

**FIRST ENGROSSMENT  
with Senate Amendments**

Sixtieth  
Legislative Assembly  
of North Dakota

**ENGROSSED HOUSE BILL NO. 1241**

Introduced by

Representative DeKrey

Senator Nething

1 A BILL for an Act to create and enact section 10-19.1-00.1, a new section to chapter 10-19.1, a  
2 new subsection to section 10-19.1-48, sections 10-19.1-74.1 and 10-19.1-139.1, a new section  
3 to chapter 10-32, section 10-32-42.1, a new subsection to section 10-32-85, section  
4 10-33-01.3, a new subsection to section 10-33-44, and sections 10-33-72.1, 10-34-02.1,  
5 45-10.2-06.1, and 45-13-02.1 of the North Dakota Century Code, relating to business  
6 corporations, limited liability companies, nonprofit corporations, real estate investment trusts,  
7 limited partnerships, and partnerships; and to amend and reenact sections 10-19.1-01,  
8 10-19.1-01.2, 10-19.1-10, 10-19.1-13, and 10-19.1-23, subsection 2 of section 10-19.1-39,  
9 section 10-19.1-41, subsection 3 of section 10-19.1-61, section 10-19.1-63, subsection 1 of  
10 section 10-19.1-65, subsection 6 of section 10-19.1-66, section 10-19.1-69, subsection 1 of  
11 section 10-19.1-75, subsection 1 of section 10-19.1-76.1, subsection 2 of section 10-19.1-84,  
12 section 10-19.1-87, subsection 1 of section 10-19.1-93, sections 10-19.1-96, 10-19.1-97, and  
13 10-19.1-98, subsection 1 of section 10-19.1-99, section 10-19.1-100, subsection 1 of section  
14 10-19.1-100.1, section 10-19.1-101, subsection 2 of section 10-19.1-102, sections  
15 10-19.1-102.1, 10-19.1-103, and 10-19.1-104, subsection 2 of section 10-19.1-104.1,  
16 subsection 1 of section 10-19.1-110, sections 10-19.1-146, 10-19.1-147, 10-32-02, 10-32-07,  
17 10-32-10, and 10-32-27, subsection 1 of section 10-32-37, section 10-32-43, subsection 1 of  
18 section 10-32-76, subsection 2 of section 10-32-94, section 10-32-100, subsection 1 of section  
19 10-32-101, section 10-32-102, subsection 1 of section 10-32-103, sections 10-32-104 and  
20 10-32-105, subsections 2 and 3 of section 10-32-106, sections 10-32-106.1 and 10-32-107,  
21 subsection 4 of section 10-32-108, sections 10-33-01, 10-33-06, 10-33-10, 10-33-34, and  
22 10-33-73, subsection 40 of section 45-10.2-02, subsection 1 of section 45-10.2-27, section  
23 45-10.2-81, subsection 26 of section 45-13-01, subsection 6 of section 45-13-05, subsection 24  
24 of section 45-22-01, subsection 2 of section 45-22-22, and subsection 24 of section 45-23-01 of  
25 the North Dakota Century Code, relating to business corporations, limited liability companies,

1 nonprofit corporations, limited partnerships, partnerships, limited liability partnerships, and  
2 limited liability limited partnerships.

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

4 **SECTION 1.** Section 10-19.1-00.1 of the North Dakota Century Code is created and  
5 enacted as follows:

6 **10-19.1-00.1. Citation.** This chapter may be cited as the "North Dakota Business  
7 Corporation Act."

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

10 **10-19.1-01. Definitions.** For purposes of this chapter, unless the context otherwise  
11 requires:

- 12 1. "Acquiring corporation" means the domestic or foreign corporation that acquires  
13 the shares of a corporation in an exchange.
- 14 2. "Acquiring organization" means the ~~corporation~~, foreign ~~corporation~~, or domestic or  
15 ~~foreign limited liability company~~ organization acquiring in an exchange the shares  
16 ownership interests of a corporation or another foreign corporation or the  
17 ~~membership interests of a domestic or foreign limited liability company~~ or domestic  
18 organization participating in an exchange.
- 19 3. "Address" means:
  - 20 a. In the case of a registered office or principal executive office, the mailing  
21 address, including the zip code, of the actual office location, which may not be  
22 only a post-office box; and
  - 23 b. In any other case, the mailing address, including the zip code.
- 24 4. "Articles" means:
  - 25 a. In the case of a corporation incorporated under or governed by this chapter,  
26 articles of incorporation, articles of amendment, a resolution of election to  
27 become governed by this chapter, a demand retaining the two-thirds majority  
28 for shareholder approval of certain transactions, a statement of change of  
29 registered office, registered agent, or name of registered agent, a statement  
30 establishing or fixing the rights and preferences of a class or series of shares,

- 1 a statement of cancellation of authorized shares, articles of merger, articles of  
2 abandonment, articles of conversion, and articles of dissolution.
- 3 b. In the case of a foreign corporation, the term includes all records serving a  
4 similar function required to be filed with the secretary of state or other officer  
5 of the ~~corporation's~~ state of incorporation of the foreign corporation.
- 6 5. "Authenticated electronic communication" means:
- 7 a. That the electronic communication is delivered:
- 8 (1) To the principal place of business of the corporation; or  
9 (2) To an officer or agent of the corporation authorized by the corporation  
10 to receive the electronic communication; and
- 11 b. That the electronic communication sets forth information from which the  
12 corporation can reasonably conclude that the electronic communication was  
13 sent by the purported sender.
- 14 6. "Ballot" means a written ballot or a ballot transmitted by electronic  
15 communications.
- 16 7. "Board" or "board of directors" means the board of directors of a corporation.
- 17 8. "Board member" means:
- 18 a. An individual serving on the board of directors in the case of a corporation;  
19 and  
20 b. An individual serving on the board of governors in the case of a limited liability  
21 company.
- 22 9. "Bylaws" means the code adopted for the regulation or management of the internal  
23 affairs of a corporation, regardless of how that code is designated.
- 24 10. "Class", when used with reference to ~~shares~~ ownership interests, means a  
25 category of ~~shares~~ ownership interests that differs in designation or one or more  
26 rights or preferences from another category of ~~shares~~ ownership interests of the  
27 ~~corporation~~ organization.
- 28 11. "Closely held corporation" means a corporation that does not have more than  
29 thirty-five shareholders.
- 30 12. "Constituent corporation" means a corporation or a foreign corporation that:

- 1           a. In a merger, is either the surviving corporation or a foreign or domestic  
2           corporation that is merged into the surviving organization; or
- 3           b. In an exchange, is either the acquiring corporation or a foreign or domestic  
4           corporation whose shares are acquired by the acquiring organization.
- 5        13. "Constituent organization" means ~~a corporation, foreign corporation, limited liability~~  
6        ~~company, or foreign limited liability company~~ an organization that:
- 7           a. In a merger, is either the surviving organization or an organization that is  
8           merged into the surviving organization; or
- 9           b. In an exchange, is either the acquiring organization or an organization whose  
10          securities are acquired by the acquiring organization.
- 11       14. "Converted organization" means the organization into which a converting  
12        organization converts pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
- 13       15. "Converting organization" means an organization that converts into another  
14        organization pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
- 15       16. "Corporation" or "domestic corporation" means a corporation, other than a foreign  
16        corporation, organized for profit and incorporated under or governed by this  
17        chapter.
- 18       17. "Director" means a member of the board.
- 19       18. "Distribution" means a direct or indirect transfer of money or other property, other  
20        than ~~a corporation's~~ its own shares, with or without consideration, or an incurrence  
21        or issuance of indebtedness, by a corporation to any of ~~the corporation's~~ its  
22        shareholders in respect of ~~the corporation's~~ its shares, and may be in the form of a  
23        dividend, an interim distribution, or a distribution in liquidation, or as consideration  
24        for the purchase, redemption, or other acquisition of ~~the corporation's~~ its shares, or  
25        otherwise.
- 26       19. "Division" or "combination" means dividing or combining shares of a class or  
27        series, whether issued or unissued, into a greater or lesser number of shares of  
28        the same class or series.
- 29       20. "Domestic organization" means an organization created under the laws of this  
30        state.



- 1           28. "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           29. "Good faith" means honesty in fact in the conduct of an act or transaction.
- 5           30. "Governing body" means for an organization that is:  
6                   a. A corporation, its board of directors;  
7                   b. A limited liability company, its board of governors; or  
8                   c. Any other organization, the body selected by its owners that has the ultimate  
9                   power to determine the policies of the organization and to control its policies.
- 10          31. "Governing statute" of an organization means:  
11                   a. With respect to a domestic organization, the following chapters of this code  
12                   which govern the internal affairs of the organization:  
13                           (1) If a corporation, then this chapter;  
14                           (2) If a limited liability company, then chapter 10-32;  
15                           (3) If a general partnership, then chapters 45-13 through 45-21;  
16                           (4) If a limited partnership, then chapter 45-10.2;  
17                           (5) If a limited liability partnership, then chapter 45-22; and  
18                           (6) If a limited liability limited partnership, then chapter 45-23; and  
19                   b. With respect to a foreign organization, the laws of the jurisdiction under which  
20                   the organization is created and under which the internal affairs of the  
21                   organization are governed.
- 22          ~~31.~~ 32. "Intentionally" means that the person referred to has a purpose to do or fail to do  
23                   the act or cause the result specified or believes that the act or failure to act, if  
24                   successful, will cause that result. A person "intentionally" violates a statute:  
25                   a. If the person intentionally does the act or causes the result prohibited by the  
26                   statute; or  
27                   b. If the person intentionally fails to do the act or cause the result required by the  
28                   statute, even though the person may not know of the existence or  
29                   constitutionality of the statute or the scope or meaning of the terms used in  
30                   the statute.



- 1 by the rules and regulations under the Securities Exchange Act of 1934, as  
2 amended, provided that the corporation has first received any affirmative  
3 written consent or implied consent required under those rules and regulations.
- 4 c. Is given, in all other cases:
- 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;
- 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 there; or
- 16 (4) When given by a form of electronic communication consented to by the  
17 person to whom the notice is given if by:
- 18 (a) Facsimile communication, when directed to a telephone number  
19 at which the person has consented to receive notice.
- 20 (b) Electronic mail, when directed to an electronic mail address at  
21 which the person has consented to receive notice.
- 22 (c) 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) Any other form of electronic communication by which the person  
28 has consented to receive notice, when directed to the person.
- 29 (5) When the method is fair and reasonable when all of the circumstances  
30 are considered.

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- 1 d. Is given by mail when deposited in the United States mail with sufficient  
2 postage affixed.
- 3 e. Is deemed received when it is given.
- 4 ~~36.~~ 37. "Officer" means an individual who is eighteen years of age or more who is:  
5 a. Elected, appointed, or otherwise designated as an officer by the board; or  
6 b. Deemed elected as an officer pursuant to section 10-19.1-56.
- 7 ~~37.~~ 38. "Organization" means:  
8 a. Whether domestic or foreign, a corporation, limited liability company, general  
9 partnership, limited partnership, limited liability partnership, limited liability  
10 limited partnership, or any other person subject to a governing statute; but  
11 b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation  
12 which is incorporated under chapter 10-33 or a foreign nonprofit corporation  
13 which is incorporated in another jurisdiction.
- 14 39. "Originating records" means for an organization that is:  
15 a. A corporation, its articles of incorporation;  
16 b. A limited liability company, its articles of organization;  
17 c. A limited partnership, its certificate of limited partnership;  
18 d. A limited liability partnership, its registration; or  
19 e. A limited liability limited partnership, its certificate of limited liability limited  
20 partnership.
- 21 ~~38.~~ 40. "Outstanding shares" means all shares duly issued and not reacquired by a  
22 corporation.
- 23 ~~39.~~ 41. "Owners" means:  
24 a. ~~Shareholders in the case of a corporation; and~~  
25 b. ~~Members in the case of a limited liability company or a nonprofit corporation~~  
26 the holders of ownership interests in an organization.
- 27 ~~40.~~ 42. "Ownership interests" means for ~~an~~ a domestic or foreign organization that is:  
28 a. A corporation, its shares;  
29 b. A limited liability company, its membership interests;  
30 c. A limited partnership, its partnership interests;  
31 d. A general partnership, its partnership interests;

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- 1 e. A limited liability partnership, its partnership interests; ~~or~~
- 2 f. A limited liability limited partnership, its partnership interests; or
- 3 g. Any other organization, its governance or transferable interests.
- 4 ~~44.~~ 43. "Parent" of a specified ~~corporation~~ organization means ~~a corporation, a foreign~~  
5 ~~corporation, a limited liability company, or a foreign limited liability company~~ an  
6 organization that directly, or indirectly through related organizations, owns more  
7 than fifty percent of the voting power of the ~~shares~~ ownership interests entitled to  
8 vote for directors or other members of the governing body of the specified  
9 ~~corporation~~ organization.
- 10 ~~42.~~ 44. "Principal executive office" means:
- 11 a. If the corporation has an elected or appointed president, then an office where  
12 the elected or appointed president of a corporation has an office; or
- 13 b. If the corporation has no elected or appointed president, then the registered  
14 office of the corporation.
- 15 ~~43.~~ 45. "Record" means information that is inscribed on a tangible medium or that is stored  
16 in an electronic or other medium and is retrievable in perceivable form.
- 17 ~~44.~~ 46. "Registered office" means the place in this state designated in a corporation's  
18 articles of incorporation or in a foreign corporation's certificate of authority as the  
19 registered office.
- 20 ~~45.~~ 47. "Related organization" means an organization that controls, is controlled by, or is  
21 under common control with another organization with control existing if an  
22 organization:
- 23 a. Owns, directly or indirectly, at least fifty percent of the ~~shares, membership~~  
24 ~~interests, or other~~ ownership interests of another organization;
- 25 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or  
26 more of the voting members of the governing body of another organization; or
- 27 c. Has the power, directly or indirectly, to direct or cause the direction of the  
28 management and policies of another organization, whether through the  
29 ownership of voting interests, by contract, or otherwise.
- 30 ~~46.~~ 48. "Remote communication" means communication via electronic communication,  
31 conference telephone, videoconference, the internet, or such other means by

- 1           which persons not physically present in the same location may communicate with  
2           each other on a substantially simultaneous basis.
- 3    ~~47.~~ 49. "Security" has the meaning given in section 10-04-02.
- 4    ~~48.~~ 50. "Series" means a category of shares, within a class of shares authorized or issued  
5           by a corporation by or pursuant to a corporation's articles, that have some of the  
6           same rights and preferences as other shares within the same class, but that differ  
7           in designation or one or more rights and preferences from another category of  
8           shares within that class.
- 9    ~~49.~~ 51. "Share" means one of the units, however designated, into which the shareholders'  
10           proprietary interests of the shareholder in a corporation are divided.
- 11   ~~50.~~ 52. "Shareholder" means a person registered on the books or records of a corporation  
12           or the corporation's transfer agent or registrar as the owner of whole or fractional  
13           shares of the corporation.
- 14   ~~51.~~ 53. "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  
17                telecommunication or electronically, or in any other manner reproduced on  
18                the record, is placed on a record, ~~as provided under section 41-01-14~~ with the  
19                present intention to authenticate that record; and
- 20           b.   With respect to a record required by this chapter to be filed with the secretary  
21                of state, that:
- 22                (1)   The record is signed by a person authorized to do so by this chapter,  
23                    the articles or bylaws, or a resolution approved by the directors as  
24                    required under section 10-19.1-46 or the shareholders as required  
25                    under section 10-19.1-74; and
- 26                (2)   The signature and the record are communicated by a method or  
27                    medium of communication acceptable by the secretary of state.
- 28   ~~52.~~ 54. "Subscriber" means a person that subscribes for shares in a corporation, whether  
29           before or after incorporation.
- 30   ~~53.~~ 55. "Subsidiary" of a specified ~~corporation~~ organization means:



- 1           1. A person knows or has knowledge of a fact if the person has actual knowledge of
- 2           it. A person does not know or have knowledge of a fact merely because the
- 3           person has reason to know or have knowledge of the fact.
- 4           2. A person has notice of a fact if the person:
- 5           a. Knows of the fact;
- 6           b. Has received notice of the fact as provided in subsection ~~35~~ 36 of section
- 7           10-19.1-01;
- 8           c. Has reason to know the fact exists from all of the facts known to the person at
- 9           the time in question; or
- 10          d. Has notice of it under subsection 3.
- 11          3. Subject to subsection 8, a person has notice of:
- 12          a. The intention of a corporation to dissolve, ninety days after the effective date
- 13          of the filed notice of intent to dissolve;
- 14          b. The dissolution of a corporation, ninety days after the effective date of the
- 15          filed articles of dissolution;
- 16          c. The conversion of a corporation, ninety days after the effective date of the
- 17          filed articles of conversion; or
- 18          d. The merger of a corporation, ninety days after the effective date of the filed
- 19          articles of merger.
- 20          4. A person notifies or gives a notification to another person by taking the steps
- 21          provided in subsection ~~35~~ 36 of section 10-19.1-01, whether or not the other
- 22          person learns of it.
- 23          5. A person receives a notification as provided in subsection ~~35~~ 36 of section
- 24          10-19.1-01.
- 25          6. Except as otherwise provided in subsection 7 and except as otherwise provided in
- 26          subsection ~~35~~ 36 of section 10-19.1-01, a person other than an individual knows,
- 27          has notice, or receives a notification of a fact for purposes of a particular
- 28          transaction when the individual conducting the transaction for the person knows,
- 29          has notice, or receives a notification of the fact, or in any event when the fact
- 30          would have been brought to the attention of the individual if the person had
- 31          exercised reasonable diligence.

- 1           a. A person other than an individual exercises reasonable diligence if it  
2                   maintains reasonable routines for communicating significant information to  
3                   the individual conducting the transaction for the person and there is  
4                   reasonable compliance with the routines.
- 5           b. Reasonable diligence does not require an individual acting for the person to  
6                   communicate information unless the communication is part of the regular  
7                   duties of the individual or the individual has reason to know of the transaction  
8                   and that the transaction would be materially affected by the information.
- 9        7. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by  
10           an officer or director is effective immediately as knowledge of, notice to, or receipt  
11           of a notification by the corporation, except in the case of a fraud on the corporation  
12           committed by or with the consent of the officer or director. Knowledge, notice, or  
13           receipt of a notification of a fact relating to the corporation by a shareholder who is  
14           not an officer or director, is not effective as knowledge by, notice to, or receipt of a  
15           notification by the corporation.
- 16        8. Notice otherwise effective under subsection 3 does not affect the power of a  
17           person to transfer real property held in the name of a corporation unless at the  
18           time of transfer a certified copy of the relevant statement, amendment, or articles,  
19           as filed with the secretary of state, has been recorded in the office of the county  
20           recorder in the county in which the real property affected by the statement,  
21           amendment, or articles is located.
- 22        9. With respect to notice given by a form of electronic communication:
- 23           a. Consent by an officer or director to notice given by electronic communication  
24                   may be given in writing or by authenticated electronic communication. The  
25                   corporation is entitled to rely on any consent so given until revoked by the  
26                   officer or director. However, no revocation affects the validity of any notice  
27                   given before receipt by the corporation of revocation of the consent.
- 28           b. An affidavit of an officer or director or an authorized agent of the corporation,  
29                   that the notice has been given by a form of electronic communication is, in the  
30                   absence of fraud, prima facie evidence of the facts stated in the affidavit.

1           **SECTION 4.** A new section to chapter 10-19.1 of the North Dakota Century Code is  
2 created and enacted as follows:

3           **Reservation of legislative right.** The legislative assembly reserves the right to amend  
4 or repeal the provisions of this chapter. A corporation incorporated under or governed by this  
5 chapter is subject to this reserved right.

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

8           **10-19.1-10. Articles.**

9           1. The articles of incorporation must contain:

- 10           a. The name of the corporation.
- 11           b. The address of the registered office of the corporation and the name of its  
12 registered agent at that address.
- 13           c. The aggregate number of shares that the corporation has authority to issue.
- 14           d. The name and address of each incorporator.
- 15           e. The effective date of incorporation if a later date than that on which the  
16 certificate of incorporation is issued by the secretary of state, which may not  
17 be later than ninety days after the date on which the certificate of  
18 incorporation is issued.

19           ~~2. The articles of incorporation may not contain;~~

- 20           ~~a. Any provision limiting the right of cumulative voting as guaranteed by~~  
21 ~~section 6 of article XII of the Constitution of North Dakota.~~
- 22           ~~b. Any provision authorizing the issuance of stocks or bonds in violation of~~  
23 ~~section 9 of article XII of the Constitution of North Dakota.~~

24           ~~3.~~ The following provisions govern a corporation unless modified in the articles:

- 25           a. A corporation has general business purposes as provided in section  
26 10-19.1-08.
- 27           b. A corporation has perpetual existence and certain powers as provided in  
28 section 10-19.1-26.
- 29           c. The power to adopt, amend, or repeal the bylaws is vested in the board as  
30 provided in section 10-19.1-31.

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- 1           d. A corporation must allow cumulative voting for directors as provided in section  
2                 10-19.1-39.
- 3           e. The affirmative vote of a majority of directors present is required for an action  
4                 of the board as provided in section 10-19.1-46.
- 5       e- f. A written action by the board taken without a meeting must be signed by all  
6                 directors as provided in section 10-19.1-47.
- 7       f- g. The board may authorize the issuance of securities and rights to purchase  
8                 securities as provided in subsection 1 of section 10-19.1-61.
- 9       g- h. All shares are common shares entitled to vote and are of one class and one  
10                 series as provided in subdivisions a and b of subsection 2 of section  
11                 10-19.1-61.
- 12       h- i. All shares have equal rights and preferences in all matters not otherwise  
13                 provided for by the board as provided in subdivisions a and b of subsection 2  
14                 of section 10-19.1-61.
- 15       i- j. The par value of shares is fixed at one cent per share for certain purposes  
16                 and may be fixed by the board for certain other purposes as provided in  
17                 subdivisions a and b of subsection 2 of section 10-19.1-61.
- 18       j- k. Subject to article XII of the Constitution of North Dakota, the board or the  
19                 shareholders may issue shares for any consideration or for no consideration  
20                 to effectuate share dividends or splits and determine the value of  
21                 nonmonetary consideration as provided in subsection 1 of section 10-19.1-63.
- 22       k- l. Shares of a class or series may not be issued to holders of shares of another  
23                 class or series to effectuate share dividends or splits, unless authorized by a  
24                 majority of the voting power of the shares of the same class or series as the  
25                 shares to be issued as provided in subsection 1 of section 10-19.1-63.
- 26       l- m. A corporation may issue rights to purchase securities whose terms,  
27                 provisions, and conditions are fixed by the board as provided in section  
28                 10-19.1-64.
- 29       n. A shareholder has certain preemptive rights, unless otherwise provided by the  
30                 board as provided in section 10-19.1-65.

- 1           ~~m.~~ o. The affirmative vote of the holders of a majority of the voting power of the  
2           shares present and entitled to vote at a duly held meeting is required for an  
3           action of the shareholders, except when this chapter requires the affirmative  
4           vote of:
- 5           (1) A plurality of the votes cast as provided in subsection 1 of section  
6           10-19.1-39; or
- 7           (2) A majority of the voting power of all shares entitled to vote as provided  
8           in subsection 1 of section 10-19.1-74.
- 9           p. A written action of shareholders must be signed by all shareholders as  
10          provided in section 19-19.1-75.
- 11          ~~n.~~ q. Shares of a corporation acquired by the corporation may be reissued as  
12          provided in subsection 1 of section 10-19.1-93.
- 13          ~~o.~~ r. An exchange need not be approved by shareholders of the acquiring  
14          corporation unless the outstanding shares entitled to vote of that corporation  
15          will be increased by more than twenty percent immediately after the exchange  
16          as provided in subdivision c of subsection 3 of section 10-19.1-98.
- 17          ~~p.~~ s. An exchange need not be approved by shareholders of the acquiring  
18          corporation unless the outstanding participating shares of that corporation will  
19          be increased by more than twenty percent immediately after the exchange as  
20          provided in subdivision d of subsection 3 of section 10-19.1-98.
- 21          ~~q.~~ t. Each share has one vote unless otherwise provided in the terms of the share  
22          as provided in subsection 5 of section 10-19.1-73.2.
- 23          ~~r.~~ u. The board may effect share dividends, divisions, and combinations under  
24          certain circumstances without shareholder approval as provided in section  
25          10-19.1-61.1.
- 26          ~~s.~~ ~~A written action of shareholders must be signed by all shareholders as~~  
27          ~~provided in section 10-19.1-75.~~
- 28          ~~4.~~ 3. The following provisions govern a corporation unless modified either in the articles  
29          or in the bylaws:
- 30          a. A director serves for an indefinite term that expires upon the election and  
31          qualification of a successor as provided in section 10-19.1-35.

