

Fifty-eighth  
Legislative Assembly  
of North Dakota

## ENGROSSED 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, subsection 10 of section 10-31-01, section 10-32-02,  
15 subsections 2, 3, and 4 of section 10-32-07, subsection 5 of section 10-32-10, section  
16 10-32-11, subsection 1 of section 10-32-13, section 10-32-15, subsection 6 of section  
17 10-32-17, subsection 1 of section 10-32-22, subsection 17 of section 10-32-23, sections  
18 10-32-36 and 10-32-37, subsections 2 and 3 of section 10-32-38, subsections 2 and 3 of  
19 section 10-32-39, subsection 3 of section 10-32-40, sections 10-32-40.1, 10-32-43, and  
20 10-32-43.2, subsection 1 of section 10-32-48, subsection 1 of section 10-32-50, section  
21 10-32-51, subsection 1 of section 10-32-54, subsection 4 of section 10-32-55, section  
22 10-32-56, subsection 2 of section 10-32-57, subsection 3 of section 10-32-58, subsection 1 of  
23 section 10-32-59, sections 10-32-60 and 10-32-61, subsection 1 of section 10-32-64, section  
24 10-32-67, subsections 2 and 3 of section 10-32-68, sections 10-32-69, 10-32-70, 10-32-73, and  
25 10-32-74, subsection 2 of section 10-32-76, subsection 2 of section 10-32-77, subsections 2

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1 and 3 of section 10-32-78, subsection 2 of section 10-32-78.1, subsection 1 of section  
2 10-32-79, sections 10-32-80, 10-32-81, and 10-32-83, subsections 1 and 2 of section 10-32-84,  
3 subsections 1 and 3 of section 10-32-85, subsections 2 and 4 of section 10-32-86, subsections  
4 1 and 2 of section 10-32-87, sections 10-32-88, 10-32-89, and 10-32-92, subsection 3 of  
5 section 10-32-94, section 10-32-95, subsection 1 of section 10-32-97, sections 10-32-99 and  
6 10-32-104, subsections 1 and 2 of section 10-32-108, subsection 2 of section 10-32-112,  
7 subsection 3 of section 10-32-113, subsection 1 of section 10-32-114, subsections 2 and 3 of  
8 section 10-32-117, subsection 1 of section 10-32-119, subsection 2 of section 10-32-130.1,  
9 subsection 3 of section 10-32-132, subsection 2 of section 10-32-149, sections 10-33-01,  
10 10-33-10, 10-33-11, and 10-33-21, subsection 3 of section 10-33-23, subsection 2 of section  
11 10-33-25, subsection 1 of section 10-33-27, subsections 1 and 2 of section 10-33-39,  
12 subsections 1 and 2 of section 10-33-43, subsection 1 of section 10-33-44, subsection 1 of  
13 section 10-33-50, subsection 3 of section 10-33-65, subsection 3 of section 10-33-66, sections  
14 10-33-73 and 10-33-75, subsection 1 of section 10-33-77, sections 10-33-81 and 10-33-93,  
15 subsection 1 of section 10-33-101, subsections 2 and 3 of section 10-33-103, subsection 4 of  
16 section 10-33-104, subsection 1 of section 10-33-107, subsections 1, 2, and 3 of section  
17 10-33-108, subsection 3 of section 10-33-120, subsection 1 of section 10-33-128, subsection 2  
18 of section 10-33-139, section 45-10.1-01, subsection 6 of section 45-10.1-02, sections  
19 45-10.1-03 and 45-10.1-07.1, subsections 7 and 8 of section 45-10.1-09, sections 45-10.1-13,  
20 45-10.1-55, 45-10.1-56, and 45-13-01, subsections 5 and 6 of section 45-13-04.1, section  
21 45-13-04.2, subsections 6 and 7 of section 45-13-05, subsection 1 of section 45-13-06,  
22 subsection 1 of section 45-15-03, subsection 1 of section 45-15-03.1, subsection 2 of section  
23 45-15-03.2, section 45-15-04, subsection 1 of section 45-19-04, subsections 1 and 2 of section  
24 45-21-05, subsection 2 of section 45-21-06, subsections 1 and 2 of section 45-21-07, section  
25 45-22-01, subsection 3 of section 45-22-03, subsection 5 of section 45-22-04, section  
26 45-22-05, subsection 2 of section 45-22-17, subsection 2 of section 45-22-21.1, section  
27 45-23-01, and subsection 5 of section 45-23-03 of the North Dakota Century Code, relating to  
28 business corporations, professional corporations, limited liability companies, nonprofit  
29 corporations, limited partnerships, partnerships, limited liability partnerships, and limited liability  
30 limited partnerships; and to repeal sections 45-10.1-14, 45-10.1-15, and 45-10.1-16 of the  
31 North Dakota Century Code, relating to 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  
10                    the 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~~  
4                   ~~do business in this state under this or another chapter of this code~~, limited  
5                   liability company, partnership, limited partnership, limited liability partnership,  
6                   limited liability limited partnership, joint venture, association, business trust,  
7                   estate, 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

1                    the document, is placed on a document, as provided ~~in subsection 39 of~~  
2                    under section ~~41-01-11, 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~~  
12                   ~~telecommunication or electronically, or in any other manner reproduced on~~  
13                   ~~the 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    ~~40.~~ 49. "Subscriber" means a person who subscribes for shares in a corporation, whether  
17                   before or after incorporation.

18    ~~41.~~ 50. "Subsidiary" of a specified corporation means:

19            a. A corporation having more than fifty percent of the voting power of the  
20                   corporation's shares entitled to vote for directors owned directly, or indirectly  
21                   through related ~~corporations or limited liability companies~~ organizations, by  
22                   the specified corporation; or

23            b. A limited liability company having more than fifty percent of the voting power  
24                   of the limited liability company's membership interests entitled to vote for  
25                   governors owned directly, or indirectly through related limited liability  
26                   companies or corporations, by the specified limited liability company.

27    ~~42.~~ 51. "Surviving corporation" means the domestic or foreign corporation resulting from a  
28                   merger.

29    ~~43.~~ 52. "Surviving organization" means the corporation or foreign corporation or domestic  
30                   or foreign limited liability company resulting from a merger.

31    ~~44.~~ 53. "Vote" includes authorization by written action.

- 1     ~~45.~~ 54. "Written action" means a:
- 2             a. A written document signed by all of the persons required to take the action;<sub>i</sub>
- 3                     or ~~the~~
- 4             b. The counterparts of a written document signed by any of the persons taking
- 5                     the action described.
- 6                     (1) Each counterpart constitutes the action of the person signing; and ~~all~~
- 7                     (2) All the counterparts, taken together, constitute one written action by all
- 8                             of the persons signing the counterparts.

9             **SECTION 2.** Section 10-19.1-01.1 of the North Dakota Century Code is created and

10 enacted as follows:

11             **10-19.1-01.1. Legal recognition of electronic records and electronic signatures.**

12 For purposes of this chapter:

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

21             **SECTION 3. AMENDMENT.** Subsection 4 of section 10-19.1-13 of the North Dakota

22 Century Code is amended and reenacted as follows:

- 23             4. A corporation that is ~~merged~~ the surviving organization in a merger with ~~another~~
- 24                     ~~domestic~~ one or foreign organization, or that is incorporated by the reorganization
- 25                     ~~of one or more domestic or foreign~~ other organizations, or that acquires by sale,
- 26                     lease, or other disposition to or exchange with a ~~domestic~~ an organization all or
- 27                     substantially all of the assets of another ~~domestic or foreign~~ organization including
- 28                     its name, may have the same name, subject to the requirements of subsection 1,
- 29                     as that used in this state by any of the other organizations, if the other organization
- 30                     whose name is sought to be used:

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

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

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

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

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

3           **10-19.1-19. Procedure for amendment after issuance of shares.**

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

1 proportion or number equal to or larger than the majority necessary to  
2 transact a specified type of business at a meeting, the affirmative vote  
3 necessary to add the provision to, or to amend an existing provision in, the  
4 articles is the larger of:

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

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

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

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

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

26 2. Initial bylaws may be adopted by the first board or by the incorporators, pursuant to  
27 section 10-19.1-30. Unless reserved by the articles to the shareholders, the power  
28 to adopt, amend, or repeal the bylaws is vested in the board. The power of the  
29 board is subject to the power of the shareholders, exercisable in the manner  
30 provided in subsection 3, to adopt, amend, or repeal bylaws adopted, amended, or  
31 repealed by the board. ~~After the adoption of the initial bylaws, the board may not~~

1           ~~adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders,~~  
2           ~~prescribing procedures for removing directors or filling vacancies in the board, or~~  
3           ~~fixing the number of directors or their classifications, qualifications, or terms of~~  
4           ~~office, but may adopt or amend a bylaw to increase the number of directors.~~

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

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

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

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

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

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

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

1                   (2) If provided for in the articles, approved by the affirmative vote of the  
2                                   shareholders required by section 10-19.1-74, establishing a price in  
3                                   money or other consideration, or a minimum price, or a general formula  
4                                   or method by which the price will be determined.

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

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

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

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

29                   3. Special meetings must be held on the date and at the time and place fixed by the  
30                                   president, the board, or a person authorized by the articles or bylaws to call a  
31                                   meeting, except that a special meeting called by or at the demand of a shareholder

1 or shareholders pursuant to subsection 2 must be held in the county where the  
2 principal executive office is located. To the extent authorized by the articles or  
3 bylaws, the board may determine that a special meeting of the shareholders shall  
4 be held solely by means of remote communication in accordance with subsection 3  
5 of section 10-19.1-75.2.

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

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

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

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

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

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

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

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

1           4- When this chapter requires or permits a certificate concerning an action to be filed  
2                   with the secretary of state, the officers signing the certificate must so indicate if the  
3                   action was taken under this section.

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

6           **10-19.1-75.2. Electronic Remote communications for shareholder meetings.**

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

1                   ~~proxy if all the other requirements of section 10-19.1-76.2 are met, participate~~  
2                   in a meeting of shareholders held at a designated place.

3       4. 3. In any meeting of shareholders held solely by means of remote communication  
4                   under subdivision a of subsection 2 or in any meeting of shareholders held at a  
5                   designated place in which one or more shareholders participate by means of  
6                   remote communication under subdivision b of subsection 2:

7       a. The corporation shall implement reasonable measures to:

8                   (1) Verify that each person deemed present and entitled to vote at the  
9                   meeting by means of remote communication is a shareholder; and

10                  (2) Provide each shareholder participating by means of remote  
11                  communication with a reasonable opportunity to participate in the  
12                  meeting, including an opportunity to:

13                       (a) Read or hear the proceedings of the meeting substantially  
14                       concurrently with those proceedings;

15                       (b) If allowed by the procedures governing the meeting, have the  
16                       shareholder's remarks heard or read by other participants in the  
17                       meeting substantially concurrently with the making of those  
18                       remarks; and

19                       (c) If otherwise entitled, vote on matters submitted to the  
20                       shareholders.

21       b. Participation in a meeting by this means constitutes presence at the meeting  
22                   in person or by proxy if all of the requirements of section 10-19.1-76.2 are  
23                   met.

24       4. With respect to notice to shareholders:

25       a. Any notice to shareholders given by the corporation under any provision of  
26                   this chapter, the articles, or the bylaws by a form of electronic communication  
27                   consented to by the shareholder 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 shareholder has consented to receive notice;

- 1                   (2) If by electronic mail, when directed to an electronic mail address at  
2                   which the shareholder has consented to receive notice;
- 3                   (3) If by a posting on an electronic network on which the shareholder has  
4                   consented to receive notice, together with separate notice to the  
5                   shareholder of the specific posting, upon the later of:  
6                   (a) The posting; or  
7                   (b) The giving of the separate notice.
- 8                   (4) If by any other form of electronic communication by which the  
9                   shareholder has consented to receive notice, when directed to the  
10                  shareholder.
- 11                  b. An affidavit of the secretary, other authorized officer, or authorized agent of  
12                  the corporation, that the notice has been given by a form of electronic  
13                  communication is, in the absence of fraud, prima facie evidence of the facts  
14                  stated in the affidavit.
- 15                  c. Consent by a shareholder to notice given by electronic communication may  
16                  be given in writing or by authenticated electronic communication. The  
17                  corporation is entitled to rely on any consent so given until revoked by the  
18                  shareholder. However, no revocation affects the validity of any notice given  
19                  before receipt by the corporation of revocation of the consent.
- 20                  5. Any ballot, vote, authorization, or consent submitted by electronic communication  
21                  under this chapter may be revoked by the shareholder submitting the ballot, vote,  
22                  authorization, or consent so long as the revocation is received by an officer of the  
23                  corporation at or before the meeting or before an action without a meeting is  
24                  effective according to section 10-19.1-75.
- 25                  6. Waiver of notice by a shareholder of a meeting by means of authenticated  
26                  electronic communication ~~described in subsection 4 or 3~~ may be given in the  
27                  manner provided in subsection 4 of section 10-19.1-73. Participation in a meeting  
28                  by means of ~~communications~~ remote communication described in subdivisions a  
29                  and b of subsection ~~4 or 3~~ 2 is a waiver of notice of that meeting, except when the  
30                  shareholder objects:



1                   to section 10-19.1-75.2 to the extent the shareholder appointing the  
2                   proxy would have been entitled to participate by remote communication  
3                   according to section 10-19.1-75.2 if the shareholder did not appoint the  
4                   proxy.

5           ~~b.~~ c. A copy, facsimile telecommunication, or other reproduction of the original  
6           writing or transmission may be substituted or used in lieu of the original  
7           writing or transmission for any purpose for which the original writing or  
8           transmission could be used if the copy, facsimile, telecommunication, or other  
9           reproduction is a complete and legible reproduction of the entire original  
10          writing or transmission.

11          ~~e.~~ d. An appointment of a proxy for shares held jointly by two or more shareholders  
12          is valid if signed or consented to by authenticated electronic communication  
13          by any one of the shareholders, unless the corporation receives from any of  
14          those shareholders written notice or authenticated electronic communication  
15          either denying the authority of that person to appoint a proxy or appointing a  
16          different proxy.

17           **SECTION 15. AMENDMENT.** Subsection 1 of section 10-19.1-87 of the North Dakota  
18 Century Code is amended and reenacted as follows:

19           1. A shareholder of a corporation may dissent from, and obtain payment for the fair  
20           value of the shareholder's shares in the event of, any of the following corporate  
21           actions:

22           a. An amendment of the articles that materially and adversely affects the rights  
23           or preferences of the shares of a dissenting shareholder in that it:

24                   (1) Alters or abolishes a preferential right of the shares;

25                   (2) Creates, alters, or abolishes a right in respect of the redemption of the  
26                   shares, including a provision respecting a sinking fund for the  
27                   redemption or repurchase of shares;

28                   (3) Alters or abolishes a preemptive right of the holder of the shares to  
29                   acquire shares, securities other than shares, or rights to purchase  
30                   shares or securities other than shares; or

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

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

25                  **10-19.1-100. Merger of subsidiary into parent.**

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

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

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

- 1 signed on behalf of the parent and filed with the secretary of state, with the fees  
2 provided in section 10-19.1-147.
- 3 8. The secretary of state shall issue a certificate of merger to the surviving constituent  
4 organization or the surviving constituent organization's legal representative. The  
5 certificate must contain the effective date of the merger.
- 6 9. If all of the ownership interests of one or more domestic subsidiaries that is a  
7 constituent organization to a merger under this section are not owned by the  
8 parent directly, or indirectly through related constituent organizations, immediately  
9 before the merger, the owners of each domestic subsidiary have dissenter's rights  
10 under section 10-19.1-87 or 10-32-54, without regard to subsection 3 of section  
11 10-19.1-87 or subsection 2 of section 10-32-54, and under section 10-19.1-88 or  
12 10-32-55. If the parent is a constituent organization but is not the surviving  
13 organization in the merger, the articles of incorporation or articles of organization  
14 of the surviving organization immediately after the merger differ from the articles of  
15 incorporation or articles of organization of the parent immediately before the  
16 merger in a manner that would entitle an owner of the parent to dissenter's rights  
17 under subdivision a of subsection 1 of section 10-19.1-87 or under subdivision a of  
18 subsection 1 of section 10-32-54, and the articles of incorporation or articles of  
19 organization of the surviving constituent organization constitute an amendment to  
20 the articles of incorporation or articles of organization of the parent, that owner of  
21 the parent has dissenter's rights as provided under section 10-19.1-87 or 10-32-54.  
22 Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not  
23 apply to any merger affected under this section.
- 24 10. A merger among a parent and one or more subsidiaries or among two or more  
25 subsidiaries of a parent may be accomplished under sections 10-19.1-97 through  
26 10-19.1-99 instead of this section, in which case this section does not apply.

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

29 **10-19.1-100.1. Merger to effect a holding company reorganization.**

- 30 1. For purposes of this section:

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

1           same restrictions thereon, as the share or fraction of a share of the parent  
2           constituent corporation being converted in the merger;

3           g. The articles and bylaws of the holding company immediately following the  
4           effective time of the merger contain provisions identical to the articles and  
5           bylaws of the parent constituent corporation immediately before the effective  
6           time of the merger, other than provisions, if any, regarding the incorporator or  
7           incorporators, the corporate name, the registered office and agent, the initial  
8           board, and the initial subscribers for shares and the provisions contained in  
9           any amendment to the articles of the parent constituent corporation that were  
10           necessary to effect an exchange, reclassification, or cancellation of shares if  
11           the exchange, reclassification, or cancellation has become effective;

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

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

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

1           8. A merger between a parent and a subsidiary may be accomplished under sections  
2                   10-19.1-97, 10-19.1-98, 10-19.1-99, and 10-19.1-100 instead of this section, in  
3                   which case this section does not apply.

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

- 6           1. If notice to creditors and claimants is given, it must be given by:
- 7               a. Publishing the notice once each week for four successive weeks in an official  
8               newspaper, as defined in chapter 46-06, in the county or counties where the  
9               registered office and the principal executive office of the corporation are  
10              located; and
- 11              b. Giving written notice to known creditors and claimants pursuant to  
12              subsection ~~23~~ 32 of section 10-19.1-01.

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

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

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

- 27           3. If neither the corporation's registered agent nor an officer of the corporation can be  
28           found at the registered office, or if a corporation fails to maintain a registered agent  
29           in this state and an officer of the corporation cannot be found at the registered  
30           office, then the secretary of state is the agent of the corporation upon whom the  
31           process, notice, or demand may be served. ~~The~~ Service on the secretary of state:

- 1           a. Shall be made by registered mail or personal delivery to the secretary of state  
2           and not by electronic communication;
- 3           b. Shall include the return of the sheriff, or the affidavit of a person who is not a  
4           party, verifying that ~~ne~~ neither the registered agent ~~or~~ nor an officer can be  
5           found at the registered office ~~must be provided to the secretary of state.~~  
6           Service on the secretary of state of any process, notice, or demand is; and
- 7           c. Is deemed personal service upon the corporation and must be made by filing  
8           with the secretary of state ~~an~~;
- 9           (1) An original and two copies of the process, notice, or demand, ~~with the~~;  
10           and
- 11           (2) The fees provided in section 10-19.1-147. The secretary of state shall  
12           immediately forward, by registered mail, addressed to the corporation  
13           at the registered office, a copy of the process, notice, or demand.  
14           Service on the secretary of state is returnable in not less than thirty  
15           days notwithstanding a shorter period specified in the process, notice,  
16           or demand.

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

- 19           2. The annual report must be submitted on forms prescribed by the secretary of state.  
20           The information provided must be given as of the date of the execution of the  
21           report except as to the information required by ~~subdivisions~~ subdivision g, i, and j  
22           of subsection 1 which must be given as of the close of business on December  
23           thirty-first next preceding the date herein provided for the filing of the report, or, in  
24           the alternative, data of the fiscal year ending next preceding this report may be  
25           used. The annual report must be signed as prescribed in subsection ~~39~~ 48 of  
26           section 10-19.1-01, or the articles or the bylaws or a resolution approved by the  
27           affirmative vote of the required proportion or number of the directors or holders of  
28           shares entitled to vote. If the corporation or foreign corporation is in the hands of a  
29           receiver or trustee, it must be signed on behalf of the corporation or foreign  
30           corporation by the receiver or trustee. The secretary of state may destroy all  
31           annual reports provided for in this section after they have been on file for six years.

1           The secretary of state, or any employee or legal representative of the secretary of  
2           state, may not disclose the information reported under ~~subdivisions~~ subdivision g;  
3           ~~i, and j~~ of subsection 1 to any person, except a person who is verified to be a  
4           shareholder of the corporation or foreign corporation, a legal representative of the  
5           shareholder for which information is requested, or to the tax commissioner or any  
6           employee or legal representative of the tax commissioner, who may not disclose  
7           the information and may use the information only for the administration of the tax  
8           laws.

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

11           **10-19.1-149.1. Secretary of state - Exempt records.** Any social security number or  
12          federal tax identification number disclosed or contained in any document filed with the secretary  
13          of state under this chapter is an exempt record as defined by subsection 5 of section  
14          44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any  
15          social security number or federal tax identification number the secretary of state determines to  
16          be a closed record before a copy of any document is released to the public.

17           **SECTION 23. AMENDMENT.** Subsection 10 of section 10-31-01 of the North Dakota  
18          Century Code is amended and reenacted as follows:

19           10. "Professional service" means the personal service to the public which requires a  
20           license as a condition precedent to the rendering of such service and which ~~before~~  
21           ~~the passage of this chapter could not be performed by a corporation, limited~~  
22           ~~liability company, or a limited liability partnership~~ requires as a condition of  
23           licensure an undergraduate or advanced college degree in the specific field.

24           **SECTION 24. AMENDMENT.** Section 10-32-02 of the North Dakota Century Code is  
25          amended and reenacted as follows:

26           **10-32-02. Definitions.** For purposes of this chapter, unless the context otherwise  
27          requires:

28           1. "Acquiring organization" means the foreign or domestic limited liability company or  
29           foreign or domestic corporation that acquires in an exchange the shares of a  
30           domestic or foreign corporation or the membership interests of a limited liability  
31           company.

- 1           2. "Address" means:
- 2           a. In the case of a registered office or principal executive office, the mailing
- 3           address, including a zip code, of the actual office location which may not be
- 4           only a post-office box; and
- 5           b. In all other cases, the mailing address, including a zip code.
- 6           3. "Articles" or "articles of organization" means:
- 7           a. In the case of a limited liability company organized under this chapter, articles
- 8           of organization, articles of amendment, a statement of change of registered
- 9           office, registered agent, or name of registered agent, a statement establishing
- 10          or fixing the rights and preferences of a class or series of membership
- 11          interests, articles of merger, articles of abandonment, and articles of
- 12          termination.
- 13          b. In the case of a foreign limited liability company, the term includes all
- 14          documents serving a similar function required to be filed with the secretary of
- 15          state or other state office of the limited liability company's state of
- 16          organization.
- 17          4. "Authenticated electronic communication" means:
- 18          a. That the electronic communication is delivered:
- 19               (1) To the principal place of business of the limited liability company; or
- 20               (2) To a manager or agent of the limited liability company authorized by the
- 21               limited liability company to receive the electronic communication; and
- 22          b. That the electronic communication sets forth information from which the
- 23          limited liability company can reasonably conclude that the electronic
- 24          communication was sent by the purported sender.
- 25          5. "Board" or "board of governors" means the board of governors of a limited liability
- 26          company.
- 27          ~~5-~~ 6. "Board member" means:
- 28          a. An individual serving on the board of governors in the case of a limited liability
- 29          company; and
- 30          b. An individual serving on the board of directors in the case of a corporation.

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- 1       ~~6-~~ 7. "Bylaws" means any rule, resolution, or other provision, regardless how  
2                    designated, that:
- 3            a.    Relates to the management of the business or the regulation of the affairs of  
4                    the limited liability company; and
- 5            b.    Was expressly part of the bylaws by the action, taken from time to time under  
6                    section 10-32-68, by the board ~~of governors~~ or the members.
- 7       ~~7-~~ 8. "Class", when used with reference to membership interests, means a category of  
8                    membership interests which differs in one or more rights or preferences from  
9                    another category of membership interests of the limited liability company.
- 10       ~~8-~~ 9. "Closely held limited liability company" means a limited liability company that does  
11                    not have more than thirty-five members.
- 12       ~~9-~~ 10. "Constituent organization" means a limited liability company or a domestic or  
13                    foreign corporation that:
- 14            a.    In a merger, is either the surviving organization or an organization that is  
15                    merged into the surviving organization; or
- 16            b.    In an exchange, is either the acquiring organization or an organization whose  
17                    securities are acquired by the acquiring organization.
- 18       ~~10-~~ 11. "Contribution" means any cash, property, services rendered, or a promissory note  
19                    or other binding obligation to contribute cash or property or to perform services,  
20                    which a member contributes to a limited liability company in the capacity of that  
21                    member as a member.
- 22       12. "Contribution agreement" means an agreement between a person and a limited  
23                    liability company under which:
- 24            a.    The person agrees to make a contribution in the future; and
- 25            b.    The limited liability company agrees that, at the time specified for the  
26                    contribution in the future, the limited liability company will accept the  
27                    contribution and reflect the contribution in the required records.
- 28       ~~11-~~ 13. "Contribution allowance agreement" means an agreement between a person and a  
29                    limited liability company under which:
- 30            a.    The person has the right, but not the obligation, to make a contribution in the  
31                    future; and

- 1           b. The limited liability company agrees that, if the person makes the specified  
2           contribution at the time specified in the future, the limited liability company will  
3           accept the contribution and reflect the contribution in the required records.
- 4   ~~42.~~ 14. "Dissolution" means that the limited liability company incurred an event under  
5           subsection 1 of section 10-32-109, subject only to sections 10-32-116 and  
6           10-32-124, that obligates the limited liability company to wind up the limited liability  
7           company's affairs and to terminate the limited liability company's existence as a  
8           legal entity.
- 9   ~~43.~~ 15. "Dissolution avoidance consent" means the consent of all remaining members:  
10          a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after  
11           the occurrence of any event that terminates the continued membership of a  
12           member in the limited liability company; and  
13          b. That the limited liability company must be continued as a legal entity without  
14           dissolution.
- 15   ~~44.~~ 16. "Distribution" means a direct or indirect transfer of money or other property, other  
16           than its own membership interests, with or without consideration, or an incurrence  
17           or issuance of indebtedness, by a limited liability company to any of the limited  
18           liability company's members in respect of membership interests. A distribution  
19           may be in the form of an interim distribution or a termination distribution, or as  
20           consideration for the purchase, redemption, or other acquisition of its membership  
21           interests, or otherwise.
- 22   ~~45.~~ 17. "Domestic corporation" means a corporation, other than a foreign corporation,  
23           organized for profit and incorporated under or governed by chapter 10-19.1.
- 24   ~~46.~~ 18. "Domestic organization" means an organization created under the laws of this  
25           state.
- 26          19. "Electronic" means relating to technology having electrical, digital, magnetic,  
27           wireless, optical, electromagnetic, or similar capabilities.
- 28          20. "Electronic communication" means any form of communication, not directly  
29           involving the physical transmission of paper:  
30          a. That creates a record that may be retained, retrieved, and reviewed by a  
31           recipient of the communication; and

- 1           b. That may be directly reproduced in paper form by the recipient through an  
2           automated process.
- 3       21. "Electronic record" means a record created, generated, sent, communicated,  
4       received, or stored by electronic means.
- 5       22. "Electronic signature" means an electronic sound, symbol, or process attached to  
6       or logically associated with a record and executed or adopted by a person with the  
7       intent to sign the record.
- 8       23. "Filed with the secretary of state" means except as otherwise permitted by law or  
9       rule:
- 10      a. ~~That either of the following~~ a document meeting the applicable requirements  
11      of this chapter, together with the fees provided in section 10-32-150, has  
12      been delivered or communicated to the secretary of state by a method or  
13      medium of communication acceptable by the secretary of state, and has been  
14      determined by the secretary of state to conform to law:
- 15      (1) ~~A signed original or a legible facsimile telecommunication of a signed~~  
16      ~~original of a request for reserved name; or~~
- 17      (2) ~~A signed original of all other documents, meeting the applicable~~  
18      ~~requirements of this chapter, together with the fees provided in section~~  
19      ~~10-32-150.~~
- 20      b. That the secretary of state shall then:
- 21      (1) ~~Endorse on the original Record the word "filed" and the month, day,~~  
22      ~~and year~~ actual date on which the document is filed, and if different, the  
23      effective date of filing; and
- 24      (2) Record the document in the office of the secretary of state.
- 25    ~~17.~~ 24. "Financial rights" means a member's rights:
- 26      a. To share in profits and losses as provided in section 10-32-36;
- 27      b. To share in distributions as provided in section 10-32-60;
- 28      c. To receive interim distributions as provided in section 10-32-61; and
- 29      d. To receive termination distributions as provided in subdivision c of
- 30      subsection 1 of section 10-32-131.

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- 1    ~~48.~~ 25. "Foreign corporation" means a corporation organized for profit that is incorporated  
2                    under laws other than the laws of this state for a purpose for which a corporation  
3                    may be incorporated under chapter 10-19.1.
- 4    ~~49.~~ 26. "Foreign limited liability company" means a limited liability company organized for  
5                    profit which is organized under laws other than the laws of this state for a purpose  
6                    for which a limited liability company may be organized under this chapter.
- 7    ~~20.~~ 27. "Foreign organization" means an organization created under laws other than the  
8                    laws of this state for a purpose for which an organization may be created under the  
9                    laws of this state.
- 10        28. "Good faith" means honesty in fact in the conduct of the act or transaction  
11                    concerned.
- 12    ~~24.~~ 29. "Governance rights" means all of a member's rights as a member in the limited  
13                    liability company other than financial rights and the right to assign financial rights.
- 14    ~~22.~~ 30. "Governing board" means:  
15                    a.    The board of governors in the case of a limited liability company; and  
16                    b.    The board of directors in the case of a corporation.
- 17    ~~23.~~ 31. "Governor" means an individual serving on the board ~~of governors~~.
- 18    ~~24.~~ 32. "Intentionally" means that the person referred to either has a purpose to do or fail  
19                    to do 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:  
21                    a.    If the person intentionally does the act or causes the result prohibited by the  
22                    statute; or  
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    ~~25.~~ 33. "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    ~~26.~~ 34. "Legal representative" means a person empowered to act for another person,  
31                    including an agent, manager, officer, partner, or associate of an organization; a

1 trustee of a trust; a personal representative; a trustee in bankruptcy; and a  
2 receiver, guardian, custodian, or conservator.

3 ~~27.~~ 35. "Limited liability company" means a limited liability company, other than a foreign  
4 limited liability company, organized under this chapter.

