

# CORPORATIONS

## CHAPTER 86

### HOUSE BILL NO. 1091

(Judiciary Committee)  
(At the request of the Securities Commissioner)

AN ACT to amend and reenact subsection 5 of section 10-04-10.1 of the North Dakota Century Code, relating to investment advisory contracts.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsection 5 of section 10-04-10.1 of the North Dakota Century Code is amended and reenacted as follows:

5. It is unlawful for any investment adviser to enter ~~into~~, extend, or renew any investment advisory contract unless ~~the investment advisory contract~~ provides in writing that:
  - a. The investment adviser ~~shall~~may not be compensated on the basis of a share of capital gains, earnings, or capital appreciation of the funds or any portion of the funds of the client. This subdivision does not prohibit an investment advisory contract that provides for compensation based on the total value of a fund determined as of a definite date or averaged as of definite dates or over a definite period. This subdivision does not prohibit an investment advisory contract that provides for performance fees permitted and determined in accordance with section 205 of the Investment Advisers Act of 1940 [Pub. L. 768; 54 Stat. 852; 15 U.S.C. 80b-5] and the rules adopted thereunder.
  - b. An assignment of the investment advisory contract may not be made by the investment adviser unless the investment adviser notifies the client of the intended assignment and obtains the prior written consent of the client.
  - c. The investment adviser shall provide written notice to the client within fifteen days of any change of ownership in excess of five percent.
  - d. The investment adviser shall provide written notice to the client within fifteen days of a change of controlling interest of the investment adviser. The client may terminate the investment advisory contract without penalty by providing a written notice to the investment adviser within thirty days after the client's receipt of the notice of change of controlling interest.

Approved May 9, 2011  
Filed May 10, 2011

## CHAPTER 87

### SENATE BILL NO. 2174

(Senator Nething)  
(Representative DeKrey)

AN ACT to create and enact subsection 6 to section 10-01.1-06, sections 10-15-51.1 and 10-15-52.7, subsection 12 to section 10-15-54, and sections 10-15-57.1, 10-15-57.2, and 45-21-04.3 of the North Dakota Century Code, relating to listing of commercial registered agents, cooperative associations, corporations, limited liability companies, nonprofit corporations, limited partnerships, and general partnerships; and to amend and reenact sections 10-06.1-17 and 10-15-08.1, subsection 37 of section 10-19.1-01, subsection 4 of section 10-19.1-10, sections 10-19.1-13 and 10-19.1-31, subsection 2 of section 10-19.1-51, section 10-19.1-52, subsection 2 of section 10-19.1-58, subsection 1 of section 10-19.1-68, subsection 2 of section 10-19.1-70, subsection 1 of section 10-19.1-73, subsection 2 of section 10-19.1-84, subsection 1 of section 10-19.1-104, section 10-19.1-141, subsection 2 of section 10-19.1-146, sections 10-19.1-147 and 10-19.1-149, subsection 39 of section 10-32-02, sections 10-32-07, 10-32-09, and 10-32-10, subsection 1 of section 10-32-40, subsection 2 of section 10-32-51, section 10-32-68, subsection 2 of section 10-32-87, section 10-32-88, subsection 2 of section 10-32-94, subsection 1 of section 10-32-108, sections 10-32-144 and 10-32-150, subsection 5 of section 10-32-152, section 10-32-153, subsection 27 of section 10-33-01, subsections 3 and 4 of section 10-33-06, section 10-33-10, subsections 1, 2, and 3 of section 10-33-15, sections 10-33-26 and 10-33-28, subsection 2 of section 10-33-38, sections 10-33-39 and 10-33-43, subsection 2 of section 10-33-44, subsection 2 of section 10-33-46, sections 10-33-49, 10-33-51, and 10-33-52, subsection 2 of section 10-33-54, subsection 11 of section 10-33-84, subsection 2 of section 10-33-87, section 10-33-94, subsection 3 of section 10-33-98, section 10-33-134, subsection 1 of section 10-33-140, sections 10-33-142, 10-35-33, 45-10.2-10, 45-10.2-85, and 45-10.2-87, subsection 15 of section 45-10.2-109, section 45-10.2-112, subsection 3 of section 45-22-03, and sections 45-22-04, 45-22-16, 45-22-24, and 45-23-03 of the North Dakota Century Code, relating to annual reports of corporate limited liability company farms, cooperative associations, business corporations, limited liability companies, nonprofit corporations, publicly traded corporations, limited partnerships, limited liability partnerships, and limited liability limited partnerships.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** Subsection 6 to section 10-01.1-06 of the North Dakota Century Code is created and enacted as follows:

6. The secretary of state may make minor modifications to the name of a registered agent in a previously filed record in order to cause the modified name to be consistent with the correct name of a proposed commercial registered agent when it can be concluded from the previously filed record that the name of the proposed commercial registered agent was intended.

**SECTION 2. AMENDMENT.** Section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-17. Annual report - Contents - Filing requirements.**

Before April sixteenth of each year, every corporation engaged in farming or ranching after June 30, 1981, and every limited liability company engaged in farming or ranching shall file with the secretary of state an annual report ~~executed by the corporation's or limited liability company's president, vice president, secretary, or treasurer~~ signed as provided in subsection 53 of section 10-19.1-01 if a corporation and subsection 58 of section 10-32-02 if a limited liability company. If the corporation or limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or limited liability company by the receiver or trustee. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this section or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this section meets the filing date requirement. An annual report must include the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.
2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the corporation or limited liability company in this state.
3. With respect to each corporation:
  - a. A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - b. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
4. With respect to each shareholder or member:
  - a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;
  - b. The number of shares or membership interests or percentage of shares or membership interests owned by each;
  - c. The relationship of each;
  - d. A statement of whether each is a citizen or permanent resident alien of the United States; and
  - e. A statement of whether at least one is an individual residing on or operating the farm or ranch.
5. With respect to management:

- a. If a corporation, then the names and addresses of the officers and members of the board of directors; or
  - b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.
6. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].
  7. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years or for each year of existence if less than five years.
  8. A statement of the percentage of gross income of the corporation or limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.
  9. A corporation engaged in farming which fails to file an annual report is subject to the penalties provided in section 10-19.1-147 except that the penalties must be calculated from the date of the report required by this section.
  10. A limited liability company engaged in farming which fails to file an annual report is subject to the penalties provided in subsections 5 and 6 of section 10-32-149 except that the penalties must be calculated from the date of the report required by this section.

**SECTION 3. AMENDMENT.** Section 10-15-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**10-15-08.1. Cooperative name.**

1. The cooperative name:
  - a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. May contain the word "corporation" or "incorporated" or an abbreviation of either of those words.
  - c. May not contain a word or phrase that indicates or implies that it is organized for a purpose other than one or more business purposes for which a cooperative association may be organized under this chapter.
  - d. May not be the same as, or deceptively similar to, the name ~~of a domestic or foreign, whether foreign and authorized to do business in this state, or domestic, unless there is filed with the articles of association of a domestic cooperative or the application for authority of a foreign cooperative, a record in compliance with subsection 2 of:~~

(1) Another cooperative association;

- (2) A corporation;
- (3) A limited liability company;
- (4) A limited liability partnership; ~~or;~~
- (5) A limited partnership, whether profit or nonprofit, authorized to do business in this state, or a;
- (6) A limited liability limited partnership;
- (7) A name the right to which is, at the time of organization, in some manner reserved; ~~or is a;~~
- (8) A fictitious name registered with the secretary of state as provided in chapter 45-11; ~~or is a;~~
- (9) A trade name registered with the secretary of state as provided in chapter 47-25, unless there is filed with the articles; ~~or~~
- (10) A trademark or service mark registered in the manner provided in chapter 47-22.
2. If the secretary of state determines a cooperative name is deceptively similar to another name for purposes of this chapter, then the cooperative name may not be used unless there is filed with the articles of association or application for authority:
- (1)a. A written consent to use the name obtained from the domestic or foreign corporation, limited liability company, limited liability partnership, limited liability limited partnership, or limited partnership authorized to do business in this state having a deceptively similar name, or the holder of a reserved name, registered trade name ~~or,~~ fictitious name, or trademark or service mark; or
- (2)b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
- ~~2-3.~~ The secretary of state shall determine whether a cooperative name is deceptively similar to another name for purposes of this chapter.
- ~~3-4.~~ This section and section 10-15-08.2 do not:
- a. Abrogate or limit:
- (1) The law of unfair competition or unfair practices;
- (2) Chapter 47-25;
- (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
- (4) Any other rights to the exclusive use of names or symbols; or
- b. Derogate the common law or the principles of equity.

- 4-5. A cooperative that is involuntarily dissolved by the secretary of state under section 10-15-36 may reacquire the right to use that name by reinstating the cooperative within the time provided in section 10-15-36 or by refiling articles of association, unless the name has been adopted for use or reserved by another person, in which case the filing must be rejected unless the filing is accompanied by a written consent or judgment as provided in subdivision d of subsection 1. A cooperative that is unable to reacquire the use of its name shall adopt a new name that complies with this section.
6. A cooperative that files its articles of association with an effective date later than the date of filing as provided in section 10-15-07 shall maintain the right to the name until the effective date.

**SECTION 4.** Section 10-15-51.1 of the North Dakota Century Code is created and enacted as follows:

**10-15-51.1. Foreign cooperative - Name.**

A foreign cooperative may apply for a certificate of authority under any name that would be available to a domestic cooperative, whether the name is the name under which it is authorized in its jurisdiction of origin. A trade name must be registered as provided in chapter 47-25 when applying for a certificate of authority under a name different from the name authorized in the jurisdiction of origin.

**SECTION 5.** Section 10-15-52.7 of the North Dakota Century Code is created and enacted as follows:

**10-15-52.7. Foreign cooperative - Revocation of certificate of authority.**

1. The certificate of authority of a foreign cooperative to transact business in this state may be revoked by the secretary of state if:
- a. The foreign cooperative has failed to:
- (1) Appoint and maintain a registered agent, and if a noncommercial registered agent, then the registered office of the noncommercial registered agent as provided in chapter 10-01.1;
  - (2) File in the office of the secretary of state any amendment to its application for a certificate of authority as provided in section 10-15-52.3;
  - (3) File in the office of the secretary of state any merger as provided in section 10-15-52.1;
  - (4) File in the office of the secretary of state an application for a certificate of withdrawal of its authority as provided in section 10-15-52.5 when the cooperative's existence has expired or the cooperative has been dissolved in the jurisdiction of origin; or
- b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign cooperative pursuant to this chapter.

2. Except for revocation of the certificate of authority for failure to file the annual report as provided in section 10-15-36, no certificate of authority of a foreign cooperative may be revoked by the secretary of state unless:
  - a. The secretary of state has given the foreign cooperative at least sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign cooperative fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
  - b. During the sixty-day period, the foreign cooperative has failed to:
    - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;
    - (2) File any amendment;
    - (3) File any merger;
    - (4) File an application for certificate of withdrawal; or
    - (5) Correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign cooperative to transact business in this state ceases and the secretary of state shall issue a notice of revocation and shall mail the notice to the registered agent at the registered office in this state or, if the foreign cooperative failed to appoint and maintain a registered agent or a registered office in this state, then addressed to the principal executive office of the foreign cooperative.

**SECTION 6.** Subsection 12 to section 10-15-54 of the North Dakota Century Code is created and enacted as follows:

12. Filing a statement of correction, twenty dollars.

**SECTION 7.** Section 10-15-57.1 of the North Dakota Century Code is created and enacted as follows:

**10-15-57.1. Correcting a filed record.**

With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
  - a. Must:
    - (1) Be signed by:
      - (a) The person that signed the original record; or





- a. Elected, appointed, or otherwise designated as ~~an~~the president, the treasurer, or any other officer by the board pursuant to section 10-19.1-52; or
- b. Deemed elected as an officer pursuant to section 10-19.1-56.

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

4. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board fixing a greater than majority director or shareholder vote or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:
  - a. The members of the first board may be named in the articles as provided in subsection 1 of section 10-19.1-32.
  - b. A manner for increasing or decreasing the number of directors as provided in section 10-19.1-33.
  - c. Additional qualifications for directors may be imposed as provided in section 10-19.1-34.
  - d. Directors may be classified as provided in section 10-19.1-38.
  - e. The day or date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-19.1-43.
  - f. Absent directors may be permitted to give written consent or opposition to a proposal as provided in section 10-19.1-44.
  - g. A larger than majority vote may be required for board action as provided in section 10-19.1-46.
  - h. A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles as provided in section 10-19.1-50.
  - i. Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the president as provided in section 10-19.1-53.
  - j. Additional officers may be designated as provided in section 10-19.1-52.
  - k. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-19.1-53.
  - l. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-19.1-58.
  - m. A certain officer or agent may be authorized to sign share certificates as provided in subsection 1 of section 10-19.1-66.

