

HOUSE BILL NO. 1136

Introduced by

Judiciary Committee

(At the request of the Commission on Uniform State Laws)

1 A BILL for an Act to create and enact chapter 10-32.1 of the North Dakota Century Code,
2 relating to the regulation of limited liability companies and foreign liability companies; to amend
3 and reenact subsections 5 and 12 of section 10-01.1-02, sections 10-06.1-05, 10-06.1-12,
4 10-06.1-14, 10-06.1-17, subsections 27, 31, and 34 of section 10-19.1-01, paragraph 2 of
5 subdivision e of subsection 1 and subdivision c of subsection 6 of section 10-19.1-13,
6 subsection 9 of section 10-19.1-100, subsection 3 of section 10-19.1-102, paragraph 2 of
7 subdivision e of subsection 2 of section 10-19.1-104.1, subsection 1 of section 10-31-02.1,
8 section 10-31-03.1, subdivision a and paragraph 3 of subdivision b of subsection 2 and
9 subsections 5 and 6 of section 10-31-13, subdivisions a and b of subsection 7 of section
10 10-31-13.1, paragraph 2 of subdivision e of subsection 1 and subdivision c of subsection 6 of
11 section 10-33-10, subsection 1 of section 10-33-72, sections 10-36-03, 38-08.1-03, and
12 43-07-19, subsection 23 of section 45-10.2-02, paragraph 2 of subdivision f of subsection 1 and
13 subdivision c of subsection 6 of section 45-10.2-10, paragraph 2 of subdivision a of
14 subsection 2 of section 45-10.2-94, paragraph 2 of subdivision e of subsection 1 and
15 subdivision c of subsection 6 of section 45-13-04.1, subdivision b of subsection 1 and
16 paragraph 2 of subdivision a of subsection 11 of section 45-21-01, paragraph 2 of subdivision e
17 of subsection 1 and subdivision c of subsection 5 of section 45-22-04, paragraph 2 of
18 subdivision a of subsection 13 of section 45-23-01, paragraph 2 of subdivision f of subsection 1
19 and subdivision c of subsection 5 of section 45-23-03, section 50-22-02.2, and subsection 3 of
20 section 54-44.4-09 of the North Dakota Century Code, relating to limited liability companies; and
21 to repeal chapter 10-32 of the North Dakota Century Code, relating to limited liability
22 companies.

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

1 **SECTION 1. AMENDMENT.** Subsections 5 and 12 of section 10-01.1-02 of the North
2 Dakota Century Code are amended and reenacted as follows:

3 5. "Domestic limited liability company" means a limited liability company, other than a
4 foreign limited liability company, organized under chapter ~~10-32~~10-32.1.

5 12. "Foreign limited liability company" means a limited liability company:

6 a. That is organized under laws other than the laws of this state for a purpose for
7 which a limited liability company may be organized under chapter ~~10-32~~10-32.1;

8 and

9 b. That is a qualified foreign entity.

10 **SECTION 2. AMENDMENT.** Section 10-06.1-05 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **10-06.1-05. Conversion of limited liability company.**

13 A domestic business limited liability company organized under chapter ~~10-32~~10-32.1 may
14 convert to a farming or ranching limited liability company by adopting an amendment to its
15 articles of organization which specifies that the limited liability company elects to be subject to
16 this chapter and by complying with all requirements of this chapter. The amendment must be
17 filed with the secretary of state with the prescribed fee and with the initial report required by
18 section 10-06.1-15. A farming or ranching limited liability company may convert to a domestic
19 business limited liability company by adopting an amendment to its articles of organization. The
20 amendment must be filed with the secretary of state with the prescribed fee. The amendment
21 must be accompanied by a report outlining the information, as of the date of the amendment,
22 which is required under section 10-06.1-17 and the manner in which the limited liability
23 company has divested itself of its owned or leased land holdings and its business of farming or
24 ranching.

