the foreign limited partnership may appeal to district court of the county where the  
27          registered office of the foreign limited partnership in this state is situated by filing  
28          with the clerk of that court a petition setting forth a copy of the foreign limited  
29          partnership's registration and a copy of the notice of revocation given by the  
30          secretary of state. The court shall try the matter de novo. The court shall sustain

1           the action of the secretary of state or direct the secretary of state to take any action  
2           the court determines proper.

3           5. The attorney general may maintain an action to restrain a foreign limited  
4           partnership from transacting business in this state in violation of this chapter.

5           **SECTION 131.** Section 45-10.1-68 of the North Dakota Century Code is created and  
6 enacted as follows:

7           **45-10.1-68. Secretary of state - Certificates and certified copies to be received in**  
8 **evidence.**

9           1. All copies of documents filed in accordance with this chapter, when certified by the  
10           secretary of state, must be taken and received in all courts, public offices, and  
11           official bodies as prima facie evidence of the facts stated.

12           2. A certificate by the secretary of state under the great seal of this state, as to the  
13           existence or nonexistence of the facts relating to domestic limited partnerships or  
14           foreign limited partnerships which would not appear from a certified copy of any of  
15           the foregoing documents or certificates, must be taken and received in all courts,  
16           public offices, and official bodies as prima facie evidence of the existence of  
17           nonexistence of the facts stated.

18           **SECTION 132.** Section 45-10.1-69 of the North Dakota Century Code is created and  
19 enacted as follows:

20           **45-10.1-69. Secretary of state - Exempt records.** Any social security number or  
21 federal tax identification number disclosed or contained in any document filed with the secretary  
22 of state under this chapter is an exempt record as defined by subsection 5 of section  
23 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any  
24 social security number or federal tax identification number the secretary of state determines to  
25 be a closed record before a copy of any document is released to the public.

26           **SECTION 133.** Section 45-10.1-70 of the North Dakota Century Code is created and  
27 enacted as follows:

28           **45-10.1-70. Secretary of state - Forms to be furnished by the secretary of state.**  
29 Every annual report must be made on forms prescribed by the secretary of state. Upon  
30 request, the secretary of state may furnish forms for all other documents to be filed in the office

1 of the secretary of state. However, the use of these documents, unless otherwise specifically  
2 required by law, is not mandatory.

3 **SECTION 134.** Section 45-10.1-71 of the North Dakota Century Code is created and  
4 enacted as follows:

5 **45-10.1-71. Audit reports and audit of limited partnerships receiving state**  
6 **subsidies for production of alcohol or methanol for combination with gasoline.** Any  
7 limited partnership that produces agricultural ethyl alcohol or methanol within this state and  
8 which receives a production subsidy from the state, whether in the form of reduced taxes or  
9 otherwise, shall submit an annual audit report, prepared by a certified public accountant based  
10 on an audit of all records and accounts of the limited liability partnership, to the legislative audit  
11 and fiscal review committee. The audit must be submitted within ninety days of the close of the  
12 taxable year of the limited partnership. Upon request of the legislative audit and fiscal review  
13 committee, the state auditor shall conduct an audit of the records and accounts of any limited  
14 partnership required to submit an annual report under this section.

15 **SECTION 135.** Section 45-10.1-72 of the North Dakota Century Code is created and  
16 enacted as follows:

17 **45-10.1-72. Foreign trade zones.**

18 1. As used in this section, unless the context otherwise requires:

- 19 a. "Act of Congress" means the Act of Congress approved June 18, 1934,  
20 entitled an act to provide for the establishment, operation, and maintenance of  
21 foreign trade zones and ports of entry of the United States, to expedite and  
22 encourage foreign commerce and for other purposes, as amended, and  
23 commonly known as the Foreign Trade Zone Act of 1934 [48 Stat. 998;  
24 19 U.S.C. 81a et seq.], as amended.
- 25 b. "Private limited partnership" means a domestic limited partnership or foreign  
26 limited partnership, one of the purposes of which is to establish, operate, and  
27 maintain a foreign trade zone by itself or in conjunction with a public  
28 corporation.
- 29 c. "Public corporation" means this state, any political subdivision of this state,  
30 any public agency of this state or any political subdivision of this state, or any  
31 corporate instrumentality of this state.

1           2. Any private limited partnership or public corporation may apply to the proper  
2           authorities of the United States for a grant of the privilege of establishing,  
3           operating, and maintaining foreign trade zones and foreign trade subzones and to  
4           do all things necessary and proper to carry into effect the establishment, operation,  
5           and maintenance of such zones, in accordance with the Act of Congress and other  
6           applicable laws and rules.

7           **SECTION 136. AMENDMENT.** Section 45-13-01 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9           **45-13-01. (101) Definitions.** In chapters 45-13 through 45-21 unless the context or  
10 subject matter otherwise requires:

11          1. "Address" means:

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

15           b. In any other case, the mailing address, including the zip code.

16          2. "Authenticated electronic communication" means:

17           a. That the electronic communication is delivered:

18               (1) To the principal place of business of the partnership; or

19               (2) To a partner or agent of the partnership authorized by the partnership to  
20               receive the electronic communication; and

21           b. That the electronic communication sets forth information from which the  
22           partnership can reasonably conclude that the electronic communication was  
23           sent by the purported sender.

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

25          2. ~~"Chief executive office" means an office from which the partnership conducts~~  
26          ~~business.~~

27          3. 4. "Debtor in bankruptcy" means a person who is the subject of:

28           a. An order for relief under title 11 of the United States Code or a comparable  
29           order under a successor statute of general application; or

30           b. A comparable order under federal, state, or foreign law governing insolvency.