- 1           b. The compensation of directors is fixed by the board as provided in section  
2                   10-19.1-37.
- 3           c. The method provided in section 10-19.1-41 or 10-19.1-41.1 must be used for  
4                   removal of directors.
- 5           d. The method provided in section 10-19.1-42 must be used for filling board  
6                   vacancies.
- 7           e. If the board fails to select a place for a board meeting, it must be held at the  
8                   principal executive office as provided in subsection 1 of section 10-19.1-43.
- 9           f. A director may call a board meeting, and the notice of the meeting need not  
10                  state the purpose of the meeting as provided in subsection 3 of section  
11                  10-19.1-43.
- 12          g. A majority of the board is a quorum for a board meeting as provided in section  
13                  10-19.1-45.
- 14          h. A committee ~~must~~:
- 15            (1) Must consist of one or more ~~persons~~ individuals, who need not be  
16                  directors, appointed by affirmative vote of a majority of the directors  
17                  present as provided in subsection 2 of section 10-19.1-48; and
- 18            (2) May create one or more subcommittees, each consisting of one or  
19                  more members of the committees and may delegate to the  
20                  subcommittee any or all of the authority of the committee as provided in  
21                  subsection 7 of section 10-19.1-48.
- 22          i. The board may establish a special litigation committee as provided in section  
23                  10-19.1-48.
- 24          j. Unless the board determines otherwise, the officers have specified duties as  
25                  provided in section 10-19.1-53.
- 26          k. Officers may delegate some or all of their duties and powers, if not prohibited  
27                  by the board from doing so as provided in section 10-19.1-59.
- 28          l. The ~~board~~ corporation may establish uncertificated shares as provided in  
29                  subsection 6 of section 10-19.1-66.
- 30          m. Regular meetings of shareholders need not be held, unless demanded by a  
31                  shareholder under certain conditions as provided in section 10-19.1-71.

- 1 n. No fewer than ten nor more than fifty days' notice is required for a meeting of  
2 shareholders as provided in subsection 3 of section 10-19.1-73.
- 3 o. The number of shares required for a quorum at a shareholders' meeting is a  
4 majority of the voting power of the shares entitled to vote at the meeting as  
5 provided in section 10-19.1-76.
- 6 p. The board may fix a date up to fifty days before the date of a shareholders'  
7 meeting as the date for the determination of the holders of shares entitled to  
8 notice of and entitled to vote at the meeting as provided in subsection 1 of  
9 section 10-19.1-73.2.
- 10 q. Indemnification of certain persons is required as provided in section  
11 10-19.1-91.
- 12 r. The board may authorize, and the corporation may make, distributions not  
13 prohibited, limited, or restricted by an agreement as provided in subsection 1  
14 of section 10-19.1-92.
- 15 ~~5.~~ 4. The following provisions relating to the management of the business or the  
16 regulation of the affairs of a corporation may be included either in the articles or,  
17 except for naming members of the first board fixing a greater than majority director  
18 or shareholder vote or giving or prescribing the manner of giving voting rights to  
19 persons other than shareholders otherwise than pursuant to the articles, or  
20 eliminating or limiting a director's personal liability, in the bylaws:
- 21 a. The members of the first board may be named in the articles as provided in  
22 subsection 1 of section 10-19.1-32.
- 23 b. A manner for increasing or decreasing the number of directors as provided in  
24 section 10-19.1-33.
- 25 c. Additional qualifications for directors may be imposed as provided in section  
26 10-19.1-34.
- 27 d. Directors may be classified as provided in section 10-19.1-38.
- 28 e. The day or date, time, and place of board meetings may be fixed as provided  
29 in subsection 1 of section 10-19.1-43.
- 30 f. Absent directors may be permitted to give written consent or opposition to a  
31 proposal as provided in section 10-19.1-44.

- 1 g. A larger than majority vote may be required for board action as provided in  
2 section 10-19.1-46.
- 3 h. Authority to sign and deliver certain documents may be delegated to an  
4 officer or agent of the corporation other than the president as provided in  
5 section 10-19.1-53.
- 6 i. Additional officers may be designated as provided in section 10-19.1-52.
- 7 j. Additional powers, rights, duties, and responsibilities may be given to officers  
8 as provided in section 10-19.1-53.
- 9 k. A method for filling vacant offices may be specified as provided in  
10 subsection 3 of section 10-19.1-58.
- 11 l. A certain officer or agent may be authorized to sign share certificates as  
12 provided in subsection 1 of section 10-19.1-66.
- 13 m. The transfer or registration of transfer of securities may be restricted as  
14 provided in section 10-19.1-70.
- 15 n. The day or date, time, and place of regular shareholder meetings may be  
16 fixed as provided in subsection 3 of section 10-19.1-71.
- 17 o. Certain persons may be authorized to call special meetings of shareholders  
18 as provided in subsection 1 of section 10-19.1-72.
- 19 p. Notices of shareholder meetings may be required to contain certain  
20 information as provided in subsection 3 of section 10-19.1-73.
- 21 q. A larger than majority vote may be required for shareholder action as  
22 provided in section 10-19.1-74.
- 23 r. Voting rights may be granted in or pursuant to the articles to persons who are  
24 not shareholders as provided in subsection 6 of section 10-19.1-73.2.
- 25 s. Corporate actions giving rise to dissenter rights may be designated as  
26 provided in subdivision d of subsection 1 of section 10-19.1-87.
- 27 t. The rights and priorities of persons to receive distributions may be  
28 established as provided in section 10-19.1-92.
- 29 u. A director's personal liability to the corporation or its shareholders for  
30 monetary damages for breach of fiduciary duty as a director may be  
31 eliminated or limited in the articles as provided in section 10-19.1-50.



Sixtieth  
Legislative Assembly

- 1                   (1) Is incorporated for a purpose other than:
  - 2                   (a) A lawful business purpose for which a corporation may be
  - 3                   incorporated under this chapter; or
  - 4                   (b) For a purpose stated in its articles of incorporation; or
- 5                   (2) May not be incorporated under this chapter.
- 6                   e. May not be the same as, or deceptively similar to:
  - 7                   (1) The name, whether foreign and authorized to do business in this state
  - 8                   or domestic, unless there is filed with the articles a record that complies
  - 9                   with subsection 3, of:
    - 10                   (a) Another corporation;
    - 11                   (b) A corporation incorporated or authorized to do business in this
    - 12                   state under another chapter of this code;
    - 13                   (c) A limited liability company;
    - 14                   (d) A limited partnership;
    - 15                   (e) A limited liability partnership; or
    - 16                   (f) A limited liability limited partnership;
  - 17                   (2) A name the right to which is, at the time of incorporation, reserved in
  - 18                   the manner provided in section 10-19.1-14, 10-32-11, 10-33-11,
  - 19                   45-10.2-11, 45-13-04.2, or 45-22-05;
  - 20                   (3) A fictitious name registered in the manner provided in chapter 45-11; or
  - 21                   (4) A trade name registered in the manner provided in chapter 47-25.
- 22                   2. The secretary of state shall determine whether a corporate name is "deceptively
- 23                   similar" to another name for purposes of this chapter.
- 24                   3. If the secretary of state determines that a corporate name is "deceptively similar"
- 25                   to another name for purposes of this chapter, then the corporate name may not be
- 26                   used unless there is filed with the articles:
  - 27                   a. The written consent of the holder of the rights to the name to which the
  - 28                   proposed name has been determined to be deceptively similar; or
  - 29                   b. A certified copy of a judgment of a court in this state establishing the prior
  - 30                   right of the applicant to the use of the name in this state.

- 1           4. This subsection does not affect the right of a domestic corporation existing on  
2           July 1, 1986, or a foreign corporation authorized to do business in this state on that  
3           date to continue the use of its name.
- 4           5. This section and section 10-19.1-14 do not:
- 5           a. Abrogate or limit:
- 6                 (1) The law of unfair competition or unfair practices;
- 7                 (2) Chapter 47-25;
- 8                 (3) The laws of the United States with respect to the right to acquire and  
9                 protect copyrights, trade names, trademarks, service names, service  
10                marks; or
- 11                (4) Any other rights to the exclusive use of names or symbols; or
- 12           b. Derogate the common law or the principles of equity.
- 13           6. A domestic or foreign corporation that is the surviving organization in a merger with  
14           one or more other organizations, or that acquires by sale, lease, or other  
15           disposition to or exchange with an organization all or substantially all of the assets  
16           of another organization including its name, may have the same name, subject to  
17           the requirements of subsection 1, as that used in this state by any of the other  
18           organizations, if the other organization whose name is sought to be used:
- 19           a. Was incorporated, organized, formed, or registered under the laws of this  
20           state;
- 21           b. Is authorized to transact business or conduct activities in this state;
- 22           c. Holds a reserved name in the manner provided in section 10-19.1-14,  
23           10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
- 24           d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
- 25           e. Holds a trade name registered in the manner provided in chapter 47-25.
- 26           7. The use of a name by a corporation in violation of this section does not affect or  
27           vitiate its corporate existence. However, a court in this state may, upon application  
28           of the state or of an interested or affected person, enjoin the corporation from  
29           doing business under a name assumed in violation of this section, although its  
30           articles may have been filed with the secretary of state and a certificate of  
31           incorporation issued.

- 1           8. A corporation whose period of existence has expired or that is involuntarily  
2           dissolved by the secretary of state pursuant to section 10-19.1-146 may reacquire  
3           the right to use that name by refiling articles of incorporation pursuant to section  
4           10-19.1-11, unless the name has been adopted for use or reserved by another  
5           person, in which case the filing will be rejected unless the filing is accompanied by  
6           a written consent or judgment as provided in subsection 2. A corporation that  
7           cannot reacquire the use of its corporate name shall adopt a new corporate name  
8           that complies with the provisions of this section:
- 9           a. By refiling articles of incorporation pursuant to section 10-19.1-11;  
10          b. By amending pursuant to section 10-19.1-17; or  
11          c. By reinstating pursuant to section 10-19.1-146.
- 12          9. Subject to section 10-19.1-133, this section applies to any foreign corporation  
13          transacting business in this state, having a certificate of authority to transact  
14          business in this state, or applying for a certificate of authority.
- 15          10. An amendment that only changes the name of the corporation may be authorized  
16          by a resolution approved by the board and may, but need not, be submitted to and  
17          approved by the shareholders as provided in section 10-19.1-18.

18           **SECTION 7. AMENDMENT.** Section 10-19.1-23 of the North Dakota Century Code is  
19          amended and reenacted as follows:

20           **10-19.1-23. Filing articles of amendment.** An original of the articles of amendment  
21          must be filed with the secretary of state. If the secretary of state finds that the articles of  
22          amendment conform to law and all fees have been paid as provided under section 10-19.1-147,  
23          the articles of amendment must be recorded in the office of the secretary of state. A  
24          corporation that amends the corporate name and is the owner of a trademark or trade name, is  
25          a general partner named in a fictitious name certificate, or is a general partner in a limited  
26          partnership or a limited liability limited partnership, or is a managing partner of a limited liability  
27          partnership that is on file with the secretary of state must change or amend the corporation's  
28          name in each registration when the corporation files an amendment.

29           **SECTION 8. AMENDMENT.** Subsection 2 of section 10-19.1-39 of the North Dakota  
30          Century Code is amended and reenacted as follows:

- 1           2. ~~As provided in article XII of the Constitution of North Dakota~~ Unless otherwise  
2           provided in the articles, and except as provided in subsection 4 of section  
3           10-19.1-41, each shareholder entitled to vote for directors has the right to cumulate  
4           those votes in all elections of directors by giving written notice of intent to cumulate  
5           those votes to any officer of the corporation before the meeting, or to the presiding  
6           officer at the meeting at which the election is to occur at any time before the  
7           election of directors at the meeting, in which case:
- 8           a. The presiding officer at the meeting shall announce, before the election of  
9           directors, that shareholders may cumulate their votes; and
- 10          b. Each shareholder shall cumulate those votes either by casting for one  
11          candidate the number of votes equal to the number of directors to be elected  
12          multiplied by the number of votes represented by the shares entitled to vote,  
13          or by distributing all of those votes on the same principle among any number  
14          of candidates.

15           **SECTION 9. AMENDMENT.** Section 10-19.1-41 of the North Dakota Century Code is  
16 amended and reenacted as follows:

17           **10-19.1-41. Nonjudicial removal of directors.**

- 18          1. The provisions of this section apply unless modified by the articles, the bylaws, or  
19          an agreement described in section 10-19.1-83.
- 20          2. A director may be removed at any time, with or without cause, if:
- 21           a. The director was named by the board to fill a vacancy;
- 22           b. The shareholders have not elected directors in the interval between the time  
23           of the appointment to fill a vacancy and the time of the removal; and
- 24           c. A majority of the remaining directors present affirmatively vote to remove the  
25           director.
- 26          3. ~~Any one~~ Except as provided in subsection 4, any or all of the directors may be  
27          removed at any time, with or without cause, by the affirmative vote of the holders  
28          of ~~the proportion or number~~ a majority of the voting power of ~~the all~~ shares of the  
29          classes or series the director represents sufficient to elect them. ~~If less than the~~  
30          entire board is to be removed, ~~no one of the directors may be removed if the votes~~  
31          of a sufficient number of shares are cast against the director's removal which, if

- 1           ~~then cumulatively voted at an election of the entire board of directors, or, if there~~  
2           ~~be classes of directors, at an election of the class of directors of which the director~~  
3           ~~is a part, would be sufficient to elect the~~ entitled to vote at an election of directors.  
4           ~~However, if a director. Whenever the holders of the~~ has been elected solely by the  
5           ~~holders of a class or series of shares, as stated in the articles or bylaws, then that~~  
6           ~~director may be removed only by the affirmative vote of the holders of a majority of~~  
7           ~~the voting power of all shares of any that class are or series~~ entitled to elect one or  
8           ~~more directors by the provisions of the articles of incorporation, the provisions of~~  
9           ~~this section shall apply, in respect to the removal of a director or directors so~~  
10           ~~elected, to the vote of the holders of the outstanding shares of that class and not to~~  
11           ~~the vote of the outstanding shares as a whole~~ vote at an election of that director.  
12           4. ~~New directors may be elected at a meeting at which directors are~~ In a corporation  
13           ~~having cumulative voting, unless the entire board is removed~~ simultaneously, a  
14           ~~director is not removed from the board if there are cast against removal of the~~  
15           ~~director the votes of a proportion of the voting power sufficient to elect the director~~  
16           ~~at an election of the entire board under cumulative voting.~~  
17           5. New directors may be elected at a meeting at which directors are removed. If the  
18           corporation allows cumulative voting and if a shareholder notifies the presiding  
19           officer at any time prior to the election of new directors of interest to cumulate the  
20           votes of the shareholders, then the presiding officer shall announce before the  
21           election that cumulative voting is in effect and shareholders shall cumulate their  
22           votes as provided in subdivision b of subsection 2 of section 10-19.1-39.

23           **SECTION 10.** A new subsection to section 10-19.1-48 of the North Dakota Century  
24 Code is created and enacted as follows:

- 25           Unless otherwise provided in the articles, the bylaws, or the resolution of the board  
26           establishing the committee, a committee may create one or more subcommittees,  
27           each consisting of one or more members of the committee, and may delegate to a  
28           subcommittee any or all of the authority of the committee. In this chapter, unless  
29           the language or the context clearly indicates that a different meaning is intended:  
30           a. Any reference to a committee is deemed to include a subcommittee; and

- 1           b. Any reference to a committee member is deemed to include a subcommittee  
2           member.

3           **SECTION 11. AMENDMENT.** Subsection 3 of section 10-19.1-61 of the North Dakota  
4 Century Code is amended and reenacted as follows:

5           3. Subject to any restrictions in the articles, the power granted in subsection 2 may  
6 be exercised by a resolution approved by the directors as required under section  
7 10-19.1-46 establishing a class or series, setting forth the designation of the class  
8 or series, and fixing the relative rights and preferences of the class or series. ~~Any~~  
9 ~~of the rights and preferences of a class or series established in the articles or by~~  
10 ~~resolution of the directors:~~

11          a. ~~May be made dependent upon facts ascertainable outside the articles or~~  
12 ~~outside the resolution or resolutions establishing the class or series, provided~~  
13 ~~that the manner in which the facts operate upon the rights and preferences of~~  
14 ~~the class or series is clearly and expressly set forth in the articles or in the~~  
15 ~~resolution or resolutions establishing the class or series; and~~

16          b. ~~May incorporate by reference any of the terms of any agreements, contracts,~~  
17 ~~or other arrangements entered into by the issuing corporation in connection~~  
18 ~~with the establishment of the class or series if the corporation retains at the~~  
19 ~~principal executive office, a copy of the agreements, contracts, or other~~  
20 ~~arrangements or portions incorporated by reference.~~

21           **SECTION 12. AMENDMENT.** Section 10-19.1-63 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23           **10-19.1-63. Consideration for shares - Value and payment - Liability.**

24           1. ~~Subject to article XII of the Constitution of North Dakota, consideration~~  
25 Consideration for the issuance of shares may be paid, in whole or in part, in  
26 money; in other property, tangible or intangible; or in labor or services actually  
27 performed for the corporation. When payment of the consideration for which  
28 shares are to be issued is received by the corporation, the shares are considered  
29 fully paid and nonassessable. Neither promissory notes nor future services  
30 constitute payment or part payment for shares of a corporation.

- 1           2.    Subject to any restrictions in the articles, a corporation may, without any new or  
2           additional consideration, ~~a corporation may~~ issue ~~the corporation's~~ its own shares  
3           in exchange for or in conversion of ~~the corporation's~~ its outstanding shares, or  
4           ~~may~~, subject to authorization of share dividends, divisions, and combinations  
5           according to section 10-19.1-61.1, issue ~~the corporation's~~ its own shares pro rata  
6           to ~~the corporation's~~ shareholders or the shareholders of one or more classes or  
7           series, to effectuate share dividends, divisions, or combinations. ~~Shares~~ No  
8           shares of a class or series, shares of which are then outstanding, ~~may not~~ shall be  
9           issued to the holders of shares of another class or series, except in exchange for  
10          or in conversion of outstanding shares of the other class or series, unless the  
11          issuance is expressly provided for in the articles or is approved at a meeting by the  
12          affirmative vote of the holders of a majority of the voting power of all shares of the  
13          same class or series as the shares to be issued.
- 14          3.    The determinations of the board or the shareholders as to the amount or fair value  
15          or the fairness to the corporation of the consideration received or to be received by  
16          the corporation for its shares or the terms of payment, as well as the agreement to  
17          issue shares for that consideration, are presumed to be proper if they are made in  
18          good faith and on the basis of accounting methods, or a fair valuation or other  
19          method, reasonable in the circumstances. Unless otherwise required by the  
20          articles, the consideration may be less than the par value, if any, of the shares.  
21          Directors or shareholders who are present and entitled to vote, and who,  
22          intentionally or without reasonable investigation, fail to vote against approving an  
23          issue of shares for a consideration that is unfair to the corporation, or overvalue  
24          property ~~or services~~ received or to be received by the corporation as consideration  
25          for shares issued, are jointly and severally liable to the corporation for the benefit  
26          of the then shareholders who did not consent to and are damaged by the action, to  
27          the extent of the damages of those shareholders. A director or shareholder  
28          against whom a claim is asserted pursuant to this ~~section~~ subsection, except in  
29          case of knowing participation in a deliberate fraud, is entitled to contribution on an  
30          equitable basis from other directors or shareholders who are liable under this  
31          section.

- 1           4. A corporation may issue only shares that are nonassessable or that are  
2           assessable but are issued with the unanimous consent of the shareholders.  
3           "Nonassessable" shares are shares for which the agreed consideration has been  
4           fully paid, delivered, or rendered to the corporation.
- 5           a. The reasonable charges and expenses of organization or reorganization of a  
6           corporation, and the reasonable expenses of and compensation for the sale  
7           or underwriting of its shares, may be paid or allowed by the corporation out of  
8           the consideration received by it in payment for its shares without rendering  
9           the shares not fully paid and nonassessable.
- 10          b. If shares are issued in violation of this subsection, then the following persons  
11          are jointly and severally liable to the corporation for the difference between  
12          the agreed consideration for the shares and the consideration actually  
13          received by the corporation:
- 14               (1) A director or shareholder who was present and entitled to vote but who  
15               failed to vote against the issuance of the shares knowing of the  
16               violation;
- 17               (2) The person to whom the shares were issued; and
- 18               (3) A successor or transferee of the interest in the corporation of a person  
19               described in paragraph 1 or 2, including a purchaser of shares, a  
20               subsequent assignee, successor, or transferee, a pledgee, a holder of  
21               any other security interest in the assets of the corporation or shares  
22               granted by the person described in paragraph 1 or 2, or a legal  
23               representative of or for the person or estate of the person, which  
24               successor, transferee, purchaser, assignee, pledgee, holder, or  
25               representative acquired the interest knowing of the violation.
- 26          5. A pledgee or holder of any other security interest in all or any shares that have  
27          been issued in violation of subsection 4 is not liable under subdivision b of  
28          subsection 4 if all those shares are surrendered to the corporation. The surrender  
29          does not impair any rights of the pledgee or holder of any other security interest  
30          against the pledgor or person granting the security interest.

- 1           6. A pledgee, holder of any other security interest, or legal representative is liable  
2           under subdivision b of subsection 4 only in that capacity. The liability of the person  
3           under subdivision a of subsection 4 is limited to the assets held in that capacity for  
4           the person or estate of the person described in paragraph 1 or 2 of subdivision b of  
5           subsection 4.
- 6           7. Each person liable under subdivision b of subsection 4 has a full right of  
7           contribution on an equitable basis from all other persons liable under that  
8           subdivision for the same transaction.
- 9           8. An action may not be maintained against a person under subdivision b of  
10          subsection 4 unless commenced within two years from the date on which shares  
11          are issued in violation of subsection 4.

12           **SECTION 13. AMENDMENT.** Subsection 1 of section 10-19.1-65 of the North Dakota  
13 Century Code is amended and reenacted as follows:

- 14          1. ~~To the extent allowed by section 9 of article XII of the Constitution of North Dakota,~~  
15          ~~a shareholder of a corporation has the preemptive rights provided in this section,~~  
16          ~~unless~~ Unless denied or limited in the articles or by the board pursuant to  
17          subdivision b of subsection 2 of section 10-19.1-61, a shareholder of a corporation  
18          has the preemptive rights provided in this section.

19           **SECTION 14. AMENDMENT.** Subsection 6 of section 10-19.1-66 of the North Dakota  
20 Century Code is amended and reenacted as follows:

- 21          6. Unless uncertificated shares are prohibited by the articles or bylaws, a ~~resolution~~  
22          ~~approved by the affirmative vote of a majority of the directors present~~ corporation  
23          may provide that some or all of any or all classes and series of the corporation's  
24          shares will be uncertificated shares.
- 25          a. ~~The resolution~~ action by the corporation provided in this subsection does not  
26          apply to shares represented by a certificate until the certificate is surrendered  
27          to the corporation.
- 28          b. Within a reasonable time after the issuance or transfer of uncertificated  
29          shares, the corporation shall send to the new shareholder the information  
30          required by this section to be stated on certificates.

- 1           c. The information required under this section is not required to be sent to the  
2           new shareholder by a publicly held corporation that adopted a system of  
3           issuance, recordation, and transfer of the corporation's shares by electronic or  
4           other means not involving the issuance of certificates if the system complies  
5           with federal law.
- 6           d. Except as otherwise expressly provided by statute, the rights and obligations  
7           of the holders of certificated and uncertificated shares of the same class and  
8           series are identical.

9           **SECTION 15. AMENDMENT.** Section 10-19.1-69 of the North Dakota Century Code is  
10          amended and reenacted as follows:

11           **10-19.1-69. Liability of subscribers and shareholders with respect to shares.**

- 12           1. A holder of or subscriber for shares of a corporation is under no obligation to the  
13           corporation or its creditors with respect to such shares other than the obligation to  
14           pay to the corporation the full consideration of which such shares were issued or to  
15           be issued. As such, a shareholder is not personally liable for the acts or debts of  
16           the corporation.
- 17           2. Any person becoming an assignee or transferee of shares or of a subscription for  
18           shares in good faith and without knowledge or notice that the full consideration  
19           therefore has not been paid shall not be personally liable to the corporation or its  
20           creditors for any unpaid portion of such consideration.
- 21           3. A personal representative, conservator, guardian, trustee, assignee for the benefit  
22           of creditors, or a receiver is not personally liable to the corporation as a holder of  
23           or subscriber for shares of a corporation but the estate and funds in said person's  
24           hands are liable.
- 25           4. No pledgee or other holder of shares as collateral security is personally liable as a  
26           shareholder.