- n. The transfer or registration of transfer of securities may be restricted as provided in section 10-19.1-70.
- o. The day or date, time, and place of regular shareholder meetings may be fixed as provided in subsection 3 of section 10-19.1-71.
- p. Certain persons may be authorized to call special meetings of shareholders as provided in subsection 1 of section 10-19.1-72.
- q. Notices of shareholder meetings may be required to contain certain information as provided in subsection 3 of section 10-19.1-73.
- r. ~~A larger than majority vote may be required for shareholder action as provided in section 10-19.1-74.~~ Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection 6 of section 10-19.1-73.2.
- s. ~~Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection 6 of section 10-19.1-73.2.~~ A larger than majority vote may be required for shareholder action as provided in section 10-19.1-74.
- t. Corporate actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-19.1-87.
- u. The rights and priorities of persons to receive distributions may be established as provided in section 10-19.1-92.

**SECTION 11. AMENDMENT.** Section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-13. Corporate name.**

1. The corporate name:
  - a. Must be expressed in letters or characters used in the English language or in any other language expressed in English as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. Must contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
  - c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
  - d. May not contain a word or phrase that indicates or implies the corporation:
    - (1) Is incorporated for a purpose other than:
      - (a) A lawful business purpose for which a corporation may be incorporated under this chapter; or
      - (b) For a purpose stated in its articles of incorporation; or

- (2) May not be incorporated under this chapter.
- e. May not be the same as, or deceptively similar to:
  - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record that complies with subsection 3, of:
    - (a) Another corporation;
    - (b) A corporation incorporated or authorized to do business in this state under another chapter of this code;
    - (c) A limited liability company;
    - (d) A limited partnership;
    - (e) A limited liability partnership; or
    - (f) A limited liability limited partnership;
  - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; ~~or~~
  - (4) A trade name registered in the manner provided in chapter 47-25; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
3. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:
  - a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
  - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
4. This subsection does not affect the right of a domestic corporation existing on July 1, 1986, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
5. This section and section 10-19.1-14 do not:
  - a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;

- (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or
    - (4) Any other rights to the exclusive use of names or symbols; or
  - b. Derogate the common law or the principles of equity.
6. A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
  - a. Was incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.
8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-19.1-146 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-19.1-11, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 2. A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name that complies with the provisions of this section:
  - a. By refiling articles of incorporation pursuant to section 10-19.1-11;
  - b. By amending pursuant to section 10-19.1-17; or
  - c. By reinstating pursuant to section 10-19.1-146.

9. Subject to section 10-19.1-133, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the shareholders as provided in section 10-19.1-18.
11. A corporation that files its articles of incorporation with an effective date later than the date of filing as provided in section 10-19.1-12 shall maintain the right to the name until the effective date.

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

**10-19.1-31. Bylaws.**

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management or the regulation of the affairs of the corporation not inconsistent with section 10-19.1-32 or any other provision of law or the articles, including:
  - a. The number of directors, and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;
  - b. The qualifications of shareholders;
  - c. Different classes of shares;
  - d. The manner of admission, withdrawal, suspension, and expulsion of shareholders;
  - e. Property, voting, and other rights and privileges of shareholders;
  - f. The appointment and authority of committees;
  - g. The appointment or election, duties, compensation, and tenure of officers;
  - h. The time, place, and manner of calling, conducting, and giving notice of shareholder, board, and committee meetings, or of conducting mail ballots;
  - i. The making of reports and financial statements to shareholders; or
  - j. The number establishing a quorum for meetings of members and the board.
2. ~~Initial~~ Unless reserved by the articles to shareholders with voting rights, initial bylaws may be adopted ~~by the first board or by a majority of the incorporators, or by the first board~~ pursuant to section 10-19.1-30. Unless reserved by the articles to the shareholders with voting rights, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board.

3. Unless the articles or bylaws provide otherwise, a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote may propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board.
  - a. The resolution must set forth the provisions proposed for adoption, amendment, or repeal.
  - b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2, 3, and 4 of section 10-19.1-19 for amendment of the articles.
  - e. ~~The articles or bylaws may impose different or additional requirements for the shareholders to adopt, amend, or repeal the bylaws.~~

**SECTION 13. AMENDMENT.** Subsection 2 of section 10-19.1-51 of the North Dakota Century Code is amended and reenacted as follows:

2. The contract or transaction described in subsection 1 is not void or voidable if:
  - a. The contract or transaction was, and the person asserting the validity of the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;
  - b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the holders of all outstanding shares, whether or not entitled to vote, and the contract or transaction is approved in good faith by:
    - (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors; or
    - (2) The unanimous affirmative vote of the holder of all outstanding shares, whether or not entitled to vote;
  - c. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the directors or committee members currently holding office, ~~but~~:
    - (1) However, the interested director or directors shall may not vote and are not be counted in determining considered for purposes of a quorum.
    - (2) If as a result, the number of remaining directors is not sufficient to reach a quorum, then a quorum for the purpose of considering the contract or transaction is the number of remaining directors or committee members, not counting any vote that the interested director might otherwise have in, and not counting the director in determining the presence of a quorum and shall not vote; or
  - d. The contract or transaction is a distribution described in subsection 1 of section 10-19.1-92 or a merger or exchange described in subsection 1 or 2 of section 10-19.1-96.

**SECTION 14. AMENDMENT.** Section 10-19.1-52 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-52. Officers.**

1. The officers of a corporation must be individuals who are eighteen years of age or more, exercising the functions of the offices and ~~shall~~:
  - a. Must consist of a president, a secretary, and a treasurer, however designated; and ~~may~~
  - b. May also include one or more vice presidents and any other officers ~~or agents, however designated~~, as may be provided in the bylaws. ~~Each of the officers~~
2. Unless the articles or the bylaws provide that the shareholders with voting rights may elect the officers:
  - a. Each officer must be elected by the board at ~~the~~ time and in ~~the~~ manner as may be provided in the bylaws ~~unless the articles or bylaws provide that the shareholders may elect the officers;~~ or
  - b. To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the directors present, the president may appoint one or more officers, other than the treasurer.
3. Unless otherwise provided, president means chief executive officer and treasurer means chief financial officer.

**SECTION 15. AMENDMENT.** Subsection 2 of section 10-19.1-58 of the North Dakota Century Code is amended and reenacted as follows:

2. With respect to removal:
  - a. Except as otherwise provided in the articles and bylaws, an officer may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the directors present, subject to the provisions of a shareholder control agreement. ~~The removal is without prejudice to any contractual rights of the officer.~~
  - b. An officer appointed by the president also may be removed at any time, with or without cause, by the president.
  - c. To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the directors present, the president may remove an officer elected or appointed by the board, other than the treasurer.
  - d. The articles or the bylaws may provide other manners of removing an officer.
  - e. A removal as described in this subsection is without prejudice to any contractual rights of the officer.

**SECTION 16. AMENDMENT.** Subsection 1 of section 10-19.1-68 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation may issue fractions of a share originally or upon transfer. If it does not issue fractions of a share, then it shall in connection with an original issuance of shares:
  - a. Arrange for the disposition of fractional interests by those entitled to them;
  - b. Pay in money the fair value of fractions of a share as of the time when persons entitled to receive the fractions are determined; or
  - c. Issue scrip or warrants in registered or bearer form that entitle the holder to receive a certificate for a full share upon the surrender of the scrip or warrants aggregating a full share.

**SECTION 17. AMENDMENT.** Subsection 2 of section 10-19.1-70 of the North Dakota Century Code is amended and reenacted as follows:

2. A written restriction on the transfer or registration of transfer of securities of a corporation which is not manifestly unreasonable under the circumstances and is noted conspicuously on the face or back of the certificate or included in information sent to the holders of uncertificated shares in accordance with subsection 6 of section 10-19.1-66 ~~may be enforced~~ is valid and specifically enforceable against the holder of the restricted securities or a successor or transferee of the holder, including a pledgee or a legal representative.
  - a. Unless noted conspicuously on the face or back of the certificate or included in information sent to holders of uncertificated shares in accordance with subsection 6 of section 10-19.1-66, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.
  - b. A restriction under this section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate record creating or describing the restriction.

**SECTION 18. AMENDMENT.** Subsection 1 of section 10-19.1-73 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, notice of all meetings of shareholders must be given to every holder of shares entitled to vote unless:
  - a. The meeting is an adjourned meeting to be held not more than one hundred twenty days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; or
  - b. The following have been mailed by first-class mail to a shareholder at the address in the corporate records and returned nondeliverable:
    - (1) Two consecutive ~~annual~~ regular meeting notices and notices of any special meetings held during the period between the two ~~annual~~ regular meetings; or
    - (2) All payments of distributions, provided there were at least two sent during a twelve-month period.



An action or meeting that is taken or held without notice under this subdivision has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to the corporation, the notice requirement is reinstated.

<sup>37</sup> **SECTION 19. AMENDMENT.** Subsection 2 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

2. A corporation shall keep, at its principal executive office or at another place or places within the United States determined by the board, ~~or~~ and, if its principal executive office or any such other place is outside of this state, shall make available at its registered office or at its principal executive office within this state within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subsection 4 or 5, originals or copies of:
  - a. Records of all proceedings of shareholders for the last three years;
  - b. Records of all proceedings of the board for the last three years;
  - c. Its articles and all amendments currently in effect;
  - d. Its bylaws and all amendments currently in effect;
  - e. Financial statements required by section 10-19.1-85 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;
  - f. Reports made to shareholders generally within the last three years;
  - g. A statement of the names and usual business addresses of its directors and principal officers;
  - h. Voting trust agreements described in section 10-19.1-81;
  - i. Shareholder control agreements described in section 10-19.1-83; and
  - j. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsection 8 of section 10-19.1-10.

**SECTION 20. AMENDMENT.** Subsection 1 of section 10-19.1-104 of the North Dakota Century Code is amended and reenacted as follows:

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

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<sup>37</sup> Section 10-19.1-84 was also amended by section 1 of House Bill No. 1136, chapter 334.

- b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or
- c. Transfer any or all of its property to an organization all the ownership interests of which are owned directly, or indirectly through wholly owned organizations, by the corporation.

**SECTION 21. AMENDMENT.** Section 10-19.1-141 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-141. Foreign corporation - Revocation of certificate of authority.**

1. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state if:
  - a. The foreign corporation has failed to:
    - (1) Appoint and maintain a registered agent, and if a noncommercial registered agent, then the registered office of the noncommercial registered agent as provided in chapter 10-01.1; ~~or~~
    - (2) File in the office of the secretary of state any amendment to its application for a certificate of authority as ~~specified~~provided in section 10-19.1-137;
    - (3) File in the office of the secretary of state any merger as provided in section 10-19.1-139; or
    - (4) File in the office of the secretary of state an application for certificate of withdrawal of its authority as provided in section 10-19.1-140 when the corporation's existence has expired or the corporation has been dissolved in the jurisdiction of incorporation; or
  - b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign corporation pursuant to this chapter.
2. Except for revocation of the certificate of authority for failure to file the annual report as provided in section 10-19.1-146, no certificate of authority of a foreign corporation may be revoked by the secretary of state unless:
  - a. The secretary of state has given the foreign corporation at least sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign corporation fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
  - b. During the sixty-day period, the foreign corporation has failed to:
    - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;
    - (2) File any amendment; ~~or~~
    - (3) File any merger;

(4) File an application for withdrawal; or

(5) Correct the misrepresentation.

3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign corporation to transact business in this state ceases; and the secretary of state shall issue a notice of revocation and shall mail the notice to the registered agent at the registered office in this state or, if the foreign corporation failed to appoint and maintain both a registered agent and a registered office in this state, then addressed to the principal executive office of the foreign corporation.

**SECTION 22. AMENDMENT.** Subsection 2 of section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection ~~5253~~ of section 10-19.1-01, ~~or the articles or the bylaws or a resolution approved by the affirmative vote of the required proportion or number of the directors or holders of shares entitled to vote.~~ If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

**SECTION 23. AMENDMENT.** Section 10-19.1-147 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-147. Fees for filing records - Issuing certificates - License fees.**

The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, one hundred dollars.
2. Filing articles of amendment, twenty dollars.
3. Filing ~~articles~~ a statement of correction, twenty dollars.
4. Filing restated articles of incorporation, thirty dollars.
5. Filing articles of conversion of a corporation or a certificate of fact of conversion of a foreign corporation, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.

7. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
8. Filing articles of abandonment of merger, fifty dollars.
9. Filing an application to reserve a corporate name, ten dollars.
10. Filing a notice of transfer of a reserved corporate name, ten dollars.
11. Filing a cancellation of reserved corporate name, ten dollars.
12. Filing a consent to use of name, ten dollars.
13. Filing a statement of change of address of registered office, change of registered agent, or both, or a change of address of registered office by registered agent, the fee provided in section 10-01.1-03.
14. Filing a statement of the establishment of a series of shares, twenty dollars.
15. Filing a statement of cancellation of shares, twenty dollars.
16. Filing a statement of reduction of stated capital, twenty dollars.
17. Filing a statement of intent to dissolve, ten dollars.
18. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
19. Filing articles of dissolution, twenty dollars.
20. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred forty-five dollars.
21. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, forty dollars.
22. Filing a certificate of fact stating a merger or consolidation of a foreign corporation holding a certificate of authority to transact business in this state, fifty dollars.
23. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
24. Filing an annual report of a corporation or foreign corporation, twenty-five dollars.
  - a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) Within ninety days after the date provided in subsection 3 of section 10-19.1-146, twenty dollars;
    - (2) Thereafter, sixty dollars; and

- (3) After the involuntary dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of one hundred thirty-five dollars.
- b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-19.1-146, or the annual report lacks sufficient payment as required by this subsection.
25. Filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.
26. Furnishing a certified copy of any record, instrument, or paper relating to a corporation, the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal thereto.
27. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
28. Filing any other statement of a corporation or foreign corporation, ten dollars.

**SECTION 24. AMENDMENT.** Section 10-19.1-149 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-149. Secretary of state - Certificates and certified copies to be received in evidence.**

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated.
3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

**SECTION 25. AMENDMENT.** Subsection 39 of section 10-32-02 of the North Dakota Century Code is amended and reenacted as follows:

39. "Manager" means an individual who is eighteen years of age or more and who is:
- a. ~~An individual who is eighteen years of age or more and who is elected~~ Elected, appointed, or otherwise designated as ~~a~~ the president, the treasurer, or any other manager ~~by the board~~ pursuant to section 10-32-88; and/or
  - b. ~~An individual considered~~ Deemed elected as a manager pursuant to section 10-32-92.

**SECTION 26. AMENDMENT.** Section 10-32-07 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The articles of organization must contain:
  - a. The name of the limited liability company;
  - b. The name of the registered agent of the limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of such noncommercial registered agent in this state;
  - c. The name and address of each organizer;
  - d. The effective date of organization:
    - (1) If a later date than that on which the certificate of organization is issued by the secretary of state; and
    - (2) Which may not be later than ninety days after the date on which the certificate of organization is issued; and
  - e. If the articles of organization are filed with the secretary of state:
    - (1) Before July 1, 1999, a statement stating in years that the period of existence for the limited liability company must be a period of thirty years from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly authorize a shorter or longer period of duration, which may be perpetual.
    - (2) After June 30, 1999, a statement stating in years the period of existence of the limited liability company, if other than perpetual.
2. The following provisions govern a limited liability company unless modified in the articles of organization or a member-control agreement under section 10-32-50:
  - a. A limited liability company has general business purposes as provided in section 10-32-04;
  - b. A limited liability company has certain powers as provided in section 10-32-23;
  - c. ~~The power to adopt, amend, or repeal the bylaws is vested in the board as provided in subsection 2 of section 10-32-68~~termination of a person's membership interest has specified consequences as provided in section 10-32-30;
  - d. ~~A limited liability company must allow cumulative voting for governors as provided in section 10-32-76~~member may only be expelled as provided in subsection 3 of section 10-32-30;
  - e. ~~The affirmative vote of the greater of a majority of governors present or a majority of the minimum number of governors constituting a quorum is~~

- ~~required for an action of the board as provided in section 10-32-83Restrictions apply to the assignment of governance rights as provided in section 10-32-32;~~
- ~~f. A written action by the board taken without a meeting must be signed by all governors as provided in section 10-32-84Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32;~~
  - ~~g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements as provided in subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59Members share profits and losses in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-36;~~
  - ~~h. All membership interests are ordinary membership interests entitled to vote and are of one class with no series as provided in subdivisions a and b of subsection 5 of section 10-32-56Unless otherwise provided, a member has certain preemptive rights as provided in section 10-32-37;~~
  - ~~i. All membership interests have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivision b of subsection 5 of section 10-32-56The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members as provided in section 10-32-40.1;~~
  - ~~j. The value of previous contributions must be restated when a new contribution is accepted as provided in subsections 3 and 4 of section 10-32-57The affirmative vote of the greater of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting or a majority of the voting power of the membership interests with voting rights constituting the minimum voting power needed for a quorum for the transaction of business is required for an action of the members, except when this chapter requires the affirmative vote of:
    - ~~(1) A plurality of the votes cast as provided in subsection 1 of section 10-32-76; or~~
    - ~~(2) A majority of the voting power of all membership interests entitled to vote as provided in subsection 1 of section 10-32-42;~~~~
  - ~~k. A member has certain preemptive rights, unless otherwise provided by the board as provided in section 10-32-37A written action by the members may be taken without a meeting as provided in section 10-32-43;~~
  - ~~l. The affirmative vote of the greater of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting or a majority of the voting power of the membership interests with voting rights constituting the minimum voting power needed for a quorum for the transaction of business is required for an action of the members, except when this chapter requires the affirmative vote of:
    - ~~(1) A plurality of the votes cast as provided in subsection 1 of section 10-32-76; or~~~~

- (2) ~~A majority of the voting power of all membership interests entitled to vote as provided in subsection 1 of section 10-32-42~~The board may accept contributions, make contribution agreements, and make contribution allowance agreements as provided in subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59;
- m. ~~The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members as provided in section 10-32-40.1~~All membership interests are ordinary membership interests entitled to vote and are of one class with no series as provided in subdivisions a and b of subsection 5 of section 10-32-56;
- n. ~~Members share in distributions in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-60~~All membership interests have equal rights and preferences in all matters as provided in subdivision b of subsection 5 of section 10-32-56;
- o. ~~Members share profits and losses in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-36~~The value of previous contributions must be restated when a new contribution is accepted as provided in subsections 3 and 4 of section 10-32-57;
- p. ~~A written action by the members taken without a meeting must be signed by all members as provided in section 10-32-43~~Members share in distributions in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-60;
- q. ~~Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind as provided in section 10-32-62;~~
- r. ~~A member is not subject to expulsion as provided in subsection 2 of section 10-32-30~~The power to adopt, amend, or repeal the bylaws is vested in the board as provided in subsection 2 of section 10-32-68;
- s. ~~Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32~~A limited liability company must allow cumulative voting for governors as provided in section 10-32-76;
- t. ~~For a limited liability company whose existence begins before July 1, 1999, unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109~~The affirmative vote of the greater of a majority of governors present or a majority of the minimum number of governors constituting a quorum is required for an action of the board as provided in section 10-32-83;
- u. ~~The termination of a person's membership interest has specified consequences as provided in section 10-32-30~~A written action by the board may be taken without a meeting as provided in section 10-32-84; and
- v. ~~Restrictions apply to the assignment of governance rights as provided in section 10-32-32~~For a limited liability company whose existence begins



before July 1, 1999, unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109.

3. The following provisions govern a limited liability company unless modified in the articles of organization, a member-control agreement under section 10-32-50, or in the bylaws:
  - a. ~~Governors serve for an indefinite term that expires at the next regular meeting of members as provided in section 10-32-72~~Regular meetings of members need not be held, unless demanded by a member under certain conditions as provided in section 10-32-38;
  - b. ~~The compensation of governors is fixed by the board as provided in section 10-32-74~~In all instances when a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members as provided in subsection 3 of section 10-32-40;
  - c. ~~A certain method must be used for removal of governors as provided in section 10-32-78~~The board may fix a date up to fifty days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-32-40.1;
  - d. ~~A certain method must be used for filling board vacancies as provided in section 10-32-79~~A quorum at a members' meeting requires a majority of the voting power of the membership interests entitled to vote at the meeting as provided in section 10-32-44;
  - e. ~~If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-32-80~~Members have no right to interim distributions except as provided through the bylaws or an act of the board as provided in section 10-32-61;
  - f. ~~The notice of a board meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-32-80~~The board may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-32-64;
  - g. ~~A majority of the board is a quorum for a board meeting as provided in section 10-32-82~~Governors serve for an indefinite term that expires at the next regular meeting of members as provided in section 10-32-72;
  - h. A committee:
    - (1) Must consist of one or more individuals, who need not be governors, appointed by affirmative vote of a majority of the governors present as provided in subsection 2 of section 10-32-85; and
    - (2) A committee may create one or more subcommittees, each consisting of one or more members of the committees and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-32-85The compensation of governors is fixed by the board as provided in section 10-32-74;

- i. ~~The board may establish a special litigation committee as provided in section 10-32-85~~Certain methods must be used for removal of governors as provided in sections 10-32-78 and 10-32-78.1;
- j. ~~The president and treasurer have specified duties, until the board determines otherwise as provided in section 10-32-89~~A certain method must be used for filling board vacancies as provided in section 10-32-79;
- k. ~~Managers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-32-95~~If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-32-80;
- l. ~~Regular meetings of members need not be held, unless demanded by a member under certain conditions as provided in section 10-32-38~~The notice of a board meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-32-80;
- m. ~~In all instances when a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members as provided in subsection 2 of section 10-32-40~~A majority of the board is a quorum for a board meeting as provided in section 10-32-82;
- n. ~~For a quorum at a members' meeting, there is required a majority of the voting power of the membership interests entitled to vote at the meeting as provided in section 10-32-44~~The board may establish a special litigation committee as provided in subsection 1 of section 10-32-85;
- o. ~~The board may fix a date up to fifty days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-32-40.1~~A committee:
  - (1) Must consist of one or more individuals, who need not be governors, appointed by the board as provided in subsection 2 of section 10-32-85; and
  - (2) May create one or more subcommittees, each consisting of one or more members of the committees and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-32-85;
- p. ~~Indemnification of certain persons is required as provided in section 10-32-99~~The president and treasurer have specified duties, until the board determines otherwise as provided in section 10-32-89;
- q. ~~The board may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-32-64~~Managers may delegate some or all of their duties and powers, if not prohibited by the board from doing so, as provided in section 10-32-95; and
- r. ~~Members have no right to interim distributions except as provided through the bylaws or an act of the board as provided in section~~

~~10-32-61~~ Indemnification of certain persons is required as provided in section 10-32-99.

4. The provisions in subdivisions ~~ad, e, g, e, pm, and rn~~ may be included in the articles of organization or a member-control agreement under section 10-32-50. The provisions in subdivisions ~~a, b, c, f, h~~ through ~~fl, h, i, j, k, l, m, n, o, p, q,~~ and ~~qr~~ may be included in the articles of organization, in a member-control agreement under section 10-32-50, or, in the bylaws:
  - a. ~~The persons to serve as the first board may be named in the articles of organization as provided in subsection 1 of section 10-32-69~~The date, time, and place of regular member meetings may be fixed as provided in subsection 3 of section 10-32-38;
  - b. ~~A manner for increasing or decreasing the number of governors may be provided as provided in section 10-32-70~~Certain persons may be authorized to call special meetings of members as provided in subsection 1 of section 10-32-39;
  - c. ~~Additional qualifications for governors may be imposed as provided in section 10-32-74~~Notices of member meetings may be required to contain certain information as provided in subsection 3 of section 10-32-40;
  - d. ~~Governors may be classified as provided in section 10-32-75~~Voting rights may be granted to persons who are not members as provided in subsection 6 of section 10-32-40.1;
  - e. ~~The date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-32-80~~A larger than majority vote may be required for member action as provided in section 10-32-42;
  - f. ~~Absent governors may be permitted to give written consent or opposition to a proposal as provided in section 10-32-84~~Limited liability company actions giving rise to dissenters' rights may be designated as provided in subdivision d of subsection 1 of section 10-32-55;
  - g. ~~A larger than majority vote may be required for board action as provided in section 10-32-83~~The persons to serve as the first board may be named as provided in subsection 1 of section 10-32-69;
  - h. ~~Authority to sign and deliver certain records may be delegated to a manager or agent of the limited liability company other than the president as provided in section 10-32-89~~A manner for increasing or decreasing the number of governors may be specified as provided in section 10-32-70;
  - i. ~~Additional managers may be designated as provided in section 10-32-88~~Additional qualifications for governors may be imposed as provided in section 10-32-71;
  - j. ~~Additional powers, rights, duties, and responsibilities may be given to managers as provided in section 10-32-89~~Governors may be classified as provided in section 10-32-75;