25 **SECTION 3. AMENDMENT.** Section 10-06.1-12 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **10-06.1-12. Corporation or limited liability company allowed to engage in the**
28 **business of farming or ranching - Requirements.**

29 This chapter does not prohibit a domestic corporation or a domestic limited liability company
30 from owning real estate and engaging in the business of farming or ranching, if the corporation
31 meets all the requirements of chapter 10-19.1 or the limited liability company meets all the

1 requirements of chapter ~~40-32~~10-32.1 which are not inconsistent with this chapter. The following
2 requirements also apply:

- 3 1. If a corporation, the corporation must not have more than fifteen shareholders. If a
4 limited liability company, the limited liability company must not have more than fifteen
5 members.
- 6 2. Each shareholder or member must be related to each of the other shareholders or
7 members within one of the following degrees of kinship or affinity: parent, son,
8 daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, brother,
9 sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or
10 the spouse of a person so related.
- 11 3. Each shareholder or member must be an individual or one of the following:
 - 12 a. A trust for the benefit of an individual or a class of individuals who are related to
13 every shareholder of the corporation or member of the limited liability company
14 within the degrees of kinship or affinity specified in this section.
 - 15 b. An estate of a decedent who was related to every shareholder of the corporation
16 or member of the limited liability company within the degrees of kinship or affinity
17 specified in this section.
- 18 4. A trust or an estate may not be a shareholder or member if the beneficiaries of the
19 trust or the estate together with the other shareholders or members are more than
20 fifteen in number.
- 21 5. Each individual who is a shareholder or member must be a citizen of the United States
22 or a permanent resident alien of the United States.
- 23 6. If a corporation, the officers and directors of the corporation must be shareholders who
24 are actively engaged in operating the farm or ranch and at least one of the
25 corporation's shareholders must be an individual residing on or operating the farm or
26 ranch. If a limited liability company, the governors and managers of the limited liability
27 company must be members who are actively engaged in operating the farm or ranch
28 and at least one of its members must be an individual residing on or operating the
29 farm or ranch.
- 30 7. An annual average of at least sixty-five percent of the gross income of the corporation
31 or limited liability company over the previous five years, or for each year of its

1 existence, if less than five years, must have been derived from farming or ranching
2 operations.

3 8. The income of the corporation or limited liability company from nonfarm rent, nonfarm
4 royalties, dividends, interest, and annuities cannot exceed twenty percent of the gross
5 income of the corporation or limited liability company.

6 **SECTION 4. AMENDMENT.** Section 10-06.1-14 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **10-06.1-14. Applicability of North Dakota limited liability company laws.**

9 Chapter ~~10-32~~10-32.1, except those sections which pertain to foreign limited liability
10 companies, is applicable to farming or ranching limited liability companies, which have the
11 powers and privileges and are subject to the duties, restrictions, and liabilities of other business
12 limited liability companies, except when inconsistent with the intent of this chapter. This chapter
13 takes precedence in the event of any conflict with the provisions of chapter ~~10-32~~10-32.1.

14 **SECTION 5. AMENDMENT.** Section 10-06.1-17 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **10-06.1-17. Annual report - Contents - Filing requirements.**

17 Before April sixteenth of each year, every corporation engaged in farming or ranching after
18 June 30, 1981, and every limited liability company engaged in farming or ranching shall file with
19 the secretary of state an annual report signed as provided in subsection 54 of section
20 10-19.1-01 if a corporation and subsection ~~5847~~ of section ~~10-32-02~~10-32.1-02 if a limited
21 liability company. If the corporation or limited liability company is in the hands of a receiver or
22 trustee, it must be signed on behalf of the corporation or limited liability company by the receiver
23 or trustee. An annual report in a sealed envelope postmarked by the United States postal
24 service before the date provided in this section or an annual report in a sealed packet with a
25 verified shipment date by any other carrier service before the date provided in this section
26 meets the filing date requirement. An annual report must include the following information with
27 respect to the preceding calendar year:

- 28 1. The name of the corporation or limited liability company.
29 2. The name of the registered agent of the corporation or limited liability company as
30 provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of
31 the registered office of the corporation or limited liability company in this state.