- 1       4- 5. "Distribution" means a transfer of money or other property from a partnership to a  
2             partner in the partner's capacity as a partner or to the partner's transferee.
- 3       5- 6. "Domestic organization" means an organization created under the laws of this  
4             state.
- 5       7. "Electronic" means relating to technology having electrical, digital, magnetic,  
6             wireless, optical, electromagnetic, or similar capabilities.
- 7       8. "Electronic communication" means any form of communication, not directly  
8             involving the physical transmission of paper:
- 9             a. That creates a record that may be retained, retrieved, and reviewed by a  
10             recipient of the communication; and
- 11            b. That may be directly reproduced in paper form by the recipient through an  
12             automated process.
- 13       9. "Electronic record" means a record created, generated, sent, communicated,  
14             received, or stored by electronic means.
- 15       10. "Electronic signature" means an electronic sound, symbol, or process attached to  
16             or logically associated with a record and executed or adopted by a person with the  
17             intent to sign the record.
- 18       11. "Filed with the secretary of state" means, except as otherwise permitted by law or  
19             rule:
- 20             a. ~~A signed original or a legible facsimile telecommunication of a signed original~~  
21             ~~of a request for reserved name or the signed original of all other documents~~  
22             That a document meeting the applicable requirements of this chapter together  
23             with the fees provided in section 45-13-05 was delivered or communicated to  
24             the secretary of state by a method or medium of communication acceptable  
25             by the secretary of state and was determined by the secretary of state to  
26             conform to law.
- 27             b. ~~The~~ That the secretary of state shall then ~~endorse on the original the word~~  
28             ~~"filed" and the month, day, and year, and record the document in the office of~~  
29             ~~the secretary of state;~~
- 30             (1) Record the actual date on which the documents are filed, and if  
31             different, the effective date of filing; and

- 1                   (2) Record the document in the office of the secretary of state.
- 2     6- 12. "Foreign limited liability partnership" means a partnership that is formed under laws  
3                   other than the laws of this state and has the status of a limited liability partnership  
4                   under those laws.
- 5     7- 13. "Foreign organization" means an organization created under laws other than the  
6                   laws of this state for a purpose for which an organization may be created under the  
7                   laws of this state.
- 8     14. "Limited liability partnership" means a partnership that filed a registration under  
9                   chapter 45-22 and does not have a similar statement in effect in any other  
10                  jurisdiction.
- 11    8- 15. "Managing partner" means one of the partners charged with the management of  
12                  the partnership in this state and if no partners are specifically so designated, then  
13                  all partners.
- 14    16. "Notice":
- 15       a. Is given to a partnership or to a partner of a partnership ~~when:~~
- 16               (1) When in writing and mailed or delivered to the partnership or to the  
17               partner at the ~~chief~~ principal executive office of the partnership; or
- 18               (2) When given by a form of electronic communication consented to by the  
19               partnership or a partner to which the notice is given:
- 20               (a) If by facsimile communication, when directed to a telephone  
21               number at which the partnership or a partner has consented to  
22               receive notice.
- 23               (b) If by electronic mail, when directed to an electronic mail address  
24               at which the partnership or a partner has consented to receive  
25               notice.
- 26               (c) If by posting on an electronic network on which the partnership or  
27               a partner has consented to receive notice, together with separate  
28               notice to the partnership or a partner if the specific posting, upon  
29               the later of:
- 30               [1] The posting; or
- 31               [2] The giving of the separate notice.



- 1 d. Is deemed received when it is given.
- 2 ~~9.~~ 17. "Organization" means:
- 3 a. Whether domestic or foreign, a corporation incorporated in or authorized to do
- 4 business in this state under this or another chapter of this code, limited liability
- 5 company, partnership, limited partnership, limited liability partnership, limited
- 6 liability limited partnership, joint venture, association, business trust, estate,
- 7 trust, enterprise, and any other legal or commercial entity; but
- 8 b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation
- 9 which is incorporated under chapter 10-33 or a foreign nonprofit corporation
- 10 which is incorporated in another jurisdiction.
- 11 ~~40.~~ 18. "Partnership" means an association of two or more persons to carry on as
- 12 coowners a business for profit formed under section 45-14-02, predecessor law, or
- 13 comparable law of another jurisdiction.
- 14 19. "Partnership agreement" means the agreement, whether written, oral, or implied,
- 15 among the partners concerning the partnership, including amendments to the
- 16 partnership agreement.
- 17 ~~44.~~ 20. "Partnership at will" means a partnership in which the partners have not agreed to
- 18 remain partners until the expiration of a definite term or the completion of a
- 19 particular undertaking.
- 20 ~~42.~~ 21. "Partnership interest" or "partner's interest in the partnership" means all of a
- 21 partner's interests in the partnership, including the partner's transferable interest
- 22 and all management and other rights.
- 23 ~~43.~~ 22. "Principal executive office" means an office from which the partnership conducts
- 24 business.
- 25 23. "Property" means all property, real, personal, or mixed, tangible or intangible, or
- 26 any interest therein.
- 27 ~~44.~~ 24. "Record" means information that is inscribed on a tangible medium or that is stored
- 28 in an electronic or other medium and is retrievable in perceivable form.
- 29 25. "Signed" means ~~the~~:
- 30 a. That the signature of a person, which may be a facsimile affixed, engraved,
- 31 printed, placed, stamped with indelible ink, transmitted by facsimile

1                    telecommunication or electronically, or in any other manner reproduced on the  
2                    document, is placed on a document, as provided ~~in subsection 39 of~~ under  
3                    ~~section 41-01-11, 41-01-09;~~ and:

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

6                    (1) The document is signed by a person authorized to do so by this chapter  
7                    or by a resolution approved by the affirmative vote of the required  
8                    proportion or number of partners; and

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

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

16    45. 26. "State" means a state of the United States, the District of Columbia, the  
17                    Commonwealth of Puerto Rico, or any territory or insular possession subject to the  
18                    jurisdiction of the United States.