- ~~k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-32-94. The date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-32-80;~~
  - ~~l. The date, time, and place of regular member meetings may be fixed as provided in subsection 3 of section 10-32-38. Absent governors may be permitted to give written consent or opposition to a proposal as provided in section 10-32-81;~~
  - ~~m. Certain persons may be authorized to call special meetings of members as provided in subsection 1 of section 10-32-39. A larger than majority vote may be required for board action as provided in section 10-32-83;~~
  - ~~n. Notices of member meetings may be required to contain certain information as provided in subsection 3 of section 10-32-40. The personal liability of a governor to the limited liability company or to the members of the limited liability company for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles as provided in subsection 5 of section 10-32-86;~~
  - ~~o. A larger than majority vote may be required for member action as provided in section 10-32-42. Additional managers may be designated as provided in section 10-32-88;~~
  - ~~p. Voting rights may be granted in or pursuant to the articles of organization to persons who are not members as provided in subsection 3 of section 10-32-40. Authority to sign and deliver certain records may be delegated to a manager or agent of the limited liability company as provided in section 10-32-89;~~
  - ~~q. Limited liability company actions giving rise to dissenters' rights may be designated as provided in subdivision d of subsection 1 of section 10-32-55. Additional powers, rights, duties, and responsibilities may be given to managers as provided in section 10-32-89; and~~
  - ~~r. A governor's personal liability to the limited liability company or the limited liability company's members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles as provided in subsection 4 of section 10-32-86. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-32-94.~~
5. The articles of organization may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the limited liability company.
6. It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by this chapter.
7. Subsection 4 does not limit the right of the board by resolution to take an action the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.
8. Except for provisions included pursuant to subsection 1, any provision of the articles may:

- a. Be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and
- b. Incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the limited liability company, but only if the limited liability company retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

**SECTION 27. AMENDMENT.** Section 10-32-09 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-09. Effective date of organization.**

The limited liability company existence begins upon the issuance of the certificate of organization or at a later date as specified in the articles of organization. A certificate of organization is conclusive evidence that all conditions precedent and required to be performed by the organizers have been performed and that the limited liability company has been organized under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of organization or in a judicial intervention proceeding pursuant to section 10-32-119.

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

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

1. The limited liability company name:
  - a. Must be expressed in letters or characters used in the English language ~~or in any other language expressed in English~~ as those letters or characters appear in the American standard code for information interchange (ASCII) table;
  - b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state;
  - c. May not contain:
    - (1) The word "corporation", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words; or
    - (2) The words "limited" or "company" without association to the words "limited liability company" or the abbreviations of these words as provided in subdivision b;
  - d. May not contain a word or phrase that indicates or implies that the limited liability company:
    - (1) Is organized for a purpose other than:

- (a) A lawful business purpose for which a limited liability company may be organized under this chapter; or
    - (b) For a purpose stated in its articles of organization; or
  - (2) May not be organized under this chapter; and
- e. May not be the same as, or deceptively similar to:
  - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record which complies with subsection 3, of:
    - (a) Another limited liability company;
    - (b) A corporation;
    - (c) A limited partnership;
    - (d) A limited liability partnership; or
    - (e) A limited liability limited partnership;
  - (2) A name, the right of which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; or
  - (4) A trade name registered in the manner provided in chapter 47-25; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
- 2. The secretary of state shall determine whether a limited liability company name is deceptively similar to another name for purposes of this chapter.
- 3. If the secretary of state determines that a limited liability company name is deceptively similar to another name for purposes of this chapter, then the limited liability company name may not be used unless there is filed with the articles:
  - a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
  - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
- 4. This section and section 10-32-11 do not:
  - a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;

- (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
    - (4) Any other rights to the exclusive use of names or symbols.
  - b. Derogate the common law or the principles of equity.
5. A domestic or foreign limited liability company that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the organization whose name is sought to be used:
  - a. Was organized, incorporated, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
6. The use of a name by a limited liability company in violation of this section does not affect or vitiate its limited liability company existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability company from doing business under a name assumed in violation of this section, although its articles of organization may have been filed with the secretary of state and a certificate of organization issued.
7. A limited liability company whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-32-149 may reacquire the right to use that name by refiling articles of organization pursuant to section 10-32-20, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A limited liability company that cannot reacquire the use of its limited liability company name shall adopt a new limited liability company name which complies with the provisions of this section:
  - a. By refiling the articles of organization pursuant to section 10-32-07;
  - b. By amending pursuant to section 10-32-18; or
  - c. By reinstating pursuant to section 10-32-149.

8. Subject to section 10-32-136, this section applies to any foreign limited liability company transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
9. An amendment that only changes the name of the limited liability company may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the members as provided in section 10-32-15.
10. A limited liability company that files its articles of organization with an effective date later than the date of filing as provided in section 10-32-09 shall maintain the right to the name until the effective date.

**SECTION 29. AMENDMENT.** Subsection 1 of section 10-32-40 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in this chapter, notice of all meetings of members must be given to every owner of membership interests entitled to vote, unless:
  - a. The meeting is an adjourned meeting to be held not more than one hundred twenty days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; or
  - b. The following have been mailed by first-class mail to a member at the address in the limited liability company records and returned nondeliverable:
    - (1) Two consecutive ~~annual~~regular meeting notices and notices of any special meetings held during the period between the two ~~annual~~regular meetings; or
    - (2) All payments of distribution sent during a twelve-month period, provided there were at least two sent during the twelve-month period.
  - c. An action or meeting that is taken or held without notice under subdivision b has the same force and effect as if notice was given. If the member delivers a written notice of the member's current address to the limited liability company, the notice requirement is reinstated.

**SECTION 30. AMENDMENT.** Subsection 2 of section 10-32-51 of the North Dakota Century Code is amended and reenacted as follows:

2. A member of a limited liability company has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the limited liability company shall make available within ten days after receipt by a manager of the limited liability company of the written demand, all records referred to in subsection 1. If such documents are maintained at a place outside of this state, then the limited liability company shall make such documents available at its registered office, at its principal executive office within this state, or at such other place as the limited liability company and the member may agree.

**SECTION 31. AMENDMENT.** Section 10-32-68 of the North Dakota Century Code is amended and reenacted as follows:



**10-32-68. Bylaws.**

1. A limited liability company may have bylaws, which may be known as an operating agreement. The bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the limited liability company not inconsistent with section 10-32-69 or any other provision of law or the articles of organization. ~~An act of the board under subsection 2 and of the members under subsection 3 will be considered part of the bylaws only if the act expressly states that it is intended to constitute or revise the bylaws, including:~~
  - a. The number of governors and the qualifications, manner of election, powers, duties, and compensation, if any, of governors;
  - b. The qualifications of members;
  - c. Different classes of membership;
  - d. The manner of admission, withdrawal, suspension, and expulsion of members;
  - e. Property, voting, and other rights and privileges of members;
  - f. The appointment and authority of committees;
  - g. The appointment or election, duties, compensation, and tenure of offices;
  - h. The time, place, and manner of calling, conducting, and giving notice of member, board, and committee meetings, or of conducting mail ballots;
  - i. The making of reports and financial statements to members; or
  - j. The number establishing a quorum for meetings of members and the board.
2. ~~Initial~~ Unless reserved by the articles to members with voting rights, initial bylaws may be adopted pursuant to section 10-32-67 by a majority of the organizers or by the first board pursuant to section 10-32-67. Unless reserved by the articles of organization or a member-control agreement to the members with voting rights, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the members, exercisable in the manner provided in subsection ~~34~~, to adopt, amend, or repeal the bylaws adopted, amended, or repealed by the board.
3. The bylaws may be amended in the manner provided in the articles or bylaws.
  - a. In the absence of such a provision, the following bylaw amendments are subject to approval by the members with voting rights:
    - (1) Fixing a quorum for meetings of members;
    - (2) Prescribing procedures for:
      - (a) Removing governors;
      - (b) Filling vacancies in the board;

(c) Fixing the number of governors or their classifications, qualifications, or terms of office;

(3) Removing or adding members; or

(4) Increasing or decreasing the vote required for member actions.

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

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

2. The contract or transaction described in subsection 1 is not void or voidable if:
- a. The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the limited liability company at the time it was authorized, approved, or ratified;
- b. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the members, whether entitled to vote, and the contract or transaction is approved in good faith by:
- (1) The owners of two-thirds of the voting power of membership interests entitled to vote which are owned by persons other than the interested governor; or
- (2) The unanimous affirmative vote of all members, whether entitled to vote;
- c. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the governors or committee members currently holding office, ~~but~~:
- (1) However, the interested governor is or governors may not vote and are not considered for purposes of a quorum.
- (2) If as a result, the number of remaining governors is not sufficient to reach a quorum, then a quorum for the purpose of considering the contract or transaction is the number of remaining governors or committee members, not counting any vote that the interested

~~governor might otherwise have, and not counted counting the governor in determining the presence of a quorum and shall not vote; or~~

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

**SECTION 33. AMENDMENT.** Section 10-32-88 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-88. Managers.**

A

1. ~~The managers of a~~ limited liability company must ~~consist of one or more~~ be individuals eighteen years of age or more, exercising the functions of the offices, ~~however designated, of and:~~
  - a. ~~Must include a~~ president, ~~a~~ secretary, and ~~a~~ treasurer, ~~however designated; and may have~~
  - b. ~~May include~~ one or more vice presidents ~~and a secretary, however designated, as may be provided in the bylaws. Any other managers, assistant managers, and agents, as necessary, may~~
2. ~~Unless the articles or the bylaws provide that the members with voting rights may elect the officers:~~
  - a. ~~Each officer must~~ be elected ~~or appointed~~ by the board ~~or chosen at the time and in such other the~~ manner as may be provided in the bylaws.
  - b. ~~To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the governors present, and subject to any member-control agreement, the president may appoint one or more managers, other than the treasurer.~~
3. ~~Unless otherwise provided, president shall mean chief executive officer or chief manager and treasurer shall mean chief financial manager.~~

**SECTION 34. AMENDMENT.** Subsection 2 of section 10-32-94 of the North Dakota Century Code is amended and reenacted as follows:

2. With respect to removal:
  - a. Except as otherwise provided in the articles, the bylaws, or a member-control agreement, a manager may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the governors present. ~~The~~
  - b. A manager appointed by the president also may be removed at any time, with or without cause, by the president.
  - c. To the extent authorized in the articles of organization, the bylaws, or a member-control agreement may provide other manners of removing a manager. Removal, or a resolution approved by the affirmative vote of a

majority of the governors present, the president may remove a manager elected or appointed by the board, other than the treasurer.

- d. The articles of organization, the bylaws, or a member-control agreement may provide other manners of removing a manager.
- e. A removal as described in this subsection is without prejudice to any contractual rights of the manager.

**SECTION 35. AMENDMENT.** Subsection 1 of section 10-32-108 of the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company may, by affirmative vote of a majority of the governors present, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, and without member approval:
  - a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;
  - b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or
  - c. Transfer any or all of its property to ~~a corporation~~ an organization all of the ~~shareownership interests~~ of which are owned, directly or indirectly through wholly owned organizations, by a limited liability company.

**SECTION 36. AMENDMENT.** Section 10-32-144 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-144. Foreign limited liability company - Revocation of certificate of authority.**

1. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state if:
  - a. The foreign limited liability company has failed to:
    - (1) Appoint and maintain a registered agent and registered office as provided in chapter 10-01.1; ~~or~~
    - (2) File in the office of the secretary of state any amendment to its application for a certificate of authority as ~~specified~~ provided in section 10-32-140;
    - (3) File in the office of the secretary of state any merger as provided in section 10-32-142; or
    - (4) File in the office of the secretary of state an application for certificate of withdrawal of its authority as provided in section 10-32-143 when the limited liability company's existence has expired or the limited liability company has been dissolved or terminated in the jurisdiction of organization; or

- b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign limited liability company pursuant to this chapter.
2. Except for revocation of the certificate of authority for failure to file the annual report as provided in section 10-32-149, no certificate of authority of a foreign limited liability company may be revoked by the secretary of state unless:
  - a. The secretary has given the foreign limited liability company not less than sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to its principal executive office; and
  - b. During the sixty-day period, the foreign limited liability company has failed to:
    - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;
    - (2) File any amendment; ~~or~~
    - (3) File any merger;
    - (4) File an application for withdrawal; or
    - (5) Correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign limited liability company to transact business in this state ceases. The secretary of state shall issue a notice of revocation and shall mail the notice to the registered agent at the registered office in this state or, if the foreign limited liability company failed to appoint and maintain a registered agent or a registered office in this state, then addressed to the principal executive office of the foreign limited liability company.