- 1 3. With respect to each corporation:
 - 2 a. A statement of the aggregate number of shares the corporation has authority to
 - 3 issue, itemized by classes, par value of shares, shares without par value, and
 - 4 series, if any, within a class.
 - 5 b. A statement of the aggregate number of issued shares, itemized by classes, par
 - 6 value of shares, shares without par value, and series, if any, within a class.
- 7 4. With respect to each shareholder or member:
 - 8 a. The name and address of each, including the names and addresses and
 - 9 relationships of beneficiaries of trusts and estates which own shares or
 - 10 membership interests;
 - 11 b. The number of shares or membership interests or percentage of shares or
 - 12 membership interests owned by each;
 - 13 c. The relationship of each;
 - 14 d. A statement of whether each is a citizen or permanent resident alien of the United
 - 15 States; and
 - 16 e. A statement of whether at least one is an individual residing on or operating the
 - 17 farm or ranch.
- 18 5. With respect to management:
 - 19 a. If a corporation, then the names and addresses of the officers and members of
 - 20 the board of directors; or
 - 21 b. If a limited liability company, then the names and addresses of the managers and
 - 22 members of the board of governors.
- 23 6. A statement listing the acreage [hectarage] and location listed by section, township,
- 24 range, and county of all land in the state owned or leased by the corporation or limited
- 25 liability company and used for farming or ranching. The statement must also designate
- 26 which, if any, of the acreage [hectarage] is leased from or jointly owned with any
- 27 shareholder or member and list the name of the shareholder or member with that
- 28 acreage [hectarage].
- 29 7. A statement of the percentage of the annual average gross income of the corporation
- 30 or limited liability company which has been derived from farming or ranching

1 operations over the previous five years or for each year of existence if less than five
2 years.

3 8. A statement of the percentage of gross income of the corporation or limited liability
4 company derived from nonfarm rent, nonfarm royalties, dividends, interest, and
5 annuities during the period covered by the report.

6 9. A corporation engaged in farming which fails to file an annual report is subject to the
7 penalties provided in section 10-19.1-147 except that the penalties must be calculated
8 from the date of the report required by this section.

9 10. A limited liability company engaged in farming which fails to file an annual report is
10 subject to the penalties provided in subsections 5 and 6 of section
11 ~~10-32-149~~10-32.1-88 except that the penalties must be calculated from the date of the
12 report required by this section.

13 **SECTION 6. AMENDMENT.** Subsections 27, 31, and 34 of section 10-19.1-01 of the North
14 Dakota Century Code are amended and reenacted as follows:

15 27. "Foreign limited liability company" means a limited liability company organized under
16 laws other than the laws of this state for a purpose for which a limited liability company
17 may be organized under chapter ~~10-32~~10-32.1.

18 31. "Governing statute" of an organization means:

19 a. With respect to a domestic organization, the following chapters of this code which
20 govern the internal affairs of the organization:

21 (1) If a corporation, then this chapter;

22 (2) If a limited liability company, then chapter ~~10-32~~10-32.1;

23 (3) If a general partnership, then chapters 45-13 through 45-21;

24 (4) If a limited partnership, then chapter 45-10.2;

25 (5) If a limited liability partnership, then chapter 45-22; and

26 (6) If a limited liability limited partnership, then chapter 45-23; and

27 b. With respect to a foreign organization, the laws of the jurisdiction under which the
28 organization is created and under which the internal affairs of the organization
29 are governed.

1 34. "Limited liability company" or "domestic limited liability company" means a limited
2 liability company, other than a foreign limited liability company, organized under or
3 governed by chapter ~~40-32~~10-32.1.

4 **SECTION 7. AMENDMENT.** Paragraph 2 of subdivision e of subsection 1 of section
5 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

6 (2) A name the right to which is, at the time of incorporation, reserved in the
7 manner provided in section 10-19.1-14, ~~40-32-11~~10-32.1-12, 10-33-11,
8 45-10.2-11, 45-13-04.2, or 45-22-05;

9 **SECTION 8. AMENDMENT.** Subdivision c of subsection 6 of section 10-19.1-13 of the
10 North Dakota Century Code is amended and reenacted as follows:

11 c. Holds a reserved name in the manner provided in section 10-19.1-14,
12 ~~40-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

13 **SECTION 9. AMENDMENT.** Subsection 9 of section 10-19.1-100 of the North Dakota
14 Century Code is amended and reenacted as follows:

15 9. If all of the ownership interests of one or more domestic subsidiaries that is a
16 constituent organization to a merger under this section are not owned by the parent
17 directly, or indirectly through related constituent organizations, immediately before the
18 merger, then the owners of each domestic subsidiary which is either a limited liability
19 company or a corporation, have dissenter's rights under section 10-19.1-87 ~~or~~
20 ~~40-32-54~~, without regard to subsection 3 of section 10-19.1-87 ~~or subsection 2 of~~
21 ~~section 10-32-54~~, and under section 10-19.1-88 ~~or 10-32-55~~.