19    46. 27. "Statement" means a:

20                    a. A statement of partnership authority under section 45-15-03; a;

21                    b. A statement of denial under section 45-15-04; a;

22                    c. A statement of dissociation under section 45-19-04; a;

23                    d. A statement of dissolution under section 45-20-05; a;

24                    e. A statement of merger under section 45-21-07; i or ~~an~~

25                    f. An amendment or cancellation of any of the foregoing.

26    47. 28. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and  
27                    encumbrance.

28                    **SECTION 137.** Section 45-13-01.1 of the North Dakota Century Code is created and  
29                    enacted as follows:

30                    **45-13-01.1. Legal recognition of electronic records and electronic signatures.** For  
31                    purposes of this chapter:

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

9           **SECTION 138. AMENDMENT.** Subsections 5 and 6 of section 45-13-04.1 of the North  
10 Dakota Century Code are amended and reenacted as follows:

- 11           5. A partnership that is ~~merged~~ the surviving organization in a merger with ~~another~~  
12           ~~partnership~~ one or domestic or foreign limited partnership, or that is formed by the  
13           ~~reorganization of one or more partnerships or domestic or foreign limited~~  
14           ~~partnerships~~ other organizations, or that acquires by sale, lease, or other  
15           disposition to or exchange with ~~a partnership~~ an organization all or substantially all  
16           of the assets of another ~~partnership or domestic or foreign limited partnership~~  
17           organization including ~~the partnership's or limited partnership's~~ its name, may have  
18           the same name, subject to the requirements of subsection 1, as that used in this  
19           state by any of the other ~~partnership or domestic or foreign limited partnership~~  
20           organizations if the other ~~partnership or domestic or foreign limited partnership~~  
21           organization whose name is sought to be used:
  - 22           a. Is formed under the laws of this state;
  - 23           b. Is authorized to transact business or conduct activities in this state;
  - 24           c. Holds a reserved name in the manner provided in section 45-10.1-03;
  - 25           d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - 26           e. Holds a trade name registered in the manner provided in chapter 47-25.
- 27           6. The use of a name by a partnership in violation of this section does not affect or  
28           vitate the ~~partnership's~~ partnership existence of the partnership. However, a court  
29           in this state may, upon application of the state or of an interested or affected  
30           person, enjoin the partnership from doing business under a name assumed in

1 violation of this section, although a statement may have been filed with the  
2 secretary of state.

3 **SECTION 139. AMENDMENT.** Section 45-13-04.2 of the North Dakota Century Code  
4 is amended and reenacted as follows:

5 **45-13-04.2. Reserved name.**

- 6 1. The exclusive right to the use of a partnership name otherwise permitted by section  
7 45-13-04.1 may be reserved by any person.
- 8 2. The reservation is made by filing with the secretary of state a request that the  
9 name be reserved together with the fees provided in section 45-13-05.
  - 10 a. If the name is available for use by the applicant, the secretary of state shall  
11 reserve the name for the exclusive use of the applicant for a period of twelve  
12 months.
  - 13 b. The reservation may be renewed for successive twelve-month periods.
- 14 3. The right to the exclusive use of a partnership name reserved pursuant to this  
15 section may be transferred to another person by or on behalf of the applicant for  
16 whom the name was reserved by filing with the secretary of state a notice of the  
17 transfer and specifying the name and address of the transferee together with the  
18 fees provided in section 45-13-05.
- 19 4. The right to the exclusive use of a partnership name reserved pursuant to this  
20 section may be canceled by or on behalf of the applicant for whom the name was  
21 reserved by filing with the secretary of state a notice of the cancellation together  
22 with the fees provided in section 45-13-05.
- 23 5. ~~The secretary of state may accept for filing a legible facsimile telecommunication of~~  
24 ~~the signed original of any request for reserved name.~~
- 25 6. The secretary of state may destroy any reserved name request and any index of  
26 reserved names one year after expiration.

27 **SECTION 140. AMENDMENT.** Subsections 6 and 7 of section 45-13-05 of the North  
28 Dakota Century Code are amended and reenacted as follows:

- 29 6. Any statement filed under this section must be renewed every five years from the  
30 date of the initial filing. A statement of renewal must be executed by the  
31 partnership on a form furnished by the secretary of state which is sent to the

1 address of the ~~chief principal~~ executive office at least sixty days before the  
2 deadline for filing. If the secretary of state finds that the statement of renewal  
3 conforms to the requirements of this section, and the proper filing fee has been  
4 paid, the secretary of state shall file the statement of renewal. If the secretary of  
5 state finds that the statement of renewal does not so conform, the secretary of  
6 state shall return the statement of renewal to the partnership for any necessary  
7 corrections. If the statement of renewal is not returned corrected within thirty days  
8 after the statement of renewal was returned for correction, the statement of  
9 renewal is subject to cancellation. If any partnership fails to file the statement of  
10 renewal, the secretary of state shall cancel the initial statement and shall mail  
11 notice of the cancellation to the address of the ~~chief principal~~ executive office.

12 7. A partnership shall notify the secretary of state in writing upon a change in address  
13 of the partnership's ~~chief principal~~ executive office. A statement of renewal filed by  
14 the secretary of state which reflects a change of address of the ~~chief principal~~  
15 executive office of the partnership may serve as a notice under this subsection.

16 **SECTION 141. AMENDMENT.** Subsection 1 of section 45-13-06 of the North Dakota  
17 Century Code is amended and reenacted as follows:

18 1. Except as otherwise provided in subsection 2, the law of the jurisdiction in which a  
19 ~~partnership has the partnership's chief principal executive office~~ of the partnership  
20 is located governs relations among the partners and between the partners and the  
21 partnership.

22 **SECTION 142. AMENDMENT.** Subsection 1 of section 45-15-03 of the North Dakota  
23 Century Code is amended and reenacted as follows:

24 1. A partnership may file with the secretary of state, along with the fees provided in  
25 section 45-13-05, a statement of partnership authority which:

26 a. Must include:

27 (1) The name of the partnership;

28 (2) The street address of the partnership's ~~chief principal~~ executive office  
29 and of one office in this state, if there is one;

30 (3) The name and mailing address of each partner;



1           **45-16-07. Action without a meeting.** An action required or permitted to be taken at a  
2 meeting of the partners may be taken without a meeting by written action signed, or consented  
3 to by authenticated electronic communication, by all of the partners entitled to vote on the  
4 action.