**SECTION 37. AMENDMENT.** Section 10-32-150 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-150. Secretary of state - Fees and charges.**

The secretary of state shall charge and collect for:

1. Filing articles of organization and issuing a certificate of organization, one hundred thirty-five dollars.
2. Filing articles of amendment, fifty dollars.
3. Filing ~~articles~~statement of correction, fifty dollars.
4. Filing restated articles of organization, one hundred twenty-five dollars.
5. Filing articles of conversion of a limited liability company, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by

- the governing laws to establish or register a new organization like the organization resulting from the conversion; or
- b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.
  7. Filing articles of merger and issuing a certificate of merger, fifty dollars.
  8. Filing abandonment of merger or exchange, fifty dollars.
  9. Filing an application to reserve a name, ten dollars.
  10. Filing a notice of transfer of a reserved name, ten dollars.
  11. Filing a cancellation of reserved name, ten dollars.
  12. Filing a consent to use of name, ten dollars.
  13. Filing a statement of change of address of registered office or change of registered agent or both, or a statement of change of address of registered office by registered agent, the fee provided in section 10-01.1-03.
  14. Filing a resolution for the establishment of a class or series of membership interests, fifty dollars.
  15. Filing a notice of dissolution, ten dollars.
  16. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
  17. Filing articles of dissolution and termination, twenty dollars.
  18. Filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred thirty-five dollars.
  19. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.
  20. Filing a certificate of fact stating a merger of a foreign limited liability company holding a certificate of authority to transact business in this state, fifty dollars.
  21. Filing a certified statement of conversion of a foreign limited liability company, fifty dollars.
  22. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.
  23. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars.

- a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) After the date provided in subsection 3 of section 10-32-149, fifty dollars; and
    - (2) After the termination of the limited liability company, or the revocation of the certificate of authority of a foreign limited liability company, the reinstatement fee of one hundred ~~twenty five~~thirty-five dollars.
  - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-32-149, or the annual report lacks sufficient payment as required by this subsection.
24. Filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.
  25. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
  26. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.
  27. Furnishing a copy of any record, or paper relating to a limited liability company or a foreign limited liability company:
    - a. The fee provided in section 54-09-04 for copying a record; and
    - b. Five dollars for a search of records.
  28. Furnishing a certificate of good standing, existence, or authorization:
    - a. Fifteen dollars; and
    - b. Five dollars for a search of records.

**SECTION 38. AMENDMENT.** Subsection 5 of section 10-32-152 of the North Dakota Century Code is amended and reenacted as follows:

5. If the court order sought is one for reinstatement of a limited liability company that has been dissolved as provided in subsection 5 of section 10-32-149, or for reinstatement of the certificate of authority of a foreign limited liability company that has been revoked as provided in subsection 6 of section 10-32-149, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the limited liability company or foreign limited liability company to:
  - a. File the most recent past-due annual report;
  - b. Pay the fees to the secretary of state for all past-due annual reports as provided in subsection ~~2623~~ of section 10-32-150; and
  - c. Pay the reinstatement fee to the secretary of state as provided in subsection ~~2623~~ of section 10-32-150.

**SECTION 39. AMENDMENT.** Section 10-32-153 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-153. Secretary of state - Certificates and certified copies to be received in evidence.**

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts therein stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability companies which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated therein.
3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

**SECTION 40. AMENDMENT.** Subsection 27 of section 10-33-01 of the North Dakota Century Code is amended and reenacted as follows:

27. "Officer" means an individual who is ~~more than~~ eighteen years of age or more and who is:
  - a. Elected, appointed, or otherwise designated as ~~a~~the president, the treasurer and the secretary, however designated, or any other officer by the board or the members pursuant to section 10-33-49; or
  - b. ~~Considered~~Deemed elected as an officer pursuant to section 10-33-52.

**SECTION 41. AMENDMENT.** Subsections 3 and 4 of section 10-33-06 of the North Dakota Century Code are amended and reenacted as follows:

3. The following provisions govern a corporation unless modified either in the articles or bylaws:
  - a. A certain method must be used for amending the articles as provided in section 10-33-15;
  - b. Certain procedures apply to the adoption, amendment, or repeal of bylaws by the members as provided in section 10-33-26;
  - c. A director holds office for an indefinite term that expires upon the election of a successor as provided in section 10-33-30;
  - d. The term of a director filling a vacancy expires at the end of the term the director is filling as provided in section 10-33-30;
  - e. The compensation of directors is fixed by the board as provided in section 10-33-32;



- f. The method provided in section 10-33-36 or 10-33-37 must be used for removal of directors;
- g. The method provided in section 10-33-38 must be used for filling board vacancies;
- h. Board meetings must be held at least once per year and if the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-33-39;
- i. A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-33-39;
- j. A majority of the board is a quorum as provided in section 10-33-41;
- k. The affirmative vote of the majority of directors present is required for board action as provided in section 10-33-42;
- l. A committee:
  - (1) Must consist of one or more persons, who need not be directors, appointed by the board as provided in section 10-33-44; and
  - (2) May create one or more subcommittees, each consisting of one or more members of the committee and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-33-44;
- m. Unless the articles or bylaws or a resolution adopted by the board, and not inconsistent with the articles or bylaws, provides otherwise, the officers shall have the duties provided in section 10-33-50;
- n. The method provided in section 10-33-54 must be used for removal of officers;
- o. If not prohibited by the board from doing so, officers may delegate some or all of their duties and powers as provided in section 10-33-55;
- p. A corporation does not have members as provided in section 10-33-57;
- q. The board may determine the consideration required to admit members as provided in section 10-33-57;
- r. All members are entitled to vote and have equal rights and preferences in matters as provided in section 10-33-57;
- s. Memberships are nontransferable except as provided in section 10-33-59;
- t. A corporation with voting members must hold a regular meeting of voting members annually as provided in section 10-33-65;
- u. If a specific minimum notice period has not been fixed by law, then at least five days' notice is required for a meeting of members as provided in section 10-33-68;

- v. The board may fix a date up to fifty days before the date of a members' meeting as the date for determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-33-68;
  - w. Each member with voting rights has one vote as provided in section 10-33-71;
  - x. The affirmative vote of the majority of members with voting rights present and entitled to vote is required for action of the members, unless this chapter or the articles or bylaws require a greater vote or voting by class as provided in section 10-33-72;
  - y. Members with voting rights may take action at a meeting by voice or ballot, by unanimous action without a meeting, by mailed ballot, or by electronic communication as provided in section 10-33-72;
  - z. The number of members required for a quorum is ten percent of the members entitled to vote as provided in section 10-33-76;
  - aa. The procedures provided in section 10-33-78 govern acceptance of member acts; and
  - bb. Indemnification of certain persons is required as provided in section 10-33-84.
4. The following provisions relating to the management or regulation of the affairs of a corporation may be included in the articles or, except for naming members of the first board, in the bylaws:
- a. The first board of directors may be named in the articles as provided in section 10-33-25;
  - b. Additional qualifications for directors may be imposed as provided in section 10-33-29;
  - c. Terms of directors may be staggered as provided in section 10-33-30;
  - d. The date, time, and place of board meetings may be fixed as provided in section 10-33-39;
  - e. Additional officers may be designated as provided in section 10-33-49;
  - f. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-33-50;
  - g. A method for filling vacant offices may be specified as provided in section 10-33-54;
  - h. Membership criteria and procedures for admission may be established as provided in section 10-33-57;
  - i. Membership terms may be fixed as provided in section 10-33-57;
  - j. A corporation may issue membership certificates or preferred or common shares as the board deems appropriate as provided in section 10-33-58;

- k. A corporation may levy dues, assessments, or fees on members as provided in section 10-33-60;
- l. A corporation may buy memberships as provided in section 10-33-63;
- m. A corporation may have delegates with some or all the authority of members as provided in section 10-33-64;
- n. The date, time, and place of regular member meetings or the place of special meetings may be fixed as provided in section 10-33-65;
- o. Certain persons may be authorized to call special meetings of members as provided in section 10-33-66;
- p. Notices of special member meetings may be required to contain certain information as provided in section 10-33-68;
- q. A larger than majority vote may be required for member action as provided in section 10-33-72;
- r. Members with voting rights may vote by proxy as provided in section 10-33-77; and
- s. Members with voting rights may enter into voting agreements as provided in section 10-33-79.

**SECTION 42. AMENDMENT.** Section 10-33-10 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The corporate name:
  - a. Must be in letters or characters used in the English language or in any other language expressed in English as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. Need not contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
  - c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
  - d. May not contain a word or phrase that indicates or implies that the corporation:
    - (1) Is incorporated for a purpose other than:
      - (a) A lawful nonprofit purpose for which a corporation may be incorporated under this chapter; or
      - (b) For a purpose stated in its articles; or
    - (2) May not be incorporated under this chapter.

- e. May not be the same as or deceptively similar to:
- (1) The name, whether foreign and authorized to conduct activities in this state or domestic unless there is filed with the articles a record that complies with subsection 2, of:
    - (a) Another corporation;
    - (b) A corporation incorporated or authorized to do business in this state under another provision of this code;
    - (c) A limited liability company;
    - (d) A limited partnership;
    - (e) A limited liability partnership; or
    - (f) A limited liability limited partnership;
  - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; ~~or~~
  - (4) A trade name registered in the manner provided in chapter 47-25; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
  3. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:
    - a. The written consent of the holder of the rights to the name the proposed name is determined to be deceptively similar to; or
    - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
  4. Subsection 3 does not affect the right of a corporation existing on August 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
  5. This section and section 10-33-11 do not:
    - a. Abrogate or limit:
      - (1) The law of unfair competition or unfair practices;
      - (2) Chapter 47-25;

- (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, or service marks; or
    - (4) Any other rights to the exclusive use of names or symbols; or
  - b. Derogate the common law or the principles of equity.
6. A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
  - a. Was incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to conduct activities or transact business in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from conducting activities under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.
8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-33-139 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-33-08 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A corporation that cannot reacquire the use of its corporate name must adopt a new corporate name that complies with the provisions of this section:
  - a. By refiling articles of incorporation pursuant to section 10-33-08;
  - b. By amending pursuant to section 10-33-14; or
  - c. By reinstating pursuant to section 10-33-139.

9. Subject to section 10-33-126, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the members as provided in section 10-33-15.
11. A corporation that files its articles of incorporation with an effective date later than the date of filing as provided in section 10-33-09 shall maintain the right to the name until the effective date.

**SECTION 43. AMENDMENT.** Subsections 1, 2, and 3 of section 10-33-15 of the North Dakota Century Code are amended and reenacted as follows:

1. A majority of incorporators may amend the articles by written action if no directors are named in the original articles, if no directors have been elected, and if there are no members with voting rights. A majority of directors may amend the articles if there are no members with voting rights, if members with voting rights have authorized the board to amend the articles under subsection 3, or if the amendment merely restates the existing articles, as amended. Notice of the meeting and of the proposed amendment must be given to the board. An amendment restating the existing articles may, but need not, be submitted to and approved by the members with voting rights as provided in subsection 2.
2. Amendments to the articles must be approved by the affirmative vote of a majority of ~~the~~all directors and by the members with voting rights. If an amendment is initiated by the directors, proper notice of the proposed amendment must precede a ~~member~~ meeting of the members with voting rights at which the amendment will be considered and must include the substance of the proposed amendment. If an amendment is proposed and approved by the members with voting rights, ~~the~~those members may demand a special board meeting within fifty days for consideration of the proposed amendment if a regular board meeting would not occur within fifty days.
3.
  - a. The members with voting rights may authorize the board of directors, subject to subdivision c, to exercise from time to time the power of amendment of the articles without ~~member~~ approval of the members with voting rights.
  - b. When the members with voting rights have authorized the board of directors to amend the articles, the board of directors, by the affirmative vote of a majority ~~vote of all directors~~, unless the articles, bylaws, or the members' resolution authorizing the board action requires a greater vote, may amend the articles at a meeting of the board. Notice of the meeting and of the proposed amendment must be given to the board.
  - c. The members with voting rights ~~voting at a meeting duly called for the purpose~~ may prospectively revoke the authority of the board to exercise the power of the members to amend the articles at a meeting called for that purpose.