27           **SECTION 16.** Section 10-19.1-74.1 of the North Dakota Century Code is created and  
28          enacted as follows:

29           **10-19.1-74.1. Contractual requirement to submit matter to shareholders.** A  
30          corporation may agree to submit a matter to its shareholders whether or not the board

1 determines, at any time after approving the matter, that the matter is no longer advisable and  
2 recommends that the shareholders reject it.

3 **SECTION 17. AMENDMENT.** Subsection 1 of section 10-19.1-75 of the North Dakota  
4 Century Code is amended and reenacted as follows:

5 1. If the articles so provide, any action may be taken by written action signed, or  
6 consented to by authenticated electronic communication, by the shareholders who  
7 own voting power equal to the voting power that would be required to take the  
8 same action at a meeting of the shareholders at which all shareholders were  
9 present. However, in no event may written action be taken by holders of less than  
10 a majority of the voting power of all shares entitled to vote on that action.

11 a. After the adoption of the initial articles, an amendment to the articles to permit  
12 written action to be taken by less than all shareholders requires the approval  
13 of all of the shareholders entitled to vote on the amendment.

14 b. When written action is permitted to be taken by less than all shareholders, all  
15 shareholders must be notified of its text and effective date no later than five  
16 days after the effective time of the action.

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

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

20 **SECTION 18. AMENDMENT.** Subsection 1 of section 10-19.1-76.1 of the North  
21 Dakota Century Code is amended and reenacted as follows:

22 1. Shares of a corporation registered in the name of another domestic or foreign  
23 corporation may be voted by the president or other legal representative of the  
24 domestic or foreign corporation.

25 **SECTION 19. AMENDMENT.** Subsection 2 of section 10-19.1-84 of the North Dakota  
26 Century Code is amended and reenacted as follows:

27 2. A corporation shall keep, at its principal executive office, or, if its principal  
28 executive office is outside of this state, shall make available at its registered office  
29 within ten days after receipt by an officer of the corporation of a written demand for  
30 them made by a person described in subsection 4 or 5, originals or copies of:

31 a. Records of all proceedings of shareholders for the last three years;

- 1           b. Records of all proceedings of the board for the last three years;
- 2           c. Its articles and all amendments currently in effect;
- 3           d. Its bylaws and all amendments currently in effect;
- 4           e. Financial statements required by section 10-19.1-85 and the financial  
5           statement for the most recent interim period prepared in the course of the  
6           operation of the corporation for distribution to the shareholders or to a  
7           governmental agency as a matter of public record;
- 8           f. Reports made to shareholders generally within the last three years;
- 9           g. A statement of the names and usual business addresses of its directors and  
10          principal officers;
- 11          h. Voting trust agreements described in section 10-19.1-81;
- 12          i. Shareholder control agreements described in section 10-19.1-83; and
- 13          j. A copy of agreements, contracts, or other arrangements or portions of them  
14          incorporated by reference under subsection ~~3 8~~ of section ~~10-19.1-61~~  
15          10-19.1-10.

16           **SECTION 20. AMENDMENT.** Section 10-19.1-87 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18           **10-19.1-87. Rights of dissenting shareholders.**

- 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. Unless otherwise provided in the articles, an amendment of the articles that  
23           materially and adversely affects the rights or preferences of the shares of a  
24           dissenting shareholder in that it:
    - 25           (1) Alters or abolishes a preferential right of the shares;
    - 26           (2) Creates, alters, or abolishes a right in respect of the redemption of the  
27           shares, including a provision respecting a sinking fund for the  
28           redemption or repurchase of shares;
    - 29           (3) Alters or abolishes a preemptive right of the holder of the shares to  
30           acquire shares, securities other than shares, or rights to purchase  
31           shares or securities other than shares;

- 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; or  
5                   (5) Eliminates the right to obtain payment under this subdivision;
- 6           b. A sale, lease, transfer, or other disposition of property and assets of the  
7           corporation that requires shareholder approval under subsection 2 of section  
8           10-19.1-104, but not including:
- 9                   (1) A disposition in dissolution described in subsection 2 of section  
10                   10-19.1-109;
- 11                   (2) A disposition pursuant to an order of a court; or  
12                   (3) A disposition for cash on terms requiring that all or substantially all of  
13                   the net proceeds of disposition be distributed to the shareholders in  
14                   accordance with their respective interests within one year after the date  
15                   of disposition;
- 16           c. A plan of merger to which the corporation is a constituent organization, except  
17           as provided in subsection 3 and except for a plan of merger adopted under  
18           section 10-19.1-100.1;
- 19           d. A plan of exchange, whether under this chapter or under ~~chapter 10-32~~ its  
20           governing statute in the case of another organization, to which the corporation  
21           is a constituent organization as the corporation whose shares will be acquired  
22           by the acquiring ~~corporation~~ organization, except as provided in subsection 3;
- 23           e. A plan of conversion adopted by a corporation; or  
24           f. Any other corporate action taken pursuant to a shareholder vote with respect  
25           to which the articles, the bylaws, or a resolution approved by the board directs  
26           that dissenting shareholders may obtain payment for their shares.
- 27           2. A shareholder may not assert dissenters' rights as to less than all of the shares  
28           registered in the name of the shareholder, unless the shareholder dissents with  
29           respect to all the shares that are beneficially owned by another person but  
30           registered in the name of the shareholder and discloses the name and address of  
31           each beneficial owner on whose behalf the shareholder dissents. In that event, the

- 1 rights of the dissenter must be determined as if the shares as to which the  
2 shareholder has dissented and the other shares were registered in the names of  
3 different shareholders. The beneficial owner of shares who is not the shareholder  
4 may assert dissenters' rights with respect to shares held on behalf of the beneficial  
5 owner, and must be treated as a dissenting shareholder under the terms of this  
6 section and section 10-19.1-88, if the beneficial owner submits to the corporation  
7 at the time of or before the assertion of the rights a written consent of the  
8 shareholder.
- 9 3. Unless the articles, the bylaws, or a resolution approved by the board otherwise  
10 provide, the right to obtain payment under this section does not apply to the  
11 shareholders of:
- 12 a. The surviving corporation in a merger with respect to shares of the  
13 shareholders that are not entitled to be voted on the merger and are not  
14 canceled or exchanged in the merger; or
- 15 b. The corporation whose shares will be acquired by the acquiring ~~corporation~~  
16 organization in a plan of exchange with respect to shares of the shareholders  
17 that are not entitled to be voted on the plan of exchange and are not  
18 exchanged in the plan of exchange.
- 19 4. The shareholders of a corporation who have a right under this section to obtain  
20 payment for their shares, or who would have the right to obtain payment for their  
21 shares absent the exception set for in subsection 6. do not have a right at law or in  
22 equity to have a corporate action described in subsection 1 set aside or rescinded,  
23 except when the corporate action is fraudulent with regard to the complaining  
24 shareholder or the corporation.
- 25 5. If a date is fixed according to subsection 1 of section 10-19.1-73.2 for the  
26 determination of shareholders entitled to receive notice of and to vote on an action  
27 described under subsection 1, only shareholders as of the date fixed and beneficial  
28 owners as of the date fixed who hold through shareholders, as provided in  
29 subsection 2, may exercise dissenters' rights.

- 1           6. Notwithstanding subsection 1, the right to obtain payment under this section, other  
2           than in connection with a plan of merger adopted under section 10-19.1-100, is  
3           limited in accordance with the following provisions:
- 4           a. The right to obtain payment under this section is not available for the holders  
5           of shares of any class or series of shares that is listed on the New York stock  
6           exchange or the American stock exchange or designated as a national  
7           market ~~system~~ security on ~~an interdealer quotation system by the national~~  
8           ~~association of securities dealers, incorporated~~ the nasdaq stock market.
- 9           b. The applicability of subdivision a is determined as of:
- 10           (1) The record date fixed to determine the shareholders entitled to receive  
11           notice of, and to vote at, the meeting of shareholders to act upon the  
12           corporate action described in subsection 1; or
- 13           (2) The day before the effective date of corporate action described in  
14           subsection 1 if there is no meeting of shareholders.
- 15           c. Subdivision a is not applicable, and the right to obtain payment under this  
16           section is available pursuant to subsection 1, for the holders of any class or  
17           series of shares who are required by the terms of the corporate action  
18           described in subsection 1 to accept for such shares anything other than  
19           shares, or cash in lieu of fractional shares, of any class or any series of  
20           shares of the domestic or foreign corporation, or any other ~~proprietary~~  
21           ownership interest of any other ~~entity~~ organization, that satisfies the  
22           standards set forth in subdivision a at the time the corporate action becomes  
23           effective.

24           **SECTION 21. AMENDMENT.** Subsection 1 of section 10-19.1-93 of the North Dakota  
25 Century Code is amended and reenacted as follows:

- 26           1. A corporation may acquire its own shares, subject to section 10-19.1-92.
- 27           a. If a corporation acquires its own shares, then any of the acquired shares that  
28           are not pledged by the corporation as security for the future payment of some  
29           or all of the purchase price for the shares constitute authorized but unissued  
30           shares of the corporation, unless the articles provide that they may not be

- 1 reissued. If the articles prohibit reissue, the number of authorized shares is  
2 reduced by the number of shares acquired.
- 3 b. If a corporation pledges acquired shares as security for future payment of all  
4 or part of the purchase price for the shares and reissues the pledged shares  
5 in its own name, then:
- 6 (1) The shares must continue to be issued and outstanding except for  
7 voting and determination of a quorum, and the shares are not  
8 considered to be present and entitled to vote at any meeting of  
9 shareholders;
- 10 (2) The corporation may not vote or exercise any other rights of a  
11 shareholder with respect to the pledged shares, but the pledgee shall  
12 have any rights, other than the right to vote, with respect to the shares  
13 which the pledgee is entitled to by contract;
- 14 (3) If the pledge is foreclosed, the corporation shall reissue and deliver the  
15 pledged shares to or at the direction of the pledgee; and
- 16 (4) Shares that are released from a pledge have the status specified in  
17 subdivision a.

18 **SECTION 22. AMENDMENT.** Section 10-19.1-96 of the North Dakota Century Code is  
19 amended and reenacted as follows:

20 **10-19.1-96. Merger - Exchange - Transfer.**

- 21 1. With or without a business purpose, a corporation may merge with:
- 22 a. ~~Another domestic corporation under a plan of merger approved in the manner~~  
23 ~~provided in sections 10-19.1-97 through 10-19.1-103.~~
- 24 b. ~~A limited liability company under a plan of merger approved in the manner~~  
25 ~~provided in sections 10-32-101 through 10-32-106.~~
- 26 e. ~~A foreign corporation or foreign limited liability company under a plan of~~  
27 ~~merger in the manner provided in section 10-19.1-103~~ another domestic or  
28 foreign organization under a plan of merger approved in the manner provided  
29 in this section and in sections 10-19.1-97 through 10-19.1-103 and in the  
30 manner provided in the governing statute of the other organization.
- 31 2. With respect to an exchange:

- 1           a. A corporation may acquire all the ownership interests of one or more classes  
2           or series of another domestic ~~corporation~~ or foreign organization under a plan  
3           of exchange approved in the manner provided in this section and in sections  
4           10-19.1-97 through 10-19.1-103 in the case of a domestic corporation and in  
5           the manner provided in the governing statute in the case of any other  
6           organization.
- 7           b. ~~A corporation may acquire all the ownership interests of one or more classes~~  
8           ~~or series of a limited liability company under a plan of exchange approved in~~  
9           ~~the manner provided in sections 10-32-101 through 10-32-106.~~
- 10          e. ~~A limited liability company~~ Another domestic or foreign organization may  
11          acquire all the ~~ownership interests~~ shares of one or more classes or series of  
12          a corporation under a plan of exchange approved in the manner provided in  
13          this section and in sections 10-19.1-97 through 10-19.1-103 and chapter  
14          10-32 in the case of a domestic corporation and in the manner provided in the  
15          governing statute in the case of any other organization.
- 16          d. ~~A foreign corporation or foreign limited liability company may acquire all the~~  
17          ~~ownership interests of one or more classes or series of a corporation under a~~  
18          ~~plan of exchange approved in the manner provided in section 10-19.1-103.~~
- 19          3. A corporation may sell, lease, transfer, or otherwise dispose of all or substantially  
20          all of the corporation's property and assets in the manner provided in section  
21          10-19.1-104.
- 22          4. A corporation may participate in a merger or exchange ~~with a limited liability~~  
23          ~~company~~ only as permitted by this section and by sections 10-19.1-97 through  
24          10-19.1-103. The dissenter's rights for shareholders of a corporation are governed  
25          by this chapter.

26           **SECTION 23. AMENDMENT.** Section 10-19.1-97 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28           **10-19.1-97. Plan of merger or exchange.**

- 29           1. A plan of merger or exchange must contain:
- 30           a. The name of the corporation and of each other constituent organization  
31           proposing to merge or participate in an exchange and:

- 1 (1) In the case of a merger, the name of the surviving organization; or  
2 (2) In the case of an exchange, the name of the acquiring organization;  
3 b. The terms and conditions of the proposed merger or exchange;  
4 c. The manner and basis for converting or exchanging ownership interests:  
5 (1) In the case of a merger, the manner and basis of converting the  
6 ownership interests of the constituent organizations into securities of  
7 the surviving organization or of any other organization or, in whole or in  
8 part, into money or other property; or  
9 (2) In the case of an exchange, the manner and basis of exchanging the  
10 ownership interests to be acquired for securities of the acquiring  
11 organization or any other organization or, in whole or in part, into  
12 money or other property;  
13 d. In the case of a merger, a statement of any amendments to the ~~articles of~~  
14 ~~incorporation or articles of organization~~ originating records of the surviving  
15 organization proposed as part of the merger; and  
16 e. Any other provisions with respect to the proposed merger or exchange which  
17 are deemed necessary or desirable.
- 18 2. This section does not limit the power of a corporation to acquire all or part of the  
19 ownership interests of one or more classes or series of ~~another~~ any other  
20 organization through a negotiated agreement with the owners or otherwise.

21 **SECTION 24. AMENDMENT.** Section 10-19.1-98 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **10-19.1-98. Plan approval.**

- 24 1. A resolution containing the plan of merger or exchange must be approved by the  
25 governing ~~board~~ body as required by section 10-19.1-46 in the case of a domestic  
26 corporation, or ~~40-32-83~~ by the governing statute of each other constituent  
27 organization and must then be submitted at a regular or special meeting to the  
28 owners of each constituent organization, in the case of a plan of merger or the  
29 constituent organization whose ownership interests will be acquired by the  
30 acquiring constituent organization in the exchange, in the case of a plan of  
31 exchange. ~~The plan of merger or exchange may require that it be submitted to the~~

- 1           ~~shareholders whether or not the board determines at any time after the board's~~  
2           ~~initial approval of the plan that the plan is no longer advisable and recommends~~  
3           ~~that the shareholders reject it.~~ If owners owning any class or series of ownership  
4           interests in a constituent organization are entitled to vote on the plan of merger or  
5           exchange under this subsection, then written notice must be given to every owner  
6           of that constituent organization, whether or not entitled to vote at the meeting, not  
7           less than fourteen days nor more than sixty days before the meeting, in the  
8           manner provided in section 10-19.1-73 for notice of meetings of shareholders in  
9           the case of a domestic corporation ~~and, or~~ in the manner provided in section  
10          ~~10-32-40 in the case of a limited liability company~~ its governing statute in the case  
11          of each other constituent organization. The written notice must state that a  
12          purpose of the meeting is to consider the proposed plan of merger or exchange. A  
13          copy or short description of the plan of merger or exchange must be included in or  
14          enclosed with the notice.
- 15          2. At the meeting a vote of the owners must be taken on the proposed plan. The plan  
16          of merger or exchange is adopted when approved by the affirmative vote of the  
17          holders of a majority of the voting power of all ownership interests entitled to vote.  
18          Except as provided in subsection 3, a class or series of ~~shares~~ ownership interests  
19          of the ~~corporation~~ constituent organization is entitled to vote as a class or series if  
20          any provision of the plan would, if contained in a proposed amendment to the  
21          articles of incorporation, or a member-control agreement, entitle the class or series  
22          of ownership interests to vote as a class or series and, in the case of an exchange,  
23          if the class or series is included in the exchange.
- 24          3. A class or series of ownership interests of the constituent organization is not  
25          entitled to vote as a class or series ~~solely because the plan of merger or exchange~~  
26          ~~affects a cancellation or exchange of ownership interests of the class or series~~ if  
27          the plan of merger or exchange affects a cancellation or exchange of all ownership  
28          interests of the constituent organization of all classes and series that are  
29          outstanding immediately before the merger or exchange and owners of ownership  
30          interests of that class or series are entitled to obtain payment for the fair value of  
31          their ownership interests under section 10-19.1-87, or would have the right to

- 1           obtain payment for their ownership interests absent the exception set forth in  
2           subsection 6 of section 10-19.1-87, in the case of a domestic corporation, or  
3           ~~10-32-54~~ under its governing statute in the case of any other organization in the  
4           event of the merger or exchange.
- 5           4. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange  
6           to a vote at a meeting of owners of a surviving constituent organization is not  
7           required if:
- 8           a. The articles will not be amended in the transaction;
- 9           b. Each owner of ownership interests in the constituent organization which were  
10           outstanding immediately before the effective date of the transaction will hold  
11           the same number of ownership interests with identical rights immediately after  
12           the effective date;
- 13           c. The voting power of the outstanding ownership interests of the constituent  
14           organization entitled to vote immediately after the merger or exchange, plus  
15           the voting power of the ownership interests of the constituent organization  
16           entitled to vote issuable on conversion of, or on the exercise of rights to  
17           purchase, securities issued in the transaction, will not exceed by more than  
18           twenty percent the voting power of the outstanding ownership interests of the  
19           constituent organization entitled to vote immediately before the transaction;  
20           and
- 21           d. The number of participating ownership interests of the constituent  
22           organization immediately after the merger, plus the number of participating  
23           ownership interests of the constituent organization issuable on conversion of,  
24           or on the exercise of rights to purchase, securities issued in the merger, will  
25           not exceed by more than twenty percent the number of participating  
26           ownership interests of the constituent organization immediately before the  
27           merger. "Participating ownership interests" are outstanding ownership  
28           interests of the constituent organization which entitle their owners to  
29           participate without limitation in distributions by the constituent organization.
- 30           5. If the merger or exchange is with an organization other than a domestic limited  
31           ~~liability company~~ corporation, the plan of merger or exchange must also be

1 approved in the manner provided in ~~chapter 10-32~~ the governing statute of the  
2 other organization.

3 **SECTION 25. AMENDMENT.** Subsection 1 of section 10-19.1-99 of the North Dakota  
4 Century Code is amended and reenacted as follows:

5 1. Upon receiving the approval required by section 10-19.1-98, articles of merger  
6 must be prepared which contain:

7 a. The plan of merger; and

8 b. A statement that the plan is approved by each constituent organization under  
9 this chapter ~~10-19.4~~ or ~~10-32~~ under its governing statute in the case of any  
10 other organization.

11 **SECTION 26. AMENDMENT.** Section 10-19.1-100 of the North Dakota Century Code  
12 is amended and reenacted as follows:

13 **10-19.1-100. Merger of subsidiary into parent.**

14 1. A If either the parent or the subsidiary is a domestic organization, then a parent  
15 that is a domestic or foreign organization owning at least ninety percent of the  
16 outstanding ownership interests of each class and series of a subsidiary that is a  
17 domestic or foreign organization directly, or indirectly through related organizations  
18 other than classes or series that, absent this section, would otherwise not be  
19 entitled to vote on the merger:

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

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

28 2. A resolution approved by the present directors of the parent as required by section  
29 10-19.1-46 in the case of a domestic corporation or ~~of the present governors of the~~  
30 ~~parent required by section 10-32-83~~ by the present members of the governing

- 1           body of the parent as required by its governing statute in the case of any other  
2           organization must set forth a plan of merger that contains:
- 3           a.   The name of the subsidiary or subsidiaries, the name of the parent, and the  
4           name of the surviving constituent organization;
- 5           b.   The manner and basis of converting the ownership interests of the subsidiary  
6           or subsidiaries or the parent into securities or ownership interests of the  
7           parent, of the subsidiary, or of another organization; or, in whole or in part,  
8           into money or other property;
- 9           c.   If the parent is a constituent organization but is not the surviving constituent  
10           organization in the merger, a provision for the pro rata issuance of ownership  
11           interests of the surviving constituent organization to the owners of ownership  
12           interests of the parent on surrender of any ownership interests of the parent;  
13           and
- 14           d.   If the surviving constituent organization is a subsidiary, a statement of any  
15           amendments to the articles of the surviving constituent organization that will  
16           be part of the merger.
- 17        3.   Notwithstanding subsection 1:
- 18           a.   If the parent is a domestic corporation and the conditions of subsection 4 of  
19           section 10-19.1-98 are not met with respect to the parent, then the resolution  
20           is not effective unless it is approved by the affirmative vote of the holders of a  
21           majority of the voting power of all shares of the parent entitled to vote at a  
22           regular or special meeting held in accordance with section 10-19.1-98; and
- 23           b.   If the parent is a domestic or foreign organization and is not the surviving  
24           organization in the merger, then the resolution is not effective unless it is also  
25           approved in the manner provided in the governing statute of the parent.
- 26        4.   Notwithstanding subsection 3, if the parent is a constituent organization and is the  
27           surviving organization in the merger, it may change its corporate name, without a  
28           vote of its owners, by the inclusion of a provision to that effect in the resolution of  
29           merger setting forth the plan of merger that is approved by the affirmative vote of a  
30           majority of the board members of the parent present. Upon the effective date of  
31           the merger, the name 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. ~~Notice~~ If the subsidiary is a domestic organization, then notice of the action,  
10           including a copy of the plan of merger must be given to each owner, other than the  
11           parent and any subsidiary, of each subsidiary that is a constituent organization in  
12           the merger before, or within ten days after, the 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. A statement that the plan of merger is approved by the parent under this  
23           section.
- 24           7. The articles of merger must be signed on behalf of the parent and filed with the  
25           secretary of state, with the fees provided in section 10-19.1-147.
- 26           8. The secretary of state shall issue a certificate of merger to the surviving constituent  
27           organization or the legal representative of the surviving constituent organization's  
28           ~~legal representative organization~~. The certificate must contain the effective date of  
29           the merger.
- 30           9. If all of the ownership interests of one or more domestic subsidiaries that is a  
31           constituent organization to a merger under this section are not owned by the

1 parent directly, or indirectly through related constituent organizations, immediately  
2 before the merger, then the owners of each domestic subsidiary which is either a  
3 limited liability company or a corporation, have dissenter's rights under section  
4 10-19.1-87 or 10-32-54, without regard to subsection 3 of section 10-19.1-87 or  
5 subsection 2 of section 10-32-54, and under section 10-19.1-88 or 10-32-55.

6 a. If the parent is a constituent organization but is not the surviving organization  
7 in the merger, the articles of incorporation or articles of organization of the  
8 surviving organization immediately after the merger differ from the articles of  
9 incorporation or articles of organization of the parent immediately before the  
10 merger in a manner that would entitle an owner of the parent to dissenter's  
11 rights under subdivision a of subsection 1 of section 10-19.1-87 or under  
12 subdivision a of subsection 1 of section 10-32-54, and the articles of  
13 incorporation or articles of organization of the surviving constituent  
14 organization constitute an amendment to the articles of incorporation or  
15 articles of organization of the parent, then that owner of the parent has  
16 dissenter's rights as provided under section 10-19.1-87 or 10-32-54.

17 b. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do  
18 not apply to any merger affected under this section.

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

22 **SECTION 27. AMENDMENT.** Subsection 1 of section 10-19.1-100.1 of the North  
23 Dakota Century Code is amended and reenacted as follows:

- 24 1. For purposes of this section:

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

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

30 c. "Subsidiary constituent corporation" means the subsidiary corporation that the  
31 parent constituent corporation merges with or into in the merger.