5           1. If the partnership agreement so provides, any action may be taken by written  
6 action signed by the partners who own voting power equal to the voting power that  
7 would be required to take the same action at a meeting of the partners at which all  
8 partners were present.

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

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

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

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

17           3. When this chapter requires or permits a certificate concerning an action to be filed  
18 with the secretary of state, the partner signing the certificate must so indicate if the  
19 action was taken under this section.

20           **SECTION 147.** Section 45-16-08 of the North Dakota Century Code is created and  
21 enacted as follows:

22           **45-16-08. Remote communications for partner meetings.**

23           1. This section shall be construed and applied to:

24           a. Facilitate remote communication consistent with other applicable law; and

25           b. Be consistent with reasonable practices concerning remote communication  
26 and with the continued expansion of those practices.

27           2. To the extent authorized in the partnership agreement:

28           a. A meeting of the partners may be held solely by any combination of means of  
29 remote communication through which the participants may participate in the  
30 meeting:

31           (1) If the notice of the meeting is given to every partner entitled to vote; and

- 1                   (2) If the partnership interests held by the partners participating in the  
2                   meeting would be sufficient to constitute a quorum at a meeting.
- 3           b. A partner not physically present at a meeting of partners may by means of  
4           remote communication participate in a meeting of partners held at a  
5           designated place.
- 6           3. In any meeting of partners held solely by means of remote communication under  
7           subdivision a of subsection 2, or in any meeting partners held at a designated  
8           place in which one or more partners participate by means of remote  
9           communication under subdivision b of subsection 2:
- 10          a. The partnership shall implement reasonable measures:
- 11               (1) To verify that each person deemed present and entitled to vote at the  
12               meeting by means of remote communication is a partner; and
- 13               (2) To provide each partner participating by means of remote  
14               communication with a reasonable opportunity to participate in the  
15               meeting, including an opportunity to:
- 16                   (a) Read or hear the proceedings of the meeting substantially  
17                   concurrently with those proceedings;
- 18                   (b) If allowed by the procedures governing the meeting, have the  
19                   partner's remarks heard or read by other participants in the  
20                   meeting substantially concurrently with the making of those  
21                   remarks; and
- 22                   (c) If otherwise entitled, vote on matters submitted to the partners.
- 23          b. Participation in a meeting by this means constitutes presence at the meeting.
- 24          4. With respect to notice partners:
- 25               a. Any notice to partners given by the partnership under any provision of this  
26               chapter or the partnership agreement by a form of electronic communication  
27               consented to by the partner to whom the notice is given is effective when  
28               given. The notice is deemed given:
- 29                   (1) If by facsimile communication, when directed to a telephone number at  
30                   which the partner has consented to receive notice;

- 1                   (2) If by electronic mail, when directed to an electronic mail address at  
2                   which the partner has consented to receive notice;
- 3                   (3) If by posting on an electronic network, on which the partner has  
4                   consented to receive notice, together with separate notice to the partner  
5                   of the specific posting, upon the later of:  
6                   (a) The posting; or  
7                   (b) The giving of the separate notice; or
- 8                   (4) If by any other form of electronic communication by which the partners  
9                   have consented to receive notice, when directed to the partner.
- 10                  b. An affidavit of the managing partner, other authorized partner, or authorized  
11                  agent of the partnership, that the notice has been given by a form of electronic  
12                  communication is, in the absence of fraud, prima facie evidence of the facts  
13                  stated in the affidavit.
- 14                  c. Consent by a partner to notice given by electronic communication may be  
15                  given in writing or by authenticated electronic communication. The  
16                  partnership is entitled to rely on any consent so given until revoked by the  
17                  partner. However, no revocation affects the validity of any notice given before  
18                  receipt by the partnership of revocation of the consent.
- 19                  5. Any ballot, vote, authorization or consent submitted by electronic communication  
20                  under this chapter may be revoked by the partner submitting the ballot, vote,  
21                  authorization, or consent so long as the revocation is received by the other  
22                  partners of the partnership at or before the meeting or before an action without a  
23                  meeting is effective according to section 10-16-07.
- 24                  6. Waiver of notice by a partner at a meeting by means of authenticated electronic  
25                  communication may be given in the manner provided in the partnership agreement.  
26                  Participation in a meeting by means of remote communication described in  
27                  subdivisions a and b of subsection 2 is a waiver of notice of that meeting, except  
28                  when the partner objects:
- 29                  a. At the beginning of the meeting to the transaction of business because the  
30                  meeting is not lawfully called or conveyed; or

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

4           **SECTION 148. AMENDMENT.** Subsection 1 of section 45-19-04 of the North Dakota  
5 Century Code is amended and reenacted as follows:

- 6           1. A dissociated partner or the partnership may file with the secretary of state, along  
7                     with the fees provided in section 45-13-05, a statement of dissociation stating the  
8                     name of the partnership and that the partner is dissociated from the partnership.

9           **SECTION 149. AMENDMENT.** Subsections 1 and 2 of section 45-21-05 of the North  
10 Dakota Century Code are amended and reenacted as follows:

- 11          1. Pursuant to a plan of merger approved as provided in subsection 3, a partnership  
12             may be merged with one or more ~~partnerships or limited partnerships~~ other  
13             organizations.

- 14          2. The plan of merger must set forth:

- 15           a. The name of ~~each~~ ;

16                 (1) ~~The partnership or limited partnership that is a party to the merger;~~

17                 (2) Each other organization proposing to merge; and

18                 (3) The surviving organization into which the other organizations will  
19                     merge.