22 a. If the parent is a constituent organization but is not the surviving organization in
23 the merger, the articles of incorporation or articles of organization of the surviving
24 organization immediately after the merger differ from the articles of incorporation
25 or articles of organization of the parent immediately before the merger in a
26 manner that would entitle an owner of the parent to dissenter's rights under
27 subdivision a of subsection 1 of section 10-19.1-87 ~~or under subdivision a of~~
28 ~~subsection 1 of section 10-32-54~~, and the articles of incorporation or articles of
29 organization of the surviving constituent organization constitute an amendment to
30 the articles of incorporation or articles of organization of the parent, then that

1 owner of the parent has dissenter's rights as provided under section 10-19.1-87
2 or ~~10-32-54~~.

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

5 **SECTION 10. AMENDMENT.** Subsection 3 of section 10-19.1-102 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 3. When a merger or exchange becomes effective, the ownership interests to be
8 converted or exchanged under the terms of the plan cease to exist in the case of a
9 merger, or are deemed to be exchanged in the case of an exchange. The owners of
10 those ownership interests are entitled only to the securities, money, or other property
11 into which those ownership interests have been converted or for which those
12 ownership interests have been exchanged in accordance with the plan, subject to any
13 dissenter's rights under section 10-19.1-87 or ~~10-32-54~~.

14 **SECTION 11. AMENDMENT.** Paragraph 2 of subdivision e of subsection 2 of section
15 10-19.1-104.1 of the North Dakota Century Code is amended and reenacted as follows:

16 (2) A certificate of organization, if the converted organization is a limited liability
17 company deemed to be organized under chapter ~~40-32~~10-32.1;

18 **SECTION 12. AMENDMENT.** Subsection 1 of section 10-31-02.1 of the North Dakota
19 Century Code is amended and reenacted as follows:

20 1. One or more individuals may organize a professional organization in the form of a
21 limited liability company for the practice of a profession by filing articles of organization
22 with the secretary of state. The articles of organization must meet the requirements of
23 chapter ~~40-32~~10-32.1 and must contain the following:

24 a. The profession to be practiced through the professional limited liability company;
25 and

26 b. The name and residence address of each original member of the professional
27 limited liability company who will practice the profession in this state and of each
28 original member of the professional limited liability company who is a minority
29 owner.

30 **SECTION 13. AMENDMENT.** Section 10-31-03.1 of the North Dakota Century Code
31 is amended and reenacted as follows:

1 **10-31-03.1. Applicability of chapter ~~10-3210-32.1~~.**

2 Chapter ~~10-3210-32.1~~ applies to a professional organization that is created in the form of a
3 limited liability company and which enjoys the powers and privileges and is subject to the
4 duties, restrictions, and liabilities of other limited liability companies except when inconsistent
5 with the letter and purpose of this chapter. This chapter takes precedence in the event of any
6 conflict with chapter ~~10-3210-32.1~~.

7 **SECTION 14. AMENDMENT.** Subdivision a of subsection 2 of section 10-31-13 of the North
8 Dakota Century Code is amended and reenacted as follows:

- 9 a. Each limited liability company organized under this chapter shall file with the
10 secretary of state an annual report at the time specified for the filing of the report
11 by chapter ~~10-3210-32.1~~ giving the name and residence address of all managers,
12 governors, and members of the organization at the time of filing of the annual
13 report.

14 **SECTION 15. AMENDMENT.** Paragraph 3 of subdivision b of subsection 2 of section
15 10-31-13 of the North Dakota Century Code is amended and reenacted as follows:

- 16 (3) Accompanied by the filing fee prescribed in section ~~10-32-18010-32.1-92~~.

17 **SECTION 16. AMENDMENT.** Subsection 5 of section 10-31-13 of the North Dakota
18 Century Code is amended and reenacted as follows:

- 19 5. In order to regulate organizations that have minority ownership, the secretary of state
20 shall collect one thousand dollars for articles of incorporation for a corporation, articles
21 of organization for a limited liability company, or articles of amendment related to an
22 organization that has a minority owner. This fee is in addition to the fees provided for
23 these filings under section 10-19.1-147 or ~~10-32-15010-32.1-92~~. Fees collected by the
24 secretary of state under this subsection must be deposited in the secretary of state's
25 general services operating fund.