1           **SECTION 28. AMENDMENT.** Section 10-19.1-101 of the North Dakota Century Code  
2 is amended and reenacted as follows:

3           **10-19.1-101. Abandonment of plan of merger or exchange.**

4           1. After a plan of merger or exchange is approved by the owners entitled to vote on  
5 the approval of the plan as provided in section 10-19.1-98 and before the effective  
6 date of the plan, the plan may be abandoned:

7           a. With respect to the approval of the abandonment:

8                   (1) If the owners of the ownership interests of each of the constituent  
9 organizations entitled to vote on the approval of the plan as provided in  
10 section 10-19.1-98 have approved the abandonment at a meeting by  
11 the affirmative vote of the owners of a majority of the voting power of  
12 the ownership interests entitled to vote;

13                   (2) If the owners of a constituent organization are not entitled to vote on  
14 the approval of the plan under section 10-19.1-98, the governing ~~board~~  
15 body of the constituent organization has approved the abandonment by  
16 the affirmative vote required by section 10-19.1-46 ~~or 10-32-83~~ in the  
17 case of a domestic corporation or by its governing statute in the case of  
18 any other organization; and

19                   (3) If the merger or exchange is with a foreign ~~corporation or limited liability~~  
20 ~~company~~ organization, then if abandonment is approved in the manner  
21 as may be required by the ~~laws of the jurisdiction under which the~~  
22 ~~corporation is incorporated or the limited liability company is organized~~  
23 governing statute of the foreign organization;

24           b. If the plan itself provides for abandonment and all conditions for abandonment  
25 set forth in the plan are met; or

26           c. Pursuant to subsection 2.

27           2. If articles of merger are not filed with the secretary of state and the plan is to be  
28 abandoned or if a plan of exchange is to be abandoned before the effective date of  
29 the plan, then a resolution by the governing body of any constituent organization  
30 abandoning the plan of merger or exchange may be approved by the affirmative  
31 vote of the governing ~~board~~ body required by section 10-19.1-46 ~~or 10-32-83~~ in

1           the case of a domestic corporation or by its governing statute in the case of any  
2           other organization, subject to the contract rights of any other person under the  
3           plan.

4           3. If articles of merger are filed with the secretary of state, but are not yet effective,  
5           the constituent organizations, in the case of abandonment under paragraph 1 of  
6           subdivision a of subsection 1, then the constituent organization or any one of them  
7           under paragraph 2 of subdivision a of subsection 1, as the abandoning constituent  
8           organization in the case of abandonment under subsection 2, shall file with the  
9           secretary of state, with the fees provided in section 10-19.1-147, articles of  
10          abandonment that contain:

- 11          a. The names of the constituent organizations;  
12          b. The provision of this section under which the plan is abandoned; and  
13          c. The text of the resolution approved by the affirmative vote of a majority of the  
14          directors present abandoning the plan.

15          4. If the certificate of merger is issued, then the ~~board~~ governing body shall surrender  
16          the certificate to the secretary of state upon filing the articles of abandonment.

17          **SECTION 29. AMENDMENT.** Subsection 2 of section 10-19.1-102 of the North  
18          Dakota Century Code is amended and reenacted as follows:

19          2. When a merger becomes effective:

- 20          a. The constituent organizations become a single entity, the surviving  
21          ~~corporation or the surviving limited liability company, as the case may be~~  
22          organization.  
23          b. The separate existence of all constituent organizations except the surviving  
24          organization ceases.  
25          c. As to any corporation that was a constituent organization and is not the  
26          surviving constituent organization, the articles of merger serve as articles of  
27          termination, and unless previously filed, the notice of dissolution.  
28          d. ~~As to rights, privileges, powers, duties, and liabilities:~~  
29          (1) ~~If the surviving organization is a limited liability company, the~~ The  
30          ~~surviving limited liability company~~ organization has all the rights,  
31          privileges, immunities, and powers and is subject to all of the duties

- 1 and liabilities of ~~a domestic limited liability company~~ the specified  
2 organization under its governing statute.
- 3 ~~(2) If the surviving organization is a corporation, the surviving corporation~~  
4 ~~has all the rights, privileges, immunities, and powers and is subject to~~  
5 ~~all the duties and liabilities of a corporation incorporated under this~~  
6 ~~chapter.~~
- 7 e. The surviving organization possesses all the rights, privileges, immunities,  
8 and franchises, of a public as well as of a private nature, of each of the  
9 constituent organizations.
- 10 (1) All property and all debts due on any account, including subscriptions  
11 to ~~shares~~ ownership interests and all other choses in action, and every  
12 other interest of or belonging to or due to each of the constituent  
13 organizations vests in the surviving organization without any further act  
14 or deed.
- 15 (2) Confirmatory deeds, assignments, or similar instruments to accomplish  
16 that vesting may be signed and delivered at any time in the name of a  
17 constituent organization by the organization's current officers ~~or,~~  
18 managers, or governing body, as the case may be, or, if the  
19 organization no longer exists, by the ~~organization's~~ last officers ~~or,~~  
20 managers, or governing body of the organization.
- 21 (3) The title to any real estate or any interest vested in any of the  
22 constituent organizations does not revert nor in any way become  
23 impaired by reason of the merger.
- 24 f. The surviving organization is responsible and liable for all the liabilities and  
25 obligations of each of the constituent organizations.
- 26 (1) A claim of or against or a pending proceeding by or against a  
27 constituent organization may be prosecuted as if the merger did not  
28 take place, or the surviving organization may be substituted in the place  
29 of the constituent organization.
- 30 (2) Neither the rights of creditors nor any liens upon the property of a  
31 constituent organization are impaired by the merger.

- 1           g. The articles of ~~incorporation or articles of organization, as the case may be,~~ of  
2           the surviving organization are deemed to be amended to the extent that  
3           changes in its articles, if any, are contained in the plan of merger.

4           **SECTION 30. AMENDMENT.** Section 10-19.1-102.1 of the North Dakota Century  
5 Code is amended and reenacted as follows:

6           **10-19.1-102.1. Continuance of corporate authority.** When an act or record is  
7 considered necessary or appropriate to evidence the vesting of property or other rights in the  
8 single corporation, the persons with authority to do so under the articles ~~or~~, bylaws, or  
9 member-control agreement of each constituent organization shall do the act or sign and deliver  
10 the record and for this purpose, the existence of the constituent organizations and the authority  
11 of those persons is continued.

12           **SECTION 31. AMENDMENT.** Section 10-19.1-103 of the North Dakota Century Code  
13 is amended and reenacted as follows:

14           **10-19.1-103. Merger or exchange with foreign ~~corporation or foreign limited~~**  
15 **~~liability company organization.~~**

- 16           1. A domestic corporation may merge with, including a merger pursuant to section  
17 10-19.1-100, or participate in an exchange with a foreign ~~corporation or foreign~~  
18 ~~limited liability company~~ organization by following the procedures set forth in this  
19 section, if:
- 20           a. With respect to a merger, the merger is permitted by ~~the laws of the~~  
21 ~~jurisdiction under which the foreign corporation or foreign limited liability~~  
22 ~~company is incorporated or organized~~ its governing statute.
- 23           b. With respect to an exchange, the constituent organization whose ownership  
24 interests will be acquired is a domestic ~~corporation or limited liability company~~  
25 organization, regardless of whether the exchange is permitted by ~~the laws of~~  
26 ~~the jurisdiction under which the foreign corporation or foreign limited liability~~  
27 ~~company is incorporated or organized~~ its governing statute.
- 28           2. Each domestic corporation shall comply with the provisions of sections 10-19.1-96  
29 through 10-19.1-103 with respect to the merger or exchange of ownership interests  
30 and each foreign ~~corporation or foreign limited liability company~~ organization shall

- 1           comply with the applicable provisions of ~~the laws of the jurisdiction under which it~~  
2           ~~was incorporated or organized or by which it is governed~~ its governing statute.
- 3           3. If the surviving organization in a merger will be a domestic corporation, then the  
4           organization shall comply with this chapter.
- 5           4. If the surviving organization in a merger will be a foreign ~~corporation or foreign~~  
6           ~~limited liability company~~ organization and will transact business in this state, then  
7           the organization shall comply with the provisions of ~~this chapter with respect to~~  
8           ~~foreign corporations or chapter 10-32 with respect to foreign limited liability~~  
9           ~~companies~~ its governing statute. In every case, the surviving foreign ~~corporation~~  
10          ~~or foreign limited liability company~~ organization shall file with the secretary of state:
- 11          a. An agreement that it may be served with process in this state in a proceeding  
12             for the enforcement of an obligation of a constituent organization and in a  
13             proceeding for the enforcement of the rights of a dissenting owner of an  
14             ownership interest of a constituent organization against the surviving foreign  
15             ~~corporation or foreign limited liability company~~ organization;
- 16          b. An irrevocable appointment of the secretary of state as the ~~organization's~~  
17             agent of the organization to accept service of process in any proceeding, and  
18             an address to which process may be forwarded; and
- 19          c. An agreement that the organization will promptly pay to the dissenting owners  
20             of ownership interests of each domestic constituent ~~corporation and domestic~~  
21             ~~constituent limited liability company~~ organization the amount, if any, to which  
22             they are entitled under ~~section 10-19.1-88 or 10-32-55~~ its governing statute.

23           **SECTION 32. AMENDMENT.** Section 10-19.1-104 of the North Dakota Century Code  
24 is amended and reenacted as follows:

25           **10-19.1-104. Transfer of assets - When permitted.**

- 26           1. A corporation, by affirmative vote of a majority of the directors present upon those  
27           terms and conditions and for those considerations, which may be money,  
28           securities, or other instruments for the payment of money or other property, as the  
29           board deems expedient, and without shareholder approval, may:
- 30           a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its  
31           property and assets in the usual and regular course of its business;

- 1           b. Grant a security interest in all or substantially all of its property and assets  
2           whether or not in the usual and regular course of its business; or  
3           c. Transfer any or all of its property to ~~a corporation~~ an organization all the  
4           ~~shares~~ ownership interests of which are owned by the corporation.
- 5        2. With respect to shareholders' approval:
- 6           a. A corporation, by affirmative vote of a majority of the directors present, may  
7           sell, lease, transfer, or otherwise dispose of all or substantially all of its  
8           property and assets, including its good will, not in the usual and regular  
9           course of its business, upon those terms and conditions and for those  
10          considerations, which may be money, securities, or other instruments for the  
11          payment of money or other property, as the board deems expedient, when  
12          approved at a regular or special meeting of the shareholders by the  
13          affirmative vote of the holders of a majority of the voting power of the shares  
14          entitled to vote.
- 15          (1) Written notice of the meeting must be given to all shareholders whether  
16          or not they are entitled to vote at the meeting.
- 17          (2) The written notice must state that a purpose of the meeting is to  
18          consider the sale, lease, transfer, or other disposition of all or  
19          substantially all of the property and assets of the corporation.
- 20        b. Shareholder approval is not required under subdivision a if, following the sale,  
21        lease, transfer, or other disposition of its property and assets, the corporation  
22        retains a significant continuing business activity. The corporation will  
23        conclusively be deemed to have retained a significant continuing business  
24        activity if the corporation retains a business activity that represented at least:
- 25          (1) Twenty-five percent of the corporation's total assets at the end of the  
26          most recently completed fiscal year; and
- 27          (2) Twenty-five percent of either income from continuing operations before  
28          taxes or revenues from continuing operations for that fiscal year,  
29          measured on a consolidated basis with its subsidiaries for each of  
30          paragraphs 1 and 2.

1           3.   Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease,  
2                   transfer, or other disposition may be signed and delivered at any time in the name  
3                   of the transferor by its current officers or, if the corporation no longer exists, by its  
4                   last officers.

5           4.   The transferee is liable for the debts, obligations, and liabilities of the transferor  
6                   only to the extent provided in the contract or agreement between the transferee  
7                   and the transferor or to the extent provided by this chapter or other statutes of this  
8                   state. A disposition of all or substantially all of the property and assets of the  
9                   corporation under this section is not considered to be a merger or a de facto  
10                  merger pursuant to this chapter or otherwise. The transferee shall not be liable  
11                  solely because it is deemed to be a continuation of the transferor.

12           **SECTION 33. AMENDMENT.** Subsection 2 of section 10-19.1-104.1 of the North  
13 Dakota Century Code is amended and reenacted as follows:

14           2.   For the purposes of sections 10-19.1-104.1 through 10-19.1-104.6, unless the  
15                   context otherwise requires:

16           a.   "Act of the board" means action by the board as provided in section  
17                   10-19.1-46 whether:

18                   (1)   At a meeting of the board as provided in section 10-19.1-43; or

19                   (2)   By a written action of the board as provided in section 10-19.1-47.

20           b.   "Act of the governing body" means action by the governing body of any  
21                   organization, other than a domestic corporation, in the manner provided in the  
22                   governing statute.

23           c.   "Act of the owners" means action by the owners of an organization, other than  
24                   a domestic corporation, in the manner provided in its governing statute.

25           d.   "Act of the shareholders" means action by the shareholders as provided in  
26                   section 10-19.1-74 whether:

27                   (1)   At a meeting of the shareholders as provided in sections 10-19.1-71  
28                   and 10-19.1-72; or

29                   (2)   By a written action of the shareholders as provided in section  
30                   10-19.1-75.

31           e.   e. "Certificate of creation" means:

- 1 (1) A certificate of incorporation, if the converted organization is a
- 2 corporation deemed to be incorporated under this chapter;
- 3 (2) A certificate of organization, if the converted organization is a limited
- 4 liability company deemed to be organized under chapter 10-32;
- 5 (3) A certificate of limited partnership, if the converted organization is a
- 6 limited partnership deemed to be formed under chapter 45-10.2;
- 7 (4) The filed registration of a limited liability partnership, if the converted
- 8 organization is a limited liability partnership deemed to be established
- 9 under chapter 45-22; or
- 10 (5) A certificate of limited liability limited partnership, if the converted
- 11 organization is a limited liability limited partnership deemed to be
- 12 formed under chapter 45-23.

13 e. f. "Date of origin" means the date on which:

- 14 (1) A corporation which is:
  - 15 (a) The converting organization was incorporated; or
  - 16 (b) The converted organization is deemed to be incorporated;
- 17 (2) A limited liability company which is:
  - 18 (a) The converting organization was organized; or
  - 19 (b) The converted organization is deemed to be organized;
- 20 (3) A general partnership that is the converting organization was formed;
- 21 (4) A limited partnership which is:
  - 22 (a) The converting organization was formed; or
  - 23 (b) The converted organization is deemed to be formed;
- 24 (5) A limited liability partnership which is:
  - 25 (a) The converting organization was formed; or
  - 26 (b) The converted organization is deemed to be formed; and
- 27 (6) A limited liability limited partnership which is:
  - 28 (a) The converting organization was formed; or
  - 29 (b) The converted organization is deemed to be formed.

30 e. g. "Filed registration" means the registration of a limited liability partnership  
31 which has been filed with the secretary of state.



1 from the conversion shall file with the secretary of state a certified statement of conversion duly  
2 authenticated by the proper officer of the jurisdiction in which the statutory conversion was  
3 effected. Any foreign organization that is the converted organization in a conversion and which  
4 will continue to transact business in this state shall obtain a certificate of authority or applicable  
5 registration in accordance with the North Dakota governing statute applicable to the converted  
6 organization.

7         **SECTION 36. AMENDMENT.** Section 10-19.1-146 of the North Dakota Century Code  
8 is amended and reenacted as follows:

9         **10-19.1-146. Secretary of state - Annual report of corporations and foreign**  
10 **corporations - Involuntary dissolution - Revocation of certificate of authority.**

- 11         1. Each corporation and each foreign corporation authorized to transact business in  
12 this state shall file, within the time provided in subsection 3, an annual report  
13 setting forth:
- 14         a. The name of the corporation or foreign corporation and the state or country  
15             under the laws of which the corporation or foreign corporation is incorporated.
  - 16         b. The address of the registered office of the corporation or foreign corporation  
17             in this state, the name of the corporation's or foreign corporation's registered  
18             agent in this state at that address, and the address of the corporation's or  
19             foreign corporation's principal executive office.
  - 20         c. A brief statement of the character of the business in which the corporation or  
21             foreign corporation is actually engaged in this state.
  - 22         d. The names and respective addresses of the officers and directors of the  
23             corporation or foreign corporation.
  - 24         e. ~~A~~ In the case of a domestic or foreign corporation, a statement of the  
25             aggregate number of shares the corporation or foreign corporation has  
26             authority to issue, itemized by classes, par value of shares, shares without  
27             par value, and series, if any, within a class.
  - 28         f. ~~A~~ In the case of a domestic or foreign corporation, a statement of the  
29             aggregate number of issued shares, itemized by classes, par value of shares,  
30             shares without par value, and series, if any, within a class.

- 1           g. ~~A statement, expressed in dollars, of the value of all the property owned by~~  
2           ~~the corporation, wherever located, and the value of the property of the~~  
3           ~~corporation located within this state, and a statement, expressed in dollars, of~~  
4           ~~the total gross income of the corporation for the twelve months ending on~~  
5           ~~December thirty first preceding the date provided under this section for the~~  
6           ~~filing of the annual report and the gross amount accumulated by the~~  
7           ~~corporation at or from places of business in this state. If, on December~~  
8           ~~thirty first preceding the time provided under this section for the filing of the~~  
9           ~~report, the corporation had not been in existence for a period of twelve~~  
10           ~~months, or, in the case of a foreign corporation, had not been authorized to~~  
11           ~~transact business in this state for a period of twelve months, the statement~~  
12           ~~with respect to total gross income must be furnished for the period between~~  
13           ~~the date of incorporation or the date of the corporation's authorization to~~  
14           ~~transact business in this state and December thirty first.~~
- 15           h. ~~Any additional information necessary or appropriate to enable the secretary of~~  
16           ~~state to determine and assess the proper amount of fees payable by the~~  
17           ~~corporation.~~
- 18           2. The annual report must be submitted on forms prescribed by the secretary of state.  
19           The information provided must be given as of the date of the execution of the  
20           report ~~except as to the information required by subdivision g of subsection 1 which~~  
21           ~~must be given as of the close of business on December thirty first next preceding~~  
22           ~~the date herein provided for the filing of the report, or, in the alternative, data of the~~  
23           ~~fiscal year ending next preceding this report may be used.~~ The annual report must  
24           be signed as provided in subsection 54 52 of section 10-19.1-01, or the articles or  
25           the bylaws or a resolution approved by the affirmative vote of the required  
26           proportion or number of the directors or holders of shares entitled to vote. If the  
27           corporation or foreign corporation is in the hands of a receiver or trustee, it must be  
28           signed on behalf of the corporation or foreign corporation by the receiver or  
29           trustee. The secretary of state may destroy all annual reports provided for in this  
30           section after they have been on file for six years. ~~The secretary of state, or any~~  
31           ~~employee or legal representative of the secretary of state, may not disclose the~~

~~information reported under subdivision g of subsection 1 to any person, except a person that is verified to be a shareholder of the corporation or foreign corporation, a legal representative of the shareholder for which information is requested, or to the tax commissioner or any employee or legal representative of the tax commissioner, who may not disclose the information and may use the information only for the administration of the tax laws.~~

3. Except for the first annual report, the annual report must be delivered to the secretary of state:

- a. By a corporation, before August second of each year; and
- b. By a foreign corporation, before May sixteenth of each year.

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

4. The secretary of state must file the annual report if the annual report conforms to the requirements of this section and all fees have been paid as provided in section 10-19.1-147.

- a. If the annual report does not conform, it must be returned to the corporation or foreign corporation for any necessary correction or payment.
- b. If the annual report is corrected and filed before the date provided in subsection 3, or within thirty days after the annual report was returned by the secretary of state for correction, then the penalties provided in section

1                   10-19.1-147 for the failure to file an annual report within the time provided do  
2                   not apply.

3           5.   The secretary of state may extend the annual report filing date provided in  
4           subsection 3 if a written application for an extension is delivered before the date  
5           provided in subsection 3. A corporation or foreign corporation ~~with a fiscal year~~  
6           ~~ending within three months before the date provided in subsection 3~~ may make a  
7           written request for an extension; to apply to reports for subsequent years ~~until the~~  
8           ~~fiscal year is changed.~~

9           6.   Three months after the date provided in subsection 3, any corporation or foreign  
10           corporation failing to file its annual report is not in good standing. After the  
11           corporation or foreign corporation becomes not in good standing, the secretary of  
12           state shall notify the corporation or foreign corporation that its certificate of  
13           incorporation or certificate of authority is not in good standing and that it may be  
14           dissolved or revoked as provided in subsection 7 or 8.

15           a.   The secretary of state must mail the notice of impending dissolution or  
16           revocation to the last registered agent at the last registered office of record.

17           b.   If the corporation or foreign corporation files its annual report after the notice  
18           is mailed, together with the filing fee and the late filing penalty fee provided in  
19           section 10-19.1-147, then the secretary of state shall restore its certificate of  
20           incorporation or certificate of authority to good standing.

21           7.   A corporation that fails to file its annual report, together with the filing and penalty  
22           fees for late filing provided in section 10-19.1-147, within one year after the date  
23           provided in subsection 3 ceases to exist as a corporation and is considered  
24           involuntarily dissolved by operation of law.

25           a.   The secretary of state shall note the dissolution of the corporation's certificate  
26           of incorporation on the records of the secretary of state and shall give notice  
27           of the action to the dissolved corporation.

28           b.   Notice by the secretary of state must be mailed to the last registered agent at  
29           the last registered office of record.

- 1           8. A foreign corporation that fails to file its annual report, together with the filing and  
2           penalty fees for late filing provided in section 10-19.1-147, within one year after the  
3           date provided in subsection 3 forfeits its authority to transact business in this state.
- 4           a. The secretary of state shall note the revocation of the foreign corporation's  
5           certificate of authority on the records of the secretary of state and shall give  
6           notice of the action to the foreign corporation.
- 7           b. Notice by the secretary of state must be mailed to the foreign corporation's  
8           last registered agent at the last registered office of record.
- 9           c. The decision by the secretary of state that a certificate of authority must be  
10          revoked under this subsection is final.
- 11          9. A corporation dissolved for failure to file an annual report, or a foreign corporation  
12          whose authority was forfeited by failure to file an annual report, may be reinstated  
13          by filing a past-due report, together with the filing and penalty fees for an annual  
14          report and a reinstatement fee as provided in section 10-19.1-147. The fees must  
15          be paid and an annual report filed within one year following the involuntary  
16          dissolution or revocation. Reinstatement under this subsection does not affect the  
17          rights or liability for the time from the dissolution or revocation to the reinstatement.

18           **SECTION 37. AMENDMENT.** Section 10-19.1-147 of the North Dakota Century Code  
19 is amended and reenacted as follows:

20           **10-19.1-147. Fees for filing records - Issuing certificates - License fees.** The  
21 secretary of state shall charge and collect for:

- 22          1. Filing articles of incorporation and issuing a certificate of incorporation, ~~thirty~~ thirty ninety  
23          dollars.
- 24          2. Filing articles of amendment, twenty dollars.
- 25          3. Filing articles of correction, twenty dollars.
- 26          4. Filing restated articles of incorporation, thirty dollars.
- 27          5. Filing articles of conversion of a corporation, fifty dollars and:
- 28           a. If the organization resulting from the conversion will be a domestic  
29           organization governed by the laws of this state, then the fees provided by the  
30           governing laws to establish or register a new organization like the  
31           organization resulting from the conversion; or

- 1           b.    If the organization resulting from the conversion will be a foreign organization  
2           that will transact business in this state, then the fees provided by the  
3           governing laws to obtain a certificate of authority or register an organization  
4           like the organization resulting from the conversion.
- 5           6.    Filing abandonment of conversion, fifty dollars.
- 6           7.    Filing articles of merger or consolidation and issuing a certificate of merger or  
7           consolidation, fifty dollars.
- 8           8.    Filing articles of abandonment of merger, fifty dollars.
- 9           9.    Filing an application to reserve a corporate name, ten dollars.
- 10          10.   Filing a notice of transfer of a reserved corporate name, ten dollars.
- 11          11.   Filing a cancellation of reserved corporate name, ten dollars.
- 12          12.   Filing a consent to use of name, ten dollars.
- 13          13.   Filing a statement of change of address of registered office or change of registered  
14          agent, or both, ten dollars.
- 15          14.   Filing a statement of change of address of registered office by registered agent,  
16          ten dollars for each corporation affected by such change.
- 17          15.   Filing a registered agent's consent to serve in such capacity, ten dollars.
- 18          16.   Filing a resignation as registered agent, ten dollars.
- 19          17.   Filing a statement of the establishment of a series of shares, twenty dollars.
- 20          18.   Filing a statement of cancellation of shares, twenty dollars.
- 21          19.   Filing a statement of reduction of stated capital, twenty dollars.
- 22          20.   Filing a statement of intent to dissolve, ten dollars.
- 23          21.   Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
- 24          22.   Filing articles of dissolution, twenty dollars.
- 25          23.   Filing an application of a foreign corporation for a certificate of authority to transact  
26          business in this state and issuing a certificate of authority, ~~forty~~ one hundred  
27          thirty-five dollars.
- 28          24.   Filing an application of a foreign corporation for an amended certificate of authority  
29          to transact business in this state and issuing an amended certificate of authority,  
30          forty dollars.