**SECTION 44. AMENDMENT.** Section 10-33-26 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-26. Bylaws.**

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management or regulation of the affairs of the corporation consistent with law or the articles, including:
  - a. The number of directors, and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;
  - b. The qualifications of members;
  - c. Different classes of membership;
  - d. The manner of admission, withdrawal, suspension, and expulsion of members;
  - e. Property, voting, and other rights and privileges of members;
  - f. The appointment and authority of committees;
  - g. The appointment or election, duties, compensation, and tenure of officers;
  - h. The time, place, and manner of calling, conducting, and giving notice of member, board, and committee meetings, or of conducting mail ballots;
  - i. The making of reports and financial statements to members; or
  - j. The number establishing a quorum for meetings of members and the board.
2. ~~Initial~~Unless reserved by the articles to members with voting rights, initial bylaws may be adopted by a majority of the incorporators or by the first board pursuant to section 10-33-25. Unless reserved by the articles to the members with voting rights, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the members with voting rights exercisable in the manner provided in subsection 3 to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws and if there are members with voting rights, the board may not adopt, amend, or repeal a bylaw fixing
3. The bylaws may be amended in the manner provided in the articles or bylaws.
  - a. In the absence of such a provision, the following bylaws amendments are subject to approval by the members with voting rights:
    - (1) Fixing a quorum for meetings of members, ~~prescribing~~;
    - (2) Prescribing procedures for ~~removing~~:
      - (a) Removing directors ~~or filling~~;
      - (b) Filling vacancies in the board, ~~or fixing~~; and
      - (c) Fixing the number of directors or their classifications, qualifications, or terms of office, ~~but may adopt or amend a bylaw to increase the number of directors. A bylaw amendment to increase or decrease~~

~~the vote required for a member action must be approved by the members.;~~

(3) Removing or adding members; or

(4) Increasing or decreasing the vote required for member action.

b. The board may adopt or amend a bylaw provision to increase the number of directors with the approval of the members with voting rights.

~~3-4.~~ Unless the articles or bylaws provide otherwise, at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, may propose a resolution for action by the members to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board.

a. The resolution must contain the provisions proposed for adoption, amendment, or repeal.

b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in section 10-33-15, for amendment of the articles, except that board approval is not required.

~~e. The articles or bylaws may impose different or additional requirements for the members to adopt, amend, or repeal the bylaws.~~

**SECTION 45. AMENDMENT.** Section 10-33-28 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-28. Number of directors.**

With respect to the number of directors:

1. The board must consist of three or more directors, with the number specified in or fixed in accordance with the articles or bylaws. However, if the corporation has either one or two members with voting rights, the number of directors may be less than three but not less than the number of members with voting rights.

2. The number of directors may be increased or, subject to sections 10-33-36 and 10-33-37, decreased at any time by amendment to or in the manner provided in the articles or bylaws.

3. Notwithstanding section 10-33-38, if the power to elect or appoint directors is vested in the board of directors and if the number of directors falls below three, or such greater minimum number set forth in the articles or bylaws, then a majority of the directors in office may appoint or elect the number of additional directors necessary to increase the board to three directors or such greater minimum set forth in the articles or bylaws.

**SECTION 46. AMENDMENT.** Subsection 2 of section 10-33-38 of the North Dakota Century Code is amended and reenacted as follows:

2. If a vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members with voting rights of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy.



**SECTION 47. AMENDMENT.** Section 10-33-39 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-39. Board meetings.**

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2.
  - a. Unless the articles or bylaws provide otherwise, a meeting of the board must be held at least once per year.
  - b. If the articles, bylaws, or board fails to select a place or method for selecting a place for a meeting, the meeting must be held at the principal executive office.
  - c. ~~The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.~~
  - d. Participation in a meeting by a means set forth in subsection 2 constitutes presence in person at the meeting.
2. Any meeting among directors may be conducted:
  - a. Solely by one or more means of remote communication through which all of the directors may participate in the meeting:
    - (1) If the notice required by subsection 3 is given for the meeting; and
    - (2) If the number of directors participating in the meeting is sufficient to constitute a quorum at a meeting.
  - b. By means of conference telephone or, if authorized by the board, by such other means of remote communication, in each case through which that director, other directors so participating, and all directors physically present at the meeting participate with each other during the meeting.
3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to subsection 2 of section 10-33-25, at least three days' notice, to all directors of the date, time, and place of the meeting.
  - a. The notice must contain the substance of any proposed amendment to the articles but otherwise need not state the purpose of the meeting unless the articles or bylaws require it.
  - b. Any notice to a director given under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the director to whom the notice is given is effective when given.
  - c. Consent by a director to notice given by electronic communication may be given in writing or by authenticated electronic communication. Any consent so given may be relied upon until revoked by the director, provided that no revocation affects the validity of any notice given before receipt of revocation of the consent.

4. If the date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.
5. A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, by authenticated electronic communication, or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except when the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

**SECTION 48. AMENDMENT.** Section 10-33-43 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-43. Action without meeting by directors.**

1. An action required or permitted to be taken at a board meeting may be taken by written action signed, or consented to by authenticated electronic communication, by all of the directors. If the articles so provide, any action, other than an action requiring ~~member~~ approval of members with voting rights, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.
2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required number of directors, unless a different effective time is provided in the written action.
3. When written action is permitted to be taken by less than all directors, all directors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken thereby.

**SECTION 49. AMENDMENT.** Subsection 2 of section 10-33-44 of the North Dakota Century Code is amended and reenacted as follows:

2. Committee members must be individuals. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee must consist of one or more persons, who need not be directors, appointed by the ~~board~~ affirmative vote of a majority of the directors present.

**SECTION 50. AMENDMENT.** Subsection 2 of section 10-33-46 of the North Dakota Century Code is amended and reenacted as follows:

2. A contract or transaction described in subsection 1 is not void or voidable if:
  - a. The contract or transaction was, and the person asserting the validity of the contract or transaction has the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation when it was authorized, approved, or ratified;

- b. The material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by two-thirds of the members entitled to vote, not counting any vote that the interested director might otherwise have, or the unanimous affirmative vote of all members, whether or not entitled to vote;
- c. The material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of directors or committee members currently holding office. However, the interested director or directors may not vote and are not considered for purposes of a quorum. If as a result the number of remaining directors is not sufficient to reach a quorum, then a quorum for the purpose of considering the contract or transaction is the number of remaining directors or committee members, not counting any vote that the interested director might otherwise have, and not counting the director in determining the presence of a quorum; or
- d. The contract or transaction is a merger or consolidation described in section 10-33-85.

**SECTION 51. AMENDMENT.** Section 10-33-49 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-49. Officers.**

1. The officers of a corporation must be individuals who are eighteen years of age or more ~~and must include~~ exercising the functions of the offices and:
  - a. Must include a president and a secretary. ~~The officers of the corporation may, however designated; and~~
  - b. May also include a treasurer, one or more vice presidents, and any other officers ~~or agents as, however designated, as~~ may be prescribed by the bylaws. ~~Each officer must be elected by the board at the time and in the manner as may be provided in the bylaws unless the articles or bylaws provide the members may elect the officers.~~
2. Unless the articles or the bylaws provide that the members with voting rights may elect the officers:
  - a. Each officer must be elected by the board at the time and in the manner as may be provided in the bylaws; or
  - b. To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the directors present, the president may appoint one or more officers, other than the treasurer.
3. Unless otherwise provided, president shall mean chief executive officer and treasurer shall mean chief financial officer.

**SECTION 52. AMENDMENT.** Section 10-33-51 of the North Dakota Century Code is amended and reenacted as follows:

### 10-33-51. Multiple offices.

~~Any~~Unless the articles or bylaws provide otherwise, any number of offices or functions of those offices may be held or exercised by the same individual. If a record must be signed by individuals holding different offices or functions and an individual holds or exercises more than one of those offices or functions, that individual may sign the record in more than one capacity, but only if the record indicates each capacity in which the individual signs.

**SECTION 53. AMENDMENT.** Section 10-33-52 of the North Dakota Century Code is amended and reenacted as follows:

### 10-33-52. Officers deemed elected.

In the absence of an election or appointment of officers by the board or the members with voting rights, the individual or individuals exercising the functions of the principal officers of the corporation are deemed to have been elected to those offices.

**SECTION 54. AMENDMENT.** Subsection 2 of section 10-33-54 of the North Dakota Century Code is amended and reenacted as follows:

#### 2. With respect to removal:

- a. Except as otherwise provided in the articles or bylaws, an officer may be removed at any time, with or without cause, by a resolution adopted by the board or by the members with voting rights, whichever elected or appointed the officer. ~~The~~
- b. An officer appointed by the president may also be removed at any time, with or without cause, by the president.
- c. To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the directors present, the president of a corporation may remove an officer elected or appointed by the board, other than the treasurer.
- d. The articles or the bylaws may provide other manners of removing an officer.
- e. A removal as described in this subsection is without prejudice to any contractual rights of the officer.

**SECTION 55. AMENDMENT.** Subsection 11 of section 10-33-84 of the North Dakota Century Code is amended and reenacted as follows:

11. ~~This~~Nothing in this section does not shall be construed to limit the power of the corporation to indemnify persons other than a director, an officer, an employee, or a member of a committee of the board by contract or otherwise.

**SECTION 56. AMENDMENT.** Subsection 2 of section 10-33-87 of the North Dakota Century Code is amended and reenacted as follows:

2. If a constituent corporation has members with voting rights with respect to mergers and consolidations as required by section 10-33-42, the board of directors of the corporation shall adopt a resolution by the affirmative vote of a majority ~~vote~~ of all directors approving a proposed plan of merger or

consolidation and directing that the plan be submitted to a vote at a meeting of the members with voting rights. Notice of the meeting must be given to ~~the member~~each member with voting rights, accompanied by a copy or summary of the proposed plan. Unless the articles or bylaws require a greater vote, the plan of merger or consolidation is adopted upon receiving the affirmative vote of a majority of the members ~~who vote upon the proposed plan with voting rights~~voting on the action.

**SECTION 57. AMENDMENT.** Section 10-33-94 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-94. Transfer of assets - When permitted.**

1. A corporation may sell, lease, transfer, dispose of, or grant a security interest in all or substantially all of the property and assets only as provided in this section.
2. Unless otherwise provided in its articles or bylaws, a corporation, by affirmative vote of ~~the board~~a majority of directors, may sell, lease, transfer, or dispose of all or substantially all of its property and assets in the usual and regular course of its activities ~~and, subject to subsection 1 of section 10-33-82, grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its activities~~, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, ~~in which case no member approval is required.~~Member approval is not required under this subsection.
- 2-3. A corporation, by affirmative vote of ~~the board~~a majority of all directors, may sell, lease, transfer, or dispose of all or substantially all of its property and assets, including its goodwill, not in the usual and regular course of its activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, ~~when approved at a regular or special meeting of the members by the affirmative vote of the majority of the members with voting rights.~~
  - a. If there are members with voting rights, then the sale, lease, transfer, or disposition must be submitted to the members under subdivision c. If there are not members with voting rights, then member approval is not required.
  - b. ~~Notice~~Written notice of the meeting must be given to ~~the member~~each member with voting rights within the time and in the manner provided in section 10-33-68 for notice of meetings of members.
  - c. ~~The~~Whether the meeting is an annual or special meeting, the notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation. The sale, lease, transfer, or disposition must be approved at a regular or special meeting of the members by the affirmative vote of the majority of the members with voting rights voting on the action.
  - d. Unless otherwise provided in its articles or bylaws and subject to subsection 1 of section 10-33-82, a corporation may, by the affirmative vote of a majority of directors, grant a security interest in all or substantially all of its property and assets whether in the usual and regular course of its

activities, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property as the board considers expedient. Member approval is not required under this subsection.

- ~~3-4.~~ If applicable, a corporation shall comply with sections 10-33-122 and 10-33-144 before selling, leasing, transferring, or disposing of all or substantially all of the corporation's assets under this section.
- 4-5. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.
- 5-6. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

**SECTION 58. AMENDMENT.** Subsection 3 of section 10-33-98 of the North Dakota Century Code is amended and reenacted as follows:

3. With respect to approval by members with voting rights:
- a. Written notice:
- (1) Must be given to each member with voting rights, within the time and in the manner provided in section 10-33-68 for notice of meetings of members; and
- (2) Whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the corporation.
- b. The proposed dissolution must be submitted for approval at a meeting of members. If the proposed dissolution is approved by the members with voting rights, the dissolution must be started.