5 ~~28.~~ 36. "Manager" means:

6 a. An individual who is eighteen years of age or more and who is elected,  
7 appointed, or otherwise designated as a manager by the board ~~of governors~~;  
8 and

9 b. An individual considered elected as a manager pursuant to section 10-32-92.

10 ~~29.~~ 37. "Member" means a person, with or without voting rights, reflected in the required  
11 records of a limited liability company as the owner of a membership interest in the  
12 limited liability company.

13 ~~30.~~ 38. "Membership interest" means one of the units, however designated, into which a  
14 member's proprietary interest in a limited liability company is divided consisting of:

15 a. A member's financial rights;

16 b. A member's right to assign financial rights as provided in section 10-32-31;

17 c. A member's governance rights, if any; and

18 d. A member's right to assign any governance rights owned as provided in  
19 section 10-32-32.

20 ~~31.~~ 39. "Notice" is:

21 a. Is given by a member of a limited liability company to the limited liability  
22 company or a manager of a limited liability company ~~when~~:

23 (1) When in writing and mailed or delivered to the limited liability company  
24 or the manager at the registered office or principal executive office of  
25 the limited liability company.

26 (2) When given by a form of electronic communication consented to by the  
27 limited liability company or a manager to which the notice is given:

28 (a) If by facsimile communication, when directed to a telephone  
29 number at which the limited liability company or a manager has  
30 consented to receive notice;

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

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

4                   [1] The posting; or

5                   [2] The giving of the separate notice.

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

9           b. ~~c.~~ Notice by mail is ~~is~~ given by mail when deposited in the United States mail  
10           with sufficient postage affixed.

11           e. ~~d.~~ Notice is considered ~~is deemed~~ received when it is given.

12   ~~32.~~ 40. "Organization" means, ~~whether~~

13           a. Whether domestic or foreign, a limited liability company, corporation,  
14           partnership, limited partnership, limited liability partnership, limited liability  
15           limited partnership, joint venture, association, business trust, estate, trust,  
16           enterprise, and any other legal or commercial entity; but

17           b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation  
18           which is incorporated under chapter 10-33 or a foreign nonprofit corporation  
19           which is incorporated in another jurisdiction.

20   ~~33.~~ 41. "Owners" means:

21           a. Members in the case of a limited liability company or a nonprofit corporation;  
22           and

23           b. Shareholders in the case of a corporation.

24   ~~34.~~ 42. "Ownership interests" means:

25           a. Membership interests in the case of a limited liability company or a nonprofit  
26           corporation; and

27           b. Shares in the case of a corporation.

28   ~~35.~~ 43. "Parent" of a specified limited liability company means a limited liability company or  
29           corporation that directly or indirectly, through related organizations, owns more  
30           than fifty percent of the voting power of the membership interests entitled to vote  
31           for governors of the specified limited liability company.

- 1    ~~36.~~ 44. "Pertains" means a contribution "pertains":
- 2            a. To a particular series when the contribution is made in return for a
- 3            membership interest in that particular series.
- 4            b. To a particular class when the class has no series and the contribution is
- 5            made in return for a membership interest in the class.
- 6            A contribution that pertains to a series does not pertain to the class of which the
- 7            series is a part.
- 8    ~~37.~~ 45. "Principal executive office" means:
- 9            a. If the limited liability company has an elected or appointed president, an office
- 10            where the elected or appointed president of the limited liability company has
- 11            an office; or
- 12            b. If the limited liability company has no elected or appointed president, the
- 13            registered office of the limited liability company.
- 14    ~~38.~~ 46. "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            47. "Registered office" means the place in this state designated in the articles as the
- 17            registered office of the limited liability company.
- 18    ~~39.~~ 48. "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    ~~40.~~ 49. "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.

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- 1           50. "Required records" are those records required to be maintained under section  
2           10-32-51.
- 3   ~~41.~~ 51. "Security" has the meaning given it in ~~subsection 13 of~~ section 10-04-02.
- 4   ~~42.~~ 52. "Series" means a category of membership interests, within a class of membership  
5           interests, that has some of the same rights and preferences as other membership  
6           interests within the same class, but that differ in one or more rights and  
7           preferences from another category of membership interests within that class.
- 8   ~~43.~~ 53. "Signed" means:
- 9           a. That the signature of a person has been, which may be a facsimile affixed,  
10           engraved, printed, placed, stamped with indelible ink, transmitted by facsimile  
11           telecommunication or electronically, or in any other manner reproduced on  
12           the document, is placed on a document, as provided in ~~subsection 39 of~~  
13           under section ~~41-01-11, and, with~~ 41-01-09.
- 14           b. With respect to a document:
- 15           a. ~~Required~~ required by this chapter to be filed with the secretary of state,  
16           means the that:
- 17                   (1) The document has been signed by a person authorized to do so by this  
18                   chapter, the articles of organization, a member-control agreement, or  
19                   the bylaws or a resolution approved by the governors as required by  
20                   section 10-32-83 or the members as required by section 10-32-42; and
- 21           b. ~~Not required by this chapter to be filed with the secretary of state, the~~  
22           ~~signature may be a facsimile affixed, engraved, printed, placed, stamped with~~  
23           ~~indelible ink, transmitted by facsimile telecommunication or electronically, or~~  
24           ~~in any other manner reproduced on the document.~~
- 25                   (2) The signature and the document are communicated by a method or  
26                   medium acceptable by the secretary of state.
- 27   ~~44.~~ 54. "Subsidiary" of a specified limited liability company means:
- 28           a. A limited liability company having more than fifty percent of the voting power  
29           of its membership interests entitled to vote for governors owned directly or  
30           indirectly through related organizations by the specified limited liability  
31           company; or

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

4    ~~45.~~ 55. "Successor organization" means an organization that, pursuant to a business  
5           continuation agreement or an order of the court under subsection 6 of section  
6           10-32-119, continues the business of the dissolved and terminated limited liability  
7           company.

8    ~~46.~~ 56. "Surviving organization" means the foreign or domestic limited liability company or  
9           domestic or foreign corporation resulting from a merger.

10 ~~47.~~ 57. "Termination" means the end of a limited liability company's existence as a legal  
11          entity and occurs when a notice of termination is:

12          a. Filed with the secretary of state under section 10-32-117 together with the  
13          fees provided in section 10-32-150; or

14          b. ~~Is considered~~ Considered filed with the secretary of state under subdivision c  
15          of subsection 2 of section 10-32-106 together with the fees provided in  
16          section 10-32-150.

17 ~~48.~~ 58. "Vote" includes authorization by written action.

18 ~~49.~~ 59. "Winding up" means the period triggered by dissolution during which the limited  
19          liability company ceases to carry on business, except to the extent necessary for  
20          concluding affairs, and disposing of assets under section 10-32-131.

21 ~~50.~~ 60. "Written action" means ~~a~~:

22          a. A written document signed by every person required to take the action  
23          described; ~~and the~~

24          b. The counterparts of a written document signed by any person taking the  
25          action described.

26                  (1) Each counterpart constitutes the action of the persons signing it; ~~and~~  
27                  ~~all~~

28                  (2) All the counterparts, taken together, constitute one written action by all  
29                  of the persons signing them.

30           **SECTION 25.** Section 10-32-02.1 of the North Dakota Century Code is created and  
31    enacted as follows:

1           **10-32-02.1. Legal recognition of electronic records and electronic signatures.**

2   For purposes of this chapter:

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

11           **SECTION 26. AMENDMENT.** Subsections 2, 3, and 4 of section 10-32-07 of the North  
12 Dakota Century Code are amended and reenacted as follows:

- 13           2. The following provisions govern a limited liability company unless modified in the  
14 articles of organization or a member-control agreement under section 10-32-50:
- 15           a. A limited liability company has general business purposes as provided in  
16 section 10-32-04;
- 17           b. A limited liability company has certain powers as provided in section  
18 10-32-23;
- 19           c. The power to adopt, amend, or repeal the bylaws is vested in the board of  
20 ~~governors~~ as provided in section 10-32-68;
- 21           d. A limited liability company must allow cumulative voting for governors as  
22 provided in section 10-32-76;
- 23           e. The affirmative vote of the greater of a majority of governors present or a  
24 majority of the minimum number of governors constituting a quorum is  
25 required for an action of the board of ~~governors~~ as provided in section  
26 10-32-83;
- 27           f. A written action by the board of ~~governors~~ taken without a meeting must be  
28 signed by all governors as provided in section 10-32-84;
- 29           g. The board may accept contributions, make contribution agreements, and  
30 make contribution allowance agreements as provided in subsection 1 of  
31 section 10-32-56 and sections 10-32-58 and 10-32-59;

- 1           h. All membership interests are ordinary membership interests entitled to vote  
2           and are of one class with no series as provided in subdivisions a and b of  
3           subsection 5 of section 10-32-56;
- 4           i. All membership interests have equal rights and preferences in all matters not  
5           otherwise provided for by the board ~~of governors~~ as provided in subdivision b  
6           of subsection 5 of section 10-32-56;
- 7           j. The value of previous contributions must be restated when a new contribution  
8           is accepted as provided in subsections 3 and 4 of section 10-32-57;
- 9           k. A member has certain preemptive rights, unless otherwise provided by the  
10          board ~~of governors~~ as provided in section 10-32-37;
- 11          l. The affirmative vote of the greater of the owners of a majority of the voting  
12          power of the membership interests present and entitled to vote at a duly held  
13          meeting or a majority of the voting power of the membership interests with  
14          voting rights constituting the minimum voting power needed for a quorum for  
15          the transaction of business is required for an action of the members, except if  
16          this chapter requires the affirmative vote of a majority of the voting power of  
17          all membership interests entitled, to vote as provided in subsection 1 of  
18          section 10-32-42;
- 19          m. The voting power of each membership interest is in proportion to the value  
20          reflected in the required records of the contributions of the members as  
21          provided in section 10-32-40.1;
- 22          n. Members share in distributions in proportion to the value reflected in the  
23          required records of the contributions of members as provided in section  
24          10-32-60;
- 25          o. Members share profits and losses in proportion to the value reflected in the  
26          required records of the contributions of members as provided in section  
27          10-32-36;
- 28          p. A written action by the members taken without a meeting must be signed by  
29          all members as provided in section 10-32-43;

- 1           q. Members have no right to receive distributions in kind and the limited liability  
2           company has only limited rights to make distributions in kind as provided in  
3           section 10-32-62;
- 4           r. A member is not subject to expulsion as provided in subsection 2 of section  
5           10-32-30;
- 6           s. Unanimous consent is required for the transfer of governance rights to a  
7           person not already a member as provided in subsection 2 of section  
8           10-32-32;
- 9           t. For a limited liability company whose existence begins before July 1, 1999,  
10          unanimous consent is required to avoid dissolution as provided in  
11          subdivision e of subsection 1 of section 10-32-109;
- 12          u. The termination of a person's membership interest has specified  
13          consequences as provided in section 10-32-30; and
- 14          v. Restrictions apply to the assignment of governance rights as provided in  
15          section 10-32-32.
- 16        3. The following provisions govern a limited liability company unless modified in the  
17        articles of organization, a member-control agreement under section 10-32-50, or in  
18        the bylaws:
- 19          a. Governors serve for an indefinite term that expires at the next regular meeting  
20          of members as provided in section 10-32-72;
- 21          b. The compensation of governors is fixed by the board ~~of governors~~ as  
22          provided in section 10-32-74;
- 23          c. A certain method must be used for removal of governors as provided in  
24          section 10-32-78;
- 25          d. A certain method must be used for filling board ~~of governors~~ vacancies as  
26          provided in section 10-32-79;
- 27          e. If the board ~~of governors~~ fails to select a place for a board meeting, it must be  
28          held at the principal executive office as provided in subsection 1 of section  
29          10-32-80;
- 30          f. The notice of a board ~~of governors~~ meeting need not state the purpose of the  
31          meeting as provided in subsection 3 of section 10-32-80;

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- 1 g. A majority of the board of ~~governors~~ is a quorum for a board meeting as  
2 provided in section 10-32-82;
- 3 h. A committee consists of one or more individuals, who need not be governors,  
4 appointed by affirmative vote of a majority of the governors present as  
5 provided in subsection 2 of section 10-32-85;
- 6 i. The board may establish a special litigation committee as provided in section  
7 10-32-85;
- 8 j. The president and treasurer have specified duties, until the board of  
9 ~~governors~~ determines otherwise as provided in section 10-32-89;
- 10 k. Managers may delegate some or all of their duties and powers, if not  
11 prohibited by the board of ~~governors~~ from doing so as provided in section  
12 10-32-95;
- 13 l. Regular meetings of members need not be held, unless demanded by a  
14 member under certain conditions as provided in section 10-32-38;
- 15 m. In all instances when a specific minimum notice period has not otherwise  
16 been fixed by law, not less than ten days' notice is required for a meeting of  
17 members as provided in subsection 2 of section 10-32-40;
- 18 n. For a quorum at a members' meeting, there is required a majority of the  
19 voting power of the membership interests entitled to vote at the meeting as  
20 provided in section 10-32-44;
- 21 o. The board of ~~governors~~ may fix a date up to fifty days before the date of a  
22 members' meeting as the date for the determination of the members entitled  
23 to notice of and entitled to vote at the meeting as provided in section  
24 10-32-40.1;
- 25 p. Indemnification of certain persons is required as provided in section 10-32-99;
- 26 q. The board of ~~governors~~ may authorize, and the limited liability company may  
27 make, distributions not prohibited, limited, or restricted by an agreement as  
28 provided in subsection 1 of section 10-32-64; and
- 29 r. Members have no right to interim distributions except as provided through the  
30 bylaws or an act of the board of ~~governors~~ as provided in section 10-32-61.

- 1           4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of  
2 organization or a member-control agreement under section 10-32-50. The  
3 provisions in subdivisions b through f, h, i, j, k, l, m, n, and q may be included in the  
4 articles of organization, in a member-control agreement under section 10-32-50,  
5 or, in the bylaws:
- 6           a. The persons to serve as the first board ~~of governors~~ may be named in the  
7 articles of organization as provided in subsection 1 of section 10-32-69;
- 8           b. A manner for increasing or decreasing the number of governors may be  
9 provided as provided in section 10-32-70;
- 10          c. Additional qualifications for governors may be imposed as provided in section  
11 10-32-71;
- 12          d. Governors may be classified as provided in section 10-32-75;
- 13          e. The date, time, and place of board ~~of governors~~ meetings may be fixed as  
14 provided in subsection 1 of section 10-32-80;
- 15          f. Absent governors may be permitted to give written consent or opposition to a  
16 proposal as provided in section 10-32-81;
- 17          g. A larger than majority vote may be required for board ~~of governors~~ action as  
18 provided in section 10-32-83;
- 19          h. Authority to sign and deliver certain documents may be delegated to a  
20 manager or agent of the limited liability company other than the president as  
21 provided in section 10-32-89;
- 22          i. Additional managers may be designated as provided in section 10-32-88;
- 23          j. Additional powers, rights, duties, and responsibilities may be given to  
24 managers as provided in section 10-32-89;
- 25          k. A method for filling vacant offices may be specified as provided in  
26 subsection 3 of section 10-32-94;
- 27          l. The date, time, and place of regular member meetings may be fixed as  
28 provided in subsection 3 of section 10-32-38;
- 29          m. Certain persons may be authorized to call special meetings of members as  
30 provided in subsection 1 of section 10-32-39;

- 1 n. Notices of member meetings may be required to contain certain information  
2 as provided in subsection 3 of section 10-32-40;
- 3 o. A larger than majority vote may be required for member action as provided in  
4 section 10-32-42;
- 5 p. Voting rights may be granted in or pursuant to the articles of organization to  
6 persons who are not members as provided in subsection 3 of section  
7 10-32-40.1;
- 8 q. Limited liability company actions giving rise to dissenter rights may be  
9 designated as provided in subdivision d of subsection 1 of section 10-32-55;  
10 and
- 11 r. A governor's personal liability to the limited liability company or the limited  
12 liability company's members for monetary damages for breach of fiduciary  
13 duty as a governor may be eliminated or limited in the articles as provided in  
14 subsection 4 of section 10-32-86.

15 **SECTION 27. AMENDMENT.** Subsection 5 of section 10-32-10 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 17 5. A limited liability company that is ~~merged~~ the surviving organization in a merger  
18 ~~with another limited liability company or domestic or foreign corporation, or that is~~  
19 ~~organized by the reorganization of one or more limited liability companies or~~  
20 ~~domestic or foreign corporations~~ other organizations, or that acquires by sale,  
21 lease, or other disposition to or exchange with ~~a limited liability company~~ an  
22 organization all or substantially all of the assets of another ~~limited liability company~~  
23 ~~or domestic or foreign corporation~~ organization including its name, may have the  
24 same name, subject to the requirements of subsection 1, as that used in this state  
25 by any of the other ~~limited liability companies or domestic or foreign corporations~~  
26 organizations, if the ~~other limited liability company or domestic or foreign~~  
27 ~~corporation~~ organization whose name is sought to be used:
- 28 a. Was organized ~~or~~, incorporated, formed or registered under the laws of this  
29 state;
- 30 b. Is authorized to transact business or conduct activities in this state;

- 1           c. Holds a reserved name in the manner provided in section 10-19.1-14,  
2                   10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;  
3           d. Holds a fictitious name registered in the manner provided in chapter 45-11; or  
4           e. Holds a trade name registered in the manner provided in chapter 47-25.

5           **SECTION 28. AMENDMENT.** Section 10-32-11 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7           **10-32-11. Reserved name.**

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

29           **SECTION 29. AMENDMENT.** Subsection 1 of section 10-32-13 of the North Dakota  
30 Century Code is amended and reenacted as follows:

- 1           1. A limited liability company may change its registered office, change its registered  
2           agent, or state a change in the name of its registered agent, by filing with the  
3           secretary of state, along with the fees provided in section 10-32-150, a statement  
4           containing:
- 5           a. The name of the limited liability company;
  - 6           b. If the address of its registered office is to be changed, the new address of its  
7           registered office;
  - 8           c. If its registered agent is to be designated or changed, the name of its new  
9           registered agent;
  - 10          d. If the name of its registered agent is to be changed, the name of its registered  
11          agent as changed;
  - 12          e. A statement that the address of its registered office and the address of the  
13          business office of its registered agent, as changed, will be identical; and
  - 14          f. A statement that the change of registered office or registered agent was  
15          authorized by resolution approved by the board ~~of governors~~.

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

18           **10-32-15. Procedure for amendment before contribution.** Before any contribution is  
19 reflected in the required records of a limited liability company, the articles of organization may  
20 be amended pursuant to section 10-32-67 by the organizers or by the board ~~of governors~~. The  
21 articles of organization may also be amended by the board ~~of governors~~ to change or cancel a  
22 statement pursuant to subsection 6 of section 10-32-56 establishing or fixing the rights and  
23 preferences of a class or series of membership interests before any contribution pertaining to  
24 that class or series is reflected in the required records of the limited liability company by filing  
25 articles of amendment or a statement of cancellation, as appropriate, with the secretary of  
26 state.

27           **SECTION 31. AMENDMENT.** Subsection 6 of section 10-32-17 of the North Dakota  
28 Century Code is amended and reenacted as follows:

- 29           6. Divide the membership interests of the class into series and determine the  
30           designation of each series and the variations in the relative rights and preferences

1           between the membership interests of each series or authorize the board of  
2           governors to do so;

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

5           1. Whenever a plan of reorganization of a limited liability company has been  
6 confirmed by decree or order of a court of competent jurisdiction in proceedings for  
7 the reorganization of the limited liability company, pursuant to the provisions of any  
8 applicable statute of the United States relating to reorganization of limited liability  
9 companies, the articles may be amended, in the manner provided in this section, in  
10 as many respects as may be necessary to carry out the plan and to put it into  
11 effect, so long as the articles as amended contain only provisions which might be  
12 lawfully contained in original articles of organization at the time of making the  
13 amendment. In particular, and without limitation upon any general power of  
14 amendment, the articles may be amended to:

- 15           a. Change the limited liability company name, period of duration, or  
16           organizational purposes of the limited liability company.  
17           b. Repeal, alter, or amend the bylaws of the limited liability company.  
18           c. Change the preferences, limitations, relative rights in respect of all or any part  
19           of the membership interests of the limited liability company, and classify,  
20           reclassify, or cancel all or any part thereof.  
21           d. Authorize the issuance of bonds, debentures, or other obligations of the  
22           limited liability company, whether convertible into membership interests of any  
23           class or bearing warrants or other evidence of optional rights to purchase or  
24           subscribe for membership interests of any class, and fix the terms and  
25           conditions thereof.  
26           e. Constitute or reconstitute and classify or reclassify the board of ~~governors~~  
27           and appoint governors and managers in place of or in addition to all or any of  
28           the governors or managers then in office.

29           **SECTION 33. AMENDMENT.** Subsection 17 of section 10-32-23 of the North Dakota  
30 Century Code is amended and reenacted as follows:

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

4           **SECTION 34. AMENDMENT.** Section 10-32-36 of the North Dakota Century Code is  
5 amended and reenacted as follows:

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

11          **SECTION 35. AMENDMENT.** Section 10-32-37 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13          **10-32-37. Preemptive rights.**

14           1. To the extent allowed by section 9 of article XII of the Constitution of North Dakota,  
15                   a member of a limited liability company has the preemptive rights provided in this  
16                   section, unless denied or limited in the articles of organization, in a member-control  
17                   agreement, or by the board ~~of governors~~ pursuant to subdivision b of subsection 5  
18                   of section 10-32-56.

19           2. A preemptive right is the right of a member to make contributions of a certain  
20                   amount or to make a contribution allowance agreement specifying future  
21                   contributions of a certain amount before the limited liability company may accept  
22                   new contributions from other persons or to make contribution allowance  
23                   agreements with other persons.

24           3. A member has a preemptive right whenever the limited liability company proposes  
25                   to accept contributions from other persons, or to make contribution allowance  
26                   agreements with other persons, pertaining to membership interests of the same  
27                   series or class as the series or class owned by the member.

28           4. Unless otherwise provided in the articles of organization or a member-control  
29                   agreement, no preemptive rights pursuant to this section arise as to contributions  
30                   to be accepted from others or as to contribution allowance agreements to be made  
31                   with others when the contribution is:

- 1           a. To be made in a form other than money;
- 2           b. To be made or reflected pursuant to a plan of merger;
- 3           c. To be made or reflected pursuant to an employee or incentive benefit plan
- 4                 approved at a meeting by the affirmative vote of the owners of a majority of
- 5                 the voting power of all membership interests entitled to vote;
- 6           d. To be made pursuant to a previously made contribution allowance
- 7                 agreement; or
- 8           e. To be made or reflected pursuant to a plan of reorganization approved by a
- 9                 court of competent jurisdiction pursuant to a statute of this state or of the
- 10                 United States.
- 11         5. The extent to which each member may make a new contribution, or obtain the right
- 12             to make a new contribution under a contribution allowance agreement, by exercise
- 13             of a preemptive right as to any class or series is the ratio that the value of that
- 14             member's contributions, as reflected in the required records as pertaining to that
- 15             class or series before the contribution, bears to the total value of all members'
- 16             contributions reflected in the required records as pertaining to that class or series
- 17             before the new contribution.
- 18         6. A member may waive a preemptive right in writing. The waiver is binding upon the
- 19             member whether or not consideration has been given for the waiver. Unless
- 20             otherwise provided in the waiver, a waiver of preemptive rights is effective only for
- 21             the proposed contribution or contribution allowance agreement described in the
- 22             waiver.
- 23         7. When proposing to accept new contributions, or to make contribution allowance
- 24             agreements, with respect to which members have preemptive rights under this
- 25             section, the board of ~~governors~~ shall cause notice to be given to each member
- 26             entitled to preemptive rights. The notice must be given at least ten days before the
- 27             date by which the member must exercise a preemptive right and must contain:
- 28             a. The extent of the member's preemptive right, being:
- 29                 (1) In the case of a preemptive right to make a contribution, the amount of
- 30                 the contribution to be made; and

- 1                   (2) In the case of a preemptive right to make a contribution allowance  
2                   agreement, the amount of the contribution to be allowed under that  
3                   contribution allowance agreement;
- 4                   b. The method used to determine the extent of the member's preemptive right;
- 5                   c. The terms and conditions upon which the member may make a contribution  
6                   or make a contribution allowance agreement; and
- 7                   d. The time within which and the method by which the member must exercise  
8                   the right.
- 9                   8. If a member does not exercise preemptive rights to make a contribution or to make  
10                  a contribution allowance agreement, then for a period not exceeding one year after  
11                  the date fixed by the board ~~of governors~~ for the exercise of those preemptive rights  
12                  and to the extent of the preemptive rights not exercised, the board ~~of governors~~  
13                  may accept contributions or make contribution allowance agreements on terms no  
14                  less favorable to the limited liability company than those offered to the member.
- 15                  9. If the members of a limited liability company are entitled to cumulative voting in the  
16                  election of governors, no amendment to the articles of organization or a  
17                  member-control agreement which has the effect of denying, limiting, or modifying  
18                  the preemptive rights provided in this section may be adopted if the votes of a  
19                  proportion of the voting power sufficient to elect a governor at an election of the  
20                  entire board ~~of governors~~ under cumulative voting are cast against the  
21                  amendment.
- 22                  10. A denial or limitation of preemptive rights otherwise provided in this section does  
23                  not limit the power of a limited liability company to grant first refusal rights,  
24                  contribution allowance rights, or other rights to make contributions to the limited  
25                  liability company, to members, to persons who have entered into contribution  
26                  agreements, or to other persons before accepting contributions or before making  
27                  allowance agreements with any other person.

28                  **SECTION 36. AMENDMENT.** Subsections 2 and 3 of section 10-32-38 of the North  
29                  Dakota Century Code are amended and reenacted as follows:

- 30                  2. If a regular meeting of members has not been held within the earlier of six months  
31                  after the fiscal yearend of the corporation or fifteen months after its last meeting:

- 1           a. A member or members owning five percent or more of the voting power of all  
2           members entitled to vote may demand a regular meeting of members by  
3           written notice of demand given to the president or the secretary of the limited  
4           liability company.
- 5           b. Within thirty days after receipt of the demand by one of those managers, the  
6           board ~~of governors~~ shall cause a regular meeting of members to be called  
7           and held on notice no later than ninety days after receipt of the demand.
- 8           c. If the board ~~of governors~~ fails to cause a regular meeting to be called and  
9           held as required by this subsection, the member or members making the  
10          demand may call the regular meeting by giving notice as required by section  
11          10-32-40.
- 12          d. All necessary expenses of the notice and the meeting must be paid by the  
13          limited liability company.
- 14          3. A regular meeting, if any, must be held on the date and at the time and place fixed  
15          by, or in a manner authorized by the articles, a member-control agreement, or the  
16          bylaws, except a meeting called by or at the demand of a member pursuant to  
17          subsection 2 must be held in the county where the principal executive office of the  
18          limited liability company is located. To the extent authorized in the articles, a  
19          member-control agreement, or the bylaws, the board may determine that a regular  
20          meeting of the members shall be held solely by means of remote communication in  
21          accordance with subdivision a of subsection 2 of section 10-32-43.2.

22           **SECTION 37. AMENDMENT.** Subsections 2 and 3 of section 10-32-39 of the North  
23   Dakota Century Code are amended and reenacted as follows:

- 24          2. A member or members owning ten percent or more of the voting power of all  
25          membership interests entitled to vote may demand a special meeting of members  
26          by written notice of demand given to the president or secretary of the limited  
27          liability company and containing the purposes of the meeting.
- 28          a. Within thirty days after receipt of the demand by one of those managers, the  
29          board ~~of governors~~ shall cause a special meeting of members to be called  
30          and held on notice no later than ninety days after receipt of the demand, all at  
31          the expense of the limited liability company.

- 1           b. If the board ~~of governors~~ fails to cause a special meeting to be called and  
2           held as required by this subsection, the member or members making the  
3           demand may call the meeting by giving notice as required by section  
4           10-32-40.
- 5           c. All necessary expenses of the notice and the meeting must be paid by the  
6           limited liability company.
- 7           3. Special meetings must be held on the date and at the time and place fixed by the  
8           president, the board ~~of governors~~, or a person authorized by the articles, a  
9           member-control agreement, or the bylaws to call a meeting, except a special  
10          meeting called by or at the demand of a member or members pursuant to  
11          subsection 2 must be held in the county where the principal executive office is  
12          located. To the extent authorized in the articles, a member-control agreement, or  
13          the bylaws, the board may determine that a special meeting of the members shall  
14          be held solely by means of remote communication in accordance with  
15          subdivision a of subsection 2 of section 10-32-43.2.

16           **SECTION 38. AMENDMENT.** Subsection 3 of section 10-32-40 of the North Dakota  
17 Century Code is amended and reenacted as follows:

- 18          3. The notice:
- 19           a. In all instances when a specific minimum notice period has not otherwise  
20           been fixed by law, must be given at least ten days before the date of the  
21           meeting, or a shorter time provided in the articles of organization, a  
22           member-control agreement, or the bylaws, and not more than fifty days  
23           before the date of the meeting;
- 24           b. Must contain the date, time, and place of the meeting;
- 25           c. Must contain the information with respect to dissenters' rights required by  
26           subsection 2 of section 10-32-55, if applicable;
- 27           d. Must inform members if proxies are permitted at the meeting and, if so, state  
28           the procedure for appointing proxies;
- 29           e. Must contain a statement of the purpose of the meeting, in the case of a  
30           special meeting;
- 31           f. Must contain any other information:

- 1                   (1) Required by the articles of organization, any member-control  
2                   agreement, the bylaws, or this chapter; or  
3                   (2) Considered necessary or desirable by the board ~~of governors~~; and  
4           g. May contain any other information considered necessary or desirable by the  
5           person or persons calling the meeting.