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- 1           25.   Filing a certificate of fact stating a merger or consolidation of a foreign corporation  
2                   holding a certificate of authority to transact business in this state, fifty dollars.
- 3           26.   Filing an application for withdrawal of a foreign corporation and issuing a certificate  
4                   of withdrawal, twenty dollars.
- 5           27.   Filing an annual report of a corporation or foreign corporation, twenty-five dollars.
- 6                a.   The secretary of state shall charge and collect additional fees for late filing of  
7                   the annual report as follows:
- 8                    (1)   Within ninety days after the date provided in subsection 3 of section  
9                                10-19.1-146, twenty dollars;
- 10                   (2)   Thereafter, sixty dollars; and
- 11                   (3)   After the involuntary dissolution of a corporation, or the revocation of  
12                                the certificate of authority of a foreign corporation, the reinstatement fee  
13                                of one hundred thirty-five dollars.
- 14                b.   Fees paid to the secretary of state according to this subsection are not  
15                   refundable if an annual report submitted to the secretary of state cannot be  
16                   filed because it lacks information required by section 10-19.1-146, or the  
17                   annual report lacks sufficient payment as required by this subsection.
- 18           28.   Filing any process, notice, or demand for service, twenty-five dollars.
- 19           29.   Furnishing a certified copy of any record, instrument, or paper relating to a  
20                   corporation, one dollar for every four pages or fraction and fifteen dollars for the  
21                   certificate and affixing the seal thereto.
- 22           30.   ~~License fee of fifty dollars for the first fifty thousand dollars of a corporation's~~  
23                   ~~authorized shares, or fraction, and the further sum of ten dollars if paid at the time~~  
24                   ~~of authorization, or twelve dollars if paid after authorized shares are issued, for~~  
25                   ~~every additional ten thousand dollars of its authorized shares, or fraction thereof, in~~  
26                   ~~excess of fifty thousand dollars.~~
- 27                a.   ~~A license fee is payable by a corporation at the time of:~~
- 28                    (1)   ~~Filing articles of incorporation;~~
- 29                    (2)   ~~Filing articles of amendment increasing the number or value of~~  
30                                ~~authorized shares; or~~

- 1                   ~~(3) Filing articles of merger or consolidation increasing the number or value~~  
2                   ~~of authorized shares a surviving or new corporation will have authority~~  
3                   ~~to issue above the aggregate number or value of shares the constituent~~  
4                   ~~corporations had authority to issue.~~
- 5                   b. ~~A license fee payable on an increase in authorized shares must be imposed~~  
6                   ~~only on the additional shares, but the amount of previously authorized shares~~  
7                   ~~must be taken into account in determining the rate applicable to the additional~~  
8                   ~~authorized shares.~~
- 9                   e. ~~For the purposes of this subsection, shares without par value are considered~~  
10                   ~~worth one dollar per share.~~
- 11                   d. ~~The minimum sum of fifty dollars must be paid for authorized shares at the~~  
12                   ~~time of filing articles of incorporation.~~
- 13                   e. ~~A corporation increasing authorized shares by articles of amendment or~~  
14                   ~~articles of merger must have previously paid for a minimum of fifty thousand~~  
15                   ~~dollars of authorized shares.~~
- 16                   ~~(1) Thereafter, a corporation may postpone the payment for any additional~~  
17                   ~~amount until the filing of an annual report after the unpaid shares are~~  
18                   ~~issued.~~
- 19                   ~~(2) Any additional amount must be paid in increments of ten thousand~~  
20                   ~~dollars of authorized shares.~~
- 21                   f. ~~The provisions of this subsection do not apply to a building and loan or~~  
22                   ~~savings and loan association.~~
- 23                   31. ~~License fee of eighty five dollars from each foreign corporation at the time of filing~~  
24                   ~~an application for a certificate of authority to transact business in this state.~~  
25                   ~~Thereafter, the secretary of state shall fix the license fee for each foreign~~  
26                   ~~corporation as follows:~~
- 27                   a. ~~The secretary of state shall first ascertain the license fee which a newly~~  
28                   ~~organized corporation would be required to pay if it had authorized shares of~~  
29                   ~~the same kind and amount as the issued or allotted shares of the reporting~~  
30                   ~~foreign corporation shown by its filed annual report.~~

1           b. ~~Said amount must be multiplied by a fraction, the numerator of which must be~~  
2           ~~the sum of the value of the property of the foreign corporation located in this~~  
3           ~~state and the gross receipts of the foreign corporation derived from that~~  
4           ~~foreign corporation's business transacted within this state, and the~~  
5           ~~denominator of which must be the sum of the value of all of that foreign~~  
6           ~~corporation's property wherever located and the gross receipts of the foreign~~  
7           ~~corporation derived from that foreign corporation's business wherever~~  
8           ~~transacted. The amounts used in determining the numerator and~~  
9           ~~denominator must be determined from the foreign corporation's filed annual~~  
10           ~~report.~~

11           e. ~~From the product of such multiplication, there must be deducted the~~  
12           ~~aggregate amount of license fee previously paid by the foreign corporation,~~  
13           ~~and the remainder, if any, must be the amount of additional fee to be paid by~~  
14           ~~the foreign corporation.~~

15           ~~The secretary of state shall enter the amount of any additional license fee in the~~  
16           ~~records of the foreign corporation in the secretary of state's office and shall mail a~~  
17           ~~notice of the amount of additional license fee due to the foreign corporation at the~~  
18           ~~foreign corporation's principal office. The additional license fee must be paid by~~  
19           ~~the foreign corporation before the annual report may be filed by the secretary of~~  
20           ~~state. Amounts less than five dollars are not collected.~~

21           ~~32.~~ Any record submitted for approval before the actual time of submission for filing,  
22           one-half of the fee provided in this section for filing the record.

23           ~~33.~~ 31. Filing any other statement of a corporation or foreign corporation, ten dollars.

24           **SECTION 38. 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 ~~limited liability company or~~ domestic or foreign  
29           ~~limited liability company, or corporation or foreign corporation~~ organization that  
30           ~~acquires in an exchange the shares~~ ownership interests of a corporation or

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

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

- 1           14. "Contribution allowance agreement" means an agreement between a person and a  
2           limited liability company under which:
- 3           a. The person has the right, but not the obligation, to make a contribution in the  
4           future; and
- 5           b. The limited liability company agrees that, if the person makes the specified  
6           contribution at the time specified in the future, the limited liability company will  
7           accept the contribution and reflect the contribution in the required records.
- 8           15. "Converted organization" means the organization resulting from a conversion  
9           under sections 10-32-108.1 through 10-32-108.6.
- 10          16. "Converting organization" means the organization that effects a conversion under  
11          sections 10-32-108.1 through 10-32-108.6.
- 12          17. "Corporation" or "domestic corporation" means a corporation, other than a foreign  
13          corporation, organized for profit and incorporated under chapter 10-19.1.
- 14          18. "Dissolution" means that the limited liability company incurred an event under  
15          subsection 1 of section 10-32-109, subject only to sections 10-32-116 and  
16          10-32-124, that obligates the limited liability company to wind up the limited liability  
17          company's affairs and to terminate the limited liability company's existence as a  
18          legal entity.
- 19          19. "Dissolution avoidance consent" means the consent of all remaining members:
- 20          a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after  
21          the occurrence of any event that terminates the continued membership of a  
22          member in the limited liability company; and
- 23          b. That the limited liability company must be continued as a legal entity without  
24          dissolution.
- 25          20. "Distribution" means a direct or indirect transfer of money or other property, other  
26          than its own membership interests, with or without consideration, or an incurrence  
27          or issuance of indebtedness, by a limited liability company to any of ~~the limited~~  
28          ~~liability company's~~ its members in respect of its membership interests. ~~A~~  
29          ~~distribution~~ and may be in the form of an interim distribution or a termination  
30          distribution, or as consideration for the purchase, redemption, or other acquisition  
31          of its membership interests, or otherwise.

- 1           21. "Domestic organization" means an organization created under the laws of this  
2           state.
- 3           22. "Electronic" means relating to technology having electrical, digital, magnetic,  
4           wireless, optical, electromagnetic, or similar capabilities.
- 5           23. "Electronic communication" means any form of communication, not directly  
6           involving the physical transmission of paper:
- 7           a. That creates a record that may be retained, retrieved, and reviewed by a  
8           recipient of the communication; and
- 9           b. That may be directly reproduced in paper form by the recipient through an  
10          automated process.
- 11          24. "Electronic record" means a record created, generated, sent, communicated,  
12          received, or stored by electronic means.
- 13          25. "Electronic signature" means an electronic sound, symbol, or process attached to  
14          or logically associated with a record and signed or adopted by a person with the  
15          intent to sign the record.
- 16          26. "Filed with the secretary of state" means except as otherwise permitted by law or  
17          rule:
- 18          a. That a record meeting the applicable requirements of this chapter, together  
19          with the fees provided in section 10-32-150, has been delivered or  
20          communicated to the secretary of state by a method or medium of  
21          communication acceptable by the secretary of state, and has been  
22          determined by the secretary of state to conform to law.
- 23          b. That the secretary of state did then:
- 24              (1) Record the actual date on which the record was filed, and if different,  
25              the effective date of filing; and
- 26              (2) Record the record in the office of the secretary of state.
- 27          27. "Financial rights" means a member's rights:
- 28          a. To share in profits and losses as provided in section 10-32-36;
- 29          b. To share in distributions as provided in section 10-32-60;
- 30          c. To receive interim distributions as provided in section 10-32-61; and

- 1           d. To receive termination distributions as provided in subdivision c of  
2           subsection 1 of section 10-32-131.
- 3       28. "Foreign corporation" means a corporation organized for profit that is incorporated  
4           under laws other than the laws of this state for a purpose for which a corporation  
5           may be incorporated under chapter 10-19.1.
- 6       29. "Foreign limited liability company" means a limited liability company which is  
7           organized under or governed by laws other than the laws of this state for a  
8           purpose for which a limited liability company may be organized under this chapter.
- 9       30. "Foreign organization" means an organization created under laws other than the  
10          laws of this state for a purpose for which an organization may be created under the  
11          laws of this state.
- 12       31. "Good faith" means honesty in fact in the conduct of the act or transaction  
13          concerned.
- 14       32. "Governance rights" means all of a member's rights as a member in the limited  
15          liability company other than financial rights and the right to assign financial rights.
- 16       33. "Governing ~~board~~ body" means for an organization that is:
- 17           a. ~~The~~ A corporation, its board of ~~governors in the case of a~~ directors;
- 18           b. A limited liability company, its board of governors; and
- 19           ~~b. The board of directors in the case of a corporation or~~
- 20           c. Any other organization, the body selected by its owners that has the ultimate  
21           power to determine the policies of the organization and to control its policies.
- 22       34. "Governing statute" of an organization means:
- 23           a. With respect to a domestic organization, the following chapters of this code  
24           which govern the internal affairs of the organization:
- 25               (1) If a corporation, then chapter 10-19.1;
- 26               (2) If a limited liability company, then this chapter;
- 27               (3) If a general partnership, then chapters 45-13 through 45-21;
- 28               (4) If a limited partnership, then chapter 45-10.2;
- 29               (5) If a limited liability partnership, then chapter 45-22; and
- 30               (6) If a limited liability limited partnership, then chapter 45-23; and

- 1           b. With respect to a foreign organization, the laws of the jurisdiction under which  
2           the organization is created and which govern the internal affairs of the  
3           organization.
- 4           35. "Governor" means an individual serving on the board.
- 5           36. "Intentionally" means that the person referred to either has a purpose to do or fail  
6           to do the act or cause the result specified or believes that the act or failure to act, if  
7           successful, will cause that result. A person "intentionally" violates a statute:
- 8           a. If the person intentionally does the act or causes the result prohibited by the  
9           statute; or
- 10           b. If the person intentionally fails to do the act or cause the result required by the  
11           statute, even though the person may not know of the existence or  
12           constitutionality of the statute or the scope or meaning of the terms used in  
13           the statute.
- 14           37. "Legal representative" means a person empowered to act for another person,  
15           including an agent, manager, officer, partner, or associate of an organization; a  
16           trustee of a trust; a personal representative; a trustee in bankruptcy; and a  
17           receiver, guardian, custodian, or conservator.
- 18           38. "Limited liability company" or "domestic limited liability company" means a limited  
19           liability company, other than a foreign limited liability company, organized under or  
20           governed by this chapter.
- 21           39. "Manager" means:
- 22           a. An individual who is eighteen years of age or more and who is elected,  
23           appointed, or otherwise designated as a manager by the board; and
- 24           b. An individual considered elected as a manager pursuant to section 10-32-92.
- 25           40. "Member" means a person, with or without voting rights, reflected in the required  
26           records of a limited liability company as the owner of a membership interest in the  
27           limited liability company.
- 28           41. "Membership interest" means one of the units, however designated, into which a  
29           ~~member's~~ the proprietary interest of the members in a limited liability company is  
30           divided consisting of:
- 31           a. ~~A member's~~ The financial rights of a member;

- 1           b. ~~A member's~~ The right of a member to assign financial rights as provided in  
2           section 10-32-31;  
3           c. ~~A member's~~ The governance rights of a member, if any; and  
4           d. ~~A member's~~ The right of a member to assign any governance rights owned as  
5           provided in section 10-32-32.

6           42. "Notice":

- 7           a. Is given by a member of a limited liability company to the limited liability  
8           company or a manager of a limited liability company:  
9           (1) When in writing and mailed or delivered to the limited liability company  
10           or the manager at the registered office or principal executive office of  
11           the limited liability company.  
12           (2) When given by a form of electronic communication consented to by the  
13           limited liability company or a manager to which the notice is given:  
14           (a) If by facsimile communication, when directed to a telephone  
15           number at which the limited liability company or a manager has  
16           consented to receive notice;  
17           (b) If by electronic mail, when directed to an electronic mail address  
18           at which the limited liability company or a manager has  
19           consented to receive notice;  
20           (c) If by posting on an electronic network on which the limited liability  
21           company or a manager has consented to receive notice, together  
22           with separate notice to the limited liability company or a manager  
23           of the specific posting, upon the later of:  
24           [1] The posting; or  
25           [2] The giving of the separate notice; or  
26           (d) If by any other form of electronic communication by which the  
27           limited liability company or a manager has consented to receive  
28           notice, when directed to the limited liability company or a  
29           manager.  
30           b. Is given, in all other cases:

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

- 1 a. Whether domestic or foreign, a limited liability company, corporation,  
2 partnership, limited partnership, limited liability partnership, limited liability  
3 limited partnership, or any other person having a governing statute; but  
4 b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation  
5 which is incorporated under chapter 10-33 or a foreign nonprofit corporation  
6 which is incorporated in another jurisdiction.
- 7 44. "Originating records" means for an organization which is:  
8 a. A corporation, its articles of incorporation;  
9 b. A limited liability company, its articles of organization;  
10 c. A limited partnership, its certificate of limited partnership;  
11 d. A limited liability partnership, its registration; or  
12 e. A limited liability limited partnership, its certificate of limited liability limited  
13 partnership.
- 14 ~~44.~~ 45. "Owners" means:  
15 a. ~~Members in the case of a limited liability company or a nonprofit corporation;~~  
16 ~~and~~  
17 b. ~~Shareholders in the case of a corporation~~ the holder of ownership interests in  
18 an organization.
- 19 ~~45.~~ 46. "Ownership interests" means for a domestic or foreign organization that is:  
20 a. ~~Membership interests in the case of a limited liability company or a nonprofit~~  
21 A corporation, it shares; and  
22 b. ~~Shares in the case of a corporation~~ A limited liability company, its  
23 membership interests;  
24 c. A limited partnership, its partnership interests;  
25 d. A general partnership, its partnership interests;  
26 e. A limited liability partnership, its partnership interests;  
27 f. A limited liability limited partnership, its partnership interests; or  
28 g. Any other organization, its governance or transferable interests.
- 29 ~~46.~~ 47. "Parent" of a specified ~~limited liability company~~ organization means a ~~limited~~  
30 ~~liability company, a foreign limited liability company, a corporation, or a foreign~~  
31 ~~corporation~~ an organization that directly or indirectly, through related organizations,

1 owns more than fifty percent of the voting power of the ~~membership~~ ownership  
2 interests entitled to vote for governors, or other members of the governing body of  
3 the specified ~~limited liability company~~ organization.

4 ~~47.~~ 48. "Pertains" means a contribution "pertains":

- 5 a. To a particular series when the contribution is made in return for a  
6 membership interest in that particular series.  
7 b. To a particular class when the class has no series and the contribution is  
8 made in return for a membership interest in the class.

9 A contribution that pertains to a series does not pertain to the class of which the  
10 series is a part.

11 ~~48.~~ 49. "Principal executive office" means:

- 12 a. If the limited liability company has an elected or appointed president, an office  
13 where the elected or appointed president of the limited liability company has  
14 an office; or  
15 b. If the limited liability company has no elected or appointed president, the  
16 registered office of the limited liability company.

17 ~~49.~~ 50. "Record" means information that is inscribed on a tangible medium or that is stored  
18 in an electronic or other medium and is retrievable in perceivable form.

19 ~~50.~~ 51. "Registered office" means the place in this state designated in a limited liability  
20 company's articles of organization or a foreign limited liability company's certificate  
21 of authority as the registered office.

22 ~~51.~~ 52. "Related organization" means an organization that controls, is controlled by, or is  
23 under common control with another organization with control existing if an  
24 organization:

- 25 a. Owns, directly or indirectly, at least fifty percent of the ~~shares, membership~~  
26 ~~interests, or other~~ ownership interests of another organization;  
27 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or  
28 more of the voting members of the governing body of another organization; or  
29 c. Has the power, directly or indirectly, to direct or cause the direction of the  
30 management and policies of another organization, whether through the  
31 ownership of voting interests, by contract, or otherwise.



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1           b. ~~A domestic corporation or a foreign corporation having more than fifty percent~~  
2           ~~of the voting power of its shares entitled to vote for directors owned directly or~~  
3           ~~indirectly through related organizations by the specified limited liability~~  
4           ~~company~~ an organization having more than fifty percent of the voting power  
5           of its ownership interests entitled to vote for governors, or other members of  
6           the governing body of the organization owned directly, or indirectly, through  
7           related organizations, by the specified organization.

8    ~~58.~~ 59. "Successor organization" means an organization that, pursuant to a business  
9           continuation agreement or an order of the court under subsection 6 of section  
10          10-32-119, continues the business of the dissolved and terminated limited liability  
11          company.

12   ~~59.~~ 60. "Surviving organization" means the ~~limited liability company or foreign limited~~  
13          ~~liability company or domestic or foreign corporation~~ organization resulting from a  
14          merger which:

- 15          a. May preexist the merger; or  
16          b. May be created by the merger.

17   ~~60.~~ 61. "Termination" means the end of the existence of a limited liability ~~company's~~  
18          ~~existence~~ company as a legal entity and occurs when a notice of termination is:  
19          a. Filed with the secretary of state under section 10-32-117 together with the  
20             fees provided in section 10-32-150; or  
21          b. Considered filed with the secretary of state under subdivision c of  
22             subsection 2 of section 10-32-106 together with the fees provided in section  
23             10-32-150.

24   ~~64.~~ 62. "Vote" includes authorization by written action.

25   ~~62.~~ 63. "Winding up" means the period triggered by dissolution during which the limited  
26          liability company ceases to carry on business, except to the extent necessary for  
27          concluding affairs, and disposing of assets under section 10-32-131.

28   ~~63.~~ 64. "Written action" means:

- 29          a. A written record signed by every person required to take the action described;  
30          and

- 1           b. The counterparts of a written record signed by any person taking the action  
2           described.
- 3           (1) Each counterpart constitutes the action of the persons signing it; and  
4           (2) All the counterparts, taken together, constitute one written action by all  
5           of the persons signing them.

6           **SECTION 39.** A new section to chapter 10-32 of the North Dakota Century Code is  
7 created and enacted as follows:

8           **Reservation of legislative right.** The legislative assembly reserves the right to amend  
9 or repeal the provisions of this chapter. A limited liability company organized under or  
10 governed by this chapter is subject to this reserved right.

11          **SECTION 40. AMENDMENT.** Section 10-32-07 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13          **10-32-07. Articles of organization.**

- 14          1. The articles of organization must contain:
- 15           a. The name of the limited liability company;
- 16           b. The address of the registered office of the limited liability company and the  
17           name of the limited liability company's registered agent at that address;
- 18           c. The name and address of each organizer;
- 19           d. The effective date of organization:
- 20           (1) If a later date than that on which the certificate of organization is issued  
21           by the secretary of state; and
- 22           (2) Which may not be later than ninety days after the date on which the  
23           certificate of organization is issued; and
- 24           e. If the articles of organization are filed with the secretary of state:
- 25           (1) Before July 1, 1999, a statement stating in years that the period of  
26           existence for the limited liability company must be a period of thirty  
27           years from the date the articles of organization are filed with the  
28           secretary of state, unless the articles of organization expressly  
29           authorize a shorter or longer period of duration, which may be  
30           perpetual.