**SECTION 59. AMENDMENT.** Section 10-33-134 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-134. Foreign corporation - Revocation of certificate of authority.**

1. The certificate of authority of a foreign corporation to conduct activities in this state may be revoked by the secretary of state if:
- a. The foreign corporation has failed to:
- (1) Appoint and maintain a registered agent and registered office as provided in chapter 10-01.1; ~~or~~
- (2) File in the office of the secretary of state any amendment to its application for a certificate of authority as specified provided in section 10-33-130;
- (3) File in the office of the secretary of state any merger as provided in section 10-33-132; or

- (4) File in the office of the secretary of state an application for certificate of withdrawal of its authority as provided in section 10-33-133 when the corporation's existence has expired or the corporation has been dissolved in the jurisdiction of incorporation; or
- b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign corporation pursuant to this chapter.
2. Except revocation of the certificate of authority for failure to file the annual report as provided in section 10-33-139, no certificate of authority of a foreign corporation may be revoked by the secretary of state unless:
    - a. The secretary of state has given the foreign corporation not less than sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign corporation fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
    - b. During the sixty-day period, the foreign corporation has failed to:
      - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;
      - (2) File any amendment; or
      - (3) Correct the misrepresentation.
  3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign corporation to conduct activities in this state ceases. The secretary of state shall issue a notice of revocation and shall mail the notice to the registered agent at the registered office in this state or, if the foreign corporation failed to appoint and maintain a registered agent or a registered office in this state, then addressed to the principal executive office of the foreign corporation.

**SECTION 60. AMENDMENT.** Subsection 1 of section 10-33-140 of the North Dakota Century Code is amended and reenacted as follows:

1. The secretary of state shall charge and collect for:
  - a. Filing articles of incorporation and issuing a certificate of incorporation, forty dollars.
  - b. Filing articles of amendment, twenty dollars.
  - c. Filing ~~articles~~statement of correction, twenty dollars.
  - d. Filing restated articles of incorporation, thirty dollars.
  - e. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
  - f. Filing an intent to dissolve, ten dollars.
  - g. Filing articles of dissolution, twenty dollars.

- h. Filing a statement of change of address of registered office or change of registered agent, or both, the fee provided in section 10-01.1-03.
- i. Filing an application to reserve a corporate name, ten dollars.
- j. Filing a notice of transfer of a reserved corporate name, ten dollars.
- k. Filing a cancellation of reserved corporate name, ten dollars.
- l. Filing a consent to use of a deceptively similar name, ten dollars.
- m. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, fifty dollars.
- n. Filing an application of a foreign corporation for an amended certificate of authority, forty dollars.
- o. Filing a certified statement of merger of a foreign corporation holding a certificate of authority to conduct activities in this state, fifty dollars.
- p. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
- q. Filing an annual report of a domestic or foreign corporation, ten dollars.
  - (1) The secretary of state shall charge and collect additional fees for late filing of the annual report:
    - (a) After the date provided in subsection 3 of section 10-33-139, five dollars; and
    - (b) After the dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of forty dollars.
  - (2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-33-139, or the annual report lacks sufficient payment as required by this subdivision.
- r. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this subsection for filing the record.
- s. Filing any other statement of a domestic or foreign corporation, ten dollars.

**SECTION 61. AMENDMENT.** Section 10-33-142 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-142. Secretary of state - Evidence.**

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the facts stated.



2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing records or certificates, ~~must~~may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated.
3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

**SECTION 62. AMENDMENT.** Section 10-35-33 of the North Dakota Century Code is amended and reenacted as follows:

**10-35-33. Funds received.**

~~Ten~~Twenty percent of the fees received by the secretary of state for filing records of a publicly traded corporation as provided for in section 10-19.1-147 or this chapter must be deposited in the secretary of state's general services operating fund to pay the cost to administer this chapter.

**SECTION 63. AMENDMENT.** Section 45-10.2-10 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-10. Limited partnership name.**

1. The name of each limited partnership as set forth in the certificate of limited partnership:
  - a. ~~Must be expressed in letters or characters used in the English language or in another language expressed in English as those letters or characters appear in the American standard code for information interchange (ASCII) table.~~
  - b. Must contain without abbreviation the words "limited partnership" or the abbreviation "L.P." or "LP", either of which abbreviations may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state.
  - c. May contain the name of any partner.
  - d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
  - e. May not contain a word or phrase that indicates or implies that the limited partnership:
    - (1) Is organized for a purpose other than:
      - (a) A lawful purpose for which a limited partnership may be organized under this chapter; or
      - (b) For a purpose stated in its certificate of limited partnership; or
    - (2) May not be organized under this chapter.

- f. May not be the same as or deceptively similar to:
- (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the certificate of limited partnership a record in compliance with subsection 3, of:
    - (a) Another limited partnership;
    - (b) A corporation;
    - (c) A limited liability company;
    - (d) A limited liability partnership; or
    - (e) A limited liability limited partnership;
  - (2) A name the right to which is, at the time of the filing of the certificate of limited partnership, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; or
  - (4) A trade name registered in the manner provided in chapter 47-25; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a limited partnership name is deceptively similar to another name for purposes of this chapter.
  3. If the secretary of state determines a limited partnership name is deceptively similar to another name for purposes of this chapter, then the limited partnership name may not be used unless there is filed with the articles:
    - a. The written consent of the holder of the registered trade name or the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
    - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
  4. Subsection 3 does not affect the right of a limited partnership existing on the effective date of this chapter, or a foreign limited partnership authorized to do business in this state on that date, to continue the use of its name.
  5. This section and section 45-10.2-11 do not:
    - a. Abrogate or limit:
      - (1) The law of unfair competition or unfair practices;
      - (2) Chapter 47-25;
      - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or

- (4) Any other right to the exclusive use of names or symbols; or
- b. Derogate the common law or the principles of equity.
6. A limited partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may include in its name, subject to the requirements of subsection 1, the name of any of the organizations, if the other organization whose name is sought to be used:
- a. Was incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; ~~or~~
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
7. The use of a name by a limited partnership in violation of this section does not affect or vitiate its limited partnership existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited partnership from doing business under a name assumed in violation of this section, although its certificate of limited partnership may have been filed with the secretary of state.
8. A limited partnership whose period of existence has expired or that is involuntarily dissolved by the secretary of state as provided in section 45-10.2-108 may reacquire the right to use that name by refiling a certificate of limited partnership pursuant to section 45-10.2-23 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3. A limited partnership that cannot reacquire the use of its limited partnership name shall adopt a new limited partnership name that complies with this section by refiling a certificate of limited partnership as provided in section 45-10.2-23; by amending its certificate of limited partnership as provided in section 45-10.2-24; or by reinstating the limited partnership pursuant to section 45-10.2-108. If the new limited partnership name has been adopted for use or reserved by another person, the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3.
9. Subject to section 45-10.2-78, this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

10. A limited partnership that files its certificate of limited partnership with an effective date later than the date of filing as provided in subsection 3 of section 45-10.2-27 shall maintain the right to the name until the effective date.

**SECTION 64. AMENDMENT.** Section 45-10.2-85 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-85. Foreign limited partnership - Cancellation of certificate of authority - Effect of failure to have certificate.**

1. In order to cancel its certificate of authority to transact business in this state, a foreign limited partnership must deliver to the secretary of state for filing a:
  - a. A certified notice of cancellation duly authenticated by the proper officer of the state or country where the cancellation was effected;
  - b. A certified statement of dissolution duly authenticated by the proper officer of the state or country where the dissolution was effected; or
  - c. A statement of withdrawal signed by a general partner.

The certificate is canceled when the notice of cancellation, statement of dissolution, or statement of withdrawal becomes effective under section 45-10.2-27.

2. A foreign limited partnership transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.
3. The failure of a foreign limited partnership to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this state.
4. A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason that the foreign limited partnership has transacted business in this state without a certificate of authority.
5. If a foreign limited partnership transacts business in this state without a certificate of authority or cancels its certificate of authority, then it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state.
6. A foreign limited partnership that transacts business in this state without a certificate of authority is liable to the state for the years or parts of years during which the foreign limited partnership transacted business in this state without the certificate of authority in an amount equal to all fees that would have been imposed by this chapter upon that foreign limited partnership had the foreign limited partnership duly obtained a certificate of authority, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under this section.
7. A foreign limited partnership that transacts business in this state without a certificate of authority is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each general partner and each agent who

authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited partnership that has not obtained a certificate of authority is subject to a civil penalty, payable to the state, not to exceed one thousand dollars.

8. The civil penalties set forth in subsection 7 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign limited partnership or any of the general partners or agents of the foreign limited partnership have transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign limited partnership and further exercise of any rights and privileges by the foreign limited partnership in this state. The foreign limited partnership must be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign limited partnership has otherwise complied with the provisions of this chapter.

**SECTION 65. AMENDMENT.** Section 45-10.2-87 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-87. Foreign limited partnership - Revocation of certificate of authority.**

1. The certificate of authority of a foreign limited partnership to transact business in this state may be revoked by the secretary of state if:
  - a. The foreign limited partnership has failed to:
    - (1) Appoint and maintain a registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state;
    - (2) Maintain the registration of a general partner as required in section 45-10.2-16;
    - (3) File a report upon any change in the address of its principal executive office; or
    - (4) File in the office of the secretary of state any amendment to its application for certificate of authority as ~~specified~~provided in section 45-10.2-81;
    - (5) File in the office of the secretary of state any merger as provided in section 45-10.2-83; or
    - (6) File in the office of the secretary of state a cancellation as provided in section 45-10.2-85 when the limited partnership's existence has expired or the limited partnership has dissolved or ceased to exist in the jurisdiction of organization; or
  - b. A misrepresentation has been made of any material matter in an application, report, affidavit, or other record submitted by the foreign limited partnership pursuant to this chapter.

2. Except for revocation of the certificate of authority for failure to file the annual report as provided in section 45-10.1-108, no certificate of authority may be revoked by the secretary of state unless:
  - a. The secretary has given the foreign limited partnership at least sixty days' notice by mail addressed to its registered agent at the registered office in this state or if the foreign limited partnership fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
  - b. During the sixty-day period, the foreign limited partnership has failed to file:
    - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent; ~~to~~
    - (2) To register a general partner as required by section 45-10.2-16; ~~to~~
    - (3) To file any amendment, merger, or cancellation; or ~~to~~
    - (4) To correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice:
  - a. The authority of the foreign limited partnership to transact business in this state ceases; and
  - b. The secretary of state shall issue a notice of revocation and shall mail the notice to the registered office of the foreign limited partnership, or if the foreign limited partnership has failed to maintain a registered office, then to its principal executive office.

**SECTION 66. AMENDMENT.** Subsection 15 of section 45-10.2-109 of the North Dakota Century Code is amended and reenacted as follows:

15. Filing a certificate of authority of foreign limited partnership, one hundred ten dollars.

**SECTION 67. AMENDMENT.** Section 45-10.2-112 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-112. Secretary of state - Certificates and certified copies to be received in evidence.**

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

3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

**SECTION 68.** Section 45-21-04.3 of the North Dakota Century Code is created and enacted as follows:

**45-21-04.3. Foreign partnership - Conversion of foreign partnership authorized to transact business in this state.**

If a foreign partnership transacting business in this state converts to another organization permitted by its governing statute, and the converted organization will continue to transact business in this state, within thirty days after the conversion becomes effective, the newly created organization resulting from the conversion shall:

1. File with the secretary of state a certified statement of conversion duly authenticated by the proper officer of the jurisdiction in which the statutory conversion was effected; and
2. Shall obtain a certificate of authority or applicable registration in accordance with the North Dakota governing statute applicable to the converted organization.

**SECTION 69. AMENDMENT.** Subsection 3 of section 45-22-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A registration, signed by a managing partner, must contain:
  - a. With respect to a domestic limited liability partnership:
    - (1) The name of the domestic limited liability partnership.
    - (2) The nature of the business to be transacted in this state.
    - (3) A statement indicating whether the limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching.
    - (4) The address of the principal executive office of the domestic limited liability partnership.
    - (5) The name of the registered agent of the domestic limited liability partnership as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that noncommercial registered agent in this state.
    - (6) The name and address of each managing partner and, if the limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching, then the names and addresses of all partners.
    - (7) A statement that the partnership elects to be a limited liability partnership.
    - (8) A deferred effective date, if any.