6           **SECTION 39. AMENDMENT.** Section 10-32-40.1 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           **10-32-40.1. Voting rights.**

- 9           1. The board ~~of governors~~ may fix or authorize a manager to fix a date not more than  
10           fifty days, or a shorter time period provided in the articles of organization, a  
11           member-control agreement, or the bylaws, before the date of a meeting of  
12           members as the date for the determination of the owners of membership interests  
13           entitled to notice of and entitled to vote at the meeting. When a date is so fixed,  
14           only members on that date are entitled to notice of and permitted to vote at that  
15           meeting of members.
- 16           2. A determination of the owners of membership interests entitled to notice and to  
17           vote at a meeting of members is effective for an adjournment of the meeting unless  
18           the board ~~of governors~~ fixes a new date for determining the right to notice and to  
19           vote, which it must do if the meeting is adjourned to a date more than fifty days  
20           after the record date for determining members entitled to notice of the original  
21           meeting.
- 22           3. If a court orders a meeting adjourned to a date more than one hundred twenty  
23           days after the date fixed for the original meeting:  
24           a. It must provide the original record date for notice and voting continues in  
25           effect; or  
26           b. It may fix a new record date for notice and voting.
- 27           4. A resolution approved by the affirmative vote of a majority of the governors present  
28           may establish a procedure whereby a member may certify in writing to the limited  
29           liability company that all or a portion of the membership interest registered in the  
30           name of the member are held for the account of one or more beneficial owners.  
31           Upon receipt by the limited liability company of the writing, the persons specified

- 1 as beneficial owners, rather than the actual member, are deemed the members for  
2 the purposes specified in the writing.
- 3 5. Unless otherwise provided in the articles, in a member-control agreement, or by  
4 the board of ~~governors~~ under subsections 5 and 6 of section 10-32-56, members  
5 have voting power in proportion to the value of the contributions of the members as  
6 reflected in the required records.
- 7 6. The articles of organization or a member-control agreement may give or prescribe  
8 the manner of giving a creditor, securityholder, or other person a right to vote  
9 under this section.
- 10 7. Membership interests owned by two or more members may be voted by any one of  
11 them unless the limited liability company receives written notice from any one of  
12 them denying the authority of that person to vote those membership interests.
- 13 8. Except as provided in subsection 7, an owner of a membership interest entitled to  
14 vote may vote any portion of the membership interest in any way the member  
15 chooses. If a member votes without designating the proportion voted in a  
16 particular way, the member is considered to have voted all of the membership  
17 interest in that way.

18 **SECTION 40. AMENDMENT.** Section 10-32-43 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **10-32-43. Action without a meeting.**

- 21 ~~4.~~ An action required or permitted to be taken at a meeting of the members may be  
22 taken without a meeting by written action signed, or consented to by authenticated  
23 electronic communication, by all of the members entitled to vote on that action.
- 24 1. If ~~provided by~~ the articles or a member-control agreement so provide, any action  
25 may be taken by written action signed, or consented to by authenticated electronic  
26 communication, by the members who own voting power equal to the voting power  
27 that would be required to take the same action at a meeting of the members at  
28 which all members were present.
- 29 2. The written action is effective when signed, or consented to by authenticated  
30 electronic communication, by the required members, unless a different effective  
31 time is provided in the written action.



1                   ~~any means of remote communication through which the member, other~~  
2                   ~~participants, and all participants physically present at the meeting may~~  
3                   ~~simultaneously hear each other during the meeting. Participation in a~~  
4                   ~~meeting by that means constitutes presence at the meeting in person or by~~  
5                   ~~proxy if all the other requirements of section 10-32-48 are met, participate in a~~  
6                   ~~meeting of members held at a designated place.~~

7                   3. In any meeting of members held solely by means of remote communication under  
8                   subdivision a of subsection 2 or in any meeting of members held at a designated  
9                   place in which one or more members participate by means of remote  
10                   communication under subdivision b of subsection 2:

11                   a. The limited liability company shall implement reasonable measures:

12                   (1) To verify that each person deemed present and entitled to vote at the  
13                   meeting by means of remote communication is a member; and

14                   (2) To provide each member participating by means of remote  
15                   communication with a reasonable opportunity to participate in the  
16                   meeting, including an opportunity to:

17                   (a) Read or hear the proceedings of the meeting substantially  
18                   concurrently with those proceedings;

19                   (b) If allowed by the procedures governing the meeting, have the  
20                   member's remarks heard or read by other participants in the  
21                   meeting opportunity to; and

22                   (c) If otherwise entitled, vote on matters submitted to the members.

23                   b. Participation in a meeting by this means constitutes presence at the meeting  
24                   in person or by proxy of all if all of the other requirements of section 10-32-48  
25                   are met.

26                   4. With respect to notice to members:

27                   a. Any notice to members given by the limited liability company under any  
28                   provision of this chapter, the articles, a member-control agreement, or the  
29                   bylaws by a form of electronic communication consent to by the member to  
30                   whom the notice is given is effective when given. The notice is deemed  
31                   given:

- 1                   (1) If by facsimile communication, when directed to a telephone number at  
2                                 which the member has consented to receive notice;
- 3                   (2) If by electronic mail, when directed to an electronic mail address at  
4                                 which the member has consented to receive notice;
- 5                   (3) If by a posting on an electronic network on which the member has  
6                                 consented to receive notice, together with separate notice to the  
7                                 member of the specific posting, upon the later of:
- 8                                 (a) The posting; or  
9                                 (b) The giving of the separate notice; and
- 10                  (4) If by any other form of electronic communication by which the member  
11                                 has consented to receive notice, when directed to the member.
- 12                  b. An affidavit of the secretary, other authorized manager, or authorized agent of  
13                                 the limited liability company, that the notice has been given by a form of  
14                                 electronic communication is, in the absence of fraud, prima facie evidence of  
15                                 the facts stated in the affidavit.
- 16                  c. Consent by a member to notice given by electronic communication may be  
17                                 given in writing or by authenticated electronic communication. The limited  
18                                 liability company is entitled to rely on any consent so given until revoked by  
19                                 the member, provided that no revocation affects the validity of any notice  
20                                 given before receipt by the limited liability company of revocation of the  
21                                 consent.
- 22                  5. Any ballot, vote authorization, or consent submitted by electronic communication  
23                                 under this chapter may be revoked by the member submitting the ballot, vote,  
24                                 authorization, or consent so long as the revocation is received by a manager of the  
25                                 limited liability company at or before the meeting or before an action without a  
26                                 meeting is effective according to section 10-32-43.
- 27                  6. Waiver of notice by a member of a meeting by means of authenticated electronic  
28                                 communication ~~described in subsections 1 and 2~~ may be given in the manner  
29                                 provided in subsection 4 of section 10-32-40. Participation in a meeting by means  
30                                 of remote communication described in ~~subsections 1 and~~ subdivisions a and b of

1            subsection 2 is a waiver of notice of that meeting, except when the member  
2            objects ~~at~~:

3            a. At the beginning of the meeting to the transaction of business because the  
4            meeting is not lawfully called or convened; ~~or objects before~~

5            b. Before a vote on an item of business because the item may not lawfully be  
6            considered at the meeting and does not participate in the consideration of the  
7            item at that meeting.

8            **SECTION 42. AMENDMENT.** Subsection 1 of section 10-32-48 of the North Dakota  
9            Century Code is amended and reenacted as follows:

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

12           a. By filing with a manager authorized to tabulate votes a written appointment of  
13           a proxy ~~with a manager of the limited liability company at or before the~~  
14           ~~meeting at which the appointment is to be effective~~ which is signed by the  
15           member.

16           a. ~~A written appointment of a proxy may be signed by the member or authorized~~  
17           ~~by the member by transmission of a telegram, cablegram, or other means of~~  
18           ~~electronic transmission, provided the limited liability company has no reason~~  
19           ~~to believe that the telegram, cablegram, or other electronic transmission was~~  
20           ~~not authorized by the member.~~

21           b. By telephonic transmission or authenticated electronic communication to a  
22           manager authorized to tabulate votes, whether or not accompanied by written  
23           instructions of the member, of an appointment of a proxy.

24           (1) The telephonic transmission or authenticated electronic communication  
25           must set forth or be submitted with information from which it can be  
26           determined that the appointment is authorized by the member. If it is  
27           reasonably concluded that the telephonic transmission or authenticated  
28           electronic communication is valid, the inspectors of election or, if there  
29           are not inspectors, the other persons making that determination of  
30           validity shall specify the information upon which they relied to make that  
31           determination.

1                   (2) A proxy so appointed may vote on behalf of the member, or otherwise  
2                   participate, in a meeting by remote communication according to section  
3                   10-32-43.2, to the extent the member appointing the proxy would have  
4                   been entitled to participate by remote communication according to  
5                   section 10-32-43.2 if the member did not appoint the proxy.

6                   c. Any copy, facsimile telecommunication, or other reproduction of the original  
7                   writing or transmission may be substituted or used in lieu of the original  
8                   writing or transmission for any purpose for which the original transmission  
9                   could be used, if the copy, facsimile telecommunication, or other reproduction  
10                  is a complete and legible reproduction of the entire original writing or  
11                  transmission.

12                  e- d. An appointment of a proxy for membership interests owned jointly by two or  
13                  more members is valid if signed or ~~otherwise authorized~~ consented to by  
14                  authenticated electronic communication by any one of ~~them~~ the members,  
15                  unless the limited liability company receives from any one of those members  
16                  written notice or an authenticated electronic communication either denying  
17                  the authority of that person to appoint a proxy or appointing a different proxy.

18                  **SECTION 43. AMENDMENT.** Subsection 1 of section 10-32-50 of the North Dakota  
19 Century Code is amended and reenacted as follows:

20                  1. A member-control agreement relating to any phase or aspect of the business and  
21                  affairs of a limited liability company is valid as provided in subsection 2 and  
22                  enforceable as provided in subsection 3.

23                  a. A member-control agreement valid under subsection 2 may relate to, without  
24                  limitation, the:

25                         (1) Management of the limited liability company's business;

26                         (2) Declaration and payment of distributions;

27                         (3) Sharing of profits and losses;

28                         (4) Election of governors or managers;

29                         (5) Employment of members and others by the limited liability company;

30                         (6) Relations among members and persons who have signed contribution  
31                         agreements, including the termination of continued membership;

- 1                   (7)   Dissolution, termination, and liquidation of the limited liability company,  
2                                   including the continuation of the limited liability company's business  
3                                   through a successor organization or individual; and  
4                   (8)   Arbitration of disputes.
- 5           b.   If this chapter provides that a particular result may or must be obtained  
6                   through a provision in the articles of organization, other than a provision  
7                   required by subsection 1 of section 10-32-07 to be contained in the articles; in  
8                   the bylaws; or by an act of the board, the same result may be accomplished  
9                   through a member-control agreement valid under this section or through a  
10                   procedure established by a member-control agreement valid under this  
11                   section.
- 12           c.   A member-control agreement may:
- 13                   (1)   Allocate to the members authority ordinarily exercised by the board ~~of~~  
14                                   ~~governors~~;
- 15                   (2)   Allocate to the board ~~of governors~~ authority ordinarily exercised by the  
16                                   members; or
- 17                   (3)   Structure the governance of the limited liability company in any agreed  
18                                   fashion and may waive, in whole or in part, a member's dissenting  
19                                   rights under sections 10-32-54 and 10-32-55.

20           **SECTION 44. AMENDMENT.** Section 10-32-51 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22           **10-32-51. Required records and information.**

- 23           1.   A limited liability company shall keep at its principal executive office, or at another  
24                   place or places within the United States determined by the board ~~of governors~~:
- 25                   a.   A current list of the full name and last-known business, residence, or mailing  
26                                   address of each member, each governor, and the president;
- 27                   b.   A current list of the full name and last-known business, residence, or mailing  
28                                   address of each assignee of financial rights other than a secured party and a  
29                                   description of the rights assigned;
- 30                   c.   A copy of the articles of organization and all amendments to the articles;
- 31                   d.   Copies of any currently effective written bylaws;

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- 1 e. Copies of the limited liability company's federal, state, and local income tax
- 2 returns and reports, if any, for the three most recent years;
- 3 f. Financial statements required by section 10-32-52;
- 4 g. Records of all proceedings of members for the last three years;
- 5 h. Records of all proceedings of the board ~~of governors~~ for the last three years;
- 6 i. Reports made to members generally within the last three years;
- 7 j. Member-control agreements described in section 10-32-50;
- 8 k. A statement of all contributions accepted under subsection 3 of section
- 9 10-32-56 including for each contribution:
  - 10 (1) The identity of the member to whom the contribution relates;
  - 11 (2) The class or series to which the contribution pertains;
  - 12 (3) The amount of cash accepted by the limited liability company or
  - 13 promised to be paid to the limited liability company;
  - 14 (4) A description of any services rendered to or for the benefit of the limited
  - 15 liability company or promised to be rendered to or for the benefit of the
  - 16 limited liability company; and
  - 17 (5) The value accorded under subsection 4 of section 10-32-56 to:
    - 18 (a) Any other property transferred or promised to be transferred to
    - 19 the limited liability company; and
    - 20 (b) Any services rendered to or for the benefit of the limited liability
    - 21 company or promised to be rendered to or for the benefit of the
    - 22 limited liability company;
- 23 l. A statement of all contribution agreements made under section 10-32-58,
- 24 including for each contribution agreement:
  - 25 (1) The identity of the would-be contributor;
  - 26 (2) The class or series to which the future contribution pertains; and
  - 27 (3) As to each future contribution to be made, the same information as
  - 28 subdivision k requires for contributions already accepted;
- 29 m. A statement of all contribution allowance agreements made under section
- 30 10-32-59, including for each contribution allowance agreement:
  - 31 (1) The identity of the would-be contributor;

- 1                   (2)    The class or series to which the future contribution would pertain; and
- 2                   (3)    As to each future contribution allowed to be made, the same
- 3                                information as subdivision k requires for contributions already
- 4                                accepted;
- 5                   n.    An explanation of any restatement of value made under section 10-32-57;
- 6                   o.    Any written consents obtained from members under this chapter; and
- 7                   p.    A copy of agreements, contracts, or other arrangements or portions of them
- 8                                incorporated by reference under subsections 6 through 8 of section 10-32-56.
- 9                   2.    A member of a limited liability company has an absolute right, upon written
- 10                               demand, to examine and copy, in person or by a legal representative, at any
- 11                               reasonable time, and the limited liability company shall make available within ten
- 12                               days after receipt by a manager of the limited liability company of the written
- 13                               demand, all documents referred to in subsection 1.
- 14                   3.    A member of a limited liability company who has been a member for at least six
- 15                               months immediately preceding the member's demand or who is the holder of
- 16                               record of at least five percent of all membership interests of the limited liability
- 17                               company has a right, upon written demand, to examine and copy, in person or by a
- 18                               legal representative, other limited liability company records at any reasonable time
- 19                               only if the member demonstrates a proper purpose for the examination. A "proper
- 20                               purpose" is one reasonably related to the person's interest as a member of a
- 21                               limited liability company.
- 22                   4.    On application of the limited liability company, a court in this state may issue a
- 23                               protective order permitting the limited liability company to withhold portions of the
- 24                               records of proceedings of the board of ~~governors~~ for a reasonable period of time,
- 25                               not to exceed twelve months, in order to prevent premature disclosure of
- 26                               confidential information that would be likely to cause competitive injury to the
- 27                               limited liability company. A protective order may be renewed for successive
- 28                               reasonable periods of time, each not to exceed twelve months and in total not to
- 29                               exceed thirty-six months, for good cause shown. In the event a protective order is
- 30                               issued, the statute of limitations for any action that the member might bring as a
- 31                               result of information withheld automatically extends for the period of delay. If the

1 court does not issue a protective order with respect to any portion of the records of  
2 proceedings as requested by the limited liability company, it shall award  
3 reasonable expenses, including attorney's fees and disbursements, to the  
4 member. This subsection does not limit the right of a court to grant other  
5 protective orders or impose other reasonable restrictions on the nature of the  
6 limited liability company records that may be copied or examined under  
7 subsections 2 and 3 or the use or distribution of the records by the demanding  
8 member.

9 5. A member who has gained access under this section to any limited liability  
10 company record may not use or furnish to another for use the limited liability  
11 company record or a portion of the contents for any purpose other than a proper  
12 purpose. Upon application of the limited liability company, a court may issue a  
13 protective order or order other relief as may be necessary to enforce the provisions  
14 of this subsection.

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

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

1           **SECTION 45. AMENDMENT.** Subsection 1 of section 10-32-54 of the North Dakota  
2 Century Code is amended and reenacted as follows:

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

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

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

12           (2) Creates, alters, or abolishes a right in respect of the redemption of the  
13 membership interests, including a provision respecting a sinking fund  
14 for the redemption or repurchase of the membership interests;

15           (3) Alters or abolishes a preemptive right of the owner of the membership  
16 interests to make a contribution;

17           (4) Excludes or limits the right of a member to vote on a matter, or to  
18 cumulate votes, except as the right may be excluded or limited through  
19 the acceptance of contributions or the making of contribution  
20 agreements pertaining to membership interests with similar or different  
21 voting rights;

22           (5) Changes a member's right to resign or retire; or

23           (6) Establishes or changes the conditions for or consequences of  
24 expulsion;

25           b. A sale, lease, transfer, or other disposition of all or substantially all of the  
26 property and assets of the limited liability company, but not including a  
27 transaction permitted without member approval under section 10-32-108, a  
28 disposition in dissolution described in subsection 4 of section 10-32-113, a  
29 disposition pursuant to an order of a court, or a disposition for cash on terms  
30 requiring that all or substantially all of the net proceeds of disposition be

- 1 distributed to the members in accordance with the member's respective  
2 membership interests within one year after the date of disposition;
- 3 c. A plan of merger to which the limited liability company is a constituent  
4 organization;
- 5 d. A plan of exchange to which the limited liability company is a constituent  
6 organization as the organization whose ownership interests will be acquired  
7 by the acquiring organization; if the membership interests being acquired are  
8 entitled to be voted on the plan; or
- 9 e. Any other limited liability company action taken pursuant to a member vote  
10 with respect to which the articles of organization, a member-control  
11 agreement, the bylaws, or a resolution approved by the board ~~of governors~~  
12 directs that dissenting members may obtain payment for the dissenting  
13 members' membership interests.

14 **SECTION 46. AMENDMENT.** Subsection 4 of section 10-32-55 of the North Dakota  
15 Century Code is amended and reenacted as follows:

- 16 4. After the proposed action is approved by the board ~~of governors~~ and, if necessary,  
17 the members, the limited liability company shall send to all members who complied  
18 with subsection 3 and to all members entitled to dissent if no member vote was  
19 required, a notice that contains:
- 20 a. The address to which a demand for payment must be sent in order to obtain  
21 payment and the date by which the demand must be received;
- 22 b. A form to be used to certify the date on which the member acquired the  
23 membership interests and to demand payment; and
- 24 c. A copy of section 10-32-54 and this section.

25 **SECTION 47. AMENDMENT.** Section 10-32-56 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **10-32-56. Authorization, form, and acceptance of contributions.**

- 28 1. Subject to any restrictions in the articles of organization or a member-control  
29 agreement and only when authorized by the board ~~of governors~~ or pursuant to a  
30 member-control agreement, a limited liability company may accept contributions

- 1 under subsections 2 and 3, make contribution agreements under section 10-32-58,  
2 and make contribution allowance agreements under section 10-32-59.
- 3 2. ~~A person may make a contribution to a limited liability company by paying money~~  
4 ~~or transferring the ownership of an interest in property to the limited liability~~  
5 ~~company for rendering services to or for the benefit of the~~ Subject to subsection 3,  
6 a person may make a contribution to a limited liability company.
- 7 3. No purported contribution is to be treated or considered as a contribution, unless:  
8 a. The board of ~~governors~~ accepts the contribution on behalf of the limited  
9 liability company and in that acceptance describes the contribution and states  
10 the value being accorded to the contribution; and  
11 b. The fact of contribution and the contribution's accorded value are both  
12 reflected in the required records of the limited liability company.
- 13 4. The determinations of the board of ~~governors~~ as to the amount or fair value or the  
14 fairness to the limited liability company of the contribution accepted or to be  
15 accepted by the limited liability company or the terms of payment or performance,  
16 including under a contribution agreement in section 10-32-58, and a contribution  
17 allowance agreement in section 10-32-59, are presumed to be proper if they are  
18 made in good faith and on the basis of accounting methods, or a fair valuation or  
19 other method, reasonable in the circumstances. Governors who are present and  
20 entitled to vote, and who, intentionally or without reasonable investigation, fail to  
21 vote against approving a consideration that is unfair to the limited liability company,  
22 or overvalue property or services received or to be received by the limited liability  
23 company as a contribution, are jointly and severally liable to the limited liability  
24 company for the benefit of the then members who did not consent to and are  
25 damaged by the action, to the extent of the damages of those members. A  
26 governor against whom a claim is asserted pursuant to this subsection, except in  
27 case of knowing participation in a deliberate fraud, is entitled to contribution on an  
28 equitable basis from other governors who are liable under this subsection.
- 29 5. All the membership interests of a limited liability company must:

- 1           a. Be of one class, without series, unless a member-control agreement or the  
2           articles of organization establish, or authorize the board ~~of governors~~ to  
3           establish, more than one class or series within classes;
- 4           b. Be ordinary membership interests entitled to vote as provided in section  
5           10-32-40.1, and have equal rights and preferences in all matters not  
6           otherwise provided for by the board ~~of governors~~ unless and to the extent the  
7           articles of organization or a member-control agreement fixes the relative  
8           rights and preferences of different classes and series; and
- 9           c. Share profits and losses as provided in section 10-32-36 and be entitled to  
10          distributions as provided in sections 10-32-60 and 10-32-61 and subdivision c  
11          of subsection 1 of section 10-32-131.
- 12          6. Subject to any restrictions in the articles of organization or a member-control  
13          agreement, the power granted in subsection 5 may be exercised by a resolution  
14          approved by the affirmative vote of a majority of the directors present establishing  
15          a class or series, setting forth the designation of the class or series, and fixing the  
16          relative rights and preferences of the class or series established in the articles of  
17          organization, in a member-control agreement, or by resolution of the board ~~of~~  
18          governors.
- 19          7. A statement signed by a manager setting forth the name of the limited liability  
20          company and the text of the resolution and certifying the adoption of the resolution  
21          and the date of adoption must be filed with the secretary of state together with the  
22          fees provided in section 10-32-150 before the acceptance of any contributions for  
23          which the resolution creates rights or preferences not set forth in the articles of  
24          organization or a member-control agreement. The resolution is effective when the  
25          statement has been filed with the secretary of state unless the statement specifies  
26          a later effective date within thirty days of filing the statement with the secretary of  
27          state.
- 28          8. Without limiting the authority granted in this section, a limited liability company may  
29          have membership interests of a class or series:

- 1           a. Subject to the right of the limited liability company to redeem any of those
- 2                   membership interests at the price fixed for their redemption by the articles of
- 3                   organization or by the board ~~of governors~~;
- 4           b. Entitling the members to cumulative, partially cumulative, or noncumulative
- 5                   distributions;
- 6           c. Having preference over any class or series of membership interests for the
- 7                   payment of distributions of any or all kinds;
- 8           d. Convertible into membership interests of any other class or any series of the
- 9                   same or another class; or
- 10          e. Having full, partial, or no voting rights, except as provided in section 10-32-17.

11           **SECTION 48. AMENDMENT.** Subsection 2 of section 10-32-57 of the North Dakota  
12 Century Code is amended and reenacted as follows:

- 13           2. Whenever a limited liability company accepts a new contribution, the board ~~of~~
- 14                   ~~governors~~ shall restate, as required by this section, the value of all old
- 15                   contributions.

16           **SECTION 49. AMENDMENT.** Subsection 3 of section 10-32-58 of the North Dakota  
17 Century Code is amended and reenacted as follows:

- 18           3. A contribution agreement, whether made before or after the formation of a limited
- 19                   liability company, must be paid or performed in full at the time or times, or in the
- 20                   installments, if any, specified in the contribution agreement. In the absence of a
- 21                   provision in the contribution agreement specifying the time at which the
- 22                   contribution is to be paid or performed, the contribution must be paid or performed
- 23                   at the time or times determined by the board ~~of governors~~, but a call made by the
- 24                   board ~~of governors~~ for payment or performance on contributions must be uniform
- 25                   for all membership interests of the same class or for all membership interests of
- 26                   the same series.

27           **SECTION 50. AMENDMENT.** Subsection 1 of section 10-32-59 of the North Dakota  
28 Century Code is amended and reenacted as follows:

- 29           1. Subject to any restrictions in the articles of organization or a member-control
- 30                   agreement, a limited liability company may enter into contribution allowance

1                   agreements under the terms, provisions, and conditions fixed by the board of  
2                   governors or by a manager pursuant to board authorization.

3                   **SECTION 51. AMENDMENT.** Section 10-32-60 of the North Dakota Century Code is  
4 amended and reenacted as follows:

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

11                   **SECTION 52. AMENDMENT.** Section 10-32-61 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13                   **10-32-61. Interim distributions.** Except as provided in the articles of organization or a  
14 member-control agreement, a member is entitled to receive distributions before the limited  
15 liability company's termination only as specified in the bylaws or by the act of the board of  
16 ~~governors~~.

17                   **SECTION 53. AMENDMENT.** Subsection 1 of section 10-32-64 of the North Dakota  
18 Century Code is amended and reenacted as follows:

- 19                   1. The board of ~~governors~~ may authorize and cause the limited liability company to  
20                   make a distribution only if the board of ~~governors~~ determines, in accordance with  
21                   subsection 2, that the limited liability company will be able to pay its debts in the  
22                   ordinary course of business after making the distribution and the board of  
23                   ~~governors~~ does not know before the distribution is made that the determination  
24                   was or has become erroneous.
- 25                   a. The limited liability company may make the distribution if it is able to pay its  
26                   debts in the ordinary course of business after making the distribution.
- 27                   b. The effect of a distribution on the ability of the limited liability company to pay  
28                   its debts in the ordinary course of business after making the distribution must  
29                   be measured in accordance with subsection 3.
- 30                   c. The right of the board of ~~governors~~ to authorize, and the limited liability  
31                   company to make, distributions may be, prohibited, limited, or restricted by

1                   the articles of organization, a member-control agreement, the bylaws, or an  
2                   agreement.

3                   **SECTION 54. AMENDMENT.** Section 10-32-67 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5                   **10-32-67. Organization.**

- 6                   1. If the first board ~~of governors~~ is not named in the articles of organization, the  
7                   organizers may elect the first board ~~of governors~~ or may act as governors with all  
8                   of the powers, rights, duties, and liabilities of governors, until governors are elected  
9                   or until a contribution is accepted, whichever occurs first.
- 10                  2. After the issuance of the certificate of organization, the organizers or the governors  
11                  named in the articles of organization shall hold an organizational meeting at the  
12                  call of a majority of the organizers or of the governors named in the articles, or  
13                  take written action, for the purposes of transacting business and taking actions  
14                  necessary or appropriate to complete the organization of the limited liability  
15                  company, including, without limitation, amending the articles, electing governors,  
16                  adopting the bylaws, electing managers, adopting banking resolutions, authorizing  
17                  or ratifying the purchase, lease, or other acquisition of suitable space, furniture,  
18                  furnishings, supplies, and materials, approving a limited liability company seal,  
19                  adopting a fiscal year for the limited liability company, contracting to receive and  
20                  accept contributions, and making any appropriate tax elections.
- 21                  a. If a meeting is held, the person or persons calling the meeting shall give at  
22                  least three days' notice of the meeting to each organizer or governor named,  
23                  stating the date, time, and place of the meeting.
- 24                  b. Organizers and governors may waive notice of an organizational meeting in  
25                  the same manner a governor may waive notice of meetings of the board ~~of~~  
26                  governors under subsection 5 of section 10-32-80.

27                  **SECTION 55. AMENDMENT.** Subsections 2 and 3 of section 10-32-68 of the North  
28 Dakota Century Code are amended and reenacted as follows:

- 29                  2. Initial bylaws may be adopted pursuant to section 10-32-67 by the organizers or by  
30                  the first board ~~of governors~~. Unless reserved by the articles of organization or a  
31                  member-control agreement to the members, the power to adopt, amend, or repeal

1 the bylaws is vested in the board of ~~governors~~. The power of the board of  
2 ~~governors~~ is subject to the power of the members, exercisable in the manner  
3 provided in subsection 3, to adopt, amend, or repeal the bylaws adopted,  
4 amended, or repealed by the board of ~~governors~~. ~~After the adoption of the initial~~  
5 ~~bylaws, the board of governors may not adopt, amend, or repeal a bylaw provision~~  
6 ~~fixing a quorum for meetings of members, prescribing procedures for removing~~  
7 ~~governors or filling vacancies in the board of governors, or fixing the number of~~  
8 ~~governors or the governors' classifications, qualifications, or terms of office, but~~  
9 ~~may adopt or amend a bylaw provision to increase the number of governors.~~

10 3. Unless the articles or bylaws provide otherwise, members owning five percent or  
11 more of the voting power of the members entitled to vote may propose a resolution  
12 for action by the members to adopt, amend, or repeal the bylaws adopted,  
13 amended, or repealed by the board of ~~governors~~ and the resolution must set forth  
14 the provision or provisions proposed for adoption, amendment, or repeal, the  
15 limitations and procedures for submitting, considering, and adopting the resolution  
16 are the same as provided in subsections 2 through 4 of section 10-32-16, for  
17 amendment of the articles of organization. The articles or bylaws may impose  
18 different or additional requirements for the members to adopt, amend, or repeal the  
19 bylaws.

20 **SECTION 56. AMENDMENT.** Section 10-32-69 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **10-32-69. Board of ~~governors~~.**

23 1. The business and affairs of a limited liability company are to be managed by or  
24 under the direction of a board of ~~governors~~, subject to the provisions of  
25 subsection 2 and section 10-32-50. The first board of ~~governors~~ may be named in  
26 the articles of organization or in a member-control agreement or may be elected by  
27 the organizers pursuant to section 10-32-67 or by the members.

28 2. The owners of the membership interests entitled to vote for governors of the  
29 limited liability company may, by unanimous affirmative vote, take any action that  
30 this chapter requires or permits the board of ~~governors~~ to take. As to an action  
31 taken by the members in that manner:

- 1           a. The governors have no duties, liabilities, or responsibilities as governors  
2           under this chapter with respect to or arising from the action;
- 3           b. The members collectively and individually have all of the duties, liabilities, and  
4           responsibilities of governors under this chapter with respect to and arising  
5           from the action;
- 6           c. If the action relates to a matter required or permitted by this chapter or by any  
7           other law to be approved or adopted by the board ~~of governors~~, either with or  
8           without approval or adoption by the members, the action is considered to  
9           have been approved or adopted by the board ~~of governors~~; and
- 10          d. A requirement that an instrument filed with a governmental agency contain a  
11          statement that the action has been approved and adopted by the board ~~of~~  
12          ~~governors~~ is satisfied by a statement that the members have taken the action  
13          under this subsection.

14           **SECTION 57. AMENDMENT.** Section 10-32-70 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16           **10-32-70. Number.** The board ~~of governors~~ consists of one or more governors. The  
17 number of governors must be fixed by or in the manner provided in the articles of organization,  
18 a member-control agreement, or the bylaws. The number of governors may be increased or,  
19 subject to section 10-32-78, decreased at any time by amendment to or in the manner provided  
20 in the articles, a member-control agreement, or the bylaws.