- 1                   (2) After June 30, 1999, a statement stating in years the period of  
2                   existence of the limited liability company, if other than perpetual.
- 3           2. The following provisions govern a limited liability company unless modified in the  
4           articles of organization or a member-control agreement under section 10-32-50:
- 5           a. A limited liability company has general business purposes as provided in  
6           section 10-32-04;
- 7           b. A limited liability company has certain powers as provided in section  
8           10-32-23;
- 9           c. The power to adopt, amend, or repeal the bylaws is vested in the board as  
10           provided in subsection 2 of section 10-32-68;
- 11           d. A limited liability company must allow cumulative voting for governors as  
12           provided in section 10-32-76;
- 13           e. The affirmative vote of the greater of a majority of governors present or a  
14           majority of the minimum number of governors constituting a quorum is  
15           required for an action of the board as provided in section 10-32-83;
- 16           f. A written action by the board taken without a meeting must be signed by all  
17           governors as provided in section 10-32-84;
- 18           g. The board may accept contributions, make contribution agreements, and  
19           make contribution allowance agreements as provided in subsection 1 of  
20           section 10-32-56 and sections 10-32-58 and 10-32-59;
- 21           h. All membership interests are ordinary membership interests entitled to vote  
22           and are of one class with no series as provided in subdivisions a and b of  
23           subsection 5 of section 10-32-56;
- 24           i. All membership interests have equal rights and preferences in all matters not  
25           otherwise provided for by the board as provided in subdivision b of  
26           subsection 5 of section 10-32-56;
- 27           j. The value of previous contributions must be restated when a new contribution  
28           is accepted as provided in subsections 3 and 4 of section 10-32-57;
- 29           k. A member has certain preemptive rights, unless otherwise provided by the  
30           board as provided in section 10-32-37;

- 1           l.    The affirmative vote of the greater of the owners of a majority of the voting  
2                   power of the membership interests present and entitled to vote at a duly held  
3                   meeting or a majority of the voting power of the membership interests with  
4                   voting rights constituting the minimum voting power needed for a quorum for  
5                   the transaction of business is required for an action of the members, except  
6                   when this chapter requires the affirmative vote of:
- 7                   (1)   A plurality of the votes cast as provided in subsection 1 of section  
8                                10-32-76; or
- 9                   (2)   A majority of the voting power of all membership interests entitled, to  
10                               vote as provided in subsection 1 of section 10-32-42;
- 11           m.   The voting power of each membership interest is in proportion to the value  
12                   reflected in the required records of the contributions of the members as  
13                   provided in section 10-32-40.1;
- 14           n.   Members share in distributions in proportion to the value reflected in the  
15                   required records of the contributions of members as provided in section  
16                   10-32-60;
- 17           o.   Members share profits and losses in proportion to the value reflected in the  
18                   required records of the contributions of members as provided in section  
19                   10-32-36;
- 20           p.   A written action by the members taken without a meeting must be signed by  
21                   all members as provided in section 10-32-43;
- 22           q.   Members have no right to receive distributions in kind and the limited liability  
23                   company has only limited rights to make distributions in kind as provided in  
24                   section 10-32-62;
- 25           r.   A member is not subject to expulsion as provided in subsection 2 of section  
26                   10-32-30;
- 27           s.   Unanimous consent is required for the transfer of governance rights to a  
28                   person not already a member as provided in subsection 2 of section  
29                   10-32-32;

- 1 t. For a limited liability company whose existence begins before July 1, 1999,  
2 unanimous consent is required to avoid dissolution as provided in  
3 subdivision e of subsection 1 of section 10-32-109;
- 4 u. The termination of a person's membership interest has specified  
5 consequences as provided in section 10-32-30; and
- 6 v. Restrictions apply to the assignment of governance rights as provided in  
7 section 10-32-32.
- 8 3. The following provisions govern a limited liability company unless modified in the  
9 articles of organization, a member-control agreement under section 10-32-50, or in  
10 the bylaws:
- 11 a. Governors serve for an indefinite term that expires at the next regular meeting  
12 of members as provided in section 10-32-72;
- 13 b. The compensation of governors is fixed by the board as provided in section  
14 10-32-74;
- 15 c. A certain method must be used for removal of governors as provided in  
16 section 10-32-78;
- 17 d. A certain method must be used for filling board vacancies as provided in  
18 section 10-32-79;
- 19 e. If the board fails to select a place for a board meeting, it must be held at the  
20 principal executive office as provided in subsection 1 of section 10-32-80;
- 21 f. The notice of a board meeting need not state the purpose of the meeting as  
22 provided in subsection 3 of section 10-32-80;
- 23 g. A majority of the board is a quorum for a board meeting as provided in section  
24 10-32-82;
- 25 h. A committee ~~consists~~:
- 26 (1) Must consist of one or more individuals, who need not be governors,  
27 appointed by affirmative vote of a majority of the governors present as  
28 provided in subsection 2 of section 10-32-85; and
- 29 (2) A committee may create one or more subcommittees, each consisting  
30 of one or more members of the committees and may delegate to the

- 1                    subcommittee any or all of the authority of the committee as provided in  
2                    subsection 7 of section 10-32-85;
- 3                    i.    The board may establish a special litigation committee as provided in section  
4                    10-32-85;
- 5                    j.    The president and treasurer have specified duties, until the board determines  
6                    otherwise as provided in section 10-32-89;
- 7                    k.    Managers may delegate some or all of their duties and powers, if not  
8                    prohibited by the board from doing so as provided in section 10-32-95;
- 9                    l.    Regular meetings of members need not be held, unless demanded by a  
10                    member under certain conditions as provided in section 10-32-38;
- 11                    m.    In all instances when a specific minimum notice period has not otherwise  
12                    been fixed by law, not less than ten days' notice is required for a meeting of  
13                    members as provided in subsection 2 of section 10-32-40;
- 14                    n.    For a quorum at a members' meeting, there is required a majority of the  
15                    voting power of the membership interests entitled to vote at the meeting as  
16                    provided in section 10-32-44;
- 17                    o.    The board may fix a date up to fifty days before the date of a members'  
18                    meeting as the date for the determination of the members entitled to notice of  
19                    and entitled to vote at the meeting as provided in section 10-32-40.1;
- 20                    p.    Indemnification of certain persons is required as provided in section 10-32-99;
- 21                    q.    The board may authorize, and the limited liability company may make,  
22                    distributions not prohibited, limited, or restricted by an agreement as provided  
23                    in subsection 1 of section 10-32-64; and
- 24                    r.    Members have no right to interim distributions except as provided through the  
25                    bylaws or an act of the board as provided in section 10-32-61.
- 26                    4.    The provisions in subdivisions a, g, o, p, and r may be included in the articles of  
27                    organization or a member-control agreement under section 10-32-50. The  
28                    provisions in subdivisions b through f, h, i, j, k, l, m, n, and q may be included in the  
29                    articles of organization, in a member-control agreement under section 10-32-50,  
30                    or, in the bylaws:

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- 1 a. The persons to serve as the first board may be named in the articles of
- 2 organization as provided in subsection 1 of section 10-32-69;
- 3 b. A manner for increasing or decreasing the number of governors may be
- 4 provided as provided in section 10-32-70;
- 5 c. Additional qualifications for governors may be imposed as provided in section
- 6 10-32-71;
- 7 d. Governors may be classified as provided in section 10-32-75;
- 8 e. The date, time, and place of board meetings may be fixed as provided in
- 9 subsection 1 of section 10-32-80;
- 10 f. Absent governors may be permitted to give written consent or opposition to a
- 11 proposal as provided in section 10-32-81;
- 12 g. A larger than majority vote may be required for board action as provided in
- 13 section 10-32-83;
- 14 h. Authority to sign and deliver certain records may be delegated to a manager
- 15 or agent of the limited liability company other than the president as provided
- 16 in section 10-32-89;
- 17 i. Additional managers may be designated as provided in section 10-32-88;
- 18 j. Additional powers, rights, duties, and responsibilities may be given to
- 19 managers as provided in section 10-32-89;
- 20 k. A method for filling vacant offices may be specified as provided in
- 21 subsection 3 of section 10-32-94;
- 22 l. The date, time, and place of regular member meetings may be fixed as
- 23 provided in subsection 3 of section 10-32-38;
- 24 m. Certain persons may be authorized to call special meetings of members as
- 25 provided in subsection 1 of section 10-32-39;
- 26 n. Notices of member meetings may be required to contain certain information
- 27 as provided in subsection 3 of section 10-32-40;
- 28 o. A larger than majority vote may be required for member action as provided in
- 29 section 10-32-42;

- 1 p. Voting rights may be granted in or pursuant to the articles of organization to  
2 persons who are not members as provided in subsection 3 of section  
3 10-32-40.1;
- 4 q. Limited liability company actions giving rise to dissenters' rights may be  
5 designated as provided in subdivision d of subsection 1 of section 10-32-55;  
6 and
- 7 r. A governor's personal liability to the limited liability company or the limited  
8 liability company's members for monetary damages for breach of fiduciary  
9 duty as a governor may be eliminated or limited in the articles as provided in  
10 subsection 4 of section 10-32-86.
- 11 5. ~~Subsection 4 does not limit the right of the board, by resolution, to take an action~~  
12 ~~the bylaws may authorize under this subsection without including the authorization~~  
13 ~~in the bylaws, unless the authorization is required to be included in the bylaws by~~  
14 ~~another provision of this chapter. The articles of organization may contain other~~  
15 ~~provisions not inconsistent with law relating to the management of the business or~~  
16 ~~the regulation of the affairs of the limited liability company.~~
- 17 6. ~~The~~ It is not necessary to set forth in the articles of organization may contain other  
18 ~~provisions not inconsistent with law relating to the management of the business or~~  
19 ~~the regulation of the affairs~~ any of the limited liability company powers granted by  
20 this chapter.
- 21 7. ~~It is not necessary to set forth in the articles of organization any of the limited~~  
22 ~~liability company powers granted by~~ Subsection 4 does not limit the right of the  
23 board by resolution to take an action the bylaws may authorize under this  
24 subsection without including the authorization in the bylaws, unless the  
25 authorization is required to be included in the bylaws by another provision of this  
26 chapter.
- 27 8. Except for provisions included pursuant to subsection 1, any provision of the  
28 articles may:
- 29 a. Be made dependent upon facts ascertainable outside the articles, but only if  
30 the manner in which the facts operate upon the provision is clearly and  
31 expressly set forth in the articles; and

- 1           b. Incorporate by reference some or all of the terms of any agreements,  
2           contracts, or other arrangements entered into by the limited liability company,  
3           but only if the limited liability company retains at its principal executive office a  
4           copy of the agreements, contracts, or other arrangements or the portions  
5           incorporated by reference.

6           **SECTION 41. AMENDMENT.** Section 10-32-10 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8           **10-32-10. Limited liability company name.**

- 9           1. The limited liability company name:
- 10           a. Must be in the English language or in any other language expressed in  
11           English letters or characters;
- 12           b. Must contain the words "limited liability company", or must contain the  
13           abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation  
14           may be used interchangeably for all purposes authorized by this chapter,  
15           including real estate matters, contracts, and filings with the secretary of state;
- 16           c. May not contain the word "corporation", "incorporated", "limited partnership",  
17           "limited liability partnership", "limited liability limited partnership", or any  
18           abbreviation of these words;
- 19           d. May not contain a word or phrase that indicates or implies that the limited  
20           liability company:
- 21           (1) Is organized for a purpose other than:
- 22               (a) A lawful business purpose for which a limited liability company  
23               may be organized under this chapter; or
- 24               (b) For a purpose stated in its articles of organization; or
- 25           (2) May not be organized under this chapter; and
- 26           e. May not be the same as, or deceptively similar to:
- 27           (1) The name, whether foreign and authorized to do business in this state  
28           or domestic, unless there is filed with the articles a record which  
29           complies with subsection 3, of:
- 30               (a) Another limited liability company;
- 31               (b) A corporation;

- 1 (c) A limited partnership;
- 2 (d) A limited liability partnership; or
- 3 (e) A limited liability limited partnership;
- 4 (2) A name, the right of which is, at the time of organization, reserved in
- 5 the manner provided in section 10-19.1-14, 10-32-11, 10-33-11,
- 6 45-10.2-11, 45-13-04.2, or 45-22-05;
- 7 (3) A fictitious name registered in the manner provided in chapter 45-11; or
- 8 (4) A trade name registered in the manner provided in chapter 47-25.
- 9 2. The secretary of state shall determine whether a limited liability company name is
- 10 deceptively similar to another name for purposes of this chapter.
- 11 3. If the secretary of state determines that a limited liability company name is
- 12 deceptively similar to another name for purposes of this chapter, then the limited
- 13 liability company name may not be used unless there is filed with the articles:
- 14 a. The written consent of the holder of the rights to the name to which the
- 15 proposed name has been determined to be deceptively similar; or
- 16 b. A certified copy of a judgment of a court in this state establishing the prior
- 17 right of the applicant to the use of the name in this state.
- 18 4. This section and section 10-32-11 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, and
- 24 service marks; or
- 25 (4) Any other rights to the exclusive use of names or symbols.
- 26 b. Derogate the common law or the principles of equity.
- 27 5. A domestic or foreign limited liability company that is the surviving organization in a
- 28 merger with one or more other organizations, or that acquires by sale, lease, or
- 29 other disposition to or exchange with an organization all or substantially all of the
- 30 assets of another organization including its name, may have the same name,

- 1 subject to the requirements of subsection 1, as that used in this state by any of the  
2 other organizations, if the organization whose name is sought to be used:
- 3 a. Was organized, incorporated, formed, or registered under the laws of this  
4 state;
  - 5 b. Is authorized to transact business or conduct activities in this state;
  - 6 c. Holds a reserved name in the manner provided in section 10-19.1-14,  
7 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - 8 d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - 9 e. Holds a trade name registered in the manner provided in chapter 47-25.
- 10 6. The use of a name by a limited liability company in violation of this section does  
11 not affect or vitiate its limited liability company existence. However, a court in this  
12 state may, upon application of the state or of an interested or affected person,  
13 enjoin the limited liability company from doing business under a name assumed in  
14 violation of this section, although its articles of organization may have been filed  
15 with the secretary of state and a certificate of organization issued.
- 16 7. A limited liability company whose period of existence has expired or that is  
17 involuntarily dissolved by the secretary of state pursuant to section 10-32-149 may  
18 reacquire the right to use that name by refiling articles of organization pursuant to  
19 section 10-32-20, unless the name has been adopted for use or reserved by  
20 another person, in which case the filing will be rejected unless the filing is  
21 accompanied by a written consent or judgment pursuant to subsection 2. A limited  
22 liability company that cannot reacquire the use of its limited liability company name  
23 shall adopt a new limited liability company name which complies with the  
24 provisions of this section:
- 25 a. By refiling the articles of organization pursuant to section 10-32-07;
  - 26 b. By amending pursuant to section 10-32-18; or
  - 27 c. By reinstating pursuant to section 10-32-149.
- 28 8. Subject to section 10-32-136, this section applies to any foreign limited liability  
29 company transacting business in this state, having a certificate of authority to  
30 transact business in this state, or applying for a certificate of authority.

1           9. An amendment that only changes the name of the limited liability company may be  
2                    authorized by a resolution approved by the board and may, but need not, be  
3                    submitted to and approved by the members as provided in section 10-32-15.

4           **SECTION 42. AMENDMENT.** Section 10-32-27 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6           **10-32-27. Transaction of business outside North Dakota.** By enacting this chapter  
7 the legislative assembly recognizes the limited liability company as an important and  
8 constructive form of business organization. The legislative assembly understands that:

- 9           1. Businesses organized under or governed by this chapter will often transact  
10                   business in other states;
- 11           2. For businesses organized under or governed by this chapter to function effectively  
12                   and for this chapter to be a useful enactment, this chapter must be accorded the  
13                   same comity and full faith and credit that states typically accord to each other's  
14                   corporate laws; and
- 15           3. Specifically, it is essential that other states recognize both the legal existence of  
16                   limited liability companies ~~formed~~ organized under or governed by this chapter and  
17                   the legal status of all members of these limited liability companies.

18 The legislative assembly therefore specifically seeks that, subject to any reasonable  
19 registration requirements, other states extend to this chapter the same full faith and credit  
20 under section 1 of article IV of the Constitution of the United States, and the same comity, that  
21 North Dakota extends to statutes that other states enact to provide for the establishment and  
22 operation of business organizations.

23           **SECTION 43. AMENDMENT.** Subsection 1 of section 10-32-37 of the North Dakota  
24 Century Code is amended and reenacted as follows:

- 25           1. ~~To the extent allowed by section 9 of article XII of the Constitution of North Dakota,~~  
26                   a member of a limited liability company has the preemptive rights provided in this  
27                   section, ~~unless~~ Unless denied or limited in the articles of organization, in a  
28                   member-control agreement, or by the board pursuant to subdivision b of  
29                   subsection 5 of section 10-32-56, a member of a limited liability company has the  
30                   preemptive rights provided in this section.

1           **SECTION 44.** Section 10-32-42.1 of the North Dakota Century Code is created and  
2 enacted as follows:

3           **10-32-42.1. Contractual requirement to submit matter to members.** A limited  
4 liability company may agree to submit a matter to its members whether or not the board  
5 determines, at any time after approving the matter, that the matter is no longer advisable and  
6 recommends that the members reject it.

7           **SECTION 45. AMENDMENT.** Section 10-32-43 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9           **10-32-43. Action Member action without a meeting by the members.** An action  
10 required or permitted to be taken at a meeting of the members may be taken without a meeting  
11 by written action signed, or consented to by authenticated electronic communication, by all of  
12 the members entitled to vote on that action.

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

18           a. However, in no event may written action be taken by members holding less  
19 than a majority of the voting power of all membership interests entitled to vote  
20 on the action.

21           b. After the adoption of the initial articles or the first making of a member-control  
22 agreement, an amendment to the articles or to a member-control agreement  
23 to permit written action to be taken by less than all members requires the  
24 approval of all the members entitled to vote on the amendment.

25           2. The written action is effective when signed, or consented to by authenticated  
26 electronic communication, by the required members, unless a different effective  
27 time is provided in the written action.

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

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

- 1 c. A member who does not sign or consent to the written action has no liability  
2 for the action or actions taken by the written action.
- 3 3. When this chapter requires or permits a certificate concerning an action to be filed  
4 with the secretary of state, the managers signing the certificate must so indicate if  
5 the action was taken under this section.

6 **SECTION 46. AMENDMENT.** Subsection 1 of section 10-32-76 of the North Dakota  
7 Century Code is amended and reenacted as follows:

- 8 1. Unless otherwise provided in the articles or a member-control agreement and  
9 subject to subsection 2, governors are elected by a plurality of the voting power of  
10 the membership interests present and entitled to vote on the election of governors  
11 at a meeting at which a quorum is present.

12 **SECTION 47.** A new subsection to section 10-32-85 of the North Dakota Century Code  
13 is created and enacted as follows:

- 14 Unless otherwise provided in the articles, the bylaws, or the resolution of the board  
15 establishing the committee, a committee may create one or more subcommittees,  
16 each consisting of one or more members of the committee, and may delegate to a  
17 subcommittee any or all of the authority of the committee. In this chapter, unless  
18 the language or the context clearly indicates that a different meaning is intended:  
19 a. Any reference to a committee is deemed to include a subcommittee; and  
20 b. Any reference to a committee member is deemed to include a subcommittee  
21 member.

22 **SECTION 48. AMENDMENT.** Subsection 2 of section 10-32-94 of the North Dakota  
23 Century Code is amended and reenacted as follows:

- 24 2. Except as otherwise provided in the articles ~~or~~, the bylaws, or a member-control  
25 agreement, a manager may be removed at any time, with or without cause, by a  
26 resolution approved by the affirmative vote of a majority of the governors present,  
27 ~~subject to the provisions of a member-control agreement. The removal~~ The  
28 articles of organization, the bylaws, or a member-control agreement may provide  
29 other manners of removing a manager. Removal is without prejudice to any  
30 contractual rights of the ~~officer~~ manager.

1           **SECTION 49. AMENDMENT.** Section 10-32-100 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **10-32-100. Merger - Exchange - Transfer.**

- 4           1. With or without a business purpose, a limited liability company may merge:
- 5           a. ~~With another limited liability company pursuant to a plan of merger approved~~  
6           ~~in the manner provided in sections 10-32-101 through 10-32-106.~~
- 7           b. ~~With a corporation under a plan of merger approved in the manner provided~~  
8           ~~in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.~~
- 9           e. ~~With any foreign corporation or foreign limited liability company pursuant to a~~  
10           ~~plan of merger approved in the manner provided in section 10-32-107 with~~  
11           ~~another domestic or foreign organization under a plan of merger approved in~~  
12           ~~the manner provided in this section and sections 10-32-101 through~~  
13           ~~10-32-106 and in the manner provided in its governing statutes in the case of~~  
14           ~~any other organization.~~
- 15          2. With respect to an exchange:
- 16          a. A limited liability company may acquire all of the ownership interests of one or  
17          more classes or series of another ~~limited liability company~~ domestic or foreign  
18          organization pursuant to a plan of exchange approved in the manner provided  
19          in sections 10-32-101 through 10-32-106 in the case of a domestic limited  
20          liability company and in the manner provided in its governing statutes in the  
21          case of any other organization.
- 22          b. ~~A limited liability company may acquire all of the ownership interests of one or~~  
23          ~~more classes or series of a corporation pursuant to a plan of exchange~~  
24          ~~approved in the manner provided in sections 10-32-101 through 10-32-107~~  
25          ~~and in chapter 10-19.1.~~
- 26          e. ~~A corporation~~ Another domestic or foreign organization may acquire all of the  
27          ~~ownership~~ membership interests of one or more classes or series of a limited  
28          liability company pursuant to a plan of exchange approved in the manner  
29          provided in this section and in sections 10-32-101 through 10-32-106  
30          ~~10-32-107 and in chapter 10-19.1~~ the manner provided in its governing  
31          statute in the case of any other organization.

1           d. ~~A foreign corporation or foreign limited liability company may acquire all of the~~  
2           ~~ownership interests of one or more classes or series of a limited liability~~  
3           ~~company pursuant to a plan of exchange approved in the manner provided in~~  
4           ~~section 10-32-107.~~

5           3. A limited liability company may sell, lease, transfer, or otherwise dispose of all or  
6           substantially all of the limited liability company's property and assets in the manner  
7           provided in section 10-32-108.

8           4. A limited liability company may participate in a merger or exchange only as  
9           permitted by this section and sections 10-32-101 through 10-32-107.

10           **SECTION 50. AMENDMENT.** Subsection 1 of section 10-32-101 of the North Dakota  
11 Century Code is amended and reenacted as follows:

12           1. A plan of merger or exchange must contain:

13           a. The name of the limited liability company and of each other constituent  
14           organization proposing to merge or participate in an exchange, and:

15           (1) In the case of a merger, the name of the surviving organization, ~~which~~  
16           ~~may be the limited liability company or the other constituent~~  
17           ~~organization;~~ or

18           (2) In the case of an exchange, the name of the acquiring organization;

19           b. The terms and conditions of the proposed merger or exchange;

20           c. The manner and basis for converting or exchanging ownership interests:

21           (1) In the case of a merger, the manner and basis of converting the  
22           ownership interests of the constituent organizations into securities of  
23           the surviving organization or of any other organization or, in whole or in  
24           part, into money or other property; or

25           (2) In the case of an exchange, the manner and basis of exchanging the  
26           ownership interests to be acquired for securities of the acquiring  
27           organization or any other organization or, in whole or in part, for money  
28           or other property;

29           d. In the case of a merger, a statement of any amendments to the articles of  
30           ~~organization or articles of incorporation, as the case may be,~~ of the surviving  
31           organization proposed as part of the merger; and

- 1 e. Any other provisions with respect to the proposed merger that are considered  
2 necessary or desirable.

3 **SECTION 51. AMENDMENT.** Section 10-32-102 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **10-32-102. Plan approval.**

- 6 1. A resolution containing the plan of merger or exchange must be approved by the  
7 governing ~~board~~ body as required by section ~~10-19.1-46~~ or 10-32-83 in the case of  
8 a domestic limited liability company or by its governing statute in the case of each  
9 ~~constituent~~ any other organization and must then be submitted at a regular or  
10 special meeting to the owners of each constituent organization in the case of a  
11 plan of merger; and the constituent organization whose ownership interests will be  
12 acquired by the acquiring constituent organization in the exchange, in the case of  
13 an exchange. ~~The plan of merger or exchange may require that it be submitted to~~  
14 ~~the owners whether or not the governing board determines at any time after the~~  
15 ~~governing board's initial approval of the plan that the plan is no longer advisable~~  
16 ~~and recommends that the owners reject it.~~ If owners owning any class or series of  
17 ownership interests in a constituent organization are entitled to vote on the plan of  
18 merger or exchange pursuant to this subsection, then written notice must be given  
19 to every owner of that constituent organization, whether or not entitled to vote at  
20 the meeting, not less than fourteen days nor more than sixty days before the  
21 meeting, in the manner provided in section ~~10-19.1-73~~ for notice of meetings of  
22 ~~shareholders in the case of a corporation and in the manner provided in section~~  
23 10-32-40 for notice of meetings of members in the case of a limited liability  
24 company, or in the manner provided in its governing statute for any other  
25 organization. The written notice must state that a purpose of the meeting is to  
26 consider the proposed plan of merger or exchange. A copy or short description of  
27 the plan of merger or exchange must be included in or enclosed with the notice.
- 28 2. At the meeting, a vote of the owners must be taken on the proposed plan. The  
29 plan of merger is adopted when approved by the affirmative vote of the owners of  
30 a majority of the voting power of all ownership interests entitled to vote as required  
31 by section ~~10-19.1-74~~ or 10-32-42 in the case of a domestic limited liability

1           company, or in the manner provided in its governing statute in the case of any  
2           other organization. Except as provided in subsection 3 or a member-control  
3           agreement, a class or series of ownership interests of the constituent organization  
4           is entitled to vote as a class or series if any provision of the plan would, if  
5           contained in a proposed amendment to the articles ~~of organization~~ or a  
6           member-control agreement, entitle the class or series of ownership interests to  
7           vote as a class or series and, in the case of an exchange, if the class or series is  
8           included in the exchange.

9           3. A class or series of ownership interests of the constituent organization is not  
10           entitled to vote as a class or series ~~solely because the plan of merger or exchange~~  
11           ~~effects a cancellation or exchange of the ownership interests of the class or series~~  
12           if the plan of merger or exchange effects a cancellation or exchange of all  
13           ownership interests of the constituent organization of all classes and series that  
14           are existing immediately before the merger or exchange and owners of ownership  
15           interests of that class or series are entitled to obtain payment for the fair value of  
16           their ownership interests under section ~~10-19-1-87 or 10-32-55,~~ as in the case of a  
17           domestic limited liability company, or in the manner provided in the governing  
18           statute in the case ~~may be~~ of any other organization, in the event of the merger or  
19           exchange.