20           b. ~~The name of the surviving entity into which the other partnerships or limited~~  
21             ~~partnerships will merge;~~

22           c. ~~Whether the surviving entity is a partnership or a limited partnership and the~~  
23             The status of each partner;

24           d. ~~c.~~ The terms and conditions of the merger;

25           e. ~~d.~~ The manner and basis of converting the interests of each party to the merger  
26             into interests or obligations of the surviving ~~entity~~ organization, or into money  
27             or other property in whole or part; and

28           f. ~~e.~~ The street address of the ~~surviving entity's chief~~ principal executive office of  
29             the surviving organization.

30           **SECTION 150. AMENDMENT.** Subsection 2 of section 45-21-06 of the North Dakota  
31 Century Code is amended and reenacted as follows:

1           2. The secretary of state of this state is the agent for service of process in an action  
2           or proceeding against a surviving foreign partnership or limited partnership to  
3           enforce an obligation of a domestic partnership or limited partnership that is a party  
4           to a merger. The surviving entity shall promptly notify the secretary of state of the  
5           mailing address of its ~~chief~~ principal executive office and of any change of address.  
6           Upon receipt of process, the secretary of state shall mail a copy of the process to  
7           the surviving foreign partnership or limited partnership.

8           **SECTION 151. AMENDMENT.** Subsections 1 and 2 of section 45-21-07 of the North  
9           Dakota Century Code are amended and reenacted as follows:

- 10          1. After a merger, the surviving ~~partnership or limited partnership~~ organization may  
11          file a statement that one or more partnerships or limited partnerships have merged  
12          into the surviving ~~entity~~ organization.
- 13          2. A statement of merger must contain:
- 14           a. The name of ~~each~~:
- 15                (1) ~~The partnership or limited partnership that is a party to the merger;~~  
16                (2) Each other organization that is a party to the merger; and  
17                (3) The surviving organization into which the other organizations were  
18                merged.
- 19           b. ~~The name of the surviving entity into which the other partnerships or limited~~  
20           ~~partnership were merged;~~
- 21           c. The street address of the ~~surviving entity's~~ chief principal executive office of  
22           the surviving organization and of an office in this state, if any; ~~and~~
- 23           d. ~~Whether the surviving entity is a partnership or a limited partnership.~~

24          **SECTION 152. AMENDMENT.** Section 45-22-01 of the North Dakota Century Code is  
25          amended and reenacted as follows:

26          **45-22-01. Definitions.** In this chapter, unless the context otherwise requires:

- 27          1. "Address" means:
- 28           a. In the case of a registered office or principal executive office, the mailing  
29           address, including the zip code, of the actual office location which may not be  
30           only a post-office box; and
- 31           b. In all other cases, the mailing address, including a zip code.

- 1           2. "Authenticated electronic communication" means:
- 2           a. That the electronic communication is delivered:
- 3                 (1) To the principal place of business of the limited liability partnership; or
- 4                 (2) To a partner or agent of the limited liability partnership authorized by
- 5                         the limited liability partnership to receive the electronic communication;
- 6                                 and
- 7           b. That the electronic communication sets forth information from which the
- 8                         limited liability partnership can reasonably conclude that the electronic
- 9                                 communication was sent by the purported sender.
- 10          3. "Domestic limited liability partnership" means a partnership that is organized under
- 11                 the laws of this state with a registration in effect and which is not a foreign limited
- 12                 liability partnership.
- 13          3. 4. "Domestic organization" means an organization created under the laws of this
- 14                 state.
- 15          5. "Electronic" means relating to technology having electrical, digital, magnetic,
- 16                 wireless, optical, electromagnetic, or similar capabilities.
- 17          6. "Electronic communication" means any form of communication, not directly
- 18                 involving the physical transmission of paper:
- 19                 a. That creates a record that may be retained, retrieved, and reviewed by a
- 20                         recipient of the communication; and
- 21                 b. That may be directly reproduced in paper form by the recipient through an
- 22                         automated process.
- 23          7. "Electronic record" means a record created, generated, sent, communicated,
- 24                 received, or stored by electronic means.
- 25          8. "Electronic signature" means an electronic sound, symbol, or process attached to
- 26                 or logically associated with a record and executed or adopted by a person with the
- 27                 intent to sign the record.
- 28          9. "Filed with the secretary of state" means, except as otherwise permitted by law or
- 29                 rule:
- 30                 a. ~~That a signed original or a legible facsimile telecommunication of a signed~~
- 31                         ~~original of a request for reserved name; or a signed original of all other~~

1 ~~documents~~ document meeting the applicable requirements of this chapter,  
2 together with the fees provided in section 45-22-23, ~~was~~ has been delivered  
3 or communicated to the secretary of state by a method or medium of  
4 communication acceptable by the secretary of state and ~~was~~ has been  
5 determined by the secretary of state to conform to law.

6 b. That the secretary of state shall then:

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

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

11 ~~4.~~ 10. "Foreign limited liability partnership" means a partnership organized as a limited  
12 liability partnership under laws other than the laws of this state which is in good  
13 standing in the partnership's jurisdiction of origin.

14 ~~5.~~ 11. "Foreign organization" means an organization created under laws other than the  
15 laws of this state for a purpose for which an organization may be created under the  
16 laws of this state.

17 12. "Jurisdiction of origin" means the jurisdiction in which the limited liability partnership  
18 status of the foreign limited liability partnership was created.

19 ~~6.~~ 13. "Limited liability partnership" means a domestic limited liability partnership or a  
20 foreign limited liability partnership.

21 ~~7.~~ 14. "Managing partner" means one of the partners charged with the management ~~in~~  
22 ~~this state~~ of the limited liability partnership or foreign limited liability partnership in  
23 this state and if no partners are so specifically designated, then all partners.