21           **SECTION 58. AMENDMENT.** Section 10-32-73 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23           **10-32-73. Acts not void or voidable.** The expiration of a governor's term with or  
24 without the election of a qualified successor does not make prior or subsequent acts of the  
25 governors or the board ~~of governors~~ void or voidable.

26           **SECTION 59. AMENDMENT.** Section 10-32-74 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28           **10-32-74. Compensation.** Subject to any limitations in the articles, a member-control  
29 agreement, or the bylaws, the board ~~of governors~~ may fix the compensation of governors.

30           **SECTION 60. AMENDMENT.** Subsection 2 of section 10-32-76 of the North Dakota  
31 Century Code is amended and reenacted as follows:

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

6           **SECTION 61. AMENDMENT.** Subsection 2 of section 10-32-77 of the North Dakota  
7 Century Code is amended and reenacted as follows:

- 8           2. If a resignation is made effective at a later time, the board may fill the pending  
9           vacancy before the effective time if the board of governors provides that the  
10          successor does not take office until the effective time.

11          **SECTION 62. AMENDMENT.** Subsections 2 and 3 of section 10-32-78 of the North  
12 Dakota Century Code are amended and reenacted as follows:

- 13          2. A governor may be removed at any time, with or without cause, if:  
14           a. The governor was named by the board of governors to fill a vacancy;  
15           b. The members have not elected governors in the interval between the time of  
16           the appointment to fill a vacancy and the time of the removal; and  
17           c. A majority of the remaining governors present affirmatively votes to remove  
18           the governor.
- 19          3. Any one or all of the governors may be removed at any time, with or without cause,  
20          by the affirmative vote of the owners of a majority of the voting power of all  
21          membership interests entitled to vote at an election of governors.  
22           a. If less than the entire board of governors is to be removed, no one of the  
23           governors may be removed if the votes cast against the governor's removal  
24           which, if then cumulatively voted at the election of the entire board of  
25           governors, or if there be classes of governors at an election of the class of  
26           governors of which the governor is a part, would be sufficient to elect the  
27           governor.  
28           b. If a governor has been elected solely by the holders of a class or series of  
29           membership interests as stated in the articles, any member-control  
30           agreement, or the bylaws, then that governor may be removed only by the  
31           affirmative vote of the holders of a majority of the voting power of all

1 membership interests of that class or series entitled to vote at an election of  
2 that governor.

3 **SECTION 63. AMENDMENT.** Subsection 2 of section 10-32-78.1 of the North Dakota  
4 Century Code is amended and reenacted as follows:

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

7 **SECTION 64. AMENDMENT.** Subsection 1 of section 10-32-79 of the North Dakota  
8 Century Code is amended and reenacted as follows:

9 1. Unless different rules for filling vacancies are provided for in the articles, a  
10 member-control agreement, or the bylaws:

11 a. Vacancies on the board ~~of governors~~ resulting from the death, resignation,  
12 removal, or disqualification of a governor may be filled by the affirmative vote  
13 of a majority of the remaining governors, even though less than a quorum;  
14 and

15 b. Vacancies on the board ~~of governors~~ resulting from newly created  
16 governorships may be filled by the affirmative vote of a majority of the  
17 governors serving at the time of the increase.

18 **SECTION 65. AMENDMENT.** Section 10-32-80 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **10-32-80. Board ~~of governors~~ meetings.**

21 1. Meetings of the board ~~of governors~~ may be held from time to time as provided in  
22 the articles of organization, a member-control agreement, or the bylaws at any  
23 place within or without the state that the board ~~of governors~~ may select or by any  
24 means described in subsection 2.

25 a. If the articles, bylaws, or board ~~of governors~~ fails to select a place for a  
26 meeting, the meeting must be held at the principal executive office, unless the  
27 articles, a member-control agreement, or the bylaws provide otherwise.

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

30 c. Participation in a meeting by either of the means set forth in subdivision 2  
31 constitutes personal presence at the meeting.

- 1           2. ~~A board of governors~~ Any meeting among governors may be conducted by:
- 2           a. ~~A conference among governors using~~ Solely by any one or more means of
- 3           remote communication through which all of the governors may
- 4           ~~simultaneously hear~~ participate with each other during the ~~conference~~
- 5           ~~constitutes a board of governors~~ meeting, if:
- 6           (1) If the same notice is given of the ~~conference~~ meeting as would be
- 7           required by subsection 3 ~~for a meeting;~~ and if
- 8           (2) If the number of governors participating in the ~~conference~~ meeting is a
- 9           quorum at a meeting. ~~Participation in a meeting by this means~~
- 10           ~~constitutes personal presence at the meeting;~~ or
- 11           b. By ~~any~~ means of conference telephone or, if authorized by the board, by such
- 12           other means of remote communication, in each case, through which the
- 13           governor, other governors so participating, and all governors physically
- 14           present at the meeting may ~~simultaneously hear~~ participate with each other
- 15           during the meeting. ~~Participation in a meeting by this means~~ constitutes
- 16           ~~personal presence at the meeting.~~
- 17           3. Unless the articles of organization, a member-control agreement, or the bylaws
- 18           provide for a different time period, a governor may call a board meeting by giving
- 19           at least ten days' notice or, in the case of organizational meetings under
- 20           subsection 2 of section 10-32-67, at least three days' notice to all governors of the
- 21           date, time, and place of the meeting. The notice need not state the purpose of the
- 22           meeting unless the articles, a member-control agreement, or the bylaws otherwise
- 23           require.
- 24           4. If the date, time, and place of a board ~~of governors~~ meeting are provided in the
- 25           articles, a member-control agreement, or the bylaws, or announced at a previous
- 26           meeting of the board ~~of governors~~, notice is not required. Notice of an adjourned
- 27           meeting need not be given other than by announcement at the meeting at which
- 28           adjournment is taken.
- 29           5. A governor may waive notice of a meeting of the board ~~of governors~~. A waiver of
- 30           notice by a governor entitled to notice is effective whether given before, at, or after
- 31           the meeting, and whether given in writing, or by attendance. Attendance by a

1           governor at a meeting is a waiver of notice of that meeting, except when the  
2           governor objects at the beginning of the meeting to the transaction of business  
3           because the meeting is not lawfully called or convened and does not participate in  
4           the meeting after the objection.

5           **SECTION 66. AMENDMENT.** Section 10-32-81 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7           **10-32-81. Absent governors.** If the articles of organization, a member-control  
8 agreement, or the bylaws so provide, a governor may give advance written consent or  
9 opposition to a proposal to be acted on at a board ~~of governors~~ meeting. If the governor is not  
10 present at the meeting, consent or opposition to a proposal does not constitute presence for  
11 purposes of determining the existence of a quorum, but consent or opposition must be counted  
12 as the vote of a governor present at the meeting in favor of or against the proposal and must be  
13 entered in the minutes or other record of action at the meeting; if the proposal acted on at the  
14 meeting is substantially the same or has substantially the same effect as the proposal to which  
15 the governor has consented or objected.

16           **SECTION 67. AMENDMENT.** Section 10-32-83 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18           **10-32-83. Act of the board ~~of governors~~.** The board ~~of governors~~ shall take action  
19 by the affirmative vote of the greater of a majority of governors present at a duly held meeting  
20 at the time the action is taken or a majority of the minimum proportion or number of governors  
21 that would constitute a quorum for the transaction of business at a meeting, except if this  
22 chapter, a member-control agreement, or the articles require the affirmative vote of a larger  
23 proportion or number. If a member-control agreement or the articles require a larger proportion  
24 or number than is required by this chapter for a particular action, the member-control  
25 agreement or the articles control.

26           **SECTION 68. AMENDMENT.** Subsections 1 and 2 of section 10-32-84 of the North  
27 Dakota Century Code are amended and reenacted as follows:

28           1. An action required or permitted to be taken at a board ~~of governors~~ meeting may  
29 be taken by written action signed, or consented to by authenticated electronic  
30 communication, by all of the governors. If the articles or a member-control  
31 agreement so provide, any action, other than an action requiring member approval,

1            may be taken by written action signed, or consented to by authenticated electronic  
2            communication, by the number of governors which would be required to take the  
3            same action at a meeting of the board ~~of governors~~ at which all governors were  
4            present.

5            2. The written action is effective when signed, or consented to by authenticated  
6            electronic communication, by the required number of governors, unless a different  
7            effective time is provided in the written action.

8            **SECTION 69. AMENDMENT.** Subsections 1 and 3 of section 10-32-85 of the North  
9            Dakota Century Code are amended and reenacted as follows:

10           1. A resolution approved by the affirmative vote of a majority of the board ~~of~~  
11           ~~governors~~ may establish committees having the authority of the board in the  
12           management of the business of the limited liability company only to the extent  
13           provided in the resolution. Committees may include a special litigation committee  
14           consisting of one or more independent governors or other independent persons to  
15           consider legal rights or remedies of the limited liability company and whether those  
16           rights and remedies should be pursued. Committees other than special litigation  
17           committees are subject at all times to the direction and control of the board ~~of~~  
18           ~~governors~~.

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

22           **SECTION 70. AMENDMENT.** Subsections 2 and 4 of section 10-32-86 of the North  
23           Dakota Century Code are amended and reenacted as follows:

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

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

- 1           b. Counsel, public accountants, or other persons as to matters that the governor  
2                   reasonably believes are within the person's professional or expert  
3                   competence; or
- 4           c. A committee of the board ~~of governors~~ upon which the governor does not  
5                   serve, duly established in accordance with section 10-32-85, as to matters  
6                   within its designated authority, if the governor reasonably believes the  
7                   committee to merit confidence.
- 8           4. A governor who is present at a meeting of the board ~~of governors~~ when an action  
9                   is approved by the affirmative vote of a majority of the governors present is  
10                  presumed to have assented to the action approved, unless the governor:
- 11           a. Objects at the beginning of the meeting to the transaction of business  
12                   because the meeting is not lawfully called or convened and does not  
13                   participate in the meeting after the objection, in which case the governor is  
14                   not considered to be present at the meeting for any purpose of this chapter;
- 15           b. Votes against the action at the meeting; or
- 16           c. Is prohibited from voting on the action by the articles; by the bylaws; as the  
17                   result of the decision to approve, ratify, or authorize a transaction pursuant to  
18                   section 10-32-87; or by a conflict of interest policy adopted by the board.

19           **SECTION 71. AMENDMENT.** Subsections 1 and 2 of section 10-32-87 of the North  
20           Dakota Century Code are amended and reenacted as follows:

- 21           1. A contract or other transaction between a limited liability company and one or more  
22                   of its governors or a member of the family of the governor; a director of a related  
23                   organization or a member of the family of a director of a related organization; or an  
24                   organization in or of which the limited liability company's governor or a member of  
25                   the family of the governor is a governor, director, manager, officer, or legal  
26                   representative or has a material financial interest is not void or voidable because  
27                   the governor or the other organization is a party or because the governor is  
28                   present at the meeting of the members or the board ~~of governors~~ or a committee  
29                   at which the contract or transaction is authorized, approved, or ratified, if at least  
30                   one of the requirements of subsection 2 is satisfied.
- 31           2. The contract or transaction described in subsection 1 is not void or voidable if:

- 1           a. The contract or transaction was, and the person asserting the validity of the  
2           contract or transaction sustains the burden of establishing that the contract or  
3           transaction was, fair and reasonable as to the limited liability company at the  
4           time it was authorized, approved, or ratified;
- 5           b. The material facts as to the contract or transaction and as to the governor's  
6           interest are fully disclosed or known to the members, whether ~~or not~~ entitled  
7           to vote, and the contract or transaction is approved in good faith by:
- 8                 (1) The owners of two-thirds of the voting power of membership interests  
9                 entitled to vote which are owned by persons other than the interested  
10                governor; or
- 11               (2) The unanimous affirmative vote of all members, whether ~~or not~~ entitled  
12                to vote;
- 13           c. The material facts as to the contract or transaction and as to the governor's  
14           interest are fully disclosed or known to the board ~~of governors~~ or a committee,  
15           and the board ~~of governors~~ or committee authorizes, approves, or ratifies the  
16           contract or transaction in good faith by a majority of the board ~~of governors~~ or  
17           committee, but the interested governor is not counted in determining the  
18           presence of a quorum and may not vote; or
- 19           d. The contract or transaction is a distribution described in subsection 1 of  
20           section 10-32-64 or a merger or exchange described in subsection 1 or 2 of  
21           section 10-32-100.

22           **SECTION 72. AMENDMENT.** Section 10-32-88 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24           **10-32-88. Managers.** A limited liability company must consist of one or more  
25 individuals eighteen years of age or more, exercising the functions of the offices, however  
26 designated, of president and treasurer and may have one or more vice presidents and a  
27 secretary, as may be provided in the bylaws. Any other managers, assistant managers, and  
28 agents, as necessary, may be elected or appointed by the board ~~of governors~~ or chosen in  
29 such other manner as may be provided in the bylaws.

30           **SECTION 73. AMENDMENT.** Section 10-32-89 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1           **10-32-89. Duties of managers and agents.** Unless otherwise provided by the articles  
2 of organization, a member-control agreement, the bylaws, or a resolution adopted by the board  
3 ~~of governors~~ which is not inconsistent with the articles, a member-control agreement, or the  
4 bylaws, the managers have the following duties:

- 5           1. The president shall:
- 6               a. Have general active management for the business of the limited liability  
7                company;
- 8               b. When present, preside at all meetings of the board ~~of governors~~ and of the  
9                members;
- 10              c. See that all orders and resolutions of the board ~~of governors~~ are carried into  
11              effect;
- 12              d. Sign and deliver in the name of the limited liability company any deeds,  
13              mortgages, bonds, contracts, or other instruments pertaining to the business  
14              of the limited liability company, except if the authority to sign and deliver is  
15              required by law to be exercised by another person or is expressly delegated  
16              by the articles, a member-control agreement, the bylaws, or the board ~~of~~  
17              ~~governors~~ to some other manager or agent of the limited liability company;
- 18              e. Maintain records of and, whenever necessary, certify all proceedings of the  
19              board ~~of governors~~ and members; and
- 20              f. Perform other duties prescribed by the board ~~of governors~~.
- 21           2. The vice president, if any, or if there is more than one, the vice presidents in the  
22           order determined by the board ~~of governors~~ shall:
- 23               a. In the absence or disability of the president, perform the duties and exercise  
24                the powers of the president; and
- 25               b. Perform other duties and have other powers as the board ~~of governors~~ may  
26                from time to time prescribe.
- 27           3. The treasurer shall:
- 28               a. Keep accurate financial records for the limited liability company;
- 29               b. Deposit all money, drafts, and checks in the name of and to the credit of the  
30                limited liability company in the banks and depositories designated by the  
31                board ~~of governors~~;

- 1 c. Endorse for deposit all notes, checks, and drafts received by the limited  
2 liability company as ordered by the board ~~of governors~~, making proper  
3 vouchers for them;
- 4 d. Disburse limited liability company funds and issue checks and drafts in the  
5 name of the limited liability company, as ordered by the board ~~of governors~~;
- 6 e. Give to the president and the board ~~of governors~~, whenever requested, an  
7 account of all transactions by the treasurer and of the financial condition of  
8 the limited liability company; and
- 9 f. Perform other duties prescribed by the board ~~of governors~~ or by the  
10 president.
- 11 4. The secretary, if any, shall:
  - 12 a. Attend all meetings of the board ~~of governors~~, all meetings of the members,  
13 and, when required, all meetings of standing committees;
  - 14 b. Record all proceedings of the meetings;
  - 15 c. Give, or cause to be given, notice of all meetings of the members and  
16 meetings of the board ~~of governors~~; and
  - 17 d. Perform other duties prescribed by the board ~~of governors~~.
- 18 5. Any other managers and agents of the limited liability company, as between the  
19 managers and agents and the limited liability company, shall perform the duties in  
20 the management of the limited liability company as may be provided in the articles,  
21 a member-control agreement, or the bylaws, or as may be determined by  
22 resolution of the board not inconsistent with the articles, a member-control  
23 agreement, or the bylaws.

24 **SECTION 74. AMENDMENT.** Section 10-32-92 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **10-32-92. Managers deemed elected.** In the absence of an election or appointment  
27 of managers by the board ~~of governors~~, the individual or individuals exercising the functions of  
28 the principal managers of the limited liability company are deemed to have been elected to  
29 those offices.

30 **SECTION 75. AMENDMENT.** Subsection 3 of section 10-32-94 of the North Dakota  
31 Century Code is amended and reenacted as follows:

1           3. A vacancy in an office because of death, resignation, removal, disqualification, or  
2           other cause, may, or in the case of the president or treasurer, must be filled for the  
3           unexpired portion of the term in the manner provided in the articles, a  
4           member-control agreement, or the bylaws; in the manner determined by the board  
5           of ~~governors~~; or pursuant to section 10-32-92.

6           **SECTION 76. AMENDMENT.** Section 10-32-95 of the North Dakota Century Code is  
7           amended and reenacted as follows:

8           **10-32-95. Delegation.** Unless prohibited by the articles, a member-control agreement,  
9           the bylaws, or by a resolution adopted by the board of ~~governors~~, a manager elected or  
10          appointed by the board of ~~governors~~ may, without the approval of the board, delegate some or  
11          all of the duties and powers of an office to other individuals. A manager who delegates the  
12          duties or powers of an office remains subject to the standard of conduct for a manager with  
13          respect to the discharge of all duties and powers so delegated.

14          **SECTION 77. AMENDMENT.** Subsection 1 of section 10-32-97 of the North Dakota  
15          Century Code is amended and reenacted as follows:

16          1. A limited liability company may lend money to, guarantee an obligation of, become  
17          a surety for, or otherwise financially assist a person, if the transaction, or a class of  
18          transactions to which the transaction belongs, is approved by the affirmative vote  
19          of a majority of the governors present and:  
20          a. Is in the usual and regular course of business of the limited liability company;  
21          b. Is with, or for the benefit of, a related organization, an organization in which  
22          the limited liability company has a financial interest, an organization with  
23          which the limited liability company has a relationship in the usual and regular  
24          course of its business, or an organization to which the limited liability  
25          company has the power to make donations any of which relationships  
26          constitute consideration sufficient to make the loan, guarantee, suretyship, or  
27          other financial assistance so approved enforceable against the limited liability  
28          company;  
29          c. Is with, or for the benefit of, a member who provides services to the limited  
30          liability company, or a manager or other employee of the limited liability  
31          company or a subsidiary, including a member, manager, or employee who is

1 a governor of the limited liability company or a subsidiary, and may  
2 reasonably be expected, in the judgment of the board ~~of governors~~, to benefit  
3 the limited liability company; or

4 d. Whether or not separate consideration has been promised to the limited  
5 liability company, has been approved by the owners of two-thirds of the voting  
6 power of persons other than the interested person or persons.

7 **SECTION 78. AMENDMENT.** Section 10-32-99 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9 **10-32-99. Indemnification.**

10 1. For purposes of this section:

11 a. "Limited liability company" includes a domestic or foreign limited liability  
12 company that was the predecessor of the limited liability company referred to  
13 in this section in a merger or other transaction in which the predecessor's  
14 existence ceased upon consummation of the transaction.

15 b. "Official capacity" means:

16 (1) With respect to a governor, the position of governor in a limited liability  
17 company;

18 (2) With respect to a person other than a governor, the elective or  
19 appointive office or position held by a manager, member of a  
20 committee of the board ~~of governors~~, the employment relationship  
21 undertaken by an employee, agent of the limited liability company, or  
22 the scope of the services provided by members of the limited liability  
23 company who provide services to the limited liability company; and

24 (3) With respect to a governor, manager, member, employee, or agent of  
25 the limited liability company who, while a governor, manager, member,  
26 or employee of the limited liability company, is or was serving at the  
27 request of the limited liability company or whose duties in that position  
28 involve or involved service as a governor, director, manager, officer,  
29 member, partner, trustee, employee, or agent of another organization  
30 or employee benefit plan, the position of that person as a governor,  
31 director, manager, officer, member, partner, trustee, employee, or

- 1 agent, as the case may be, of the other organization or employee  
2 benefit plan.
- 3 c. "Proceeding" means a threatened, pending, or completed civil, criminal,  
4 administrative, arbitration, or investigative proceeding, including a proceeding  
5 by or in the right of the limited liability company.
- 6 d. "Special legal counsel" means counsel who has not represented the limited  
7 liability company or a related organization, or a governor, manager, member  
8 of a committee of the board of governors, employee, or agent whose  
9 indemnification is in issue.
- 10 2. Subject to the provisions of subsection 5, a limited liability company shall indemnify  
11 a person made or threatened to be made a party to a proceeding by reason of the  
12 former or present official capacity of the person against judgments, penalties,  
13 fines, including, without limitation, excise taxes assessed against the person with  
14 respect to an employee benefit plan, settlements, and reasonable expenses,  
15 including attorney's fees and disbursements, incurred by the person in connection  
16 with the proceeding, if, with respect to the acts or omissions of the person  
17 complained of in the proceeding, the person:
- 18 a. Has not been indemnified by another organization or employee benefit plan  
19 for the same judgments, penalties, fines, including, without limitation, excise  
20 taxes assessed against the person with respect to an employee benefit plan,  
21 settlements, and reasonable expenses, including attorney's fees and  
22 disbursements, incurred by the person in connection with the proceeding with  
23 respect to the same acts or omissions;
- 24 b. Acted in good faith;
- 25 c. Received no improper personal benefit and section 10-32-87, if applicable,  
26 has been satisfied;
- 27 d. In the case of a criminal proceeding, had no reasonable cause to believe the  
28 conduct was unlawful; and
- 29 e. In the case of acts or omissions occurring in the official capacity described in  
30 paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that  
31 the conduct was in the best interests of the limited liability company, or in the

1 case of acts or omissions occurring in the official capacity described in  
2 paragraph 3 of subdivision b of subsection 1, reasonably believed that the  
3 conduct was not opposed to the best interests of the limited liability company.  
4 If the person's acts or omissions complained of in the proceeding relate to  
5 conduct as a director, officer, trustee, employee, or agent of an employee  
6 benefit plan, the conduct is not considered to be opposed to the best interests  
7 of the limited liability company if the person reasonably believed that the  
8 conduct was in the best interests of the participants or beneficiaries of the  
9 employee benefit plan.

10 3. The termination of a proceeding by judgment, order, settlement, conviction, or  
11 upon a plea of nolo contendere or its equivalent does not, of itself, establish that  
12 the person did not meet the criteria set forth in subsection 2.

13 4. Subject to the provisions of subsection 5, if a person is made or threatened to be  
14 made a party to a proceeding, the person is entitled, upon written request to the  
15 limited liability company, to payment or reimbursement by the limited liability  
16 company of reasonable expenses, including attorney's fees and disbursements,  
17 incurred by the person in advance of the final disposition of the proceeding:

18 a. Upon receipt by the limited liability company of a written affirmation by the  
19 person of a good-faith belief that the criteria for indemnification set forth in  
20 subsection 2 have been satisfied and a written undertaking by the person to  
21 repay all amounts so paid or reimbursed by the limited liability company, if it is  
22 ultimately determined that the criteria for indemnification have not been  
23 satisfied; and

24 b. After a determination that the facts then known to those making the  
25 determination would not preclude indemnification under this section.

26 The written undertaking required by subdivision a is an unlimited general obligation  
27 of the person making it, but need not be secured and must be accepted without  
28 reference to financial ability to make the repayment.

29 5. The articles of organization, a member-control agreement, or the bylaws may  
30 prohibit indemnification or advances of expenses otherwise required by this  
31 section or may impose conditions on indemnification or advances of expenses in

- 1 addition to the conditions contained in subsections 2 through 4 including, without  
2 limitation, monetary limits on indemnification or advances of expenses, if the  
3 conditions apply equally to all persons or to all persons within a given class. A  
4 prohibition or limit on indemnification or advances may not apply to or affect the  
5 right of a person to indemnification or advances of expenses with respect to any  
6 acts or omissions of the person occurring before the effective date of a provision in  
7 the articles of organization, or a member-control agreement, or the date of  
8 adoption of a provision in the bylaws establishing the prohibition or limit on  
9 indemnification or advances.
- 10 6. This section does not require, or limit the ability of, a limited liability company to  
11 reimburse expenses, including attorney's fees and disbursements, incurred by a  
12 person in connection with an appearance as a witness in a proceeding at a time  
13 when the person has not been made or threatened to be made a party to a  
14 proceeding.
- 15 7. All indemnification determinations must be made:
- 16 a. By the board ~~of governors~~ by a majority of a quorum. Governors who are, at  
17 the time, parties to the proceeding are not counted for determining either a  
18 majority or the presence of a quorum;
- 19 b. If a quorum under subdivision a cannot be obtained, by a majority of a  
20 committee of the board ~~of governors~~, consisting solely of two or more  
21 governors not at the time parties to the proceeding, duly designated to act in  
22 the matter by a majority of the full board ~~of governors~~, including governors  
23 who are parties;
- 24 c. If a determination is not made under subdivision a or b, by special legal  
25 counsel, selected either by a majority of the board ~~of governors~~ or a  
26 committee by vote pursuant to subdivision a or b or, if the requisite quorum of  
27 the full board ~~of governors~~ cannot be obtained and the committee cannot be  
28 established, by a majority of the full board ~~of governors~~, including governors  
29 who are parties;

- 1           d. If a determination is not made under subdivisions a through c, by the  
2           affirmative vote of the members required by section 10-32-42, other than the  
3           members who are a party to the proceeding; or
- 4           e. If an adverse determination is made under subdivisions a through d or under  
5           subsection 8, or if no determination is made under subdivisions a through d or  
6           under subsection 8 within sixty days after the later to occur of the termination  
7           of a proceeding; or a written request for indemnification to the limited liability  
8           company; or a written request for an advance of expenses, as the case may  
9           be, by a court in this state, which may be the same court in which the  
10          proceeding involving the person's liability took place, upon application of the  
11          person and any notice the court requires. The person seeking indemnification  
12          or payment or reimbursement of expenses pursuant to this clause has the  
13          burden of establishing that the person is entitled to indemnification or  
14          payment or reimbursement of expenses.
- 15        8. With respect to a person who is not, and was not at the time of the acts or  
16        omissions complained of in the proceedings, a governor, manager, or person  
17        possessing, directly or indirectly, the power to direct or cause the direction of the  
18        management or policies of the limited liability company, the determination whether  
19        indemnification of this person is required because the criteria set forth in  
20        subsections 2 and 3 have been satisfied and whether this person is entitled to  
21        payment or reimbursement of expenses in advance of the final disposition of a  
22        proceeding as provided in subsection 4 may be made by an annually appointed  
23        committee of the board of ~~governors~~, having at least one member who is a  
24        governor. The committee shall report at least annually to the board of ~~governors~~  
25        concerning its actions.
- 26        9. A limited liability company may purchase and maintain insurance on behalf of a  
27        person in that person's official capacity against any liability asserted against and  
28        incurred by the person in or arising from that capacity, whether or not the limited  
29        liability company would have been required to indemnify the person against the  
30        liability under the provisions of this section.

1           10. A limited liability company that indemnifies or advances expenses to a person in  
2           accordance with this section in connection with a proceeding by or on behalf of the  
3           limited liability company shall report to the members in writing the amount of the  
4           indemnification or advance and to whom and on whose behalf it was paid not later  
5           than the next meeting of members as part of the annual financial statements  
6           furnished to members pursuant to section 10-32-52 covering the period when the  
7           indemnification or advance was paid or accrued under the accounting method of  
8           the limited liability company reflected in the financial statements.

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

12          **SECTION 79. AMENDMENT.** Section 10-32-104 of the North Dakota Century Code is  
13          amended and reenacted as follows:

14          **10-32-104. Merger of subsidiary into parent.**

15          1. A parent owning at least ninety percent of the outstanding ownership interests of  
16          each class and series of a subsidiary directly, or indirectly through related  
17          ~~corporations or limited liability companies~~ organizations other than classes or  
18          series that absent this section would otherwise not be entitled to vote on the  
19          merger:

20           a. May merge the subsidiary into the parent; or may merge the subsidiary into  
21           any other subsidiary at least ninety percent of the outstanding ownership  
22           interest of each class and series of which is owned by the parent directly, or  
23           indirectly through related ~~corporations or limited liability companies~~  
24           organizations other than classes or series that, absent this section, would  
25           otherwise not be entitled to vote on the merger, without a vote of the owners  
26           of the parent or any subsidiary; or

27           b. May merge the parent, or the parent and one or more subsidiaries, into one of  
28           the subsidiaries under this section.

29          2. A resolution approved by the directors of the parent as required by section  
30          10-19.1-46 or by the governors of the parent present as required by section  
31          10-32-83 must set forth a plan of merger which contains:

- 1           a. The name of the subsidiary or subsidiaries, the name of the parent, and the  
2           name of the surviving constituent organization;
- 3           b. The manner and basis of converting the ownership interests of the subsidiary  
4           into ownership interests of the parent or of another organization or, in whole  
5           or in part, into money or other property;
- 6           c. If the parent is a constituent organization but is not the surviving constituent  
7           organization in the merger, a provision for the pro rata issuance of ownership  
8           interests of the surviving constituent organization to the owners of ownership  
9           interests of the parent on surrender of any ownership interests of the parent;  
10          and
- 11          d. If the surviving constituent organization is a subsidiary, a statement of any  
12          amendments to the articles of the surviving constituent organization that will  
13          be part of the merger.
- 14          3. If the parent is a constituent organization and is the surviving organization in the  
15          merger, it may change its limited liability company name, without a vote of its  
16          owners, by the inclusion of a provision to that effect in the resolution of merger  
17          setting forth the plan of merger that is approved by the affirmative vote of the board  
18          members of the parent present. Upon the effective date of the merger, the name  
19          of the parent must be changed.
- 20          4. If the parent is a constituent organization but is not the surviving constituent  
21          organization in a merger, the resolution is not effective unless the resolution is also  
22          approved by the affirmative vote of the holders of a majority of the voting power of  
23          all ownership interests of the parent entitled to vote at a regular or special meeting  
24          held in accordance with section 10-19.1-98 if the parent is a corporation, section  
25          10-32-102 if the parent is a limited liability company, or in accordance with the laws  
26          of the jurisdiction under which the parent is incorporated or organized if the parent  
27          is a foreign corporation or foreign limited liability company.
- 28          5. A Notice of the action, including a copy of the plan of merger must be mailed given  
29          to each owner, other than the parent, of each subsidiary that is a constituent  
30          organization to the merger before, or within ten days after, the effective date of the  
31          merger.