20           4. Notwithstanding subsections 1 and 2, submission of a plan of merger to a vote at a  
21           meeting of owners of a surviving constituent organization is not required if:

- 22           a. The articles will not be amended in the transaction;
- 23           b. Each owner of ownership interests in the constituent organization which were  
24           outstanding immediately before the effective ~~time~~ date of the transaction will  
25           hold the same number of ownership interests with identical rights immediately  
26           after that ~~time~~ date;
- 27           c. The voting power of the outstanding ownership interests of the constituent  
28           organization entitled to vote immediately after the merger, plus the voting  
29           power of the outstanding ownership interests of the constituent organization  
30           entitled to vote issuable on conversion of or on the exercise of rights to  
31           purchase securities issued in the transaction, will not exceed by more than

1                   twenty percent the voting power of the outstanding ownership interests of the  
2                   constituent organization entitled to vote immediately before the transaction;  
3                   and

4                   d. The number of participating ownership interests of the constituent  
5                   organization immediately after the merger, plus the number of participating  
6                   ownership interests of the constituent organization issuable on conversion, or  
7                   on the exercise of rights to purchase, securities issued in the transaction, will  
8                   not exceed by more than twenty percent the number of participating  
9                   ownership interests of the constituent organization immediately before the  
10                  transaction. "Participating ownership interests" are outstanding ownership  
11                  interests of the constituent organization which entitle the ownership interests  
12                  owners to participate without limitation in distributions by the constituent  
13                  organization.

14                  5. If the merger or exchange is with ~~a corporation~~ an organization other than a limited  
15                  liability company, then the plan of merger or exchange must also be approved in  
16                  the manner provided in ~~chapter 10-19.4~~ its governing statute.

17                  **SECTION 52. AMENDMENT.** Subsection 1 of section 10-32-103 of the North Dakota  
18 Century Code is amended and reenacted as follows:

19                  1. Upon receiving the approval required by section 10-32-102, articles of merger  
20                  must be prepared which contain:  
21                  a. The plan of merger; and  
22                  b. A statement that the plan has been approved by each constituent  
23                  organization ~~pursuant to chapter 10-19.4~~ or in the manner provided in this  
24                  chapter in the case of a domestic limited liability company, or in the manner  
25                  provided in its governing statute in the case of any other organization.

26                  **SECTION 53. AMENDMENT.** Section 10-32-104 of the North Dakota Century Code is  
27 amended and reenacted as follows:

28                  **10-32-104. Merger of subsidiary into parent.**

29                  1. A If either the parent or the subsidiary is a domestic organization, then a parent  
30                  that is a domestic or foreign organization owning at least ninety percent of the  
31                  outstanding ownership interests of each class and series of a subsidiary that is a

- 1            domestic or foreign organization directly, or indirectly through related organizations  
2            other than classes or series that absent this section would otherwise not be  
3            entitled to vote on the merger:
- 4            a.    May merge the subsidiary into the parent, or may merge the subsidiary into  
5            any other subsidiary at least ninety percent of the outstanding ownership  
6            interest of each class and series of which is owned by the parent directly or  
7            indirectly through related organizations other than classes or series that,  
8            absent this section, would otherwise not be entitled to vote on the merger,  
9            without a vote of the owners of the parent or any subsidiary; or
- 10           b.    May merge the parent, or the parent and one or more subsidiaries, into one of  
11           the subsidiaries under this section.
- 12           2.    A resolution approved by the ~~directors of the parent as required by section~~  
13           ~~40-19.1-46~~ or by the governors of the parent present as required by section  
14           10-32-83 in the case of a domestic limited liability company, or by the present  
15           members of the governing body of the parent as required by its governing statute  
16           in the case of any other organization must set forth a plan of merger which  
17           contains:
- 18           a.    The name of the subsidiary or subsidiaries, the name of the parent, and the  
19           name of the surviving constituent organization;
- 20           b.    The manner and basis of converting the ownership interests of the subsidiary  
21           into ownership interests of the parent, the subsidiary, or of another  
22           organization or, in whole or in part, into money or other property;
- 23           c.    If the parent is a constituent organization but is not the surviving constituent  
24           organization in the merger, then a provision for the pro rata issuance of  
25           ownership interests of the surviving constituent organization to the owners of  
26           ownership interests of the parent on surrender of any ownership interests of  
27           the parent; and
- 28           d.    If the surviving constituent organization is a subsidiary, then a statement of  
29           any amendments to the articles of the surviving constituent organization that  
30           will be part of the merger.
- 31           3.    ~~#~~ Notwithstanding subsection 1:

- 1           a. If the parent is a domestic limited liability company and the conditions of  
2                    subsection 4 of section 10-32-102 are not met with respect to the parent, then  
3                    the resolution is not effective unless it is approved by the affirmative vote of  
4                    the holders of a majority of the voting power of all membership interests of the  
5                    parent entitled to vote at a regular or special meeting held in accordance with  
6                    section 10-32-102; and
- 7           b. If the parent is a domestic or foreign organization and is not the surviving  
8                    organization in the merger, then the resolution is not effective unless it is  
9                    approved in accordance with the governing statute of the parent.
- 10          4. Notwithstanding subsection 3, if the parent is a constituent organization and is the  
11                    surviving organization in the merger, it may change its limited liability company  
12                    name, without a vote of its owners, by the inclusion of a provision to that effect in  
13                    the resolution of merger setting forth the plan of merger that is approved by the  
14                    affirmative vote of the board members of the parent present. Upon the effective  
15                    date of the merger, the name of the parent must be changed.
- 16          ~~4. If the parent is a constituent organization but is not the surviving constituent~~  
17                    ~~organization in a merger, the resolution is not effective unless the resolution is also~~  
18                    ~~approved by the affirmative vote of the holders of a majority of the voting power of~~  
19                    ~~all ownership interests of the parent entitled to vote at a regular or special meeting~~  
20                    ~~held in accordance with section 10-19.1-98 if the parent is a corporation, section~~  
21                    ~~10-32-102 if the parent is a limited liability company, or in accordance with the laws~~  
22                    ~~of the jurisdiction under which the parent is incorporated or organized if the parent~~  
23                    ~~is a foreign corporation or foreign limited liability company.~~
- 24          5. ~~Notice~~ If the subsidiary is a domestic organization, then notice of the action,  
25                    including a copy of the plan of merger must be given to each owner, other than the  
26                    parent, of each subsidiary that is a constituent organization to the merger before,  
27                    or within ten days after, the effective date of the merger.
- 28          6. Articles of merger must be prepared which contain:
- 29                a. The plan of merger;
- 30                b. The number of outstanding ownership interests of each class and series of  
31                    the subsidiary that is a constituent organization in the merger, other than the

- 1 classes or series that, absent this section, would otherwise not be entitled to  
2 vote on the merger, and the number of ownership interests of each class and  
3 series of the subsidiary or subsidiaries, other than the classes or series that,  
4 absent this section, would otherwise not be entitled to vote on the merger,  
5 owned by the parent directly or indirectly, through related ~~constituent~~  
6 organizations; and
- 7 c. A statement that the plan of merger has been approved by the parent under  
8 this section.
- 9 7. The articles of merger must be signed on behalf of the parent and filed with the  
10 secretary of state, together with the fees provided in section 10-32-150.
- 11 8. The secretary of state shall issue a certificate of merger to the surviving constituent  
12 organization in the merger or the surviving constituent organization's legal  
13 representative. The certificate must contain the effective date of merger.
- 14 9. If all of the ownership interests of one or more domestic subsidiaries that are a  
15 constituent organization to a merger under this section are not owned by the  
16 parent directly, or indirectly through related constituent organizations, immediately  
17 before the merger, then the owners of each domestic subsidiary which is either a  
18 domestic corporation or a domestic limited liability company have dissenters' rights  
19 under section 10-19.1-87 or under section 10-32-54, without regard to  
20 subsection 3 of section 10-19.1-88 or to subsection 2 of section 10-32-54, and  
21 under section 10-19.1-88 or 10-32-55.
- 22 a. If the parent is a constituent organization but is not the surviving constituent  
23 organization in the merger, and the articles of incorporation or articles of  
24 organization of the surviving constituent organization immediately after the  
25 merger differ from the articles of incorporation or articles of organization of the  
26 parent immediately before the merger in a manner that would entitle an owner  
27 of the parent to dissenters' rights under subsection 1 of section 10-19.1-87 or  
28 under subdivision a of subsection 1 of section 10-32-54 if the articles of  
29 incorporation or articles of organization of the surviving constituent  
30 organization constitute an amendment to the articles of incorporation or  
31 articles of organization of the parent, then that owner of the parent has

1                   dissenters' rights as provided under section 10-19.1-87 or under section  
2                   10-32-54.

3                   **b.** Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do  
4                   not apply to any merger affected under this section.

5           10. A merger among a parent and one or more subsidiaries or among two or more  
6           subsidiaries of a parent may be accomplished under sections 10-32-101 through  
7           10-32-103 instead of this section, in which case this section does not apply.

8           **SECTION 54. AMENDMENT.** Section 10-32-105 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10           **10-32-105. Abandonment of plan of merger.**

11           1. After a plan of merger is approved by the owners entitled to vote on the approval of  
12           the plan as provided in section 10-32-102, and before the effective date of the  
13           plan, the plan of merger may be abandoned:

14           a. With respect to approval of the abandonment:

15                   (1) If the owners of ownership interests of each of the constituent  
16                   organizations entitled to vote on the approval of the plan as provided in  
17                   section 10-32-102 have approved the abandonment at a meeting by  
18                   the owners of a majority of the voting power of the ownership interests  
19                   entitled to vote as required by section ~~40-19.1-74~~ or 10-32-42 in the  
20                   case of a domestic limited liability company, or by its governing statute  
21                   in the case of any other organization;

22                   (2) If the owners of a constituent organization are not entitled to vote on  
23                   the approval of the plan under section 10-32-102, then if the governing  
24                   board body of that constituent organization has approved the  
25                   abandonment by the board as required by section ~~40-19.1-46~~ or  
26                   10-32-83 in the case of a domestic limited liability company, or by its  
27                   governing statute in the case of any other organization; and

28                   (3) If the merger or exchange is with a foreign ~~corporation or foreign limited~~  
29                   ~~liability company~~ organization, then if abandonment is approved in the  
30                   manner ~~required by the laws of the jurisdiction under which the~~

- 1                   ~~corporation is incorporated or the limited liability company is organized~~  
2                   provided in its governing statute;
- 3           b.    If the plan itself provides for abandonment and all conditions for abandonment  
4           set forth in the plan are met; or
- 5           c.    Pursuant to subsection 2.
- 6           2.    If articles of merger have not been filed with the secretary of state and the plan is  
7           to be abandoned, or if a plan of exchange is to be abandoned before the effective  
8           date of the plan, then a resolution by the governing ~~board~~ body of any constituent  
9           organization abandoning the plan of merger or exchange may be approved by the  
10          ~~board~~ governing body as required by section ~~10-19-1-46~~ or 10-32-83 in the case of  
11          a domestic limited liability company, or by its governing statute in the case of any  
12          other organization subject to the contract rights of any other person under the plan.
- 13          3.    If articles of merger have been filed with the secretary of state, but have not yet  
14          become effective, the constituent organizations, in the case of abandonment under  
15          subdivision a of subsection 1, then the constituent organizations or any one  
16          constituent organization, in the case of abandonment under subdivision b of  
17          subsection 1, or the abandoning constituent organization in the case of  
18          abandonment under subsection 2, shall file with the secretary of state together with  
19          the fees provided in section 10-32-150, articles of abandonment that contain:
- 20          a.    The names of the constituent organizations;
- 21          b.    The provision of this section under which the plan is abandoned; and
- 22          c.    The text of the resolution abandoning the plan.
- 23          4.    If the certificate of merger has been issued, then the governing ~~board~~ body shall  
24          surrender the certificate to the secretary of state upon filing the articles of  
25          abandonment.

26           **SECTION 55. AMENDMENT.** Subsections 2 and 3 of section 10-32-106 of the North  
27    Dakota Century Code are amended and reenacted as follows:

- 28          2.    When a merger becomes effective:
- 29          a.    The constituent organizations become a single entity, the surviving  
30          ~~corporation, or surviving limited liability company~~ organization;

- 1           b. The separate existence of all constituent organizations except the surviving  
2           constituent organization ceases;
- 3           c. As to any limited liability company that was a constituent organization and is  
4           not the surviving constituent organization, the articles of merger serve as the  
5           articles of termination and, unless previously filed, the notice of dissolution;
- 6           d. ~~As to rights, privileges, immunities, powers, duties, and liabilities:~~
- 7           (1) ~~If the surviving organization is a limited liability company, the~~ The  
8           surviving ~~limited liability company~~ organization has all the rights,  
9           privileges, immunities, and powers, and is subject to all the duties and  
10          liabilities of a ~~limited liability company organized under this chapter; and~~
- 11          (2) ~~If the surviving organization is a corporation, the surviving corporation~~  
12          ~~has all the rights, privileges, immunities, and powers, and is subject to~~  
13          ~~all the duties and liabilities of a corporation~~ the specified organization  
14          under its governing statute;
- 15          e. The surviving constituent organization, ~~whether a limited liability company or~~  
16          ~~a domestic or foreign corporation,~~ possesses all the rights, privileges,  
17          immunities, and franchises, of a public as well as of a private nature, of each  
18          of the constituent organizations.
- 19          (1) All property, real, personal, and mixed, and all debts due on any  
20          account, including subscriptions to ~~shares~~ ownership interests and  
21          contribution agreements, as the case may be, and all other choses in  
22          action, and every other interest of or belonging to or due to each of the  
23          constituent organizations vests in the surviving constituent organization  
24          without any further act or deed.
- 25          (2) Confirmatory deeds, assignments, or similar instruments to accomplish  
26          that vesting may be signed and delivered at any time in the name of a  
27          constituent organization by its current officers ~~or~~ managers, as the  
28          ~~case may be~~ or governing body, or, if the organization no longer exists,  
29          by its last officers ~~or~~ managers, as the case may be or governing  
30          body.

- 1                   (3)    The title to any real estate or any interest in real estate vested in any of  
2                                   the constituent organizations does not revert nor in any way become  
3                                   impaired by reason of the merger;
- 4                   f.    The surviving constituent organization is responsible and liable for all the  
5                                   liabilities and obligations of each of the constituent organizations.
- 6                   (1)    A claim of or against or a pending proceeding by or against a  
7                                   constituent organization may be prosecuted as if the merger had not  
8                                   taken place, or the surviving organization may be substituted in the  
9                                   place of the constituent organization.
- 10                  (2)    Neither the rights of creditors nor any liens upon the property of a  
11                                  constituent organization are impaired by the merger; and
- 12                  g.    The articles of ~~organization or articles of incorporation, as the case may be,~~ of  
13                                  the surviving organization are considered to be amended to the extent that  
14                                  changes in its articles, if any, are contained in the plan of merger.
- 15                  3.    When a merger becomes effective, the ownership interests to be converted or  
16                                  exchanged under the terms of the plan cease to exist in the case of a merger, or  
17                                  are considered to be exchanged in the case of an exchange. The owners of those  
18                                  ownership interests are entitled only to the securities, money, or other property into  
19                                  which those ownership interests have been converted or for which those  
20                                  ownership interests have been exchanged in accordance with the plan, subject to  
21                                  any dissenters' rights under section 10-19.1-87 or 10-32-54,~~as the case may be.~~

22                   **SECTION 56. AMENDMENT.** Section 10-32-106.1 of the North Dakota Century Code  
23 is amended and reenacted as follows:

24                   **10-32-106.1. Continuance of limited liability company authority.** When an act or  
25 record is considered necessary or appropriate to evidence the vesting of property or other  
26 rights in the single limited liability company, the persons with authority to do so under the  
27 articles of, bylaws, or member-control agreement of each constituent organization shall do the  
28 act or sign and deliver the record and for this purpose, the existence of the constituent  
29 organizations and the authority of those persons are continued.

30                   **SECTION 57. AMENDMENT.** Section 10-32-107 of the North Dakota Century Code is  
31 amended and reenacted as follows:

1           **10-32-107. Merger or exchange with foreign limited liability company or foreign**  
2 **corporation.**

3           1. A limited liability company may merge with, including a merger pursuant to section  
4           10-32-104, or participate in an exchange with a foreign ~~corporation or a foreign~~  
5           ~~limited liability company~~ organization by following the procedures set forth in this  
6           section, if:

7           a. With respect to a merger, the merger is permitted by ~~the laws of the~~  
8           ~~jurisdiction under which the foreign corporation or foreign limited liability~~  
9           ~~company is incorporated or organized~~ its governing statute; and

10          b. With respect to an exchange, the constituent organization of which the  
11          ownership interests will be acquired is ~~a limited liability company or a~~  
12          ~~corporation~~ an organization, regardless of whether the exchange is permitted  
13          by ~~the laws of the jurisdiction under which the foreign corporation or foreign~~  
14          ~~limited liability company is incorporated or organized~~ its governing statute.

15          2. Each limited liability company shall comply with the provisions of this section and  
16          sections 10-32-100 through 10-32-106 with respect to the merger or exchange of  
17          ownership interests of organizations and each foreign ~~corporation or foreign limited~~  
18          ~~liability company~~ organization shall comply with the applicable provisions of the  
19          ~~laws of the jurisdiction under which the foreign corporation or foreign limited liability~~  
20          ~~company is incorporated or organized or under which the foreign corporation or~~  
21          ~~foreign limited liability company is governed~~ its governing statute.

22          3. If the surviving organization in a merger will be a domestic limited liability  
23          company, then the surviving organization shall comply with all the provisions of this  
24          chapter.

25          4. If the surviving organization in a merger will be a foreign ~~corporation or foreign~~  
26          ~~limited liability company~~ organization and will transact business in this state, then  
27          the surviving organization shall comply, ~~as the case may be,~~ with ~~the provisions of~~  
28          ~~chapter 10-19.1 with respect to foreign corporations or with the provisions of this~~  
29          ~~chapter with respect to foreign limited liability companies~~ its governing statute. In  
30          every case, the surviving ~~foreign corporation or foreign limited liability company~~  
31          organization shall file with the secretary of state:

- 1 a. An agreement that the surviving organization may be served with process in  
2 this state in a proceeding for the enforcement of an obligation of a constituent  
3 organization and in a proceeding for the enforcement of the rights of a  
4 dissenting owner of an ownership interest of a constituent organization  
5 against the surviving foreign ~~corporation or foreign limited liability company~~  
6 organization;
- 7 b. An irrevocable appointment of the secretary of state as the ~~surviving~~  
8 ~~organization's agent~~ of the surviving organization to accept service of process  
9 in any proceeding, and an address to which process may be forwarded; and
- 10 c. An agreement that the surviving organization promptly will pay to the  
11 dissenting owners of ownership interests of each constituent ~~limited liability~~  
12 ~~company and constituent corporation~~ organization the amount, if any, to  
13 which the dissenting owners are entitled under ~~section 10-19.1-88 or~~  
14 ~~10-32-55~~ its governing statute.

15 **SECTION 58. AMENDMENT.** Subsection 4 of section 10-32-108 of the North Dakota  
16 Century Code is amended and reenacted as follows:

- 17 4. The transferee is liable for the debts, obligations, and liabilities of the transferor  
18 only to the extent provided in the contract or agreement between the transferee  
19 and the transferor or to the extent provided by this chapter or other statutes of this  
20 state. A disposition of all or substantially all of the property and assets of the  
21 limited liability company under this section is not considered to be a merger or a  
22 de facto merger pursuant to this chapter or otherwise. The transferee shall not be  
23 liable solely because it is deemed to be a continuation of the transferor.

24 **SECTION 59. AMENDMENT.** Section 10-33-01 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26 **10-33-01. Definitions.** For the purposes of this chapter, unless the context otherwise  
27 requires:

- 28 1. "Activity" or "activities" means, in a corporation organized under this chapter, the  
29 functional equivalent of "business" in a corporation organized under chapter  
30 10-19.1.
- 31 2. "Address" means:

- 1           a.    In the case of a registered office or principal executive office, the mailing  
2                    address, including a zip code, of the actual office location which may not be  
3                    only a post-office box; and
- 4           b.    In any other case, the mailing address, including a zip code.
- 5        3.    "Articles" means:
- 6           a.    In the case of a corporation incorporated under or governed by this chapter,  
7                    articles of incorporation, articles of amendment, a resolution of election to  
8                    become governed by this chapter, a statement of change of registered office,  
9                    registered agent, or name of registered agent, articles of merger, articles of  
10                   consolidation, articles of abandonment, articles of dissolution, and any annual  
11                   report in which a registered office or registered agent has been established or  
12                   changed.
- 13          b.    In the case of a foreign corporation, the term includes all records serving a  
14                   similar function required to be filed with the secretary of state or other officer  
15                   of the ~~corporation's~~ state of incorporation of the foreign corporation.
- 16        4.    "Authenticated electronic communication" means:
- 17          a.    That the electronic communication is delivered:
- 18                (1)   To the principal place of activity of the corporation; or
- 19                (2)   To an officer or agent of the corporation authorized by the corporation  
20                   to receive the electronic communication; and
- 21          b.    That the electronic communication sets forth information from which the  
22                   corporation can reasonably conclude that the electronic communication was  
23                   sent by the purported sender.
- 24        5.    "Ballot" means a written ballot or a ballot transmitted by electronic communication.
- 25        6.    "Board" means the board of directors of a corporation.
- 26        7.    "Board member" means an individual serving on the board.
- 27        8.    "Bylaws" means the code adopted for the regulation or management of the internal  
28                   affairs of a corporation, regardless of how designated.
- 29        9.    "Corporation" means a corporation, other than a foreign corporation, that is  
30                   incorporated under or governed by this chapter.
- 31        10.   "Director" means a member of the board.

- 1           11. "Domestic organization" means an organization created under the laws of this  
2           state.
- 3           12. "Electronic" means relating to technology having electrical, digital, magnetic,  
4           wireless, optical, electromagnetic, or similar capabilities.
- 5           13. "Electronic communication" means any form of communication, not directly  
6           involving the physical transmission of paper:
- 7           a. That creates a record that may be retained, retrieved, and reviewed by a  
8           recipient of the communication; and
- 9           b. That may be directly reproduced in paper form by the recipient through an  
10          automated process.
- 11          14. "Electronic record" means a record created, generated, sent, communicated,  
12          received, or stored by electronic means.
- 13          15. "Electronic signature" means an electronic sound, symbol, or process attached to  
14          or logically associated with a record and signed or adopted by a person with the  
15          intent to sign the record.
- 16          16. "Filed with the secretary of state" means except as otherwise permitted by law or  
17          rule:
- 18          a. That a record meeting the applicable requirements of this chapter, together  
19          with the fees provided in section 10-33-140, was delivered or communicated  
20          to the secretary of state by a method or medium of communication acceptable  
21          by the secretary of state and was determined by the secretary of state to  
22          conform to law; and
- 23          b. That the secretary of state did then:
- 24              (1) Record the actual date on which the record was filed, and if different,  
25              the effective date of filing; and
- 26              (2) Record the record in the office of the secretary of state.
- 27          17. "Foreign corporation" means a corporation that is formed under laws other than the  
28          laws of this state for a purpose for which a corporation may be organized under  
29          this chapter.

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

- 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 or
- 4 (2) When given by a form of electronic communication consented to by the
- 5 corporation to which the notice is given if by:
- 6 (a) Facsimile communication, when directed to a telephone number
- 7 at which the corporation has consented to receive notice.
- 8 (b) Electronic mail, when directed to an electronic mail address at
- 9 which the corporation has consented to receive notice.
- 10 (c) Posting on an electronic network on which the corporation has
- 11 consented to receive notice, together with separate notice to the
- 12 corporation of the specific posting, upon the later of:
- 13 [1] The posting; or
- 14 [2] The giving of the separate notice.
- 15 (d) Any other form of electronic communication by which the
- 16 corporation has consented to receive notice, when directed to the
- 17 corporation.
- 18 b. Is given, in all other cases:
- 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;
- 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 there;
- 30 (4) When given by a form of electronic communication consented to by the
- 31 person to whom the notice is given if by:

- 1 (a) Facsimile communication, when directed to a telephone number  
2 at which the person has consented to receive notice;
- 3 (b) Electronic mail, when directed to an electronic mail address at  
4 which the person has consented to receive notice; or
- 5 (c) 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; or
- 10 (5) When the method is fair and reasonable when all of the circumstances  
11 are considered.
- 12 c. Is given by mail when deposited in the United States mail with sufficient  
13 postage affixed.
- 14 d. Is deemed received when it is given.
- 15 27. "Officer" means an individual who is more than eighteen years of age and who is:  
16 a. Elected, appointed, or otherwise designated as an officer by the board or the  
17 members; or  
18 b. Considered elected as an officer pursuant to section 10-33-52.
- 19 28. "Organization" means:  
20 a. Whether domestic or foreign, a corporation, limited liability company,  
21 partnership, limited partnership, limited liability partnership, limited liability  
22 limited partnership, business trust, or any other person having a governing  
23 statute; but  
24 b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation  
25 which is incorporated under this chapter or a foreign nonprofit corporation  
26 which is incorporated in another jurisdiction.
- 27 29. "Principal executive office" means:  
28 a. If the corporation has an elected or appointed president, then an office where  
29 the elected or appointed president of the corporation has an office; or  
30 b. If the corporation has no elected or appointed president, then the registered  
31 office of the corporation.