- b. With respect to a foreign limited liability partnership:
- (1) The name of the foreign limited liability partnership and, if different, the name under which the foreign limited liability partnership proposes to transact business in this state.
  - (2) The jurisdiction of origin.
  - (3) The date on which the foreign limited liability partnership expires in the jurisdiction of origin.
  - (4) The nature of the business to be transacted in this state.
  - (5) A statement indicating whether the foreign limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching.
  - (6) The address of the principal executive office of the foreign limited liability partnership.
  - (7) The name of the registered agent of the foreign limited liability partnership as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that registered agent in this state.
  - (8) The name and address of each managing partner and, if the foreign limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching, then the names and addresses of all partners.
  - (9) An acknowledgment that the status of the foreign limited liability partnership in this state will automatically expire unless the foreign limited liability partnership continuously maintains limited liability partnership status in the jurisdiction of origin.
- c. The registration must be accompanied by payment of the fees provided in section 45-22-22 together with a certificate of good standing or certificate of existence authenticated by the registering officer of the state or country where the foreign limited liability partnership is originally registered ~~and the consent of the designated registered agent for service of process to serve in that capacity.~~

**SECTION 70. AMENDMENT.** Section 45-22-04 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-04. Limited liability partnership - Name.**

1. The name of a limited liability partnership:
  - a. Must be expressed in letters or characters in the English language or in any other language, expressed in English, those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. Must contain the words "limited liability partnership" or the abbreviation "L.L.P." or the abbreviation "LLP", either of which abbreviations may be



- used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state.
- c. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability limited partnership", or any abbreviation of these words.
  - d. May not contain a word or phrase that indicates or that implies that the limited liability partnership:
    - (1) Is formed for a purpose other than:
      - (a) A lawful purpose for which a limited liability partnership may be formed under this chapter; or
      - (b) For a purpose stated in its registration; or
    - (2) May not be formed under this chapter.
  - e. May not be the same as or deceptively similar to:
    - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the registration a record that complies with subsection 3, of:
      - (a) Another limited liability partnership;
      - (b) A corporation;
      - (c) A limited liability company;
      - (d) A limited partnership; or
      - (e) A limited liability limited partnership;
    - (2) A name, the right to which is at the time of registration reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
    - (3) A fictitious name registered in the manner provided in chapter 45-11; ~~or~~
    - (4) A trade name registered in the manner provided in chapter 47-25; or
    - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
  - f. Need not be filed as provided in chapter 45-11 except if transacting business under a name other than the name as registered under this chapter.
2. The secretary of state shall determine whether a name is deceptively similar to another name for purposes of this chapter.
  3. If the secretary of state determines that a limited liability partnership name is deceptively similar to another name for purposes of this chapter, the limited

liability partnership name may not be used unless there is filed with the registration:

- a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
  - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
4. This section and section 45-22-05 do not:
- a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;
    - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
    - (4) Any other rights to the exclusive use of names or symbols.
  - b. Derogate the common law or principles of equity.
5. A limited liability partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought:
- a. Is incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; ~~or~~
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
6. The use of a name by a limited liability partnership in violation of this section does not affect or vitiate the limited liability partnership's status as a limited liability partnership. However, a court of this state may, upon application of the state or of an interested or affected person, enjoin the limited liability partnership from doing business under a name assumed in violation of this section, even though the limited liability partnership's registration may have been filed with the secretary of state.

7. A limited liability partnership whose registration has expired or whose registration has been forfeited as provided in section 45-22-21.1 may reacquire the right to use that name by refiling a registration as provided in section 45-22-03 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3. A limited liability partnership that cannot reacquire the use of its limited liability partnership name shall adopt a new limited liability partnership name that complies with this section:
  - a. By refiling a registration as provided in section 45-22-03;
  - b. By amending its registration as provided in section 45-22-03; or
  - c. By reinstating the limited liability partnership pursuant to section 45-22-21.1, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3.
8. With respect to foreign limited liability partnerships:
  - a. A foreign limited liability partnership may register under any name that would be available to a domestic limited liability partnership, regardless of whether the name is the same under which the foreign limited liability partnership is authorized in the jurisdiction of original registration.
  - b. A fictitious name certificate must be filed as provided in chapter 45-11 only if registering under a name other than the name as authorized in the jurisdiction of original registration.
9. A limited liability partnership that files its registration with an effective date later than the date of filing as provided in subsection 9 of section 45-22-03 shall maintain the right to the name until the effective date.

**SECTION 71. AMENDMENT.** Section 45-22-16 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-16. Revocation of registration.**

1. The registration of a limited liability partnership may be revoked by the secretary of state if:
  - a. The limited liability partnership fails:
    - (1) To appoint and maintain a registered agent and registered office as provided in chapter 10-01.1; ~~or~~
    - (2) To file any amendment to the limited liability partnership's registration required to be filed pursuant to subdivision b or c of subsection 4 of section 45-22-03;
    - (3) Fails to file a merger as required to be filed pursuant to subdivision d of subsection 4 of section 45-22-03; or

- (4) Fails to file a withdrawal statement or cancellation of its registration if the limited liability partnership's existence expires, it is dissolved, or ceases to exist in the jurisdiction of origin.
- b. An intentional misrepresentation is made in any material matter in any registration, report, affidavit, or other document submitted by the limited liability partnership pursuant to this chapter.
2. Except for revocation of the registration for failure to file the annual report as provided in section 45-22-21.1, the secretary of state may not revoke the registration of a limited liability partnership unless:
    - a. The secretary of state gave the limited liability partnership at least sixty days' notice of the reason for the pending revocation by mail addressed to the limited liability partnership's registered agent at the registered office or, if the limited liability partnership fails to appoint and maintain a registered agent in this state, by mail addressed to the limited liability partnership's principal executive office; and
    - b. During the sixty-day period, the limited liability partnership fails:
      - (1) To appoint and maintain a registered agent as provided in chapter 10-01.1;
      - (2) To file the report of change regarding the name or business address of the registered agent;
      - (3) To file any amendment to the limited liability partnership's registration required to be filed pursuant to subdivision b or c of subsection 4 of section 45-22-03; or
      - (4) To correct the misrepresentation.
  3. Upon the expiration of the sixty-day period without the limited liability partnership curing the reason for the pending revocation set forth in the notice, the registration is revoked. The secretary of state shall note the revocation in the records of the secretary of state and shall give notice of the revocation to the limited liability partnership. Notice by the secretary of state must be mailed to the last registered agent at the last registered office. If the limited liability partnership ~~fails failed~~ to appoint and maintain a registered office in this state, the notice must be mailed to the limited liability partnership's principal executive office.

**SECTION 72. AMENDMENT.** Section 45-22-24 of the North Dakota Century Code is amended and reenacted as follows:

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

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

~~must~~ may be taken and received in all courts, public offices, and official bodies as ~~prima facie~~ evidence of the existence or nonexistence of the facts stated.

3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

**SECTION 73. AMENDMENT.** Section 45-23-03 of the North Dakota Century Code is amended and reenacted as follows:

**45-23-03. Limited liability limited partnership name.**

1. The name of each limited liability limited partnership as set forth in the limited liability limited partnership's certificate of limited liability limited partnership:
  - a. Must be expressed in letters or characters used in the English language ~~or in another language expressed in English~~ as those letters or characters appear in the American standard code for information interchange (ASCII) table.
  - b. Must contain without abbreviation the words "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP", either of which abbreviation may be used interchangeably for any purpose authorized by this chapter including real estate matters, contracts, and filings with the secretary of state.
  - c. May contain the name of any partner.
  - d. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", or any abbreviation of these words.
  - e. May not contain a word or phrase that indicates or that implies that the limited liability limited partnership:
    - (1) Is organized for a purpose other than:
      - (a) A lawful purpose for which a limited liability limited partnership may be organized under this chapter; or
      - (b) For a purpose stated in its certificate of limited liability limited partnership; or
    - (2) May not be organized under this chapter.
  - f. May not be the same as, or deceptively similar to:
    - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the certificate a record in compliance with subsection 3, of:
      - (a) Another limited liability limited partnership;
      - (b) A limited partnership;
      - (c) A corporation;

- (d) A limited liability company; or
  - (e) A limited liability partnership;
  - (2) A name the right to which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; ~~or~~
  - (4) A trade name registered in the manner provided in chapter 47-25; or
  - (5) A trademark or service mark registered in the manner provided in chapter 47-22.
2. The secretary of state shall determine whether a limited liability limited partnership name is deceptively similar to another name for purposes of this chapter.
  3. If the secretary of state determines a limited liability limited partnership name is deceptively similar to another name for purposes of this chapter, the limited liability limited partnership name may not be used unless there is filed with the certificate:
    - a. The written consent of the holder of the registered trade name or the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
    - b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.
  4. This section does not:
    - a. Abrogate or limit:
      - (1) The law of unfair competition or unfair practices;
      - (2) Chapter 47-25;
      - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
      - (4) Any other rights to the exclusive use of any name or symbol.
    - b. This section does not derogate the common law or the principles of equity.
  5. A limited liability limited partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization, including its name, may include in the limited liability limited partnership's name, subject to the requirements of subsection 1, the name of any of the other organizations, if the other organization whose name is sought to be used:

- a. Is incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11;  
or
  - e. Holds a trade name registered in the manner provided in chapter 47-25; or
  - f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.
6. The use of a name of a limited liability limited partnership in violation of this section does not affect or vitiate a limited liability limited partnership's existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability limited partnership from doing business under a name assumed in violation of this section, although a certificate of limited liability limited partnership may have been filed with the secretary of state.
7. A limited liability limited partnership whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 45-10.2-108 may reacquire the right to use that name by refiling a certificate of limited liability limited partnership pursuant to section 45-23-04, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3. A limited liability limited partnership that cannot reacquire the use of its limited liability limited partnership name shall adopt a new limited liability limited partnership name that complies with the provisions of this section:
- a. By refiling the certificate of limited liability limited partnership pursuant to section 45-23-04;
  - b. By amending pursuant to section 45-10.2-24; or
  - c. By reinstating pursuant to section 45-10.2-108, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3.
8. Subject to section 45-23-07, this section applies to any foreign limited liability limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
9. A limited liability limited partnership that files its certificate of limited liability limited partnership with an effective date later than the date of filing as provided in subsection 1 of section 45-23-05 shall maintain the right to the name until the effective date.

## CHAPTER 88

### HOUSE BILL NO. 1161

(Representative Keiser)

AN ACT to amend and reenact section 10-30.5-12 of the North Dakota Century Code, relating to entrepreneurship center awards.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 10-30.5-12 of the North Dakota Century Code is amended and reenacted as follows:

#### **10-30.5-12. (Effective through July 31, 2015) Entrepreneurship awards.**

1. The corporation shall administer an entrepreneurship award program that provides funding awards to entrepreneurial centers and to entrepreneurs.
2. The following provisions apply to entrepreneurial center awards:
  - a. An applicant must be an entrepreneurial center certified by the department of commerce. In certifying an entrepreneurial center, the department shall consider whether the center provides business incubator services such as mentors, shared services, and relationships with educational institutions. An entrepreneurial center may not be a state entity or an institution under the control of the state board of higher education.
  - b. An award may not exceed ~~fifty~~<sup>sixty</sup> thousand dollars. An entrepreneurial center may not qualify for more than one award per year and may not receive more than five awards.
  - c. Before funds are distributed to a center under this subsection, the center shall provide the corporation with detailed documentation of the availability of one dollar of nonstate matching funds for each dollar of state funds distributed under this subsection. Matching funds must be cash and may not be in-kind assets.
  - d. If during the twelve months preceding the application for an award under this subsection, an entrepreneurial center was awarded state funding from any other source, the maximum award under this subsection must be decreased dollar for dollar for every dollar of other state funds awarded. This subdivision does not apply to state funds an entrepreneurial center receives as a fiscal agent for an identified third party as part of a contractual agreement.
  - e. As a term of receipt of an award under this subsection, an entrepreneurial center shall pay back the funds awarded under this subsection. The payback schedule must be based on the center's ability to pay back the award.
  - f. An award under this subsection is not a business incentive under chapter 54-60.1.



3. The following provisions apply to entrepreneur awards:
  - a. An applicant must be an entrepreneur:
    - (1) Using the services of an entrepreneurial center certified by the department of commerce under subsection 2;
    - (2) With a business plan, but the business is not required to be a primary sector business; and
    - (3) That has been approved by the entrepreneurial center and by the corporation.
  - b. An award may not exceed twenty thousand dollars per business.
  - c. Before funds are distributed to an entrepreneur under this subsection, the entrepreneur shall provide the corporation with detailed documentation of the availability of one dollar of nonstate matching funds for every four dollars of state funds distributed under this subsection. Matching funds must be cash and may not be in-kind assets.
  - d. If during the twelve months preceding the application for an award under this subsection an entrepreneur received state funding for the business from any other source, the maximum award under this subsection must be decreased dollar for dollar for every dollar of other state funds received.
  - e. As a term of receipt of an award under this subsection, the entrepreneur shall pay back the funds awarded under this subsection. The payback schedule must be based upon the entrepreneur's ability to pay back the award and may include debt, equity, or a combination of debt and equity.

Approved April 8, 2011  
Filed April 11, 2011