- 1           6. Articles of merger must be prepared which contain:
- 2           a. The plan of merger;
- 3           b. The number of outstanding ownership interests of each class and series of
- 4           the subsidiary that is a constituent organization in the merger, other than the
- 5           classes or series that, absent this section, would otherwise not be entitled to
- 6           vote on the merger, and the number of ownership interests of each class and
- 7           series of the subsidiary or subsidiaries, other than the classes or series that,
- 8           absent this section, would otherwise not be entitled to vote on the merger,
- 9           owned by the parent directly or indirectly, through related constituent
- 10           organizations; and
- 11           c. ~~The date a copy of the plan of merger was mailed to the owners, other than~~
- 12           ~~the parent, of each subsidiary that is a constituent organization in the merger;~~
- 13           and
- 14           d. A statement that the plan of merger has been approved by the parent under
- 15           this section.
- 16           7. ~~Within thirty days after a copy of the plan of merger is mailed to the owners of each~~
- 17           ~~subsidiary that is a constituent organization to the merger, or upon waiver of the~~
- 18           ~~mailing by the owners of all outstanding ownership interests of each subsidiary that~~
- 19           ~~is a constituent organization to the merger, the~~ The articles of merger must be
- 20           signed on behalf of the parent and filed with the secretary of state, together with
- 21           the fees provided in section 10-32-150.
- 22           8. The secretary of state shall issue a certificate of merger to the surviving constituent
- 23           organization in the merger or the surviving constituent organization's legal
- 24           representative. The certificate must contain the effective date of merger.
- 25           9. If all of the ownership interests of one or more domestic subsidiaries that are a
- 26           constituent organization to a merger under this section are not owned by the
- 27           parent directly, or indirectly through related constituent organizations, immediately
- 28           before the merger, the owners of each domestic subsidiary have dissenter's rights
- 29           under section 10-19.1-87 or under section 10-32-54, without regard to
- 30           subsection 3 of section 10-19.1-88 or to subsection 2 of section 10-32-54, and
- 31           under section 10-19.1-88 or 10-32-55. If the parent is a constituent organization

1 but is not the surviving constituent organization in the merger, and the articles of  
2 incorporation or articles of organization of the surviving constituent organization  
3 immediately after the merger differ from the articles of incorporation or articles of  
4 organization of the parent immediately before the merger in a manner that would  
5 entitle an owner of the parent to dissenter's rights under subsection 1 of section  
6 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54 if the articles  
7 of incorporation or articles of organization of the surviving constituent organization  
8 constitute an amendment to the articles of incorporation or articles of organization  
9 of the parent, that owner of the parent has dissenter's rights as provided under  
10 section 10-19.1-87 or under section 10-32-54. Except as provided in this  
11 subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected  
12 under this section.

- 13 10. A merger among a parent and one or more subsidiaries or among two or more  
14 subsidiaries of a parent may be accomplished under sections 10-32-101 through  
15 10-32-103 instead of this section, in which case this section does not apply.

16 **SECTION 80. AMENDMENT.** Subsections 1 and 2 of section 10-32-108 of the North  
17 Dakota Century Code are amended and reenacted as follows:

- 18 1. A limited liability company may, by affirmative vote of a majority of the governors  
19 present, upon those terms and conditions and for those considerations, which may  
20 be money, securities, or other instruments for the payment of money or other  
21 property, as the board of ~~governors~~ considers expedient, and without member  
22 approval:
- 23 a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its  
24 property and assets in the usual and regular course of its business;
  - 25 b. Grant a security interest in all or substantially all of its property and assets  
26 whether or not in the usual and regular course of its business; or
  - 27 c. Transfer any or all of its property to a corporation all of the shares of which  
28 are owned by a limited liability company.
- 29 2. A limited liability company, by affirmative vote of a majority of the governors  
30 present, may sell, lease, transfer, or otherwise dispose of all or substantially all of  
31 its property and assets, including its goodwill, not in the usual and regular course

1 of its business, upon those terms and conditions and for those considerations,  
2 which may be money, securities, or other instruments for the payment of money or  
3 other property, as the board of ~~governors~~ considers expedient, when approved at a  
4 regular or special meeting of the members by the affirmative vote of the owners of  
5 a majority of the voting power of the interests entitled to vote. Written notice of the  
6 meeting must be given to all members whether or not they are entitled to vote at  
7 the meeting. The written notice must state that a purpose of the meeting is to  
8 consider the sale, lease, transfer, or other disposition of all or substantially all of  
9 the property and assets of the limited liability company.

10 **SECTION 81. AMENDMENT.** Subsection 2 of section 10-32-112 of the North Dakota  
11 Century Code is amended and reenacted as follows:

12 2. When the notice of dissolution has been filed with the secretary of state, and  
13 subject to section 10-32-116, the limited liability company shall cease to carry on  
14 its business, except to the extent necessary for the winding up of the business of  
15 the limited liability company. The members shall retain the right to revoke the  
16 dissolution in accordance with section 10-32-116 and the right to remove  
17 governors or fill vacancies on the board of ~~governors~~. The limited liability company  
18 existence continues to the extent necessary to wind up the affairs of the limited  
19 liability company until the dissolution is revoked or articles of termination are filed  
20 with the secretary of state.

21 **SECTION 82. AMENDMENT.** Subsection 3 of section 10-32-113 of the North Dakota  
22 Century Code is amended and reenacted as follows:

23 3. When a notice of dissolution has been filed with the secretary of state, the board of  
24 ~~governors~~, or the managers acting under the direction of the board of ~~governors~~,  
25 shall proceed as soon as possible:  
26 a. To give notice to creditors and claimants under section 10-32-114 or to  
27 proceed under section 10-32-115;  
28 b. To collect or make provision for the collection of all known debts due or owing  
29 to the limited liability company, including unperformed contribution  
30 agreements; and



- 1 (1) The governors or the persons having the authority otherwise vested in  
2 the board ~~of governors~~ are deadlocked in the management of the  
3 affairs of the limited liability company and the members are unable to  
4 break the deadlock;
- 5 (2) The governors or those in control of the limited liability company have  
6 acted fraudulently, illegally, or in a manner unfairly prejudicial toward  
7 one or more members in their capacities as members or governors of  
8 any limited liability company or as managers or employees of a closely  
9 held limited liability company;
- 10 (3) The members of the limited liability company are so divided in voting  
11 power that, for a period that includes the time when two consecutive  
12 regular meetings were held, they have failed to elect successors to  
13 governors whose terms have expired or would have expired upon the  
14 election and qualification of their successors;
- 15 (4) The limited liability company assets are being misapplied or wasted; or
- 16 (5) An event of dissolution has occurred under subdivision a, d, or e of  
17 subsection 1 of section 10-32-109 but the limited liability company is  
18 not acting to wind up its affairs;
- 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 the judgment has been returned unsatisfied; or
  - 22 (2) The limited liability company has admitted in writing that the claim of  
23 the creditor is due and owing and it is established that the limited  
24 liability company is unable to pay its debts in the ordinary course of  
25 business; or
- 26 d. In an action by the attorney general to dissolve the limited liability company in  
27 accordance with section 10-32-122 when it is established that a decree of  
28 termination is appropriate.

29 **SECTION 86. AMENDMENT.** Subsection 2 of section 10-32-130.1 of the North  
30 Dakota Century Code is amended and reenacted as follows:

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

7           **SECTION 87. AMENDMENT.** Subsection 3 of section 10-32-132 of the North Dakota  
8 Century Code is amended and reenacted as follows:

- 9           3. If neither the limited liability company's registered agent nor an officer of the limited  
10          liability company can be found at the registered office, or if a limited liability  
11          company fails to maintain a registered agent in this state and a manager of the  
12          limited liability company cannot be found at the registered office, then the secretary  
13          of state is the agent of the limited liability company upon whom the process, notice,  
14          or demand may be served. ~~The Service on the secretary of state:~~
- 15          a. Shall be made by registered mail or personal delivery to the secretary of state  
16          and not by electronic communication;
- 17          b. Shall include the return of the sheriff, or the affidavit of a person not a party,  
18          verifying that ~~ne~~ neither the registered agent ~~or~~ nor a manager can be found  
19          at the registered office ~~must be provided to the secretary of state. Service on~~  
20          the secretary of state of any process, notice, or demand is; and
- 21          c. Is deemed personal service upon the limited liability company and is made by  
22          filing with the secretary of state ~~an~~:
- 23               (1) An original and two copies of the process, notice, or demand, ~~along~~  
24               with the; and
- 25               (2) The fees provided for in section 10-32-150.

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

30          **SECTION 88. AMENDMENT.** Subsection 2 of section 10-32-149 of the North Dakota  
31 Century Code is amended and reenacted as follows:

1           2. The annual report must be submitted on forms prescribed by the secretary of state.  
2           The information provided must be given as of the date of the execution of the  
3           report. The annual report must be signed as prescribed in subsection ~~43~~ 53 of  
4           section 10-32-02, the articles, the bylaws, or a resolution approved by the  
5           affirmative vote of the required proportion or number of the governors or members  
6           entitled to vote. If the limited liability company or foreign limited liability company is  
7           in the hands of a receiver or trustee, the annual report must be signed on behalf of  
8           the limited liability company or foreign limited liability company by the receiver or  
9           trustee. The secretary of state may destroy any annual report provided for in this  
10          section after the annual report is on file for six years.

11          **SECTION 89.** Section 10-32-153.1 of the North Dakota Century Code is created and  
12          enacted as follows:

13          **10-32-153.1. Secretary of state - Exempt records.** Any social security number or  
14          federal tax identification number disclosed or contained in any document filed with the secretary  
15          of state under this chapter is an exempt record as defined by subsection 5 of section  
16          44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any  
17          social security number or federal tax identification number the secretary of state determines to  
18          be a closed record before a copy of any document is released to the public.

19          **SECTION 90. AMENDMENT.** Section 10-33-01 of the North Dakota Century Code is  
20          amended and reenacted as follows:

21          **10-33-01. Definitions.** For the purposes of this chapter, unless the context otherwise  
22          requires:

- 23          1. "Address" means:
- 24               a. In the case of a registered office or principal executive office, the mailing  
25               address, including a zip code, of the actual office location which may not be  
26               only a post-office box; and
- 27               b. In any other case, the mailing address, including a zip code.
- 28          2. "Articles" means:
- 29               a. In the case of a corporation incorporated under or governed by this chapter,  
30               articles of incorporation, articles of amendment, a resolution of election to  
31               become governed by this chapter, a statement of change of registered office,

- 1 registered agent, or name of registered agent, articles of merger, articles of  
2 consolidation, articles of abandonment, articles of dissolution, and any annual  
3 report in which a registered office or registered agent has been established or  
4 changed.
- 5 b. In the case of a foreign corporation, the term includes all documents serving a  
6 similar function required to be filed with the secretary of state or other officer  
7 of the corporation's state of incorporation.
- 8 3. "Authenticated electronic communication" means:
- 9 a. That the electronic communication is delivered:
- 10 (1) To the principal place of activity of the corporation; or  
11 (2) To an officer or agent of the corporation authorized by the corporation  
12 to receive the electronic communication; and
- 13 b. That the electronic communication sets forth information from which the  
14 corporation can reasonably conclude that the electronic communication was  
15 sent by the purported sender.
- 16 4. "Board" means the board of directors of a corporation.
- 17 ~~4.~~ 5. "Board member" means an individual serving on the board.
- 18 ~~5.~~ 6. "Bylaws" means the code adopted for the regulation or management of the internal  
19 affairs of a corporation, regardless of how designated.
- 20 ~~6.~~ 7. "Corporation" means a corporation, other than a foreign corporation, that is  
21 incorporated under or governed by this chapter.
- 22 ~~7.~~ 8. "Director" means a member of the board.
- 23 ~~8.~~ 9. "Domestic organization" means an organization created under the laws of this  
24 state.
- 25 10. "Electronic" means relating to technology having electrical, digital, magnetic,  
26 wireless, optical, electromagnetic, or similar capabilities.
- 27 11. "Electronic communication" means any form of communication, not directly  
28 involving the physical transmission of paper:
- 29 a. That creates a record that may be retained, retrieved, and reviewed by a  
30 recipient of the communication; and

- 1           b. That may be directly reproduced in paper form by the recipient through an  
2           automated process.
- 3       12. "Electronic record" means a record created, generated, sent, communicated,  
4       received, or stored by electronic means.
- 5       13. "Electronic signature" means an electronic sound, symbol, or process attached to  
6       or logically associated with a record and executed or adopted by a person with the  
7       intent to sign the record.
- 8       14. "Filed with the secretary of state" means except as otherwise permitted by law or  
9       rule:  
10      a. ~~The following have been~~ That a document meeting the applicable  
11      requirements of this chapter, together with the fees provided in section  
12      10-33-140, was delivered or communicated to the secretary of state by a  
13      method or medium of communication acceptable by the secretary of state and  
14      ~~have been~~ was determined by the secretary of state to conform to law:  
15      (1) ~~A signed original or a legible facsimile telecommunication of a signed~~  
16      ~~original, of a request for reserved name; or a signed original of all other~~  
17      ~~documents, meeting the applicable requirements of this chapter; and~~  
18      (2) ~~The fees provided for in section 10-33-140; and~~
- 19      b. ~~The~~ That the secretary of state has shall then:  
20      (1) ~~Endorsed on the original the word "filed", and the month, day, and year~~  
21      Record the actual date on which the document is filed, and if different,  
22      the effective date of filing; and  
23      (2) ~~Recorded~~ Record the document in the office of the secretary of state.
- 24    9- 15. "Foreign corporation" means a corporation that is formed under laws other than the  
25      laws of this state for a purpose for which a corporation may be organized under  
26      this chapter.
- 27    40- 16. "Foreign organization" means an organization created under laws other than the  
28      laws of this state for a purpose for which an organization may be created under the  
29      laws of this state.
- 30    17. "Good faith" means honesty in fact in the conduct of an act or transaction.

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- 1     ~~44.~~ 18. "Intentionally" means the person referred to has a purpose to do or fail to do the  
2                   act or cause the result specified, or believes the act or failure to act, if successful,  
3                   will cause that result. A person intentionally violates a statute:
- 4                   a. If the person intentionally does the act or causes the result prohibited by the  
5                   statute; or
- 6                   b. If the person intentionally fails to do the act or cause the result required by the  
7                   statute, even though the person may not know of the existence or  
8                   constitutionality of the statute or the scope or meaning of the terms used in  
9                   the statute.
- 10    ~~42.~~ 19. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended  
11                   from time to time, and successive federal revenue acts.
- 12    ~~43.~~ 20. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A  
13                   person does not "know" or have "knowledge" of a fact merely because the person  
14                   has reason to know of the fact.
- 15    ~~44.~~ 21. "Legal representative" means a person empowered to act for another person,  
16                   including an agent, manager, officer, partner, or associate of an organization; a  
17                   trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver,  
18                   guardian, custodian, or conservator.
- 19    ~~45.~~ 22. "Member" means a person with membership rights in a corporation under its  
20                   articles or bylaws, regardless of how the person is identified.
- 21    ~~46.~~ 23. "Members with voting rights" means members or a class of members that has  
22                   voting rights with respect to the purpose or matter involved.
- 23    ~~47.~~ 24. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving  
24                   pecuniary gain to any officer, director, or member, other than a member that is a  
25                   nonprofit organization or subdivision, unit, or agency of the United States or a state  
26                   or local government.
- 27    ~~48.~~ 25. "Notice":
- 28                   a. Is given by a member of a corporation to the corporation or an officer of the  
29                   corporation ~~when:~~

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

- 1                   (a) If by facsimile communication, when directed to a telephone  
2                                   number at which the person has consented to receive notice.
- 3                   (b) If by electronic mail, when directed to an electronic mail address  
4                                   at which the person has consented to receive notice.
- 5                   (c) If by posting on an electronic network on which the person has  
6                                   consented to receive notice, together with separate notice to the  
7                                   person of the specific posting, upon the later of:
- 8                                   [1] The posting; or  
9                                   [2] The giving of the separate notice.
- 10                   c. Is given by mail when deposited in the United States mail with sufficient  
11                                   postage affixed.
- 12                   d. Is deemed received when it is given.
- 13   ~~49.~~ 26. "Officer" means an individual who is more than eighteen years of age and who is:  
14                   a. Elected, appointed, or otherwise designated as an officer by the board or the  
15                                   members; or  
16                   b. Considered elected as an officer pursuant to section 10-33-52.
- 17   ~~20.~~ 27. "Organization" means a corporation, whether domestic or foreign, incorporated in  
18                                   or authorized to do business in this state under another chapter of this code;  
19                   limited liability company; partnership; limited partnership; limited liability  
20                   partnership; limited liability limited partnership, joint venture; association; business  
21                   trust; estate; trust; enterprise; or any other legal or commercial entity.
- 22   ~~24.~~ 28. "Principal executive office" means:  
23                   a. If the corporation has an elected or appointed president, then an office where  
24                                   the elected or appointed president of the corporation has an office; or  
25                   b. If the corporation has no elected or appointed president, then the registered  
26                                   office of the corporation.
- 27   ~~22.~~ 29. "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                   30. "Registered office" means the place in this state designated in the articles of a  
30                                   corporation as the registered office of the corporation.

- 1    ~~23.~~ 31. "Related organization" means an organization that controls, is controlled by, or is  
2                    under common control with another organization with control existing if an  
3                    organization:
- 4                    a. Owns, directly or indirectly, at least fifty percent of the shares, membership  
5                    interests, or other ownership interests of another organization;
- 6                    b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or  
7                    more of the voting members of the governing body of another organization; or
- 8                    c. Has the power, directly or indirectly, to direct or cause the direction of the  
9                    management and policies of another organization, whether through the  
10                    ownership of voting interests, by contract, or otherwise.
- 11    ~~24.~~ 32. "Remote communication" means communication via electronic communication,  
12                    conference telephone, videoconference, the internet, or such other means by  
13                    which persons not physically present in the same location may communicate with  
14                    each other on a substantially simultaneous basis.
- 15                    33. "Signed" means ~~the~~:
- 16                    a. That the signature of a person, which may be a facsimile affixed, engraved,  
17                    printed, placed, stamped with indelible ink, transmitted by facsimile  
18                    telecommunication or electronically, or in any other manner reproduced on  
19                    the document, is placed on a document, as provided ~~in subsection 39 of~~  
20                    under section 41-01-11, 41-01-09; and:
- 21                    ~~a.~~ b. With respect to a document required by this chapter to be filed with the  
22                    secretary of state, ~~means the~~ that:
- 23                    (1) The document ~~has been~~ is signed by a person authorized to ~~sign~~ do so  
24                    by this chapter, the articles, ~~the~~ or bylaws, a resolution approved by the  
25                    directors as required by section 10-33-42, or the members with voting  
26                    rights, if any, as required by section 10-33-72; and
- 27                    ~~b.~~ With respect to a document not required by this chapter to be filed with the  
28                    secretary of state, the signature may be a facsimile affixed, engraved, printed,  
29                    placed, stamped with indelible ink, transmitted by facsimile  
30                    telecommunication or electronically, or in any other manner reproduced on  
31                    the document.



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

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

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

7           **10-33-10. Corporate name.**

8           1. The corporate name:

9                   a. Must be in the English language or in any other language expressed in  
10                   English letters or characters.

11                  b. Need not contain the word "company", "corporation", "incorporated", "limited",  
12                   or an abbreviation of one or more of these words.

13                  c. May not contain a word or phrase that indicates or implies that it may not be  
14                   incorporated under this chapter.

15                  d. May not contain the words "limited liability company", "limited partnership",  
16                   "limited liability partnership", "limited liability limited partnership", or any  
17                   abbreviation of these words.

18                  e. May not contain a word or phrase that indicates or implies that it is  
19                   incorporated for a purpose other than a legal nonprofit purpose for which a  
20                   corporation may be incorporated under this chapter.

21                  f. Unless a document in compliance with subsection 2 ~~of this section~~ is filed  
22                   with the articles, may not be the same as or deceptively similar to:

23                   (1) The name, whether foreign and authorized to ~~do business~~ conduct  
24                   activities in this state or domestic, of:

25                           (a) Another corporation;

26                           (b) A corporation incorporated or authorized to do business in this  
27                           state under another provision of this code;

28                           (c) A limited liability company;

29                           (d) A limited partnership;

30                           (e) A limited liability partnership; or

31                           (f) A limited liability limited partnership;

- 1                   (2) A name the right to which is, at the time of incorporation, reserved in  
2                   the manner provided in section 10-19.1-14, 10-32-11, 10-33-11,  
3                   45-10.1-03, or 45-22-05;
- 4                   (3) A fictitious name registered in the manner provided in chapter 45-11; or  
5                   (4) A trade name registered in the manner provided in chapter 47-25.
- 6           2. If the secretary of state determines that a corporate name is "deceptively similar"  
7           to another name for purposes of this chapter, then the corporate name may not be  
8           used unless there is filed with the articles:
- 9           a. The written consent of the holder of the rights to the name the proposed  
10           name is determined to be deceptively similar to; or  
11           b. A certified copy of a judgment of a court in this state establishing the prior  
12           right of the applicant to the use of the name in this state.
- 13           This subsection does not affect the right of a domestic corporation existing on  
14           August 1, 1997, or a foreign corporation authorized to do business in this state on  
15           that date to continue the use of its name.
- 16           3. The secretary of state shall determine whether a corporate name is "deceptively  
17           similar" to another name for purposes of this chapter.
- 18           4. This section and section 10-33-11 do not:
- 19           a. Abrogate or limit:
- 20               (1) The law of unfair competition or unfair practices;  
21               (2) Chapter 47-25;  
22               (3) The laws of the United States with respect to the right to acquire and  
23               protect copyrights, trade names, trademarks, service names, or service  
24               marks; or  
25               (4) Any other rights to the exclusive use of names or symbols; or  
26           b. Derogate the common law or the principles of equity.
- 27           5. A corporation that is ~~merged~~ the surviving organization in a merger with ~~another~~  
28           ~~domestic one~~ or foreign corporation, or that is incorporated by the reorganization  
29           ~~of one or more domestic or foreign corporations~~ other organizations, or that  
30           acquires by sale, lease, or other disposition to or exchange with ~~a domestic~~  
31           ~~corporation~~ an organization all or substantially all of the assets of another ~~domestic~~

1 ~~or foreign corporation~~ organization including its name, may have the same name,  
2 subject to the requirements of subsection 1, as that used in this state by any of the  
3 other ~~corporations~~ organizations, if the other ~~corporation was~~ organization whose  
4 name is sought to be used:

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

12 6. The use of a name by a corporation in violation of this section does not affect or  
13 vitiate its corporate existence, but a court in this state may, upon application of the  
14 state or of an interested or affected person, enjoin the corporation from ~~doing~~  
15 business conducting activities under a name assumed in violation of this section,  
16 although its articles may have been filed with the secretary of state and a  
17 certificate of incorporation issued.

18 7. If a corporation's period of existence has expired or is involuntarily dissolved by the  
19 secretary of state pursuant to section 10-33-139, the corporation may reacquire  
20 the right to use that name by refiling articles of incorporation pursuant to section  
21 10-33-08; amending pursuant to section 10-33-118; or reinstating pursuant to  
22 section 10-33-139. If the name has been adopted for use or reserved by another  
23 person, the filing will be rejected unless the filing is accompanied by a written  
24 consent or judgment pursuant to subsection 2. A corporation that cannot reacquire  
25 the use of its corporate name must adopt a new corporate name that complies with  
26 the provisions of this section.

27 **SECTION 93. AMENDMENT.** Section 10-33-11 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29 **10-33-11. Reserved name.**

30 1. The exclusive right to the use of a corporate name otherwise permitted by section  
31 10-33-10 may be reserved by any person.

- 1           2.    The reservation must be made by filing with the secretary of state a request that
- 2                    the name be reserved, together with the fees provided in section 10-33-140:
- 3                    a.    If the name is available for use by the applicant, the secretary of state shall
- 4                            reserve the name for the exclusive use of the applicant for a period of twelve
- 5                            months.
- 6                    b.    The reservation may be renewed for successive twelve-month periods.
- 7           3.    The right to the exclusive use of a corporate name reserved pursuant to this
- 8                    section may be transferred to another person by or on behalf of the applicant for
- 9                    whom the name was reserved by filing with the secretary of state a notice of the
- 10                   transfer and specifying the name and address of the transferee, together with the
- 11                   fees provided in section 10-33-140.
- 12           4.    The right to the exclusive use of a corporate name reserved pursuant to this
- 13                    section may be canceled by or on behalf of the applicant for whom the name was
- 14                    reserved by filing with the secretary of state a notice of the cancellation, together
- 15                    with the fees provided in section 10-33-140.
- 16           5.    ~~The secretary of state may accept for filing a legible facsimile copy of the signed~~
- 17                   ~~original of any request for reserved name.~~
- 18           6.    The secretary of state may destroy all reserved name requests and index thereof
- 19                    one year after expiration.

20           **SECTION 94. AMENDMENT.** Section 10-33-21 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22           **10-33-21. General powers.**

- 23           1.    A corporation has the powers set forth in this section, subject to any limitations
- 24                    provided in any other statute of this state or in its articles.
- 25           2.    A corporation has perpetual duration.
- 26           3.    A corporation may sue and be sued, complain and defend and participate as a
- 27                    party or otherwise in any legal, administrative, or arbitration proceeding, in its
- 28                    corporate name.
- 29           4.    A corporation may purchase, lease, or otherwise acquire, own, hold, improve, and
- 30                    use and otherwise deal in and with real or personal property, or any interest in
- 31                    property, wherever situated.

- 1           5. A corporation may sell, convey, mortgage, create a security interest in, lease,  
2           exchange, transfer, or otherwise dispose of all or any part of its real or personal  
3           property, or any interest in property, wherever situated.
- 4           6. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote,  
5           use, employ, sell, exchange, mortgage, lend, create a security interest in, or  
6           otherwise dispose of, use and deal in and with, securities or other interests in, or  
7           obligations of, a person or direct or indirect obligations of any domestic or foreign  
8           government or instrumentality.
- 9           7. A corporation may make contracts and incur liabilities, borrow money, issue its  
10          securities, and secure any of its obligations by mortgage of or creation of a security  
11          interest in all or any of its property, franchises, and income.
- 12          8. A corporation may invest and reinvest its funds.
- 13          9. A corporation may take and hold real and personal property, whether or not of a  
14          kind sold or otherwise dealt in by the corporation, as security for the payment of  
15          money loaned, advanced, or invested.
- 16          10. A corporation may conduct its ~~business~~ activities, carry on its operations, have  
17          offices, and exercise the powers granted by this chapter anywhere in the universe.
- 18          11. Except as otherwise prohibited by law, a corporation may make donations,  
19          irrespective of corporate benefit, for:
- 20           a. The public welfare;
- 21           b. Social, community, charitable, religious, educational, scientific, civic, literary,  
22           and testing for public safety purposes, and for similar or related purposes;
- 23           c. The purpose of fostering national or international amateur sports competition;  
24           and
- 25           d. The prevention of cruelty to children and animals, and for similar or related  
26           purposes.
- 27          12. A corporation may pay pensions, retirement allowances, and compensation for  
28          past services and establish employee or incentive benefit plans, trusts, and  
29          provisions for the benefit of the corporation and the corporation's related  
30          organizations' officers, managers, directors, governors, employees, and agents  
31          and, in the case of a related organization that is a limited liability company,

- 1 members who provide services to the limited liability company, and the families,  
2 dependents, and beneficiaries of any of them. It may indemnify and purchase and  
3 maintain insurance for a fiduciary of any of these employee benefit and incentive  
4 plans, trusts, and provisions.
- 5 13. A corporation may participate in any capacity in the promotion, organization,  
6 ownership, management, and operation of any organization or in any transaction,  
7 undertaking, or arrangement that the participating corporation would have power to  
8 conduct by itself, whether or not the participation involves sharing or delegation of  
9 control.
- 10 14. A corporation may provide for its benefit life insurance and other insurance with  
11 respect to the services of its officers, directors, employees, and agents, or on the  
12 life of a member for the purpose of acquiring, at the death of the member, any  
13 membership interests in the corporation owned by the member.
- 14 15. A corporation may have, alter at pleasure, and use a corporate seal as provided in  
15 section 10-33-22.
- 16 16. A corporation may adopt, amend, and repeal bylaws relating to the management of  
17 the ~~business~~ activities or the regulation of the affairs of the corporation as provided  
18 in section 10-33-26.
- 19 17. A corporation may establish committees of the board of directors, elect or appoint  
20 persons to the committees, and define their duties as provided in section 10-33-44  
21 and fix their compensation.
- 22 18. A corporation may elect or appoint officers, employees, and agents of the  
23 corporation, and define their duties and fix their compensation.
- 24 19. A corporation may lend money to, guarantee an obligation of, become a surety for,  
25 or otherwise financially assist persons as provided in section 10-33-82.
- 26 20. A corporation may make advances to its directors, officers, and employees and  
27 those of its subsidiaries as provided in section 10-33-83.
- 28 21. A corporation shall indemnify those persons identified in section 10-33-84 against  
29 certain expenses and liabilities only as provided in section 10-33-84 and may  
30 indemnify other persons.

- 1           22. A corporation may conduct all or part of its ~~business~~ activities under one or more  
2           trade names as provided in chapter 47-25.
- 3           23. A corporation may take, receive, and hold real and personal property, including the  
4           principal and interest of money or other fund, that is given, conveyed, bequeathed,  
5           devised to, or vested in the corporation in trust when the corporation or a related  
6           organization has a vested or contingent interest in the trust.
- 7           24. Except when the trust instrument prescribes otherwise, a corporation may invest  
8           trust property or its proceeds in accordance with sections 59-02-08.1 through  
9           59-02-08.11.
- 10          25. A corporation may be a member of or the owner of the ownership interest in  
11          another domestic or foreign organization.
- 12          26. A corporation may dissolve and wind up.
- 13          27. A corporation may merge and consolidate with other domestic or foreign nonprofit  
14          corporations organized for related purposes.
- 15          28. A corporation ~~doing business~~ conducting activities as a hospital may merge with a  
16          corporation incorporated for profit and form a corporation under this chapter.
- 17          29. A corporation may acquire an owner's interest in another organization.
- 18          30. A corporation may have and exercise all other powers necessary or convenient to  
19          effect any or all of the purposes for which the corporation is incorporated.

20           **SECTION 95. AMENDMENT.** Subsection 3 of section 10-33-23 of the North Dakota  
21 Century Code is amended and reenacted as follows:

- 22           3. In a proceeding by the attorney general, as provided in this chapter, to dissolve the  
23           corporation or to enjoin the corporation from the transaction of unauthorized  
24           ~~business~~ activities.