24 ~~8.~~ 15. "Notice":

25 a. Is given to a limited liability partnership or to a partner of the limited liability  
26 partnership ~~when~~:

27 (1) When in writing and mailed or delivered to the limited liability  
28 partnership or the partner at the registered office or principal executive  
29 office of the limited liability partnership; or

30 (2) When given by a form of electronic communication consented to by the  
31 limited liability partnership or the partner to which the notice is given:

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

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

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

6 [1] The posting; or

7 [2] The giving of the separate notice.

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

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

13 d. Is deemed received when given.

14 ~~9-~~ 16. "Organization" means:

15 a. Whether domestic or foreign, a corporation incorporated in or authorized to do  
16 business in this state under this or another chapter of this code, limited liability  
17 company, partnership, limited partnership, limited liability partnership, limited  
18 liability limited partnership, joint venture, association, business trust, estate,  
19 trust, enterprise, and any other legal or commercial entity; but

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

23 17. "Originally registered" and "original registration" means the document establishing  
24 the limited liability partnership status of the foreign limited liability partnership in the  
25 foreign limited liability partnership's jurisdiction of origin.

26 ~~40-~~ 18. "Partnership" means an association of two or more persons to carry on as  
27 coowners of a business for profit formed under chapters 45-13 through 45-21,  
28 predecessor law, or comparable law of another jurisdiction.

29 ~~44-~~ 19. "Principal executive office" means:

30 a. An office from which the limited liability partnership conducts business; or

- 1                   b. If the limited liability partnership has no office from which the limited liability  
2                   partnership conducts business, the registered office of the limited liability  
3                   partnership.
- 4    ~~42.~~ 20. "Record" means information that is inscribed on a tangible medium or that is stored  
5                   in an electronic or other medium and is retrievable in perceivable form.
- 6                   21. "Register" means the act of filing with the secretary of state which causes:  
7                   a. A domestic limited liability partnership to be created; or  
8                   b. A foreign limited liability partnership to be authorized to transact business in  
9                   this state.
- 10 ~~43.~~ 22. "Registered office" means the place in this state designated as the registered office  
11                   of the limited liability partnership.
- 12 ~~44.~~ 23. "Registration" means the document which, when filed with the secretary of state,  
13                   causes:  
14                   a. A domestic limited liability partnership to be created; or  
15                   b. A foreign limited liability partnership to be authorized to do business in this  
16                   state.
- 17 ~~45.~~ 24. "Signed" means:  
18                   a. That the signature of a person which may be a facsimile affixed, engraved,  
19                   printed, placed, stamped with indelible ink, transmitted by telecommunication  
20                   or electronically, or in any other manner reproduced on the document, is  
21                   placed on a document, as provided in subsection 39 of under section  
22                   ~~41-01-11.~~ 41-01-09; and
- 23                   a. b. With respect to a document required by this chapter to be filed with the  
24                   secretary of state, ~~the term~~ means ~~the~~ that:  
25                   (1) The document is signed by a person authorized to do so by this  
26                   chapter, or by or pursuant to an agreement among the partners, or by a  
27                   resolution approved by the affirmative vote of the required proportion or  
28                   number of partners.
- 29                   b. ~~With respect to a document not required by this chapter to be filed with the~~  
30                   ~~secretary of state, the signature may be a facsimile affixed, engraved, printed,~~

1                   ~~placed, stamped with indelible ink, transmitted by telecommunication or~~  
2                   ~~electronically, or in any other manner reproduced on the document.~~

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

5                   **SECTION 153.** Section 45-22-01.1 of the North Dakota Century Code is created and  
6 enacted as follows:

7                   **45-22-01.1. Legal recognition of electronic records and electronic signatures.** For  
8 purposes of this chapter:

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

17                   **SECTION 154. AMENDMENT.** Subsection 3 of section 45-22-03 of the North Dakota  
18 Century Code is amended and reenacted as follows:

- 19                   3.   A registration, signed by a managing partner, must contain:  
20                   a.   With respect to a domestic limited liability partnership:  
21                   (1)   The name of the domestic limited liability partnership.  
22                   (2)   The nature of the business to be transacted in this state.  
23                   (3)   The address of the principal executive office of the domestic limited  
24                   liability partnership.  
25                   (4)   The address of the registered office of the domestic limited liability  
26                   partnership and the name of the registered agent at that address.  
27                   (5)   The name and address of each managing partner.  
28                   (6)   A statement that the partnership elects to be a limited liability  
29                   partnership.  
30                   (7)   A deferred effective date, if any.  
31                   b.   With respect to a foreign limited liability partnership:

- 1 (1) The name of the foreign limited liability partnership and, if different, the  
2 name under which the foreign limited liability partnership proposes to  
3 transact business in this state.
- 4 (2) The jurisdiction of origin.
- 5 (3) The date on which the foreign limited liability partnership expires in the  
6 jurisdiction of origin.
- 7 (4) The nature of the business to be transacted in this state.
- 8 (5) The address of the principal executive office of the foreign limited  
9 liability partnership.
- 10 (6) The address of the registered office of the foreign limited liability  
11 partnership and the name of the foreign limited liability partnership's  
12 registered agent at that address.
- 13 (7) The name and address of each managing partner.
- 14 (8) An acknowledgment that the status of the foreign limited liability  
15 partnership in this state will automatically expire unless the foreign  
16 limited liability partnership continuously maintains limited liability  
17 partnership status in the jurisdiction of origin.
- 18 c. The registration must be accompanied by payment of the fees provided in  
19 section 45-22-22 together with a certificate of good standing or certificate of  
20 existence authenticated by the registering officer of the state or country where  
21 the foreign limited liability partnership is originally registered and the consent  
22 of the designated registered agent for service of process to serve in that  
23 capacity.