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



1           **SECTION 61. AMENDMENT.** Section 10-33-06 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **10-33-06. Articles.**

- 4           1. The articles of incorporation must contain:
- 5               a. The name of the corporation;
- 6               b. The address of the registered office of the corporation and the name of its  
7               registered agent at that address;
- 8               c. The name and address of each incorporator;
- 9               d. The effective date of the incorporation:
- 10                   (1) If a later date than that on which the certificate of incorporation is  
11                   issued by the secretary of state; and
- 12                   (2) Which may not be later than ninety days after the date on which the  
13                   certificate of incorporation is issued; and
- 14               e. A statement that the corporation is incorporated under this chapter.
- 15           2. ~~The articles of incorporation may not contain:~~
- 16               a. ~~Any provision limiting the right of cumulative voting as guaranteed by~~  
17               ~~section 6 of article XII of the Constitution of North Dakota.~~
- 18               b. ~~Any provision authorizing the issuance of stocks or bonds in violation of~~  
19               ~~section 9 of article XII of the Constitution of North Dakota.~~
- 20           ~~3.~~ The following articles govern a corporation unless modified by the articles:
- 21               a. A corporation has a general purpose of engaging in any lawful nonprofit  
22               activity as provided in section 10-33-04;
- 23               b. A corporation has perpetual existence and certain powers as provided in  
24               section 10-33-21;
- 25               c. The power to initially adopt, amend, or repeal the bylaws is vested in the  
26               board as provided in section 10-33-26;
- 27               d. Cumulative voting is prohibited as provided in section 10-33-34;
- 28               e. The affirmative vote of a majority of the directors present is required for an  
29               action of the board as provided in section 10-33-42;
- 30           e. f. A written action by the board taken without a meeting must be signed by all  
31               directors as provided in section 10-33-43;

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- 1           f. ~~g.~~ Members are of one class as provided in section 10-33-57; and
- 2           g. ~~h.~~ A written action by the members must be signed by all members as provided
- 3                 in section 10-33-73.
- 4       4. ~~3.~~ The following provisions govern a corporation unless modified either in the articles
- 5                 or bylaws:
- 6           a. A certain method must be used for amending the articles as provided in
- 7                 section 10-33-15;
- 8           b. Certain procedures apply to the adoption, amendment, or repeal of bylaws by
- 9                 the members as provided in section 10-33-26;
- 10          c. A director holds office for an indefinite term that expires upon the election of a
- 11                 successor as provided in section 10-33-30;
- 12          d. The term of a director filling a vacancy expires at the end of the term the
- 13                 director is filling as provided in section 10-33-30;
- 14          e. The compensation of directors is fixed by the board as provided in section
- 15                 10-33-32;
- 16          f. The method provided in section 10-33-36 or 10-33-37 must be used for
- 17                 removal of directors;
- 18          g. The method provided in section 10-33-38 must be used for filling board
- 19                 vacancies;
- 20          h. Board meetings must be held at least once per year and if the board fails to
- 21                 select a place for a board meeting, it must be held at the principal executive
- 22                 office as provided in subsection 1 of section 10-33-39;
- 23          i. A director may call a board meeting, and the notice of the meeting need not
- 24                 state the purpose of the meeting as provided in subsection 3 of section
- 25                 10-33-39;
- 26          j. A majority of the board is a quorum as provided in section 10-33-41;
- 27          k. The affirmative vote of the majority of directors present is required for board
- 28                 action as provided in section 10-33-42;
- 29          l. A committee ~~consist~~:
- 30                 (1) Must consist of one or more persons, who need not be directors,
- 31                 appointed by the board as provided in section 10-33-44; and

- 1                   (2) May create one or more subcommittees, each consisting of one or  
2                                   more members of the committee and may delegate to the  
3                                   subcommittee any or all of the authority of the committee as provided in  
4                                   subsection 7 of section 10-33-44.
- 5                   m. Unless the articles or bylaws or a resolution adopted by the board, and not  
6                                   inconsistent with the articles or bylaws, provides otherwise, the officers shall  
7                                   have the duties provided in section 10-33-50;
- 8                   n. The method provided in section 10-33-54 must be used for removal of  
9                                   officers;
- 10                  o. If not prohibited by the board from doing so, officers may delegate some or all  
11                                  of their duties and powers as provided in section 10-33-55;
- 12                  p. A corporation does not have members as provided in section 10-33-57;
- 13                  q. The board may determine the consideration required to admit members as  
14                                  provided in section 10-33-57;
- 15                  r. All members are entitled to vote and have equal rights and preferences in  
16                                  matters as provided in section 10-33-57;
- 17                  s. Memberships are nontransferable except as provided in section 10-33-59;
- 18                  t. A corporation with voting members must hold a regular meeting of voting  
19                                  members annually as provided in section 10-33-65;
- 20                  u. If a specific minimum notice period has not been fixed by law, then at least  
21                                  five days' notice is required for a meeting of members as provided in section  
22                                  10-33-68;
- 23                  v. The board may fix a date up to fifty days before the date of a members'  
24                                  meeting as the date for determination of the members entitled to notice of and  
25                                  entitled to vote at the meeting as provided in section 10-33-68;
- 26                  w. Each member has one vote as provided in section 10-33-71;
- 27                  x. The affirmative vote of the majority of members with voting rights present and  
28                                  entitled to vote is required for action of the members, unless this chapter or  
29                                  the articles or bylaws require a greater vote or voting by class as provided in  
30                                  section 10-33-72;

- 1           y. Members may take action at a meeting by voice or ballot, by unanimous  
2           action without a meeting, by mailed ballot, or by electronic communication as  
3           provided in section 10-33-72;
- 4           z. The number of members required for a quorum is ten percent of the members  
5           entitled to vote as provided in section 10-33-76;
- 6           aa. The procedures provided in section 10-33-78 govern acceptance of member  
7           acts; and
- 8           bb. Indemnification of certain persons is required as provided in section 10-33-84.
- 9       ~~5.~~ 4. The following provisions relating to the management or regulation of the affairs of a  
10       corporation may be included in the articles or, except for naming members of the  
11       first board, in the bylaws:
- 12       a. The first board of directors may be named in the articles as provided in  
13       section 10-33-25;
- 14       b. Additional qualifications for directors may be imposed as provided in section  
15       10-33-29;
- 16       c. Terms of directors may be staggered as provided in section 10-33-30;
- 17       d. The date, time, and place of board meetings may be fixed as provided in  
18       section 10-33-39;
- 19       e. Additional officers may be designated as provided in section 10-33-49;
- 20       f. Additional powers, rights, duties, and responsibilities may be given to officers  
21       as provided in section 10-33-50;
- 22       g. A method for filling vacant offices may be specified as provided in section  
23       10-33-54;
- 24       h. Membership criteria and procedures for admission may be established as  
25       provided in section 10-33-57;
- 26       i. Membership terms may be fixed as provided in section 10-33-57;
- 27       j. A corporation may issue membership certificates or preferred or common  
28       shares as the board deems appropriate as provided in section 10-33-58;
- 29       k. A corporation may levy dues, assessments, or fees on members as provided  
30       in section 10-33-60;
- 31       l. A corporation may buy memberships as provided in section 10-33-63;

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- 1 m. A corporation may have delegates with some or all the authority of members  
2 as provided in section 10-33-64;
- 3 n. The date, time, and place of regular member meetings or the place of special  
4 meetings may be fixed as provided in section 10-33-65;
- 5 o. Certain persons may be authorized to call special meetings of members as  
6 provided in section 10-33-66;
- 7 p. Notices of special member meetings may be required to contain certain  
8 information as provided in section 10-33-68;
- 9 q. A larger than majority vote may be required for member action as provided in  
10 section 10-33-72;
- 11 r. Members may vote by proxy as provided in section 10-33-77; and
- 12 s. Members may enter into voting agreements as provided in section 10-33-79.
- 13 ~~6.~~ 5. The articles may contain other provisions consistent with law relating to the  
14 management or regulation of the affairs of the corporation.
- 15 ~~7.~~ 6. It is not necessary to state the corporate powers granted by this chapter in the  
16 articles.
- 17 ~~8.~~ 7. If there is a conflict between subsection 2, 3, or 4, ~~or 5~~ and another section of this  
18 chapter, then the other section controls.
- 19 ~~9.~~ 8. Subsection ~~5~~ 4 does not limit the right of the board, by resolution, to take an action  
20 that the bylaws may authorize under this subsection without including the  
21 authorization in the bylaws, unless the authorization is required to be in the bylaws  
22 by another provision of this chapter.
- 23 9. Except for provisions included pursuant to subsection 1, any provision of the  
24 articles may:
- 25 a. Be made dependent upon facts ascertainable outside the articles, but only if  
26 the manner in which the facts operate upon the provision is clearly and  
27 expressly set forth in the articles; and
- 28 b. Incorporate by reference some or all of the terms of any agreements,  
29 contracts, or other arrangements entered into by the corporation, but only if  
30 the corporation retains at its principal executive office a copy of the

1                   agreements, contracts, or other arrangements or the portions incorporated by  
2                   reference.

3                   **SECTION 62. AMENDMENT.** Section 10-33-10 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5                   **10-33-10. Corporate name.**

6                   1. The corporate name:

7                   a. Must be in the English language or in any other language expressed in  
8                   English letters or characters.

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

11                   c. May not contain the words "limited liability company", "limited partnership",  
12                   "limited liability partnership", "limited liability limited partnership", or any  
13                   abbreviation of these words.

14                   d. May not contain a word or phrase that indicates or implies that the  
15                   corporation:

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

17                   (a) A lawful nonprofit purpose for which a corporation may be  
18                   incorporated under this chapter; or

19                   (b) For a purpose stated in its articles; or

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

21                   e. May not be the same as or deceptively similar to:

22                   (1) The name, whether foreign and authorized to conduct activities in this  
23                   state or domestic unless there is filed with the articles a record that  
24                   complies with subsection 2, 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                   45-10.2-11, 45-13-04.2, 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. The secretary of state shall determine whether a corporate name is "deceptively  
7           similar" to another name for purposes of this chapter.
- 8           3. If the secretary of state determines that a corporate name is "deceptively similar"  
9           to another name for purposes of this chapter, then the corporate name may not be  
10           used unless there is filed with the articles:
- 11           a. The written consent of the holder of the rights to the name the proposed  
12           name is determined to be deceptively similar to; or  
13           b. A certified copy of a judgment of a court in this state establishing the prior  
14           right of the applicant to the use of the name in this state.
- 15           4. Subsection 3 does not affect the right of a corporation existing on August 1, 1997,  
16           or a foreign corporation authorized to do business in this state on that date to  
17           continue the use of its name.
- 18           5. 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           6. A domestic or foreign corporation that is the surviving organization in a merger with  
28           one or more other organizations, or that acquires by sale, lease, or other  
29           disposition to or exchange with an organization all or substantially all of the assets  
30           of another organization including its name, may have the same name, subject to

- 1 the requirements of subsection 1, as that used in this state by any of the other  
2 organizations, if the other organization whose name is sought to be used:
- 3 a. Was incorporated, organized, formed, or registered under the laws of this  
4 state;
  - 5 b. Is authorized to conduct activities or transact business in this state;
  - 6 c. Holds a reserved name in the manner provided in section 10-19.1-14,  
7 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - 8 d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - 9 e. Holds a trade name registered in the manner provided in chapter 47-25.
- 10 7. The use of a name by a corporation in violation of this section does not affect or  
11 vitiate its corporate existence, but a court in this state may, upon application of the  
12 state or of an interested or affected person, enjoin the corporation from conducting  
13 activities under a name assumed in violation of this section, although its articles  
14 may have been filed with the secretary of state and a certificate of incorporation  
15 issued.
- 16 8. A corporation whose period of existence has expired or that is involuntarily  
17 dissolved by the secretary of state pursuant to section 10-33-139 may reacquire  
18 the right to use that name by refiling articles of incorporation pursuant to section  
19 10-33-08 unless the name has been adopted for use or reserved by another  
20 person, in which case the filing will be rejected unless the filing is accompanied by  
21 a written consent or judgment pursuant to subsection 2. A corporation that cannot  
22 reacquire the use of its corporate name must adopt a new corporate name that  
23 complies with the provisions of this section:
- 24 a. By refiling articles of incorporation pursuant to section 10-33-08;
  - 25 b. By amending pursuant to section 10-33-14; or
  - 26 c. By reinstating pursuant to section 10-33-139.
- 27 9. Subject to section 10-33-126, this section applies to any foreign corporation  
28 transacting business in this state, having a certificate of authority to transact  
29 business in this state, or applying for a certificate of authority.

1           10. An amendment that only changes the name of the corporation may be authorized  
2                   by a resolution approved by the board and may, but need not, be submitted to and  
3                   approved by the members as provided in section 10-33-15.

4           **SECTION 63. AMENDMENT.** Section 10-33-34 of the North Dakota Century Code is  
5 amended and reenacted as follows:

6           **10-33-34. Cumulative voting for directors.** Unless the articles provide otherwise ~~or~~  
7 ~~except as provided in article XII of the Constitution of North Dakota~~, there is no cumulative  
8 voting.

9           **SECTION 64.** A new subsection to section 10-33-44 of the North Dakota Century Code  
10 is created and enacted as follows:

11                   Unless otherwise provided in the articles, the bylaws, or the resolution of the board  
12                   establishing the committee, a committee may create one or more subcommittees,  
13                   each consisting of one or more members of the committee, and may delegate to a  
14                   subcommittee any or all of the authority of the committee. In this chapter, unless  
15                   the language or context clearly indicates that a different meaning is intended:

- 16                   a. Any reference to a committee is deemed to include a subcommittee; and  
17                   b. Any reference to a committee member is deemed to include any reference to  
18                   a subcommittee member.

19           **SECTION 65.** Section 10-33-72.1 of the North Dakota Century Code is created and  
20 enacted as follows:

21           **10-33-72.1. Contractual requirement to submit a matter to the members.** A  
22 corporation may agree to submit a matter to its members whether or not the board determines,  
23 at any time after approving the matter, that the matter is no longer advisable and recommends  
24 that the members reject it.

25           **SECTION 66. AMENDMENT.** Section 10-33-73 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27           **10-33-73. ~~Action~~ Member action without a meeting ~~by the members.~~** An action  
28 required or permitted to be taken at a meeting of the members may be taken without a meeting  
29 by written action signed, or consented to by authenticated electronic communication, by all of  
30 the members entitled to vote on that action.

- 1           1. If the articles so provide, any action may be taken by written action signed, or  
2           consented to by authenticated electronic communication, by the members who  
3           hold voting power equal to the voting power that would be required to take the  
4           same action at a meeting of the members at which all members were present.  
5           However, in no event may written action be taken by members who hold less than  
6           a majority of the voting power of all members entitled to vote on that action.  
7           a. After the adoption of the initial articles, an amendment to the articles to permit  
8           written action to be taken by less than all members requires the approval of  
9           all members entitled to vote on the amendment.  
10          b. When written action is permitted to be taken by less than all members, all  
11          members must be notified immediately of its text and effective date no later  
12          than five days after the effective time of the action.  
13          c. Failure to provide the notice does not invalidate the written action.  
14          d. A member who does not sign or consent to the written action has no liability  
15          for the action or actions taken by the written action.  
16          2. The written action is effective when signed by the required members, unless a  
17          different effective time is provided in the written action.  
18          3. When this chapter requires or permits a certificate concerning an action to be filed  
19          with the secretary of state, the certificate must indicate if the action was taken  
20          under this section.

21           **SECTION 67.** Section 10-34-02.1 of the North Dakota Century Code is created and  
22   enacted as follows:

23           **10-34-02.1. Reservation of legislative right.** The legislative assembly reserves the  
24   right to amend or repeal the provisions of this chapter. A real estate investment trust formed  
25   under or governed by this chapter is subject to this reserved right.

26           **SECTION 68. AMENDMENT.** Subsection 40 of section 45-10.2-02 of the North  
27   Dakota Century Code is amended and reenacted as follows:

- 28          40. "Signed" means:  
29           a. That the signature of a person, which may be a facsimile affixed, engraved,  
30           printed, placed, stamped with indelible ink, transmitted by facsimile or  
31           electronically, or in any other manner reproduced on the record, is placed on

1 a record ~~as provided under section 41-01-14~~ with the present intention to  
2 authenticate that record; and

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

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

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

11 **SECTION 69.** Section 45-10.2-06.1 of the North Dakota Century Code is created and  
12 enacted as follows:

13 **45-10.2-06.1. Reservation of legislative right.** The legislative assembly reserves the  
14 right to amend or repeal the provisions of this chapter. A limited partnership formed under or  
15 governed by this chapter is subject to this reserved right.

16 **SECTION 70. AMENDMENT.** Subsection 1 of section 45-10.2-27 of the North Dakota  
17 Century Code is amended and reenacted as follows:

18 1. A record authorized or required to be delivered to the secretary of state for filing  
19 under this chapter must be captioned to describe the purpose of the record, be in a  
20 medium permitted by the secretary of state, and be delivered to the secretary of  
21 state. If the secretary of state determines that a record complies with the filing  
22 requirements of this chapter, then the secretary of state shall file the record and,  
23 except for an annual report, return a copy of the filed record to the person that  
24 delivered it to the secretary of state for filing. That person shall then:

25 a. For a statement of dissociation, send a copy of the filed statement:

26 (1) To the person which the statement indicates has dissociated as a  
27 general partner; and

28 (2) To the limited partnership;

29 b. For a statement of withdrawal, send a copy of the filed statement:

30 (1) To the person on whose behalf the record was filed; and

1                   (2) If the statement refers to an existing limited partnership, to the limited  
2                   partnership; and

3                   c. For all other records, send a copy of the filed record to the person on whose  
4                   behalf the record was filed.

5                   **SECTION 71. AMENDMENT.** Section 45-10.2-81 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7                   **45-10.2-81. Foreign limited partnership - Amendments to the certificate of**  
8 **authority.** If any statement in the application for a certificate of authority by a foreign limited  
9 partnership is false when made or becomes false due to changed circumstances, or if the  
10 foreign limited partnership changes its name or purposes sought in this state, then the foreign  
11 limited partnership shall file with the secretary of state an application for an amended certificate  
12 of authority signed by ~~an authorized person~~ at least one general partner correcting the  
13 statement and, in the case of a change in the name of the foreign limited partnership, a  
14 certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of  
15 which the foreign limited partnership is organized.

16                  1. In the case of a dissolution, a foreign limited partnership need not file an  
17                  application for an amended certificate of authority but shall promptly file with the  
18                  secretary of state a certificate to that effect authenticated by the proper officer of  
19                  the jurisdiction under the laws of which the foreign limited partnership is organized.

20                  2. A foreign limited partnership that changes its name and applies for an amended  
21                  certificate of authority and which is the owner of a trademark or trade name, is a  
22                  general partner named in a fictitious name certificate, is a general partner in  
23                  another limited partnership or limited liability limited partnership, or is a managing  
24                  partner in a limited liability partnership that is on file with the secretary of state,  
25                  shall change the name of the foreign limited partnership in each of the foregoing  
26                  registrations that is applicable when the foreign limited partnership files an  
27                  application for an amended certificate of authority.

28                  3. A foreign limited partnership shall report any change of address of the principal  
29                  executive office to the secretary of state and need not file an application for  
30                  amended certificate of authority.

1           **SECTION 72. AMENDMENT.** Subsection 26 of section 45-13-01 of the North Dakota  
2 Century Code is amended and reenacted as follows:

3           26. "Signed" means:

4           a. That the signature of a person, which may be a facsimile affixed, engraved,  
5           printed, placed, stamped with indelible ink, transmitted by facsimile  
6           telecommunication or electronically or in any other manner reproduced on the  
7           record, is placed on a record, ~~as provided under section 41-01-14~~ with the  
8           present intention to authenticate that record; and

9           b. With respect to a record required by this chapter to be filed with the secretary  
10           of state, that:

11           (1) The record is signed by a person authorized to do so by this chapter or  
12           by a resolution approved by the affirmative vote of the required  
13           proportion or number of partners; and

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

16           **SECTION 73.** Section 45-13-02.1 of the North Dakota Century Code is created and  
17 enacted as follows:

18           **45-13-02.1. Reservation of legislative right.** The legislative assembly reserves the  
19 right to amend or repeal the provisions of this chapter. A partnership formed under or governed  
20 by this chapter is subject to this reserved right.

21           **SECTION 74. AMENDMENT.** Subsection 6 of section 45-13-05 of the North Dakota  
22 Century Code is amended and reenacted as follows:

23           6. Any statement filed under this section must be renewed every five years from the  
24           date of the initial filing. A statement of renewal must be executed by the  
25           partnership ~~on a form furnished by the secretary of state which is sent to the~~  
26           ~~address of the principal executive office at least sixty days before the deadline for~~  
27           filing in the same manner as previously executed. If the secretary of state finds  
28           that the statement of renewal conforms to the requirements of this section, and the  
29           proper filing fee has been paid, the secretary of state shall file the statement of  
30           renewal. If the secretary of state finds that the statement of renewal does not so  
31           conform, the secretary of state shall return the statement of renewal to the

1 partnership for any necessary corrections. If the statement of renewal is not  
2 returned corrected within thirty days after the statement of renewal was returned  
3 for correction, the statement of renewal is subject to cancellation. If any  
4 partnership fails to file the statement of renewal, the secretary of state shall cancel  
5 the initial statement and shall mail notice of the cancellation to the last address of  
6 the principal executive office as recorded in the office of the secretary of state.

7 **SECTION 75. AMENDMENT.** Subsection 24 of section 45-22-01 of the North Dakota  
8 Century Code is amended and reenacted as follows:

9 24. "Signed" means:

- 10 a. That the signature of a person which may be a facsimile affixed, engraved,  
11 printed, placed, stamped with indelible ink, transmitted by telecommunication  
12 or electronically, or in any other manner reproduced on the record, is placed  
13 on a record, ~~as provided under section 41-01-14~~ with the present intention to  
14 authenticate that record; and
- 15 b. With respect to a record required by this chapter to be filed with the secretary  
16 of state means that:
- 17 (1) The record is signed by a person authorized to do so by this chapter, or  
18 by or pursuant to an agreement among the partners, or by a resolution  
19 approved by the affirmative vote of the required proportion or number of  
20 partners; and
- 21 (2) The signature and the record are communicated by a method or  
22 medium of communication acceptable by the secretary of state.

23 **SECTION 76. AMENDMENT.** Subsection 2 of section 45-22-22 of the North Dakota  
24 Century Code is amended and reenacted as follows:

25 2. The secretary of state shall charge and collect for:

- 26 a. Furnishing a copy of any record or paper relating to a domestic limited liability  
27 partnership or foreign limited liability partnership, one dollar for every four  
28 pages, or fraction of pages.
- 29 b. A certificate certifying a copy or reciting facts related to a domestic limited  
30 liability partnership or foreign limited liability partnership, ~~twenty~~ fifteen  
31 dollars.

1                   c. Each page of any record or form sent by electronic transmission, one dollar.

2                   **SECTION 77. AMENDMENT.** Subsection 24 of section 45-23-01 of the North Dakota  
3 Century Code is amended and reenacted as follows:

4                   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 facsimile or  
7 electronically, or in any other manner reproduced on the record, is placed on  
8 a record, ~~as provided under section 41-01-11~~ with the present intention to  
9 authenticate that record; and

10                  b. With respect to a record required by this chapter to be filed with the secretary  
11 of state, that:

12                  (1) The record is signed by a person authorized to sign by this chapter, or  
13 pursuant to an agreement among the partners, or by a resolution  
14 approved by the affirmative vote of the required proportion or number of  
15 partners; and

16                  (2) The signature and the record are communicated by a method or  
17 medium acceptable by the secretary of state.