26 **SECTION 17. AMENDMENT.** Subsection 6 of section 10-31-13 of the North Dakota
27 Century Code is amended and reenacted as follows:

- 28 6. In order to regulate organizations that have ownership that renders more than one
29 professional service, the secretary of state shall collect one thousand dollars for
30 articles of incorporation for a corporation, articles of organization for a limited liability
31 company, or articles of amendment related to an organization that has ownership that

1 renders more than one professional service. This fee is in addition to the fees provided
2 for these filings under section 10-19.1-147 or ~~10-32-150~~10-32.1-92. Fees collected by
3 the secretary of state under this subsection must be deposited in the secretary of
4 state's general services operating fund.

5 **SECTION 18. AMENDMENT.** Subdivisions a and b of subsection 7 of section 10-31-13.1 of
6 the North Dakota Century Code are amended and reenacted as follows:

- 7 7. a. The provisions of chapter ~~10-32~~10-32.1 applicable to foreign limited liability
8 companies apply to a foreign professional organization rendering professional
9 services in this state in the form of a foreign limited liability company. Such a
10 foreign professional organization enjoys the powers and privileges and is subject
11 to the duties, restrictions, and liabilities of other foreign limited liability companies
12 doing business in this state, except when inconsistent with the letter and purpose
13 of the provisions of this chapter applicable to foreign professional organizations.
- 14 b. A foreign professional organization rendering professional services in this state in
15 the form of a foreign limited liability company shall include in its application for a
16 certificate of authority under section ~~10-32-138~~10-32.1-75 or its annual report
17 under section ~~10-32-149~~10-32.1-19 the following information:

18 **SECTION 19.** Chapter 10-32.1 of the North Dakota Century Code is created and enacted
19 as follows:

20 **10-32.1-01. Citation.**

21 This chapter may be cited as the "North Dakota Uniform Limited Liability Company Act".

22 **10-32.1-02. Definitions.**

23 For purposes of this chapter, unless the context otherwise requires:

- 24 1. "Acquiring organization" means the domestic or foreign organization that acquires the
25 ownership interests of another foreign or domestic organization in an exchange.
- 26 2. "Address" means:
- 27 a. In the case of a registered office or principal executive office, the mailing address,
28 which may not be only a post-office box, including a zip code, or the actual office
29 location; and
- 30 b. In all other cases, the mailing address, including a zip code.
- 31 3. "Filed documents" means:

- 1 a. In the case of a limited liability company organized under this chapter, articles of
2 organization, articles of amendment, a statement of change of registered office,
3 registered agent, or name of registered agent, a statement establishing or fixing
4 the rights and preferences of a class or series of membership interests, articles of
5 merger, articles of abandonment, articles of conversion, statement of authority,
6 and articles of dissolution and termination.
- 7 b. In the case of a foreign limited liability company, the term includes all records
8 serving a similar function required to be filed with the secretary of state or other
9 state office of the state of organization of the foreign limited liability company.
- 10 4. "Board" means the board of governors, however designated, of a board-managed
11 limited liability company.
- 12 5. "Board-managed limited liability company" means a limited liability company that
13 qualifies as such under subsection 1 of section 10-32.1-39.
- 14 6. "Bylaws" means any rule, resolution, or other provision, regardless how designated,
15 that:
- 16 a. Relates to the management of the business or the regulation of the affairs of the
17 limited liability company; and
- 18 b. Was expressly part of the bylaws by the action, taken from time to time under
19 section 10-32.1-39 by the board or the members.
- 20 7. "Class", when used with reference to membership interests, means a category of
21 membership interests which differs in one or more rights or preferences from another
22 category of membership interests of the limited liability company.
- 23 8. "Closely held limited liability company" means a limited liability company that does not
24 have more than thirty-five members.
- 25 9. "Contribution" means any benefit provided by a person to a limited liability company:
- 26 a. In order to become a member upon formation of the company and in accordance
27 with an agreement between or among the persons that have agreed to become
28 the initial members of the company;
- 29 b. In order to become a member after formation of the company and in accordance
30 with an agreement between the person and the company; or