25           **SECTION 96. AMENDMENT.** Subsection 2 of section 10-33-25 of the North Dakota  
26 Century Code is amended and reenacted as follows:

- 27           2. After the issuance of the certificate of incorporation, the incorporators or the  
28           directors named in the articles shall, within a reasonable time, either hold an  
29           organizational meeting at the call of a majority of the incorporators or of the  
30           directors named in the articles, or take written action, for the purposes of  
31           ~~transacting business~~ conducting activities and taking actions necessary or

1 appropriate to complete the organization of the corporation. If a meeting is held,  
2 the person or persons calling the meeting shall give at least three days' notice of  
3 the meeting to each incorporator or director named, stating the date, time, and  
4 place of the meeting. Incorporators and directors may waive notice of an  
5 organizational meeting in the same manner that a director may waive notice of  
6 meetings of the board pursuant to subsection 5 of section 10-33-39.

7 **SECTION 97. AMENDMENT.** Subsection 1 of section 10-33-27 of the North Dakota  
8 Century Code is amended and reenacted as follows:

- 9 1. The ~~business activities~~ and affairs of a corporation must be managed by or under  
10 the direction of a board.
- 11 a. All directors are entitled to vote and have equal rights and preferences except  
12 as otherwise provided in the articles or bylaws.
- 13 b. The members of the first board may be named in the articles, designated or  
14 appointed pursuant to the articles, or elected by the incorporators under  
15 section 10-33-25.

16 **SECTION 98. AMENDMENT.** Subsections 1 and 2 of section 10-33-39 of the North  
17 Dakota Century Code are amended and reenacted as follows:

- 18 1. Meetings of the board may be held from time to time as provided in the articles or  
19 bylaws at any place within or without the state that the board may select or by any  
20 means described in subsection 2.
- 21 a. Unless the articles or bylaws provide otherwise, a meeting of the board must  
22 be held at least once per year.
- 23 b. If the articles, bylaws, or board fails to select a place for a meeting, the  
24 meeting must be held at the principal executive office, ~~unless the articles or~~  
25 ~~bylaws provide otherwise.~~
- 26 c. The board may determine under subsection 2 that a meeting of the board  
27 shall be held solely by means of remote communication.
- 28 d. Participation in a meeting by either of the means set forth in subsection 2  
29 constitutes presence at the meeting.
- 30 2. ~~A board meeting may be conducted by:~~

- 1           a. ~~A conference among directors using any~~ Any meeting among directors may  
2           be conducted:
- 3           a. Solely by one or more means of remote communication through which all of  
4           the directors may ~~simultaneously hear each other during the conference~~  
5           ~~constitutes a board~~ participate in the meeting, if:
- 6           (1) ~~If the same notice is given of the conference as would be required by~~  
7           subsection 3 is given for a the meeting; and if
- 8           (2) ~~If the number of directors participating in the conference~~ meeting is  
9           sufficient to constitute a quorum at a meeting. ~~Participation in a~~  
10          ~~meeting by this means is personal presence at the meeting; or~~
- 11          b. ~~Any means of communication through which the director, other directors so~~  
12          ~~participating, and all directors physically present at the meeting may~~  
13          ~~simultaneously hear each other during the meeting.~~ Participation in a  
14          ~~meeting by this means is personal presence at the meeting.~~ By means of  
15          conference telephone or, if authorized by the board, by such other means of  
16          remote communication, in each case through which that director, other  
17          directors so participating, and all directors physically present at the meeting  
18          participate with each other during the meeting.

19           **SECTION 99. AMENDMENT.** Subsections 1 and 2 of section 10-33-43 of the North  
20   Dakota Century Code are amended and reenacted as follows:

- 21           1. An action required or permitted to be taken at a board meeting may be taken by  
22           written action signed, or consented to by authenticated electronic communication,  
23           by all of the directors. If the articles so provide, any action, other than an action  
24           requiring member approval, may be taken by written action signed, or consented to  
25           by authenticated electronic communication, by the number of directors that would  
26           be required to take the same action at a meeting of the board at which all directors  
27           were present.
- 28           2. The written action is effective when signed, or consented to by authenticated  
29           electronic communication, by the required number of directors, unless a different  
30           effective time is provided in the written action.

1           **SECTION 100. AMENDMENT.** Subsection 1 of section 10-33-44 of the North Dakota  
2 Century Code is amended and reenacted as follows:

- 3           1. A resolution approved by the affirmative vote of a majority of the board may  
4           establish committees having the authority of the board in the management of the  
5           ~~business~~ activities of the corporation to the extent provided in the resolution.  
6           Committees may include a special litigation committee consisting of one or more  
7           independent directors or other independent persons to consider legal rights or  
8           remedies of the corporation and whether those rights or remedies should be  
9           pursued. Committees other than special litigation committees are subject at all  
10          times to the direction and control of the board.

11          **SECTION 101. AMENDMENT.** Subsection 1 of section 10-33-50 of the North Dakota  
12 Century Code is amended and reenacted as follows:

- 13          1. The president shall:
- 14           a. Have general active management for the ~~business~~ activities of the  
15           corporation;
  - 16           b. When present, preside at all meetings of the board and of members;
  - 17           c. See that all orders and resolutions of the board are carried into effect;
  - 18           d. Sign and deliver in the name of the corporation, any deeds, mortgages,  
19           bonds, contracts, or other instruments pertaining to the business of the  
20           corporation, except in cases in which the authority to sign and deliver is  
21           required by law to be exercised by another person or is expressly delegated  
22           by the articles or bylaws or by the board to some officer or agent of the  
23           corporation;
  - 24           e. Maintain records of and, whenever necessary, certify all proceedings of the  
25           board and the members; and
  - 26           f. Perform other duties prescribed by the board.

27          **SECTION 102. AMENDMENT.** Subsection 3 of section 10-33-65 of the North Dakota  
28 Century Code is amended and reenacted as follows:

- 29          3. An annual meeting of members must be held at the time and place stated in or  
30          fixed in accordance with the articles or bylaws. If a place is not stated or if a  
31          demand for a meeting is made under subsection 2, the meeting must be held in

1           the county where the principal executive office of the corporation is located. To the  
2           extent authorized in the articles or bylaws, the board may determine that an annual  
3           meeting of the members shall be held solely by means of remote communication in  
4           accordance with subsection 2 of section 10-33-75.

5           **SECTION 103. AMENDMENT.** Subsection 3 of section 10-33-66 of the North Dakota  
6 Century Code is amended and reenacted as follows:

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

14          **SECTION 104. AMENDMENT.** Section 10-33-73 of the North Dakota Century Code is  
15 amended and reenacted as follows:

16          **10-33-73. Action without a meeting.** An action required or permitted to be taken at a  
17 meeting of the members may be taken without a meeting by written action signed, or consented  
18 to by authenticated electronic communication, by all of the members entitled to vote on that  
19 action.

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

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

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

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

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

- 1           3. ~~When written action is permitted to be taken by less than all members, all~~  
2           ~~members must be notified immediately of its text and effective date. Failure to~~  
3           ~~provide the notice does not invalidate the written action. A member who does not~~  
4           ~~sign or consent to the written action has no liability for the action or actions taken~~  
5           ~~by the written action.~~
- 6           4. When this chapter requires or permits a certificate concerning an action to be filed  
7           with the secretary of state, the certificate must indicate ~~that~~ if the action was taken  
8           under this section.

9           **SECTION 105. AMENDMENT.** Section 10-33-75 of the North Dakota Century Code is  
10          amended and reenacted as follows:

11           **10-33-75. Electronic Remote communications for member meetings.**

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

- 1                   ~~constitutes presence at the meeting in person or by proxy if all the other~~  
2                   ~~requirements of section 10-33-77 are met~~ of members held at a designated  
3                   place.
- 4           3. In any meeting of members held solely by means of remote communication under  
5           subdivision a of subsection 2 or in any meeting of members held at a designated  
6           place in which one or more members participate by means of remote  
7           communication under subdivision b of subsection 2:
- 8           a. The corporation shall implement reasonable measures:
- 9                   (1) To verify that each person deemed present and entitled to vote at the  
10                   meeting by means of remote communication is a member; and
- 11                   (2) To provide each member participating by means of remote  
12                   communication with a reasonable opportunity to participate in the  
13                   meeting, including an opportunity to:
- 14                           (a) Read or hear the proceedings of the meeting substantially  
15                           concurrently with those proceedings;
- 16                           (b) If allowed by the procedures governing the meeting, have the  
17                           member's remarks heard or read by other participants in the  
18                           meeting substantially concurrently with the making of those  
19                           remarks; and
- 20                           (c) If otherwise entitled, vote on matters submitted to the members.
- 21           b. Participating in a meeting by this means constitutes presence at the meeting  
22           in person or by proxy if all of the other requirements of section 10-33-77 are  
23           met.
- 24           4. With respect to notice to members:
- 25           a. Any notice to members given by the corporation under any provision of this  
26           chapter, the articles, or the bylaws by a form of electronic communication  
27           consented to by the member 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 member has consented to receive notice;

- 1                   (2) If by electronic mail, when directed to an electronic mail address at  
2                   which the member has consented to receive notice;
- 3                   (3) If by a posting on an electronic network on which the member has  
4                   consented to receive notice, together with separate notice to the  
5                   member of the specific posting, upon the later of:  
6                   (a) The posting; or  
7                   (b) The giving of the separate notice; and
- 8                   (4) If by any other form of electronic communication by which the member  
9                   has consented to receive notice, when directed to the member.
- 10                  b. An affidavit of the secretary, other authorized officer, or authorized agent of  
11                  the corporation, 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 member to notice given by electronic communication may be  
15                  given in writing or by authenticated electronic communication. The  
16                  corporation is entitled to rely on any consent so given until revoked by the  
17                  member, provided that no revocation affects the validity of any notice given  
18                  before receipt by the corporation 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 member submitting the ballot, vote  
21                  authorization, or consent so long as the revocation is received by an officer of the  
22                  corporation at or before the meeting or before an action without a meeting is  
23                  effective according to section 10-33-73.
- 24                  6. Waiver of notice by a member of a meeting by means of authenticated electronic  
25                  communication ~~described in subsections 1 and 2~~ may be given in the manner  
26                  provided in subsection 5 of section 10-33-68. Participation in a meeting by means  
27                  of ~~communications~~ remote communication described in ~~subsections 1 and~~  
28                  subdivisions a and b of subsection 2 is a waiver of notice of that meeting, except  
29                  when the member objects:
- 30                  a. ~~Objects at~~ At the beginning of the meeting to the transaction of business  
31                  because the meeting is not lawfully called or convened; or

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

4           **SECTION 106. AMENDMENT.** Subsection 1 of section 10-33-77 of the North Dakota  
5 Century Code is amended and reenacted as follows:

- 6           1. If the articles or bylaws permit proxy voting, a member may ~~appoint a proxy to cast~~  
7           or authorize the casting of a vote ~~or otherwise act for the member by signing an:~~  
8           a. Filing a nonelectronic written appointment form either personally or of a proxy  
9           signed by the member, with an attorney-in-fact officer of a corporation at or  
10           before the meeting at which the appointment is to be effective; or  
11           b. Telephonic transmission or authenticated electronic communication whether  
12           or not accompanied by written instructions of the member, of an appointment  
13           of a proxy with the corporation or the corporation's duly authorized agent at or  
14           before the meeting at which the appointment is to be effective.

15           **SECTION 107. AMENDMENT.** Section 10-33-81 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17           **10-33-81. Equitable remedies.** If a corporation or an officer or director of the  
18 corporation violates this chapter, a court in this state, in an action brought by at least fifty  
19 members with voting rights or ten percent of the members with voting rights, whichever is less,  
20 or by the attorney general, may grant equitable relief it considers just and reasonable in the  
21 circumstances and award expenses, including reasonable attorney's fees and disbursements,  
22 to the members, and the attorney general is entitled to an award of reasonable attorney's fees,  
23 investigation fees, costs, and expenses of any investigation and action brought by the attorney  
24 general under this chapter.

25           **SECTION 108. AMENDMENT.** Section 10-33-93 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27           **10-33-93. Merger of corporation ~~doing business~~ conducting activities as a**  
28 **hospital with a corporation organized for profit - Retention of property tax status.**  
29 Notwithstanding any provision of chapter 10-19.1 and this chapter, a corporation ~~doing~~  
30 ~~business~~ conducting activities as a hospital may merge with a corporation incorporated for  
31 profit and form a corporation incorporated under this chapter.

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

8           **SECTION 109. AMENDMENT.** Subsection 1 of section 10-33-101 of the North Dakota  
9 Century Code is amended and reenacted as follows:

- 10           1. If notice to creditors and claimants is given, it must be given:
- 11                   a. By publishing the notice once each week for four successive weeks in an
- 12                   official newspaper, as defined in chapter 46-06, in the county or counties
- 13                   where the registered office and the principal executive office of the
- 14                   corporation are located; and
- 15                   b. By giving written notice to known creditors and claimants pursuant to
- 16                   subsection ~~48~~ 25 of section 10-33-01.

17           **SECTION 110. AMENDMENT.** Subsections 2 and 3 of section 10-33-103 of the North  
18 Dakota Century Code are amended and reenacted as follows:

- 19           2. When the certificate of dissolution has been issued by the secretary of state, or on
- 20                   a later date within thirty days after filing if the articles of dissolution so provide, the
- 21                   corporation is dissolved.
- 22           3. The secretary of state shall issue to the dissolved corporation, or its legal
- 23                   representative, a certificate of dissolution that contains:
- 24                   a. The name of the corporation;
- 25                   b. The date the articles of dissolution ~~were filed with the secretary of state~~ is
- 26                   effective; and
- 27                   c. A statement that the corporation was dissolved as of the effective date of
- 28                   dissolution.

29           **SECTION 111. AMENDMENT.** Subsection 4 of section 10-33-104 of the North Dakota  
30 Century Code is amended and reenacted as follows:

- 1           4.   Revocation of dissolution proceedings is effective when a notice of revocation is  
2                   filed with the secretary of state.
- 3           a.   After the notice is filed, the corporation may resume ~~business~~ its activities.
- 4           b.   If notice to the attorney general has been given under section 10-33-122, the  
5                   notice of revocation also must be given to the attorney general on or before  
6                   the time that it is filed with the secretary of state.

7           **SECTION 112. AMENDMENT.** Subsection 1 of section 10-33-107 of the North Dakota  
8 Century Code is amended and reenacted as follows:

- 9           1.   A court may grant equitable relief it considers just and reasonable in the  
10                   circumstances or may dissolve a corporation and liquidate its assets and ~~business~~  
11                   activities:
- 12           a.   In a supervised voluntary dissolution under section 10-33-106.
- 13           b.   In an action by a director or at least fifty members with voting rights or ten  
14                   percent of the members with voting rights, whichever is less, when it is  
15                   established that:
- 16                   (1)   The directors or the persons having the authority otherwise vested in  
17                   the board are deadlocked in the management of the corporate affairs,  
18                   the members cannot break the deadlock, and the corporation or the  
19                   parties have not provided for a procedure to resolve the dispute;
- 20                   (2)   The directors or those in control of the corporation have acted  
21                   fraudulently, illegally, or in a manner unfairly prejudicial toward one or  
22                   more members in their capacities as members, directors, or officers;
- 23                   (3)   The members of the corporation are so divided in voting power that, for  
24                   a period that includes the time when two consecutive regular meetings  
25                   were held, they have failed to elect successors to directors whose  
26                   terms have expired or would have expired upon the election and  
27                   qualification of their successors;
- 28                   (4)   The corporate assets are being misapplied or wasted; or
- 29                   (5)   The period of duration as provided in the articles has expired and has  
30                   not been extended as provided in section 10-33-118.
- 31           c.   In an action by a creditor when:

- 1                   (1) The claim of the creditor has been reduced to judgment and an  
2                   execution on it has been returned unsatisfied; or
- 3                   (2) The corporation has admitted in writing that the claim of the creditor is  
4                   due and owing and it is established that the corporation cannot pay its  
5                   debts in the ordinary course of its activities.
- 6                   d. In an action by the attorney general when it is established that:
- 7                   (1) The articles and certificate of incorporation were obtained through  
8                   fraud;
- 9                   (2) The corporation should not have been formed under this chapter;
- 10                  (3) The corporation failed to comply with the requirements of sections  
11                  10-33-02 through 10-33-19 essential to incorporation under or election  
12                  to become governed by this chapter;
- 13                  (4) The corporation has flagrantly violated a provision of this chapter, has  
14                  violated a provision of this chapter more than once, or has violated  
15                  more than one provision of this chapter;
- 16                  (5) The corporation has engaged in an unauthorized act, contract,  
17                  conveyance, or transfer or has exceeded its powers;
- 18                  (6) The corporation has acted, or failed to act, in a manner that constitutes  
19                  surrender or abandonment of the corporate purpose, franchise,  
20                  privileges, or enterprise;
- 21                  (7) The corporation has liabilities and obligations exceeding the corporate  
22                  assets;
- 23                  (8) The period of corporate existence has ended without extension;
- 24                  (9) The corporation has failed for a period of ninety days to pay fees,  
25                  charges, or penalties required by this chapter;
- 26                  (10) The corporation has failed for a period of thirty days:
- 27                       (a) To appoint and maintain a registered agent in this state; or
- 28                       (b) After changing its registered office, to file with the secretary of  
29                       state a statement of the change;



1           **SECTION 114. AMENDMENT.** Subsection 3 of section 10-33-120 of the North Dakota  
2 Century Code is amended and reenacted as follows:

3           3. If neither the corporation's registered agent nor an officer of the corporation can be  
4 found at the registered office, or if a corporation fails to maintain a registered agent  
5 in this state and an officer of the corporation cannot be found at the registered  
6 office, then the secretary of state is the agent of the corporation upon whom the  
7 process, notice, or demand may be served. ~~The Service on the secretary of state:~~

8           a. Shall be made by registered mail or personal delivery to the secretary of state  
9           and not by electronic communication;

10           b. Shall include the return of the sheriff, or the affidavit of a person who is not a  
11           party, verifying that ~~ne~~ neither the registered agent ~~or~~ nor an officer can be  
12           found at the registered office ~~must be provided to the secretary of state.~~

13           ~~Service on the secretary of state of any process, notice, or demand is; and~~

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

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

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

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

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

23           **SECTION 115. AMENDMENT.** Subsection 1 of section 10-33-128 of the North Dakota  
24 Century Code is amended and reenacted as follows:

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

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

31           b. The jurisdiction of its incorporation;

- 1 c. The date of incorporation in the jurisdiction of its incorporation and the period  
2 of duration of the foreign corporation;
- 3 d. The address of the principal executive office of the foreign corporation in the  
4 jurisdiction where it is incorporated;
- 5 e. The address of the proposed registered office of the foreign corporation in this  
6 state;
- 7 f. The name of the proposed registered agent in this state that is:
- 8 (1) An individual resident of this state;
- 9 (2) A corporation whether incorporated under this chapter or under another  
10 provision of this code; or
- 11 (3) A foreign corporation having a place of ~~business~~ activity in, and  
12 authorized to conduct activities in, this state whether authorized to  
13 conduct activities in this state under this chapter or under another  
14 provision of this code;
- 15 g. The purpose or purposes of the foreign corporation which it proposes to  
16 pursue in conducting its activities in this state;
- 17 h. The names and addresses of the directors and officers of the foreign  
18 corporation; and
- 19 i. Any additional information deemed necessary or appropriate by the secretary  
20 of state to enable the secretary of state to determine whether the foreign  
21 corporation is entitled to a certificate of authority to conduct activities in this  
22 state.

23 **SECTION 116. AMENDMENT.** Subsection 2 of section 10-33-139 of the North Dakota  
24 Century Code is amended and reenacted as follows:

- 25 2. The annual report must be submitted on forms prescribed by the secretary of state.  
26 The information provided must be given as of the date of the execution of the  
27 report. The annual report must be signed as prescribed in subsection ~~24~~ 33 of  
28 section 10-33-01 or in the articles or bylaws, or in a resolution approved by the  
29 affirmative vote of the required proportion or number of the directors or members  
30 entitled to vote. If the corporation or foreign corporation is in the hands of a  
31 receiver or trustee, it must be signed on behalf of the corporation or foreign

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

3           **SECTION 117.** Section 10-33-142.1 of the North Dakota Century Code is created and  
4           enacted as follows:

5           **10-33-142.1. Secretary of state - Exempt records.** Any social security number or  
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 118. AMENDMENT.** Section 45-10.1-01 of the North Dakota Century Code  
12          is amended and reenacted as follows:

13          **45-10.1-01. (101) Definitions.** As used in this chapter, unless the context otherwise  
14          requires:

15          1. "Address" means:

- 16           a. In the case of a registered office or principal executive office, the mailing  
17           address, including the zip code, of the actual office location which may not be  
18           only a post-office box; and  
19           b. In all other cases, the mailing address, including a zip code.

20          2. "Authenticated electronic communication" means:

21           a. That the electronic communication is delivered:

- 22           (1) To the principal place of business of the limited partnership; or  
23           (2) To a general partner or agent of the limited partnership authorized by  
24           the limited partnership to receive the electronic communication; and  
25           b. That the electronic communication sets forth information from which the  
26           limited partnership can reasonably conclude that the electronic  
27           communication was sent by the purported sender.

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

29          ~~3.~~ 4. "Certificate of limited partnership" means the certificate referred to in section  
30          45-10.1-08, and the certificate as amended or restated.

- 1       4- 5. "Contribution" means any cash, property, services rendered, or a promissory note  
2                   or other binding obligation to contribute cash or property or to perform services,  
3                   which a partner contributes to a limited partnership in that partner's capacity as a  
4                   partner.
- 5       5- 6. "Distribution" means a transfer of money or other property from a limited  
6                   partnership to a partner in the partner's capacity as a partner or to the partner's  
7                   transferee.
- 8       6- 7. "Domestic organization" means an organization created under the laws of this  
9                   state.
- 10       8. "Electronic" means relating to technology having electrical, digital, magnetic,  
11                   wireless, optical, electromagnetic, or similar capabilities.
- 12       9. "Electronic communication" means any form of communication, not directly  
13                   involving the physical transmission of paper:  
14                   a. That creates a record that may be retained, retrieved, and reviewed by a  
15                   recipient of the communication; and  
16                   b. That may be directly reproduced in paper form by the recipient through an  
17                   automated process.
- 18       10. "Electronic record" means a record created, generated, sent, communicated,  
19                   received, or stored by electronic means.
- 20       11. "Electronic signature" means an electronic sound, symbol, or process attached to  
21                   or logically associated with a record and executed or adopted by a person with the  
22                   intent to sign the record.
- 23       12. "Event of withdrawal of a general partner" means an event that causes a person to  
24                   cease to be a general partner as provided in section 45-10.1-26.
- 25       7- 13. "Filed with the secretary of state" means except as otherwise permitted by law or  
26                   rule:  
27                   a. ~~That a signed original or a legible facsimile telecommunication of a signed~~  
28                   ~~original of a request for reserved name or a signed original of all other~~  
29                   ~~documents~~ document meeting the applicable requirements of this chapter  
30                   together with the fees provided in section 45-10.1-15 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.
- 3                    b. That the secretary of state shall then:
- 4                    (1) ~~Endorse on the original the word "filed" and the month, day, and year~~  
5                    Record the actual date on which the document is filed, and if different,  
6                    the effective date of filing; and
- 7                    (2) Record the document in the office of the secretary of state.
- 8        ~~8.~~ 14. "Foreign limited partnership" means a partnership formed under the laws of any  
9                    state other than this state and having as partners one or more general partners  
10                    and one or more limited partners.
- 11        ~~9.~~ 15. "Foreign organization" means an organization created under laws other than the  
12                    laws of this state for a purpose for which an organization may be created under the  
13                    laws of this state.
- 14        16. "General partner" means a person who has been admitted to a limited partnership  
15                    as a general partner in accordance with the partnership agreement and named in  
16                    the certificate of limited partnership as a general partner.
- 17        ~~40.~~ 17. "Jurisdiction of origin" means the jurisdiction in which the limited partnership status  
18                    of the foreign limited partnership is created.
- 19        ~~44.~~ 18. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A  
20                    person does not "know" or have "knowledge" of a fact merely because the person  
21                    has reason to know of the fact.
- 22        19. "Legal representative" means a person empowered to act for another person,  
23                    including an agent, a manager, an officer, a partner, or an associate of an  
24                    organization; a trustee of a trust; a personal representative; a trustee in  
25                    bankruptcy; and a receiver, guardian, custodian, or conservator.
- 26        20. "Limited partner" means a person who has been admitted to a limited partnership  
27                    as a limited partner in accordance with the partnership agreement.
- 28        ~~42.~~ 21. "Limited partnership" and "domestic limited partnership" means a partnership  
29                    formed by two or more persons under the laws of this state and having one or  
30                    more general partners and one or more limited partners.
- 31        ~~43.~~ 22. "Notice":

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

1 (b) If the office is closed or the person to be notified has no office,  
2 when left at the dwelling house or usual place of abode of the  
3 person with some person of suitable age and discretion residing  
4 there; or

5 (4) When given by a form of electronic communication consented to by the  
6 person to whom the notice is given:

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

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

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

14 [1] The posting; or

15 [2] The giving of the separate notice.

16 (d) If by any other form of electronic communication by which the  
17 person has consented to receive notice, when directed to the  
18 person.

19 c. Is given when deposited in the United States mail with sufficient postage  
20 affixed.

21 d. Is deemed received when it is given.

22 ~~44.~~ 23. "Organization" means:

23 a. Whether domestic or foreign, a corporation incorporated in or authorized to do  
24 business in this state under this or another chapter of this code, limited  
25 liability company, partnership, limited partnership, limited liability partnership,  
26 limited liability limited partnership, joint venture, association, business trust,  
27 estate, trust, enterprise, and any other legal or commercial entity; but

28 b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation  
29 which is incorporated under chapter 10-33 or a foreign nonprofit corporation  
30 which is incorporated in another jurisdiction.

31 24. "Partner" means a general or limited partner.

- 1    ~~45.~~ 25. "Partnership agreement" means any valid agreement, written or oral, of the  
2                                    partners as to the affairs of a limited partnership and the conduct of its business.
- 3    ~~46.~~ 26. "Partnership interest" means a partner's share of the profits and losses of a limited  
4                                    partnership and the right to receive distributions of partnership assets.
- 5    ~~47.~~ 27. "Principal executive office" means:  
6                                    a.    An office from which the limited partnership conducts business; or  
7                                    b.    If the limited partnership has no office from which it conducts business, then  
8                                    the registered office of the limited partnership.
- 9    ~~48.~~ 28. "Record" means information that is inscribed on a tangible medium or that is stored  
10                                   in an electronic or other medium and is retrievable in perceivable form.
- 11    29. "Signed" means ~~that~~:  
12                                   a.    That the signature of a person, which may be a facsimile affixed, engraved,  
13                                   printed, placed, stamped with indelible ink, transmitted by facsimile or  
14                                   electronically, or in any other manner reproduced on the document, is placed  
15                                   on a document, as provided ~~in subsection 39 of~~ under section ~~41-01-11,~~  
16                                   41-01-09; and:
- 17    a- b. With respect to a document required by this chapter to be filed with the  
18                                   secretary of state, ~~means the~~ that:  
19                                   (1)    The document is signed by a person authorized to sign the document  
20                                   by this chapter or by a resolution approved by the affirmative vote of  
21                                   the required proportion or number of partners; and
- 22    b. ~~With respect to a document not required by this chapter to be filed with the~~  
23                                   ~~secretary of state, means the signature may be a facsimile affixed, engraved,~~  
24                                   ~~printed, placed, stamped with indelible ink, transmitted by facsimile or~~  
25                                   ~~electronically, or in any other manner reproduced on the document.~~
- 26    49. "State" means a state, territory, or possession of the United States, the District of  
27                                   Columbia, ~~or the Commonwealth of Puerto Rico.~~
- 28                                   (2)    The signature and the document are communicated by a method or  
29                                   medium of communication acceptable by the secretary of state.

30                    **SECTION 119.** Section 45-10.1-01.1 of the North Dakota Century Code is created and  
31 enacted as follows:

1           **45-10.1-01.1. Legal recognition of electronic records and electronic signatures.**

2   For purposes of this chapter:

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

11           **SECTION 120. AMENDMENT.** Subsection 6 of section 45-10.1-02 of the North  
12 Dakota Century Code is amended and reenacted as follows:

- 13           6.   A limited partnership that is ~~merged~~ the surviving organization in a merger with  
14           ~~another domestic one or foreign organization, or that is organized by the~~  
15           ~~reorganization of one or more domestic or foreign~~ organizations, or that acquires  
16           by sale, lease, or other disposition to or exchange with ~~a domestic~~ an organization  
17           all or substantially all of the assets of another ~~domestic or foreign~~ organization  
18           including its name, may include in its name, subject to the requirements of  
19           subsection 1, the name of any of the other organizations, if the other organization  
20           whose name is sought to be used:
- 21           a.   Was incorporated, organized, formed, or registered under the laws of this  
22           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 10-19.1-14,  
25           10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- 26           d.   Holds a fictitious name registered in the manner provided in chapter 45-11; or
- 27           e.   Holds a trade name registered in the manner provided in chapter 47-25.

28           **SECTION 121. AMENDMENT.** Section 45-10.1-03 of the North Dakota Century Code  
29 is amended and reenacted as follows:

30           **45-10.1-03. (103) Reserved name.**

- 1           1. The exclusive right to the use of a limited partnership name otherwise permitted by  
2           section 45-10.1-02 may be reserved by any person.
- 3           2. The reservation must be made by filing with the secretary of state a request that  
4           the name be reserved, together with the fees provided in section 45-10.1-15:
  - 5           a. If the name is available for use by the applicant, the secretary of state shall  
6           reserve the name for the exclusive use of the applicant for a period of twelve  
7           months.
  - 8           b. The reservation may be renewed for successive twelve-month periods.
- 9           3. The right to the exclusive use of a limited partnership name reserved pursuant to  
10          this section may be transferred to another person by or on behalf of the applicant  
11          for whom the name was reserved by filing in the office of the secretary of state a  
12          notice of the transfer, and specifying the name and address of the transferee,  
13          together with fees provided in section 45-10.1-15.
- 14          4. The right to the exclusive use of a limited partnership name reserved pursuant to  
15          this section may be canceled by or on behalf of the applicant for whom the name  
16          was reserved by filing with the secretary of state a notice of cancellation, together  
17          with the fees provided in section 45-10.1-15.
- 18          5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed~~  
19          ~~original of any request for reserved name.~~
- 20          6. The secretary of state may destroy all reserved name requests and index thereof  
21          one year after expiration.