24 **SECTION 155. AMENDMENT.** Subsection 5 of section 45-22-04 of the North Dakota  
25 Century Code is amended and reenacted as follows:

- 26 5. A limited liability partnership that is ~~merged~~ the surviving organization in a merger  
27 ~~with a domestic one or foreign organization, that is registered by the reorganization~~  
28 ~~of one or more domestic or foreign organizations, or that acquires by sale, lease,~~  
29 ~~or other disposition to or exchange with a domestic organization all or substantially~~  
30 ~~all of the assets of another domestic or foreign organization including the~~  
31 ~~organization's~~ its name, may have the same name, subject to the requirements of

- 1            subsection 1, as that used in this state by any of the other organizations, if the  
2            other organization whose name is sought:
- 3            a.    Is incorporated, organized, formed, or registered under the laws of this state;
  - 4            b.    Is authorized to transact business or conduct activities in this state;
  - 5            c.    Holds a reserved name in the manner provided in section 10-19.1-14,  
6                      10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
  - 7            d.    Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - 8            e.    Holds a trade name registered in the manner provided in chapter 47-25.

9            **SECTION 156. AMENDMENT.** Section 45-22-05 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11            **45-22-05. Reserved name.**

- 12            1.    The exclusive right to the use of a limited liability partnership name otherwise  
13                      permitted by section 45-22-04 may be reserved by any person.
- 14            2.    The reservation is made by filing with the secretary of state a request that the  
15                      name be reserved together with the fees provided in section 45-22-22.
  - 16                      a.    If the name is available for use by the applicant, the secretary of state shall  
17                                      reserve the name for the exclusive use of the applicant for a period of twelve  
18                                      months.
  - 19                      b.    The reservation may be renewed for successive twelve-month periods.
- 20            3.    The right to the exclusive use of a limited liability partnership name reserved  
21                      pursuant to this section may be transferred to another person by or on behalf of the  
22                      applicant for whom the name was reserved by filing with the secretary of state a  
23                      notice of the transfer and specifying the name and address of the transferee  
24                      together with the fees provided in section 45-22-22.
- 25            4.    The right to the exclusive use of a limited liability partnership name reserved  
26                      pursuant to this section may be canceled by or on behalf of the applicant for whom  
27                      the name was reserved by filing with the secretary of state a notice of cancellation  
28                      together with the fees provided in section 45-22-22.
- 29            5.    ~~The secretary of state may accept for filing a legible facsimile copy of the signed~~  
30                      ~~original of any request for a reserved name.~~

1           6- The secretary of state may destroy any reserved name request and name request  
2           index one year after expiration.

3           **SECTION 157. AMENDMENT.** Subsection 2 of section 45-22-17 of the North Dakota  
4 Century Code is amended and reenacted as follows:

5           2. If neither the registered agent nor a responsible person can be found at the  
6           registered office and if a responsible person affiliated with the limited liability  
7           partnership cannot be found at the principal place of business in this state, the  
8           secretary of state is the agent of the limited liability partnership on whom the  
9           process, notice, or demand may be served. Service on the secretary of state:

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

12          b. Shall include the return of the sheriff or affidavit of a person not a party,  
13           verifying that ~~neither~~ a registered agent ~~or~~ nor a responsible person ~~cannot~~  
14           can be found at the registered office or at the principal place of business in  
15           this state ~~is conclusive evidence the limited liability partnership has no~~  
16           registered agent or responsible person at the limited liability partnership's  
17           registered office or at the limited liability partnership's principal place of  
18           business in this state.

19          ~~b. c.~~ Service on the secretary of state of any process, notice, or demand is ~~is~~  
20           deemed personal service on the limited liability partnership and may be made  
21           by filing with the secretary of state ~~one~~ ;

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

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

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

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

1           **SECTION 158. AMENDMENT.** Subsection 2 of section 45-22-21.1 of the North Dakota  
2 Century Code is amended and reenacted as follows:

3           2. The annual report must be submitted on forms prescribed by the secretary of state.  
4           The information provided must be given as of the date of the execution of the  
5           report. The annual report must be signed as prescribed in subsection ~~46~~ 24 of  
6           section 45-22-01, the partnership agreement, or in a resolution approved by the  
7           affirmative vote of the required proportion or number of partners. If the limited  
8           liability partnership is in the hands of a receiver or trustee, the annual report must  
9           be signed on behalf of the limited liability partnership by the receiver or trustee.  
10          The secretary of state may destroy any annual report provided for in this section  
11          after the annual report is on file for six years.

12          **SECTION 159. AMENDMENT.** Section 45-23-01 of the North Dakota Century Code is  
13 amended and reenacted as follows:

14          **45-23-01. Definitions.** In this chapter, unless the context otherwise requires:

- 15          1. "Address" means:
- 16           a. In case of a registered office or principal executive office, the mailing address  
17           of the actual office location which may not be only a post-office box; and  
18           b. In all other cases, the mailing address.
- 19          2. "Authenticated electronic communication" means:
- 20           a. That the electronic communication is delivered:
- 21               (1) To the principal place of business of the limited liability limited  
22               partnership; or
- 23               (2) To a partner or agent of the limited liability limited partnership  
24               authorized by the limited liability limited partnership to receive the  
25               electronic communication; and
- 26           b. That the electronic communication sets forth information from which the  
27           limited liability limited partnership can reasonably conclude that the electronic  
28           communication was sent by the purported sender.
- 29          3. "Domestic limited liability limited partnership" means a limited liability limited  
30          partnership that is formed under this chapter.