22           **SECTION 122. AMENDMENT.** Section 45-10.1-07.1 of the North Dakota Century  
23 Code is amended and reenacted as follows:

24           **45-10.1-07.1. Registration of general partner.** A general partner must be registered  
25 separately with the secretary of state at the time of filing a certificate of limited partnership or  
26 the registration of foreign limited partnership whenever that general partner is either a domestic  
27 or foreign:

- 28           1. Corporation;
- 29           2. Limited liability company;
- 30           3. Limited liability partnership;
- 31           4. Limited liability partnership;

- 1           5.   Limited liability limited partnership;  
2           6.   General partnership using a fictitious name; or  
3        6- 7.   Any other organization that has a registration responsibility with the secretary of  
4           state.

5           **SECTION 123. AMENDMENT.** Subsections 7 and 8 of section 45-10.1-09 of the North  
6 Dakota Century Code are amended and reenacted as follows:

- 7           7.   A limited partnership must notify the secretary of state in writing whenever a  
8           general partner changes the address of its principal place of business. A  
9           ~~corporate~~ An annual report filed by the secretary of state that reflects a change of  
10          address of a general partner may serve as such notice. This notice is not subject  
11          to the amendment fee prescribed in section 45-10.1-15.  
12          8.   A limited partnership that changes its name and that is the owner of a trademark,  
13          or uses a fictitious name registered with the secretary of state, or is a general  
14          partner of another limited partnership or limited liability limited partnership on file  
15          with the secretary of state, or is a managing partner of a limited liability partnership  
16          on file with the secretary of state, must effect a change of name in each of such  
17          registrations simultaneously with the filing of the amendments.

18          **SECTION 124. AMENDMENT.** Section 45-10.1-13 of the North Dakota Century Code  
19 is amended and reenacted as follows:

20          **45-10.1-13. (206) Secretary of state - Filing in office of secretary of state.**

- 21          1.   A signed ~~copy~~ document of the certificate of limited partnership and of any  
22          certificates of amendment or cancellation, or of any judicial decree of amendment  
23          or cancellation, must be delivered to the secretary of state. A person who  
24          executes a certificate as an agent or fiduciary need not exhibit evidence of that  
25          person's authority as a prerequisite to filing. Unless the secretary of state finds  
26          that any certificate does not conform to law, upon receipt of all filing fees required  
27          by law the secretary of state shall ~~endorse on the copy the word "Filed" and the~~  
28          ~~day, month, and year of the filing and shall~~ file the copy document in the office of  
29          the secretary of state.  
30          2.   Upon the filing of a certificate of amendment or judicial decree of amendment in  
31          the office of the secretary of state, the certificate of limited partnership is amended

1 as set forth therein, and upon the effective date of a certificate of cancellation, or a  
2 judicial decree thereof, the certificate of limited partnership is canceled.

3 **SECTION 125. AMENDMENT.** Section 45-10.1-55 of the North Dakota Century Code  
4 is amended and reenacted as follows:

5 **45-10.1-55. (905) Foreign limited partnership - Changes and amendments.**

- 6 1. If any statement in the application for registration of a foreign limited partnership is  
7 false when made or any arrangements or other facts described change, making  
8 the application inaccurate in any respect, the foreign limited partnership shall  
9 promptly file in the office of the secretary of state ~~a certificate~~ an amended  
10 registration, signed by a general partner, correcting the statement, and in the case  
11 of a change in the name of the foreign limited partnership, a certificate to that  
12 effect authenticated by the proper office of the jurisdiction of origin.
- 13 2. A foreign limited partnership that changes the foreign limited partnership's name  
14 and files ~~a statement~~ an amended registration as provided in subsection 1 and is  
15 the owner of a trademark, uses a fictitious name registered with the secretary of  
16 state, or is a general partner of another limited partnership or a limited liability  
17 limited partnership on file with the secretary of state, or is a managing partner of a  
18 limited liability partnership on file with the secretary of state, shall effect a change  
19 of name in each of the foregoing registrations which is applicable when the foreign  
20 limited partnership files the ~~certificate amending the~~ amended registration of  
21 foreign limited partnership.
- 22 3. A foreign limited partnership shall file ~~a certificate of amendment~~ an amended  
23 registration, signed by a general partner, when a general partner that is a  
24 corporation or limited liability company files an amendment changing the general  
25 partner's ~~corporate~~ name, or when the general partner files an application for an  
26 amended certificate of authority. This ~~certificate of amendment~~ amended  
27 registration must be filed simultaneously with the amendment to the articles of  
28 incorporation, articles of organization, or application for an amended certificate of  
29 authority.
- 30 4. A foreign limited partnership shall notify the secretary of state in writing when a  
31 general partner changes the address of the general partner's principal place of

1 business. A ~~corporate~~ general partner's annual report filed by the secretary of  
2 state that reflects a change of address of a general partner may serve as a notice  
3 under this subsection. This notice is not subject to the amendment fee prescribed  
4 in section 45-10.1-15.

5 **SECTION 126. AMENDMENT.** Section 45-10.1-56 of the North Dakota Century Code  
6 is amended and reenacted as follows:

7 **45-10.1-56. (906) Foreign limited partnership - Cancellation of registration.** A  
8 foreign limited partnership may cancel its registration by filing with the secretary of state a  
9 certificate of cancellation signed ~~and sworn to~~ by a general partner. A cancellation does not  
10 terminate the authority of the secretary of state to accept service of process on the foreign  
11 limited partnership with respect to claims for relief arising out of the transactions of business in  
12 this state.

13 **SECTION 127.** Section 45-10.1-63 of the North Dakota Century Code is created and  
14 enacted as follows:

15 **45-10.1-63. Service of process on a limited partnership.**

- 16 1. A process, notice, or demand required or permitted by law to be served on a  
17 limited partnership may be served on the registered agent or on any responsible  
18 person found at the registered office or on the secretary of state as provided in this  
19 section.
- 20 2. If neither the registered agent nor a responsible person can be found at the  
21 registered office and if a responsible person affiliated with the limited partnership  
22 cannot be found at the principal place of business in this state, the secretary of  
23 state is the agent of the limited partnership on whom the process, notice, or  
24 demand may be served. 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 affidavit of a person not a party,  
28 verifying that neither a registered agent nor a responsible person can be  
29 found at the registered office or at the principal place of business in this state.
- 30 c. Is deemed personal service on the limited partnership and may be made by  
31 filing with the secretary of state.

- 1                   (1) An original and two copies of the process, notice, or demand; and  
2                   (2) The fees provided in section 45-22-22.  
3                   d. The secretary of state immediately shall forward, by certified mail addressed  
4                   to the limited partnership at the limited partnership's registered office or  
5                   principal place of business in this state, a copy of the process, notice, or  
6                   demand.  
7                   e. Service on the secretary of state is returnable in not less than thirty days,  
8                   notwithstanding a shorter period specified in the process, notice, or demand.  
9                   3. The secretary of state shall maintain a record of every process, notice, and  
10                   demand served on the secretary of state under this section, including the date of  
11                   service and the action taken with reference to the process, notice, or demand.  
12                   4. This section does not limit the right of a person to serve process, notice, or  
13                   demand required or permitted by law to be served on a limited partnership in any  
14                   other manner permitted by law.

15                   **SECTION 128.** Section 45-10.1-64 of the North Dakota Century Code is created and  
16 enacted as follows:

17                   **45-10.1-64. Secretary of state - Annual report of limited partnership and foreign**  
18 **limited partnership.**

- 19                   1. Each limited partnership, and each foreign limited partnership authorized to  
20 transact business in this state, shall file, within the time prescribed by subsection 3,  
21 an annual report setting forth:  
22                   a. The name of the limited partnership or foreign limited partnership and the  
23 jurisdiction of origin.  
24                   b. The address of the registered office of the limited partnership or foreign  
25 limited partnership in this state and the name of the limited partnership's or  
26 foreign limited partnership's registered agent in this state at that address.  
27                   c. The address of the limited partnership's or foreign limited partnership's  
28 principal executive office.  
29                   d. A brief statement of the character of the business in which the limited  
30 partnership or foreign limited partnership is actually engaged in this state.



- 1                   (2) If the report is filed before the deadlines prescribed in this subsection,  
2                                   penalties for the failure to file a report within the time provided do not  
3                                   apply if the report is corrected to conform to the requirements of  
4                                   subsection 2 and returned to the secretary of state within thirty days  
5                                   after the annual report was returned by the secretary of state for  
6                                   correction.
- 7           4. After the date established under subsection 3, the secretary of state shall notify  
8                   any limited partnership or foreign limited partnership failing to file an annual report  
9                   that the limited partnership's or foreign limited partnership's certificate or  
10                   registration is not in good standing and that the limited partnership's certificate or  
11                   foreign limited partnership's registration may be terminated or revoked pursuant to  
12                   subsection 5.
- 13                   a. The secretary of state must mail notice of termination or revocation to the last  
14                                   registered agent at the last registered office of record.
- 15                   b. If the limited partnership or foreign limited partnership files an annual report  
16                                   after the notice is mailed, together with the annual report filing fee and late  
17                                   filing penalty fee as prescribed by section 45-10.1-15, the secretary of state  
18                                   will restore the limited partnership's or foreign limited partnership's certificate  
19                                   or registration to good standing.
- 20           5. A limited partnership that does not file an annual report, along with the statutory  
21                   filing and penalty fees, within six months after the date established in subsection 3,  
22                   ceases to exist and is considered involuntarily terminated by operation of law.
- 23                   a. The secretary of state shall note the termination of the limited partnership's  
24                                   certificate on the records of the secretary of state and shall give notice of the  
25                                   action to the terminated limited partnership.
- 26                   b. Notice by the secretary of state must be mailed to the limited partnership's  
27                                   last registered agent at the last registered office of record.
- 28           6. A foreign limited partnership that does not file an annual report, along with the  
29                   statutory filing and penalty fees, within six months after the date established by  
30                   subsection 3, forfeits the right to transact business in this state.

- 1           a. The secretary of state shall note the revocation of the foreign limited  
2                   partnership's registration on the records of the secretary of state and shall  
3                   give notice of the action to the foreign limited partnership.
- 4           b. Notice by the secretary of state must be mailed to the foreign limited  
5                   partnership's last registered agent at the last registered office of record.
- 6        7. A limited partnership that is terminated for failure to file an annual report, or a  
7           foreign limited partnership registration that is forfeited for failure to file an annual  
8           report, may be reinstated by filing a past-due report, together with the statutory  
9           filing and penalty fees for an annual report and a reinstatement fee as prescribed  
10           in section 45-10.1-15. The fees must be paid and the report filed within one year  
11           following the involuntary termination or revocation. Reinstatement under this  
12           subsection does not affect the rights or liability for the time from the termination or  
13           revocation to the reinstatement.

14           **SECTION 129.** Section 45-10.1-65 of the North Dakota Century Code is created and  
15 enacted as follows:

16           **45-10.1-65. Secretary of state - Fees for filing documents.** The secretary of state  
17 shall charge and collect for:

- 18           1. Filing a limited partnership, one hundred dollars.
- 19           2. Filing a limited partnership amendment, forty dollars.
- 20           3. Filing a limited partnership dissolution, twenty-five dollars.
- 21           4. Filing a limited partnership cancellation, twenty-five dollars.
- 22           5. Filing a reservation of name, ten dollars.
- 23           6. Filing a notice of transfer of a reserved limited partnership name, ten dollars.
- 24           7. Filing a cancellation of a reserved limited partnership name, ten dollars.
- 25           8. Filing a consent to use a deceptively similar name, ten dollars.
- 26           9. Filing a statement of change of address of registered office or change of registered  
27           agent, or both, ten dollars.
- 28           10. Filing a statement of change of address of registered office by registered agent,  
29           ten dollars for each limited partnership affected by the change.
- 30           11. Filing a registered agent's consent to serve in the capacity of registered agent, ten  
31           dollars.

- 1        12. Filing a resignation as registered agent, ten dollars.
- 2        13. Filing a registration of foreign limited partnership, one hundred dollars.
- 3        14. Filing a certified statement of amendment of foreign limited partnership, forty  
4            dollars.
- 5        15. Filing a certified statement of dissolution of foreign limited partnership, twenty-five  
6            dollars.
- 7        16. Filing a certified statement of cancellation of foreign limited partnership, twenty-five  
8            dollars.
- 9        17. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.
- 10       18. Filing an annual report of a limited partnership or foreign limited partnership,  
11           twenty-five dollars. The secretary of state shall charge and collect additional fees  
12           for late filing of an annual report as follows:
  - 13            a. After the date prescribed in subsection 3 of section 45-10.1-14, twenty  
14                    dollars; and
  - 15            b. After the termination of the limited partnership or the revocation of the  
16                    registration of a foreign limited partnership, the reinstatement fee of one  
17                    hundred dollars.
- 18       19. Any document submitted for approval before the actual time of submission for  
19           filing, one-half of the fee provided in this section for filing the document.
- 20       20. Filing any process, notice, or demand for service, twenty-five dollars.

21        **SECTION 130.** Section 45-10.1-66 of the North Dakota Century Code is created and  
22 enacted as follows:

23        **45-10.1-66. Secretary of state - Duties.** The secretary of state shall maintain an  
24 alphabetical index of all limited partnerships and foreign limited partnerships on file with that  
25 office. Except for annual reports, all documents filed with the secretary of state under this  
26 chapter must be retained in that office until the documents have been committed to microcopy,  
27 at which time the documents may be destroyed.

28        **SECTION 131.** Section 45-10.1-67 of the North Dakota Century Code is created and  
29 enacted as follows:

30        **45-10.1-67. Secretary of state - Powers - Enforcement - Penalty - Appeal.**

- 31        1. The secretary of state shall administer this chapter.

- 1           2. The secretary of state may propound to any limited partnership subject to this  
2           chapter and to any partner any interrogatory reasonably necessary and proper to  
3           ascertain whether the partnership has complied with this chapter.
- 4           a. Any interrogatory must be answered within thirty days after mailing or within  
5           any additional time fixed by the secretary of state. Every answer to the  
6           interrogatory must be full and complete and be made in writing and under  
7           oath.
- 8           b. If an interrogatory is directed:
- 9           (1) To an individual, the interrogatory must be answered by that individual;  
10          (2) To a domestic limited partnership, the interrogatory must be answered  
11          by a general partner; or
- 12          (3) To a foreign limited partnership, the interrogatory must be answered by  
13          a resident partner or, if no partner is a resident partner, a partner  
14          designated by the foreign limited partnership.
- 15          c. The secretary of state need not file any document to which an interrogatory  
16          relates until the interrogatory is answered, except if the answers disclose the  
17          document is not in conformity with this chapter.
- 18          d. The secretary of state shall certify to the attorney general, for any action the  
19          attorney general determines appropriate, any interrogatory and answers that  
20          disclose a violation of this chapter.
- 21          e. Each general partner of a domestic limited partnership or a resident partner or  
22          designated partner of a foreign limited partnership who fails or refuses within  
23          the time provided by this section to answer truthfully and fully every  
24          interrogatory propounded to that person by the secretary of state is guilty of  
25          an infraction.
- 26          f. Any interrogatory propounded by the secretary of state and the answers are  
27          not open to public inspection under section 44-04-18. The secretary of state  
28          may not disclose any fact or information obtained from an interrogatory  
29          except to the extent permitted by law or required for evidence in any criminal  
30          proceeding or other action by this state.

- 1           3. If the secretary of state rejects any document required by this chapter to be  
2           approved by the secretary of state before the document may be filed, the secretary  
3           of state shall give written notice of the rejection to the person who delivered the  
4           document, specifying the reasons for rejection. That person may appeal to the  
5           district court of the county in which the registered office of the domestic limited  
6           partnership or foreign limited partnership is, or is proposed to be, situated by filing  
7           with the clerk of that court a petition setting forth a copy of the document sought to  
8           be filed and a copy of the written rejection of the document by the secretary of  
9           state. The court shall try the matter de novo. The court shall sustain the action of  
10           the secretary of state or direct the secretary of state to take any action the court  
11           determines proper.
- 12           4. If the secretary of state revokes the registration of any foreign limited partnership,  
13           the foreign limited partnership may appeal to district court of the county where the  
14           registered office of the foreign limited partnership in this state is situated by filing  
15           with the clerk of that court a petition setting forth a copy of the foreign limited  
16           partnership's registration and a copy of the notice of revocation given by the  
17           secretary of state. The court shall try the matter de novo. The court shall sustain  
18           the action of the secretary of state or direct the secretary of state to take any action  
19           the court determines proper.
- 20           5. The attorney general may maintain an action to restrain a foreign limited  
21           partnership from transacting business in this state in violation of this chapter.

22           **SECTION 132.** Section 45-10.1-68 of the North Dakota Century Code is created and  
23 enacted as follows:

24           **45-10.1-68. Secretary of state - Certificates and certified copies to be received in**  
25 **evidence.**

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

1           the foregoing documents or certificates, must be taken and received in all courts,  
2           public offices, and official bodies as prima facie evidence of the existence or  
3           nonexistence of the facts stated.

4           **SECTION 133.** Section 45-10.1-69 of the North Dakota Century Code is created and  
5 enacted as follows:

6           **45-10.1-69. Secretary of state - Exempt records.** Any social security number or  
7 federal tax identification number disclosed or contained in any document filed with the secretary  
8 of state under this chapter is an exempt record as defined by subsection 5 of section  
9 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any  
10 social security number or federal tax identification number the secretary of state determines to  
11 be a closed record before a copy of any document is released to the public.

12           **SECTION 134.** Section 45-10.1-70 of the North Dakota Century Code is created and  
13 enacted as follows:

14           **45-10.1-70. Secretary of state - Forms to be furnished by the secretary of state.**  
15 Every annual report must be made on forms prescribed by the secretary of state. Upon  
16 request, the secretary of state may furnish forms for all other documents to be filed in the office  
17 of the secretary of state. However, the use of these documents, unless otherwise specifically  
18 required by law, is not mandatory.

19           **SECTION 135.** Section 45-10.1-71 of the North Dakota Century Code is created and  
20 enacted as follows:

21           **45-10.1-71. Audit reports and audit of limited partnerships receiving state**  
22 **subsidies for production of alcohol or methanol for combination with gasoline.** Any  
23 limited partnership that produces agricultural ethyl alcohol or methanol within this state and  
24 which receives a production subsidy from the state, whether in the form of reduced taxes or  
25 otherwise, shall submit an annual audit report, prepared by a certified public accountant based  
26 on an audit of all records and accounts of the limited partnership, to the legislative audit and  
27 fiscal review committee. The audit must be submitted within ninety days of the close of the  
28 taxable year of the limited partnership. Upon request of the legislative audit and fiscal review  
29 committee, the state auditor shall conduct an audit of the records and accounts of any limited  
30 partnership required to submit an annual report under this section.

1           **SECTION 136.** Section 45-10.1-72 of the North Dakota Century Code is created and  
2 enacted as follows:

3           **45-10.1-72. Foreign trade zones.**

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

5           a. "Act of Congress" means the Act of Congress approved June 18, 1934,  
6 entitled an act to provide for the establishment, operation, and maintenance  
7 of foreign trade zones and ports of entry of the United States, to expedite and  
8 encourage foreign commerce and for other purposes, as amended, and  
9 commonly known as the Foreign Trade Zone Act of 1934 [48 Stat. 998;  
10 19 U.S.C. 81a et seq.], as amended.

11           b. "Private limited partnership" means a domestic limited partnership or foreign  
12 limited partnership, one of the purposes of which is to establish, operate, and  
13 maintain a foreign trade zone by itself or in conjunction with a public  
14 corporation.

15           c. "Public corporation" means this state, any political subdivision of this state,  
16 any public agency of this state or any political subdivision of this state, or any  
17 corporate instrumentality of this state.

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

24           **SECTION 137. AMENDMENT.** Section 45-13-01 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26           **45-13-01. (101) Definitions.** In chapters 45-13 through 45-21 unless the context or  
27 subject matter otherwise requires:

28           1. "Address" means:

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

- 1            b. In any other case, the mailing address, including the zip code.
- 2            2. "Authenticated electronic communication" means:
- 3            a. That the electronic communication is delivered:
- 4                    (1) To the principal place of business of the partnership; or
- 5                    (2) To a partner or agent of the partnership authorized by the partnership
- 6                                    to receive the electronic communication; and
- 7            b. That the electronic communication sets forth information from which the
- 8                                    partnership can reasonably conclude that the electronic communication was
- 9                                    sent by the purported sender.
- 10           3. "Business" includes every trade, occupation, and profession.
- 11           ~~2. "Chief executive office" means an office from which the partnership conducts~~
- 12           ~~business.~~
- 13           ~~3.~~ 4. "Debtor in bankruptcy" means a person who is the subject of:
- 14                    a. An order for relief under title 11 of the United States Code or a comparable
- 15                                    order under a successor statute of general application; or
- 16                    b. A comparable order under federal, state, or foreign law governing insolvency.
- 17           ~~4.~~ 5. "Distribution" means a transfer of money or other property from a partnership to a
- 18                                    partner in the partner's capacity as a partner or to the partner's transferee.
- 19           ~~5.~~ 6. "Domestic organization" means an organization created under the laws of this
- 20                                    state.
- 21           7. "Electronic" means relating to technology having electrical, digital, magnetic,
- 22                                    wireless, optical, electromagnetic, or similar capabilities.
- 23           8. "Electronic communication" means any form of communication, not directly
- 24                                    involving the physical transmission of paper:
- 25                    a. That creates a record that may be retained, retrieved, and reviewed by a
- 26                                    recipient of the communication; and
- 27                    b. That may be directly reproduced in paper form by the recipient through an
- 28                                    automated process.
- 29           9. "Electronic record" means a record created, generated, sent, communicated,
- 30                                    received, or stored by electronic means.

- 1           10.   "Electronic signature" means an electronic sound, symbol, or process attached to  
2                   or logically associated with a record and executed or adopted by a person with the  
3                   intent to sign the record.
- 4           11.   "Filed with the secretary of state" means, except as otherwise permitted by law or  
5                   rule:  
6                   a.   ~~A signed original or a legible facsimile telecommunication of a signed original~~  
7                   ~~of a request for reserved name or the signed original of all other documents~~  
8                   That a document meeting the applicable requirements of this chapter together  
9                   with the fees provided in section 45-13-05 was delivered or communicated to  
10                  the secretary of state by a method or medium of communication acceptable  
11                  by the secretary of state and was determined by the secretary of state to  
12                  conform to law.  
13                  b.   ~~The~~ That the secretary of state shall then ~~endorse on the original the word~~  
14                  ~~"filed" and the month, day, and year, and record the document in the office of~~  
15                  ~~the secretary of state;~~  
16                  (1)   Record the actual date on which the documents are filed, and if  
17                  different, the effective date of filing; and  
18                  (2)   Record the document in the office of the secretary of state.
- 19       6- 12.   "Foreign limited liability partnership" means a partnership that is formed under laws  
20                   other than the laws of this state and has the status of a limited liability partnership  
21                   under those laws.
- 22       7- 13.   "Foreign organization" means an organization created under laws other than the  
23                   laws of this state for a purpose for which an organization may be created under the  
24                   laws of this state.
- 25           14.   "Limited liability partnership" means a partnership that filed a registration under  
26                   chapter 45-22 and does not have a similar statement in effect in any other  
27                   jurisdiction.
- 28       8- 15.   "Managing partner" means one of the partners charged with the management of  
29                   the partnership in this state and if no partners are specifically so designated, then  
30                   all partners.
- 31           16.   "Notice":

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

- 1 the person with some person of suitable age and discretion  
2 residing there; or
- 3 (4) When given by a form of electronic communication consented to by the  
4 person to whom the notice is given:
- 5 (a) If by facsimile communication, when directed to a telephone  
6 number at which the person has consented to receive notice.
- 7 (b) If by electronic mail, when directed to an electronic mail address  
8 at which the person has consented to receive notice.
- 9 (c) If by posting on an electronic network on which the person has  
10 consented to receive notice, together with separate notice to the  
11 person of the specific posting, upon the later of:
- 12 [1] The posting; or  
13 [2] The giving of the separate notice.
- 14 (d) If by any other form of electronic communication by which the  
15 person has consented to receive notice, when directed to the  
16 person.
- 17 c. Is given when deposited in the United States mail with sufficient postage  
18 affixed.
- 19 d. Is deemed received when it is given.
- 20 ~~9.~~ 17. "Organization" means:
- 21 a. Whether domestic or foreign, a corporation incorporated in or authorized to do  
22 business in this state under this or another chapter of this code, limited  
23 liability company, partnership, limited partnership, limited liability partnership,  
24 limited liability limited partnership, joint venture, association, business trust,  
25 estate, trust, enterprise, and any other legal or commercial entity; but
- 26 b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation  
27 which is incorporated under chapter 10-33 or a foreign nonprofit corporation  
28 which is incorporated in another jurisdiction.
- 29 ~~10.~~ 18. "Partnership" means an association of two or more persons to carry on as  
30 coowners a business for profit formed under section 45-14-02, predecessor law, or  
31 comparable law of another jurisdiction.



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

3 45. 26. "State" means a state of the United States, the District of Columbia, the  
4 Commonwealth of Puerto Rico, or any territory or insular possession subject to the  
5 jurisdiction of the United States.

6 46. 27. "Statement" means a:  
7           a. A statement of partnership authority under section 45-15-03; a;  
8           b. A statement of denial under section 45-15-04; a;  
9           c. A statement of dissociation under section 45-19-04; a;  
10          d. A statement of dissolution under section 45-20-05; a;  
11          e. A statement of merger under section 45-21-07; or an  
12          f. An amendment or cancellation of any of the foregoing.

13 47. 28. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and  
14 encumbrance.

15           **SECTION 138.** Section 45-13-01.1 of the North Dakota Century Code is created and  
16 enacted as follows:

17           **45-13-01.1. Legal recognition of electronic records and electronic signatures.**

18 For purposes of this chapter:

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

27           **SECTION 139. AMENDMENT.** Subsections 5 and 6 of section 45-13-04.1 of the North  
28 Dakota Century Code are amended and reenacted as follows:

- 29           5. A partnership that is ~~merged~~ the surviving organization in a merger with another  
30           partnership ~~one or domestic or foreign limited partnership, or that is formed by the~~  
31           ~~reorganization of one or more partnerships or domestic or foreign limited~~

1 ~~partnerships~~ other organizations, or that acquires by sale, lease, or other  
2 disposition to or exchange with ~~a partnership~~ an organization all or substantially all  
3 of the assets of another ~~partnership or domestic or foreign limited partnership~~  
4 organization including ~~the partnership's or limited partnership's~~ its name, may have  
5 the same name, subject to the requirements of subsection 1, as that used in this  
6 state by any of the other ~~partnership or domestic or foreign limited partnership~~  
7 organizations if the other ~~partnership or domestic or foreign limited partnership~~  
8 organization whose name is sought to be used:

- 9 a. Is formed under the laws of this state;
  - 10 b. Is authorized to transact business or conduct activities in this state;
  - 11 c. Holds a reserved name in the manner provided in section 45-10.1-03;
  - 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 6. The use of a name by a partnership in violation of this section does not affect or  
15 vitiate the ~~partnership's~~ partnership existence of the partnership. However, a court  
16 in this state may, upon application of the state or of an interested or affected  
17 person, enjoin the partnership from doing business under a name assumed in  
18 violation of this section, although a statement may have been filed with the  
19 secretary of state.

20 **SECTION 140. AMENDMENT.** Section 45-13-04.2 of the North Dakota Century Code  
21 is amended and reenacted as follows:

22 **45-13-04.2. Reserved name.**

- 23 1. The exclusive right to the use of a partnership name otherwise permitted by  
24 section 45-13-04.1 may be reserved by any person.
- 25 2. The reservation is made by filing with the secretary of state a request that the  
26 name be reserved together with the fees provided in section 45-13-05.
  - 27 a. If the name is available for use by the applicant, the secretary of state shall  
28 reserve the name for the exclusive use of the applicant for a period of twelve  
29 months.
  - 30 b. The reservation may be renewed for successive twelve-month periods.

1           3. The right to the exclusive use of a partnership name reserved pursuant to this  
2           section may be transferred to another person by or on behalf of the applicant for  
3           whom the name was reserved by filing with the secretary of state a notice of the  
4           transfer and specifying the name and address of the transferee together with the  
5           fees provided in section 45-13-05.

6           4. The right to the exclusive use of a partnership name reserved pursuant to this  
7           section may be canceled by or on behalf of the applicant for whom the name was  
8           reserved by filing with the secretary of state a notice of the cancellation together  
9           with the fees provided in section 45-13-05.

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

12          6. The secretary of state may destroy any reserved name request and any index of  
13          reserved names one year after expiration.

14           **SECTION 141. AMENDMENT.** Subsections 6 and 7 of section 45-13-05 of the North  
15          Dakota Century Code are amended and reenacted as follows:

16          6. Any statement filed under this section must be renewed every five years from the  
17          date of the initial filing. A statement of renewal must be executed by the  
18          partnership on a form furnished by the secretary of state which is sent to the  
19          address of the ~~chief~~ principal executive office at least sixty days before the  
20          deadline for filing. If the secretary of state finds that the statement of renewal  
21          conforms to the requirements of this section, and the proper filing fee has been  
22          paid, the secretary of state shall file the statement of renewal. If the secretary of  
23          state finds that the statement of renewal does not so conform, the secretary of  
24          state shall return the statement of renewal to the partnership for any necessary  
25          corrections. If the statement of renewal is not returned corrected within thirty days  
26          after the statement of renewal was returned for correction, the statement of  
27          renewal is subject to cancellation. If any partnership fails to file the statement of  
28          renewal, the secretary of state shall cancel the initial statement and shall mail  
29          notice of the cancellation to the address of the ~~chief~~ principal executive office.

30          7. A partnership shall notify the secretary of state in writing upon a change in address  
31          of the partnership's ~~chief~~ principal executive office. A statement of renewal filed by

1           the secretary of state which reflects a change of address of the ~~chief principal~~  
2           executive office of the partnership may serve as a notice under this subsection.

3           **SECTION 142. AMENDMENT.** Subsection 1 of section 45-13-06 of the North Dakota  
4 Century Code is amended and reenacted as follows:

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

9           **SECTION 143. AMENDMENT.** Subsection 1 of section 45-15-03 of the North Dakota  
10 Century Code is amended and reenacted as follows:

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

13          a. Must include:

14               (1) The name of the partnership;

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

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

18               (4) The address of the registered office of the partnership and the name of  
19               the registered agent at that address;

20               (5) The name of each partner authorized to execute an instrument  
21               transferring real property held in the name of the partnership; and

22               (6) The nature of business to be transacted.

23          b. May state the authority, or limitations on the authority, of some or all of the  
24          partners to enter into other transactions on behalf of the partnership and any  
25          other matter.

26          **SECTION 144. AMENDMENT.** Subsection 1 of section 45-15-03.1 of the North  
27 Dakota Century Code is amended and reenacted as follows:

28          1. A partnership that files and maintains a statement of partnership authority shall  
29          continuously maintain a registered office in this state. A registered office need not  
30          be the same as the principal place of business or the ~~chief principal~~ executive  
31          office of the partnership.

1           **SECTION 145. AMENDMENT.** Subsection 2 of section 45-15-03.2 of the North  
2 Dakota Century Code is amended and reenacted as follows:

3           2. A registered agent of a partnership may resign by filing with the secretary of state  
4 a signed written notice of resignation, including a statement that a signed copy of  
5 the notice was given to the partnership at the partnership's chief principal  
6 executive office, or to a legal representative of the partnership. The appointment  
7 of the agent terminates thirty days after notice is filed with the secretary of state.

8           **SECTION 146. AMENDMENT.** Section 45-15-04 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10           **45-15-04. (304) Statement of denial.** A partner or other person named as a partner in  
11 a filed statement of partnership authority may file with the secretary of state, along with the fees  
12 provided in section 45-13-05, a statement of denial stating the name of the partnership and the  
13 fact that is being denied, which may include denial of a person's authority or status as a  
14 partner. A statement of denial is a limitation on authority as provided in subsections 3 and 4 of  
15 section 45-15-03.

16           **SECTION 147.** Section 45-16-07 of the North Dakota Century Code is created and  
17 enacted as follows:

18           **45-16-07. Action without a meeting.** An action required or permitted to be taken at a  
19 meeting of the partners may be taken without a meeting by written action signed, or consented  
20 to by authenticated electronic communication, by all of the partners entitled to vote on the  
21 action.

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

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

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

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

- 1           2. The written action is effective when it has been signed, or consented to by  
2                   authenticated electronic communication, by the required partners, unless a  
3                   different effective time is provided in the written action.
- 4           3. When this chapter requires or permits a certificate concerning an action to be filed  
5                   with the secretary of state, the partner signing the certificate must so indicate if the  
6                   action was taken under this section.

7           **SECTION 148.** Section 45-16-08 of the North Dakota Century Code is created and  
8 enacted as follows:

9           **45-16-08. Remote communications for partner meetings.**

- 10          1. This section shall be construed and applied to:
- 11           a. Facilitate remote communication consistent with other applicable law; and  
12           b. Be consistent with reasonable practices concerning remote communication  
13               and with the continued expansion of those practices.
- 14          2. To the extent authorized in the partnership agreement:
- 15           a. A meeting of the partners may be held solely by any combination of means of  
16               remote communication through which the participants may participate in the  
17               meeting:
- 18               (1) If the notice of the meeting is given to every partner entitled to vote;  
19                   and  
20               (2) If the partnership interests held by the partners participating in the  
21                   meeting would be sufficient to constitute a quorum at a meeting.
- 22           b. A partner not physically present at a meeting of partners may by means of  
23               remote communication participate in a meeting of partners held at a  
24               designated place.
- 25          3. In any meeting of partners held solely by means of remote communication under  
26               subdivision a of subsection 2, or in any meeting partners held at a designated  
27               place in which one or more partners participate by means of remote  
28               communication under subdivision b of subsection 2:
- 29           a. The partnership shall implement reasonable measures:
- 30               (1) To verify that each person deemed present and entitled to vote at the  
31                   meeting by means of remote communication is a partner; and

- 1                   (2) To provide each partner participating by means of remote  
2                   communication with a reasonable opportunity to participate in the  
3                   meeting, including an opportunity to:
- 4                   (a) Read or hear the proceedings of the meeting substantially  
5                   concurrently with those proceedings;
- 6                   (b) If allowed by the procedures governing the meeting, have the  
7                   partner's remarks heard or read by other participants in the  
8                   meeting substantially concurrently with the making of those  
9                   remarks; and
- 10                  (c) If otherwise entitled, vote on matters submitted to the partners.
- 11                  b. Participation in a meeting by this means constitutes presence at the meeting.
- 12                  4. With respect to notice to partners:
- 13                  a. Any notice to partners given by the partnership under any provision of this  
14                  chapter or the partnership agreement by a form of electronic communication  
15                  consented to by the partner to whom the notice is given is effective when  
16                  given. The notice is deemed given:
- 17                  (1) If by facsimile communication, when directed to a telephone number at  
18                  which the partner has consented to receive notice;
- 19                  (2) If by electronic mail, when directed to an electronic mail address at  
20                  which the partner has consented to receive notice;
- 21                  (3) If by posting on an electronic network, on which the partner has  
22                  consented to receive notice, together with separate notice to the  
23                  partner of the specific posting, upon the later of:
- 24                  (a) The posting; or
- 25                  (b) The giving of the separate notice; or
- 26                  (4) If by any other form of electronic communication by which the partners  
27                  have consented to receive notice, when directed to the partner.
- 28                  b. An affidavit of the managing partner, other authorized partner, or authorized  
29                  agent of the partnership, that the notice has been given by a form of  
30                  electronic communication is, in the absence of fraud, prima facie evidence of  
31                  the facts stated in the affidavit.

1           c. Consent by a partner to notice given by electronic communication may be  
2           given in writing or by authenticated electronic communication. The  
3           partnership is entitled to rely on any consent so given until revoked by the  
4           partner. However, no revocation affects the validity of any notice given before  
5           receipt by the partnership 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 partner submitting the ballot, vote,  
8           authorization, or consent so long as the revocation is received by the other  
9           partners of the partnership at or before the meeting or before an action without a  
10           meeting is effective according to section 10-16-07.

11          6. Waiver of notice by a partner at a meeting by means of authenticated electronic  
12           communication may be given in the manner provided in the partnership  
13           agreement. Participation in a meeting by means of remote communication  
14           described in subdivisions a and b of subsection 2 is a waiver of notice of that  
15           meeting, except when the partner objects:

16           a. At the beginning of the meeting to the transaction of business because the  
17           meeting is not lawfully called or conveyed; or

18           b. Before a vote on an item of business because the item may not lawfully be  
19           considered at the meeting and does not participate in the consideration of the  
20           item at that meeting.

21           **SECTION 149. AMENDMENT.** Subsection 1 of section 45-19-04 of the North Dakota  
22 Century Code is amended and reenacted as follows:

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

26           **SECTION 150. AMENDMENT.** Subsections 1 and 2 of section 45-21-05 of the North  
27 Dakota Century Code are amended and reenacted as follows:

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

31           2. The plan of merger must set forth:

- 1           a.    The name of ~~each~~;
- 2                (1)   The partnership or limited partnership that is a party to the merger;
- 3                (2)   Each other organization proposing to merge; and
- 4                (3)   The surviving organization into which the other organizations will
- 5                        merge.
- 6           b.    ~~The name of the surviving entity into which the other partnerships or limited~~
- 7                        ~~partnerships will merge;~~
- 8           e.    ~~Whether the surviving entity is a partnership or a limited partnership and the~~
- 9                        The status of each partner;
- 10          ~~c.~~    The terms and conditions of the merger;
- 11          e.    d.    The manner and basis of converting the interests of each party to the merger
- 12                        into interests or obligations of the surviving ~~entity~~ organization, or into money
- 13                        or other property in whole or part; and
- 14          f.    e.    The street address of the ~~surviving entity's chief~~ principal executive office of
- 15                        the surviving organization.

16           **SECTION 151. AMENDMENT.** Subsection 2 of section 45-21-06 of the North Dakota  
17 Century Code is amended and reenacted as follows:

- 18           2.    The secretary of state of this state is the agent for service of process in an action
- 19                        or proceeding against a surviving foreign partnership or limited partnership to
- 20                        enforce an obligation of a domestic partnership or limited partnership that is a party
- 21                        to a merger. The surviving entity shall promptly notify the secretary of state of the
- 22                        mailing address of its ~~chief~~ principal executive office and of any change of
- 23                        address. Upon receipt of process, the secretary of state shall mail a copy of the
- 24                        process to the surviving foreign partnership or limited partnership.

25           **SECTION 152. AMENDMENT.** Subsections 1 and 2 of section 45-21-07 of the North  
26 Dakota Century Code are amended and reenacted as follows:

- 27           1.    After a merger, the surviving ~~partnership or limited partnership~~ organization may
- 28                        file a statement that one or more partnerships or limited partnerships have merged
- 29                        into the surviving ~~entity~~ organization.
- 30           2.    A statement of merger must contain:
- 31                a.    The name of ~~each~~;

- 1                   (1) ~~The partnership or limited partnership that is a party to the merger;~~  
2                   (2) ~~Each other organization that is a party to the merger; and~~  
3                   (3) ~~The surviving organization into which the other organizations were~~  
4                   ~~merged.~~  
5                   b. ~~The name of the surviving entity into which the other partnerships or limited~~  
6                   ~~partnership were merged;~~  
7                   e. The street address of the ~~surviving entity's chief~~ principal executive office of  
8                   the surviving organization and of an office in this state, if any; ~~and~~  
9                   d. ~~Whether the surviving entity is a partnership or a limited partnership.~~

10                   **SECTION 153. AMENDMENT.** Section 45-22-01 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12                   **45-22-01. Definitions.** In this chapter, unless the context otherwise requires:

- 13                   1. "Address" means:  
14                   a. In the case of a registered office or principal executive office, the mailing  
15                   address, including the zip code, of the actual office location which may not be  
16                   only a post-office box; and  
17                   b. In all other cases, the mailing address, including a zip code.  
18                   2. "Authenticated electronic communication" means:  
19                   a. That the electronic communication is delivered:  
20                   (1) To the principal place of business of the limited liability partnership; or  
21                   (2) To a partner or agent of the limited liability partnership authorized by  
22                   the limited liability partnership to receive the electronic communication;  
23                   and  
24                   b. That the electronic communication sets forth information from which the  
25                   limited liability partnership can reasonably conclude that the electronic  
26                   communication was sent by the purported sender.  
27                   3. "Domestic limited liability partnership" means a partnership that is organized under  
28                   the laws of this state with a registration in effect and which is not a foreign limited  
29                   liability partnership.  
30                   ~~3.~~ 4. "Domestic organization" means an organization created under the laws of this  
31                   state.

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

- 1     ~~5-~~ 11. "Foreign organization" means an organization created under laws other than the  
2                   laws of this state for a purpose for which an organization may be created under the  
3                   laws of this state.
- 4           12. "Jurisdiction of origin" means the jurisdiction in which the limited liability  
5           partnership status of the foreign limited liability partnership was created.
- 6     ~~6-~~ 13. "Limited liability partnership" means a domestic limited liability partnership or a  
7           foreign limited liability partnership.
- 8     ~~7-~~ 14. "Managing partner" means one of the partners charged with the management ~~in~~  
9           ~~this state~~ of the limited liability partnership or foreign limited liability partnership in  
10           this state and if no partners are so specifically designated, then all partners.
- 11    ~~8-~~ 15. "Notice":
- 12           a. Is given to a limited liability partnership or to a partner of the limited liability  
13           partnership ~~when~~:
- 14               (1) When in writing and mailed or delivered to the limited liability  
15               partnership or the partner at the registered office or principal executive  
16               office of the limited liability partnership; or
- 17               (2) When given by a form of electronic communication consented to by the  
18               limited liability partnership or the partner to which the notice is given:
- 19                   (a) If by facsimile communication, when directed to a telephone  
20                   number at which the limited liability partnership or the partner has  
21                   consented to receive notice.
- 22                   (b) If by electronic mail, when directed to an electronic mail address  
23                   at which the limited liability partnership or the partner has  
24                   consented to receive notice.
- 25                   (c) If by posting on an electronic network on which the limited liability  
26                   partnership or the partner has consented to receive notice,  
27                   together with separate notice to the limited liability partnership or  
28                   the partner if the specific posting, upon the later of:
- 29                       [1] The posting; or
- 30                       [2] The giving of the separate notice.

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

- 1 d. Is deemed received when given.
- 2 ~~9.~~ 16. "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
- 5 liability company, partnership, limited partnership, limited liability partnership,
- 6 limited liability limited partnership, joint venture, association, business trust,
- 7 estate, 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 17. "Originally registered" and "original registration" means the document establishing
- 12 the limited liability partnership status of the foreign limited liability partnership in the
- 13 foreign limited liability partnership's jurisdiction of origin.
- 14 ~~10.~~ 18. "Partnership" means an association of two or more persons to carry on as
- 15 coowners of a business for profit formed under chapters 45-13 through 45-21,
- 16 predecessor law, or comparable law of another jurisdiction.
- 17 ~~44.~~ 19. "Principal executive office" means:
- 18 a. An office from which the limited liability partnership conducts business; or
- 19 b. If the limited liability partnership has no office from which the limited liability
- 20 partnership conducts business, the registered office of the limited liability
- 21 partnership.
- 22 ~~42.~~ 20. "Record" means information that is inscribed on a tangible medium or that is stored
- 23 in an electronic or other medium and is retrievable in perceivable form.
- 24 21. "Register" means the act of filing with the secretary of state which causes:
- 25 a. A domestic limited liability partnership to be created; or
- 26 b. A foreign limited liability partnership to be authorized to transact business in
- 27 this state.
- 28 ~~43.~~ 22. "Registered office" means the place in this state designated as the registered
- 29 office of the limited liability partnership.
- 30 ~~44.~~ 23. "Registration" means the document which, when filed with the secretary of state,
- 31 causes:

- 1 a. A domestic limited liability partnership to be created; or
- 2 b. A foreign limited liability partnership to be authorized to do business in this
- 3 state.
- 4 ~~45-~~ 24. "Signed" means:
- 5 a. That the signature of a person which may be a facsimile affixed, engraved,
- 6 printed, placed, stamped with indelible ink, transmitted by telecommunication
- 7 or electronically, or in any other manner reproduced on the document, is
- 8 placed on a document, as provided in ~~subsection 39 of~~ under section
- 9 ~~41-01-11.~~ 41-01-09; and
- 10 a- b. With respect to a document required by this chapter to be filed with the
- 11 secretary of state, ~~the term~~ means ~~the~~ that:
- 12 (1) The document is signed by a person authorized to do so by this
- 13 chapter, or by or pursuant to an agreement among the partners, or by a
- 14 resolution approved by the affirmative vote of the required proportion or
- 15 number of partners.
- 16 b. ~~With respect to a document not required by this chapter to be filed with the~~
- 17 ~~secretary of state, the signature may be a facsimile affixed, engraved, printed,~~
- 18 ~~placed, stamped with indelible ink, transmitted by telecommunication or~~
- 19 ~~electronically, or in any other manner reproduced on the document.~~
- 20 (2) The signature and the document are communicated by a method or
- 21 medium of communication acceptable by the secretary of state.

22 **SECTION 154.** Section 45-22-01.1 of the North Dakota Century Code is created and  
23 enacted as follows:

24 **45-22-01.1. Legal recognition of electronic records and electronic signatures.**

25 For purposes of this chapter:

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

1           4. If a provision requires a signature, an electronic signature satisfies the  
2           requirement.

3           **SECTION 155. AMENDMENT.** Subsection 3 of section 45-22-03 of the North Dakota  
4 Century Code is amended and reenacted as follows:

5           3. A registration, signed by a managing partner, must contain:

6           a. With respect to a domestic limited liability partnership:

- 7                   (1) The name of the domestic limited liability partnership.  
8                   (2) The nature of the business to be transacted in this state.  
9                   (3) The address of the principal executive office of the domestic limited  
10                   liability partnership.  
11                   (4) The address of the registered office of the domestic limited liability  
12                   partnership and the name of the registered agent at that address.  
13                   (5) The name and address of each managing partner.  
14                   (6) A statement that the partnership elects to be a limited liability  
15                   partnership.  
16                   (7) A deferred effective date, if any.

17           b. With respect to a foreign limited liability partnership:

- 18                   (1) The name of the foreign limited liability partnership and, if different, the  
19                   name under which the foreign limited liability partnership proposes to  
20                   transact business in this state.  
21                   (2) The jurisdiction of origin.  
22                   (3) The date on which the foreign limited liability partnership expires in the  
23                   jurisdiction of origin.  
24                   (4) The nature of the business to be transacted in this state.  
25                   (5) The address of the principal executive office of the foreign limited  
26                   liability partnership.  
27                   (6) The address of the registered office of the foreign limited liability  
28                   partnership and the name of the foreign limited liability partnership's  
29                   registered agent at that address.  
30                   (7) The name and address of each managing partner.

- 1                   (8) An acknowledgment that the status of the foreign limited liability  
2                   partnership in this state will automatically expire unless the foreign  
3                   limited liability partnership continuously maintains limited liability  
4                   partnership status in the jurisdiction of origin.
- 5                   c. The registration must be accompanied by payment of the fees provided in  
6                   section 45-22-22 together with a certificate of good standing or certificate of  
7                   existence authenticated by the registering officer of the state or country where  
8                   the foreign limited liability partnership is originally registered and the consent  
9                   of the designated registered agent for service of process to serve in that  
10                  capacity.

11                  **SECTION 156. AMENDMENT.** Subsection 5 of section 45-22-04 of the North Dakota  
12 Century Code is amended and reenacted as follows:

- 13                  5. A limited liability partnership that is ~~merged~~ the surviving organization in a merger  
14 ~~with a domestic one or foreign organization, that is registered by the~~  
15 ~~reorganization of one or more domestic or foreign organizations, or that acquires~~  
16 ~~by sale, lease, or other disposition to or exchange with a domestic organization all~~  
17 ~~or substantially all of the assets of another domestic or foreign organization~~  
18 ~~including the organization's~~ its name, may have the same name, subject to the  
19 requirements of subsection 1, as that used in this state by any of the other  
20 organizations, if the other organization whose name is sought:
- 21                  a. Is incorporated, organized, formed, or registered under the laws of this state;  
22                  b. Is authorized to transact business or conduct activities in this state;  
23                  c. Holds a reserved name in the manner provided in section 10-19.1-14,  
24                     10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;  
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                  **SECTION 157. AMENDMENT.** Section 45-22-05 of the North Dakota Century Code is  
28 amended and reenacted as follows:

29                  **45-22-05. Reserved name.**

- 30                  1. The exclusive right to the use of a limited liability partnership name otherwise  
31                  permitted by section 45-22-04 may be reserved by any person.

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

20           **SECTION 158. AMENDMENT.** Subsection 2 of section 45-22-17 of the North Dakota  
21 Century Code is amended and reenacted as follows:

- 22           2. If neither the registered agent nor a responsible person can be found at the  
23           registered office and if a responsible person affiliated with the limited liability  
24           partnership cannot be found at the principal place of business in this state, the  
25           secretary of state is the agent of the limited liability partnership on whom the  
26           process, notice, or demand may be served. Service on the secretary of state:
- 27           a. ~~The~~ Shall be made by registered mail or personal delivery to the secretary of  
28           state and not by electronic communication;
- 29           b. Shall include the return of the sheriff or affidavit of a person not a party,  
30           verifying that neither a registered agent ~~or~~ nor a responsible person ~~cannot~~  
31           can be found at the registered office or at the principal place of business in

1                   this state ~~is conclusive evidence the limited liability partnership has no~~  
2                   ~~registered agent or responsible person at the limited liability partnership's~~  
3                   ~~registered office or at the limited liability partnership's principal place of~~  
4                   ~~business in this state.~~

5           b. ~~c.~~ ~~Service on the secretary of state of any process, notice, or demand is~~ is  
6                   deemed personal service on the limited liability partnership and may be made  
7                   by filing with the secretary of state ~~one~~:

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

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

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

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

17           **SECTION 159. AMENDMENT.** Subsection 2 of section 45-22-21.1 of the North  
18   Dakota Century Code is amended and reenacted as follows:

19           2. The annual report must be submitted on forms prescribed by the secretary of state.  
20                   The information provided must be given as of the date of the execution of the  
21                   report. The annual report must be signed as prescribed in subsection ~~46~~ 24 of  
22                   section 45-22-01, the partnership agreement, or in a resolution approved by the  
23                   affirmative vote of the required proportion or number of partners. If the limited  
24                   liability partnership is in the hands of a receiver or trustee, the annual report must  
25                   be signed on behalf of the limited liability partnership by the receiver or trustee.  
26                   The secretary of state may destroy any annual report provided for in this section  
27                   after the annual report is on file for six years.

28           **SECTION 160. AMENDMENT.** Section 45-23-01 of the North Dakota Century Code is  
29   amended and reenacted as follows:

30           **45-23-01. Definitions.** In this chapter, unless the context otherwise requires:

31           1. "Address" means:

- 1           a. In case of a registered office or principal executive office, the mailing address  
2           of the actual office location which may not be only a post-office box; and  
3           b. In all other cases, the mailing address.
- 4           2. "Authenticated electronic communication" means:  
5           a. That the electronic communication is delivered:  
6           (1) To the principal place of business of the limited liability limited  
7           partnership; or  
8           (2) To a partner or agent of the limited liability limited partnership  
9           authorized by the limited liability limited partnership to receive the  
10           electronic communication; and  
11           b. That the electronic communication sets forth information from which the  
12           limited liability limited partnership can reasonably conclude that the electronic  
13           communication was sent by the purported sender.
- 14           3. "Domestic limited liability limited partnership" means a limited liability limited  
15           partnership that is formed under this chapter.
- 16        ~~3.~~ 4. "Domestic organization" means an organization created under the laws of this  
17           state.
- 18           5. "Electronic" means relating to technology having electrical, digital, magnetic,  
19           wireless, optical, electromagnetic, or similar capabilities.
- 20           6. "Electronic communication" means any form of communication, not directly  
21           involving the physical transmission of paper:  
22           a. That creates a record that may be retained, retrieved, and reviewed by a  
23           recipient of the communication; and  
24           b. That may be directly reproduced in paper form by the recipient through an  
25           automated process.
- 26           7. "Electronic record" means a record created, generated, sent, communicated,  
27           received, or stored by electronic means.
- 28           8. "Electronic signature" means an electronic sound, symbol, or process attached to  
29           or logically associated with a record and executed or adopted by a person with the  
30           intent to sign the record.

- 1           9. "Filed with the secretary of state", ~~except as otherwise permitted by law or rule,~~  
2           means, ~~except as otherwise permitted by law or rule:~~
- 3           a. That a ~~signed original or legible facsimile telecommunication of a signed~~  
4           ~~original of a request for reserved name or a signed original of all of the~~  
5           ~~documents~~ document meeting the applicable requirements of this chapter,  
6           together with the fees provided in section 45-23-08, was delivered or  
7           communicated to the secretary of state by a method or medium of  
8           communication acceptable by the secretary of state and was determined by  
9           the secretary of state to conform to law.
- 10          b. That the secretary of state shall then ~~endorse on the original the word "filed"~~  
11          ~~and the month, day, and year:~~
- 12               (1) Record the actual date on which the document is filed, and if different,  
13               the effective date of filing; and record
- 14               (2) Record the document in the office of the secretary of state.
- 15   4. 10. "Foreign limited liability limited partnership" means a limited liability limited  
16   partnership that is:
- 17          a. Organized under the laws other than the laws of this state for a purpose or  
18          purposes for which a limited liability limited partnership may be organized  
19          under this chapter; and
- 20          b. In good standing in the jurisdiction of origin.
- 21   5. 11. "Foreign limited partnership" means a limited partnership that is:
- 22          a. Organized under laws other than the laws of this state for a purpose for which  
23          a limited partnership may be organized under chapter 45-10.1; and
- 24          b. Authorized to transact business in this state as provided in chapter 45-10.1.
- 25   6. 12. "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          13. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability limited  
29   partnership status of a foreign limited liability limited partnership was created.
- 30   7. 14. "Limited liability limited partnership" means a domestic limited liability limited  
31   partnership.

- 1     ~~8.~~ 15. "Limited partnership" means a limited partnership formed under chapter 45-10.1.
- 2     ~~9.~~ 16. "Notice":
- 3             a. Is given to a limited liability limited partnership or to a partner of the limited
- 4                 liability limited partnership ~~when~~:
- 5                     (1) When in writing and mailed or delivered to the limited liability limited
- 6                         partnership or to the partner at the registered office or principal
- 7                         executive office of the partnership; or
- 8                     (2) When given by a form of electronic communication consented to by the
- 9                         limited liability limited partnership or a partner to which the notice is
- 10                         given:
- 11                         (a) If by facsimile communication, when directed to a telephone
- 12                             number at which the limited liability limited partnership or a
- 13                             partner has consented to receive notice.
- 14                         (b) If by electronic mail, when directed to an electronic mail address
- 15                             at which the limited liability limited partnership or a partner has
- 16                             consented to receive notice.
- 17                         (c) If by posting on an electronic network on which the limited liability
- 18                             limited partnership or a partner has consented to receive notice,
- 19                             together with separate notice to the limited liability limited
- 20                             partnership or a partner if the specific posting, upon the later of:
- 21                                 [1] The posting; or
- 22                                 [2] The giving of the separate notice.
- 23                         (d) If by any other form of electronic communication by which the
- 24                             partnership or a partner has consented to receive notice, when
- 25                             directed to the partnership.
- 26             b. ~~In all other cases, is~~ Is given to a person in all other cases:
- 27                     (1) When mailed to the person at an address designated by the person or
- 28                         at the last-known address of the person;
- 29                     (2) When handed to the person; ~~or~~
- 30                     (3) When left at the office of the person with a clerk or other person in
- 31                         charge of the office, or if there is no one in charge, when left in a

1 conspicuous place in the office and if the office is closed or the person  
2 to be notified has no office, when left at the dwelling house or usual  
3 place of abode of the person with some person of suitable age and  
4 discretion residing ~~in that house or abode~~ there; or

5 (4) When given by a form of electronic communication consented to by the  
6 person to whom the notice is given:

7 (a) If by facsimile communication, when directed to a telephone  
8 number at which the person has consented to receive notice.

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

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

14 [1] The posting; or

15 [2] The giving of the separate notice.

16 (d) If by any other form of electronic communication by which the  
17 person has consented to receive notice, when directed to the  
18 person;

19 c. Is given when deposited in the United States mail with sufficient postage  
20 affixed; and

21 d. Is deemed received when given.

22 ~~40.~~ 17. "Organization" means:

23 a. Whether domestic or foreign, a corporation incorporated in or authorized to do  
24 business in this state under this or another chapter of this code, limited  
25 liability company, partnership, limited partnership, limited liability partnership,  
26 limited liability limited partnership, joint venture, association, business trust,  
27 estate, trust, enterprise, and any other legal or commercial entity; but

28 b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation  
29 which is incorporated under chapter 10-33 or a foreign nonprofit corporation  
30 which is incorporated in another jurisdiction.

31 18. "Principal executive office" means:

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- 1 a. An office from which the limited liability limited partnership conducts business;  
2 or  
3 b. If the limited liability limited partnership has no office from which the limited  
4 liability limited partnership conducts business, then the registered office of the  
5 limited liability limited partnership.
- 6 ~~44.~~ 19. "Record" means information that is inscribed on a tangible medium or that is stored  
7 in an electronic or other medium and is retrievable in perceivable form.
- 8 20. "Registered office" means the place in this state designated as the registered  
9 office of the limited liability limited partnership.
- 10 ~~42.~~ 21. "Remote communication" means communication via electronic communication,  
11 conference telephone, videoconference, the internet, or such other means by  
12 which persons not physically present in the same location may communicate with  
13 each other on a substantially simultaneous basis.
- 14 22. "Signed" means:  
15 a. That the signature of a person, which may be a facsimile affixed, engraved,  
16 printed, placed, stamped with indelible ink, transmitted by facsimile or  
17 electronically, or in any other manner reproduced on the document, is placed  
18 on a document, as provided in under section ~~41-01-44.~~ 41-01-09; and  
19 a- b. With respect to a document required by this chapter to be filed with the  
20 secretary of state, ~~means the~~ that:  
21 (1) The document is signed by a person authorized to sign by this chapter,  
22 or pursuant to an agreement among the partners, or by a resolution  
23 approved by the affirmative vote of the required proportion or number of  
24 partners; and  
25 b. ~~With respect to a document not required by this chapter to be filed with the~~  
26 ~~secretary of state, the signature may be a facsimile affixed, engraved, printed,~~  
27 ~~placed, stamped with indelible ink, transmitted by facsimile~~  
28 ~~telecommunication or electronically, or in any other manner reproduced on~~  
29 ~~the document.~~  
30 (2) The signature and the document are communicated by a method or  
31 medium acceptable by the secretary of state.

1           **SECTION 161.** Section 45-23-01.1 of the North Dakota Century Code is created and  
2 enacted as follows:

3           **45-23-01.1. Legal recognition of electronic records and electronic signatures.**

4           For purposes of this chapter:

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

13           **SECTION 162. AMENDMENT.** Subsection 5 of section 45-23-03 of the North Dakota  
14 Century Code is amended and reenacted as follows:

- 15           5. A limited liability limited partnership that is ~~merged~~ the surviving organization in a  
16           merger with another domestic one or foreign organization, that is organized by the  
17           reorganization of one or more domestic or foreign organizations, or that acquires  
18           by sale, lease, or other disposition to or exchange with a domestic an organization  
19           all or substantially all of the assets of another domestic or foreign organization,  
20           including the organization's its name, may include in the limited liability limited  
21           partnership's name, subject to the requirements of subsection 1, the name of any  
22           of the other organizations, if the other organization whose name is sought to be  
23           used:  
24           a. Is incorporated, organized, formed, or registered under the laws of this state;  
25           b. Is authorized to transact business or conduct activities in this state;  
26           c. Holds a reserved name in the manner provided in section 10-19.1-14,  
27           10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;  
28           d. Holds a fictitious name registered in the manner provided in chapter 45-11; or  
29           e. Holds a trade name registered in the manner provided in chapter 47-25.

30           **SECTION 163.** Section 45-23-07 of the North Dakota Century Code is created and  
31 enacted as follows:

1           **45-23-07. Secretary of state - Exempt records.** Any social security number or  
2 federal tax identification number disclosed or contained in any document filed with the secretary  
3 of state under this chapter is an exempt record as defined by subsection 5 of section  
4 44-04-17.1. The secretary of state shall take reasonable precautions to delete or obscure any  
5 social security number or federal tax identification number the secretary of state determines to  
6 be a closed record before a copy of any document is released to the public.

7           **SECTION 164. REPEAL.** Sections 45-10.1-14, 45-10.1-15, and 45-10.1-16 of the  
8 North Dakota Century Code are repealed.