- 1       ~~3-~~ 4. "Domestic organization" means an organization created under the laws of this  
2           state.
- 3       5. "Electronic" means relating to technology having electrical, digital, magnetic,  
4           wireless, optical, electromagnetic, or similar capabilities.
- 5       6. "Electronic communication" means any form of communication, not directly  
6           involving the physical transmission of paper:
- 7           a. That creates a record that may be retained, retrieved, and reviewed by a  
8           recipient of the communication; and
- 9           b. That may be directly reproduced in paper form by the recipient through an  
10           automated process.
- 11       7. "Electronic record" means a record created, generated, sent, communicated,  
12           received, or stored by electronic means.
- 13       8. "Electronic signature" means an electronic sound, symbol, or process attached to  
14           or logically associated with a record and executed or adopted by a person with the  
15           intent to sign the record.
- 16       9. "Filed with the secretary of state", ~~except as otherwise permitted by law or rule,~~  
17           means, except as otherwise permitted by law or rule:
- 18           a. That a ~~signed original or legible facsimile telecommunication of a signed~~  
19           ~~original of a request for reserved name or a signed original of all of the~~  
20           ~~documents~~ document meeting the applicable requirements of this chapter,  
21           together with the fees provided in section 45-23-08, was delivered or  
22           communicated to the secretary of state by a method or medium of  
23           communication acceptable by the secretary of state and was determined by  
24           the secretary of state to conform to law.
- 25           b. That the secretary of state shall then ~~endorse on the original the word "filed"~~  
26           ~~and the month, day, and year:~~
- 27                (1) Record the actual date on which the document is filed, and if different,  
28                the effective date of filing; and ~~record~~
- 29                (2) Record the document in the office of the secretary of state.
- 30       ~~4-~~ 10. "Foreign limited liability limited partnership" means a limited liability limited  
31           partnership that is:

- 1 a. Organized under the laws other than the laws of this state for a purpose or  
2 purposes for which a limited liability limited partnership may be organized  
3 under this chapter; and
- 4 b. In good standing in the jurisdiction of origin.
- 5 ~~5.~~ 11. "Foreign limited partnership" means a limited partnership that is:
- 6 a. Organized under laws other than the laws of this state for a purpose for which  
7 a limited partnership may be organized under chapter 45-10.1; and
- 8 b. Authorized to transact business in this state as provided in chapter 45-10.1.
- 9 ~~6.~~ 12. "Foreign organization" means an organization created under laws other than the  
10 laws of this state for a purpose for which an organization may be created under the  
11 laws of this state.
- 12 13. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability limited  
13 partnership status of a foreign limited liability limited partnership was created.
- 14 ~~7.~~ 14. "Limited liability limited partnership" means a domestic limited liability limited  
15 partnership.
- 16 ~~8.~~ 15. "Limited partnership" means a limited partnership formed under chapter 45-10.1.
- 17 ~~9.~~ 16. "Notice":
- 18 a. Is given to a limited liability limited partnership or to a partner of the limited  
19 liability limited partnership ~~when~~:
- 20 (1) When in writing and mailed or delivered to the limited liability limited  
21 partnership or to the partner at the registered office or principal  
22 executive office of the partnership; or
- 23 (2) When given by a form of electronic communication consented to by the  
24 limited liability limited partnership or a partner to which the notice is  
25 given:
- 26 (a) If by facsimile communication, when directed to a telephone  
27 number at which the limited liability limited partnership or a  
28 partner has consented to receive notice.
- 29 (b) If by electronic mail, when directed to an electronic mail address  
30 at which the limited liability limited partnership or a partner has  
31 consented to receive notice.

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



- 1           a. That the signature of a person, which may be a facsimile affixed, engraved,  
2           printed, placed, stamped with indelible ink, transmitted by facsimile or  
3           electronically, or in any other manner reproduced on the document, is placed  
4           on a document, as provided ~~in~~ under section 41-01-14; 41-01-09; and  
5       a- b. With respect to a document required by this chapter to be filed with the  
6           secretary of state, ~~means the~~ that:  
7           (1) The document is signed by a person authorized to sign by this chapter,  
8           or pursuant to an agreement among the partners, or by a resolution  
9           approved by the affirmative vote of the required proportion or number of  
10          partners; and  
11          b. ~~With respect to a document not required by this chapter to be filed with the~~  
12          secretary of state, the signature may be a facsimile affixed, engraved, printed,  
13          placed, stamped with indelible ink, transmitted by facsimile telecommunication  
14          or electronically, or in any other manner reproduced on the document.  
15          (2) The signature and the document are communicated by a method or  
16          medium acceptable by the secretary of state.

17       **SECTION 160.** Section 45-23-01.1 of the North Dakota Century Code is created and  
18 enacted as follows:

19       **45-23-01.1. Legal recognition of electronic records and electronic signatures.** For  
20 purposes of this chapter:

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

29       **SECTION 161. AMENDMENT.** Subsection 5 of section 45-23-03 of the North Dakota  
30 Century Code is amended and reenacted as follows:

- 1           5. A limited liability limited partnership that is ~~merged~~ the surviving organization in a  
2           merger with ~~another domestic one~~ or foreign organization, that is organized by the  
3           ~~reorganization of one or more domestic or foreign~~ organizations, or that acquires  
4           by sale, lease, or other disposition to or exchange with ~~a domestic an~~ organization  
5           all or substantially all of the assets of another ~~domestic or foreign~~ organization,  
6           including ~~the organization's~~ its name, may include in the limited liability limited  
7           partnership's name, subject to the requirements of subsection 1, the name of any  
8           of the other organizations, if the other organization whose name is sought to be  
9           used:
- 10           a. Is incorporated, organized, formed, or registered under the laws of this state;
  - 11           b. Is authorized to transact business or conduct activities in this state;
  - 12           c. Holds a reserved name in the manner provided in section 10-19.1-14,  
13           10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
  - 14           d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - 15           e. Holds a trade name registered in the manner provided in chapter 47-25.

16           **SECTION 162.** Section 45-23-07 of the North Dakota Century Code is created and  
17 enacted as follows:

18           **45-23-07. Secretary of state - Exempt records.** Any social security number or  
19 federal tax identification number disclosed or contained in any document filed with the secretary  
20 of state under this chapter is an exempt record as defined by subsection 5 of section  
21 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any  
22 social security number or federal tax identification number the secretary of state determines to  
23 be a closed record before a copy of any document is released to the public.

24           **SECTION 163. REPEAL.** Sections 45-10.1-14, 45-10.1-15, and 45-10.1-16 of the  
25 North Dakota Century Code are repealed.