- 1 c. In the capacity of the person as a member and in accordance with the operating
2 agreement or an agreement between the member and the company.
- 3 10. "Corporation" or "domestic corporation" means a corporation, other than a foreign
4 corporation, organized for profit and incorporated under chapter 10-19.1.
- 5 11. "Debtor in bankruptcy" means a person that is the subject of:
- 6 a. An order for relief under United States Code, title 12, or a successor statute of
7 general application; or
- 8 b. A comparable order under federal, state, or foreign law governing insolvency.
- 9 12. "Dissolution" means that the limited liability company incurred an event under
10 subsection 1 of section 10-32.1-50 that obligates the limited liability company to wind
11 up the affairs of the limited liability company and to terminate the existence of the
12 limited liability company as a legal entity.
- 13 13. "Distribution", except as otherwise provided in subsection 7 of section 10-32.1-31,
14 means a transfer of money or other property from a limited liability company to another
15 person on account of a transferable interest.
- 16 14. "Effective", with respect to a record required or permitted to be filed with the secretary
17 of state under this chapter, means effective under subsection 3 of section 10-32.1-86.
- 18 15. "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
19 optical, electromagnetic, or similar capabilities.
- 20 16. "Electronic communication" means any form of communication, not directly involving
21 the physical transmission of paper:
- 22 a. That creates a record that may be retained, retrieved, and reviewed by a
23 recipient of the communication; or
- 24 b. That may be directly reproduced in paper form by the recipient through an
25 automated process.
- 26 17. "Electronic record" means a record created, generated, sent, communicated, received,
27 or stored by electronic means.
- 28 18. "Electronic signature" means an electronic sound, symbol, or process attached to or
29 logically associated with a record and executed or adopted by a person with the intent
30 to sign the record.
- 31 19. "Filed with the secretary of state" means except as otherwise permitted by law or rule:

- 1 a. That a record meeting the applicable requirements of this chapter, together with
2 the fees provided in section 10-32.1-92, has been delivered or communicated to
3 the secretary of state by a method or medium of communication acceptable by
4 the secretary of state, and has been determined by the secretary of state to
5 conform to law.
- 6 b. That the secretary of state did then:
- 7 (1) Record the actual date on which the record was filed, and if different, the
8 effective date of the filing which may not be later than ninety days after the
9 date on which the record was accepted; and
- 10 (2) Record the record in the office of the secretary of state.
- 11 20. "Foreign corporation" means a corporation organized for profit that is incorporated
12 under laws other than the laws of this state for a purpose for which a corporation may
13 be incorporated under chapter 10-19.1.
- 14 21. "Foreign limited liability company" means a limited liability company which is organized
15 under or governed by laws other than the laws of this state for a purpose for which a
16 limited liability company may be organized under this chapter.
- 17 22. "Foreign organization" means an organization created under laws other than the laws
18 of this state for a purpose for which an organization may be created under the laws of
19 this state.
- 20 23. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.
- 21 24. "Governing body" means for an organization that is:
- 22 a. A corporation, its board of directors;
- 23 b. A limited liability company that is:
- 24 (1) Member-managed, its members;
- 25 (2) Board-managed, its board of governors; or
- 26 (3) Manager-managed, its managers; or
- 27 c. Any other organization, the body selected by its owners that has the ultimate
28 power to determine the policies of the organization and to control its policies.
- 29 25. "Governor" means a member of the board, however designated, of a board-managed
30 limited liability company.

- 1 26. "Intentionally" means that the person referred to either has a purpose to do or fail to do
2 the act or cause the result specified or believes that the act or failure to act, if
3 successful, will cause that result and as such a person "intentionally" violates a
4 statute:
- 5 a. If the person intentionally does the act or causes the result prohibited by the
6 statute; or
- 7 b. If the person intentionally fails to do the act or cause the result required by the
8 statute, even though the person may not know of the existence or
9 constitutionality of the statute or the scope or meaning of the terms used in the
10 statute.
- 11 27. "Legal representative" means a person empowered to act for another person,
12 including an agent, manager, officer, partner, or associate of an organization; a trustee
13 of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian,
14 custodian, or conservator.
- 15 28. "Limited liability company", or "domestic limited liability company" means a limited
16 liability company, other than a foreign limited liability company, organized under or
17 governed by this chapter excluding a nonprofit limited liability company organized
18 under or governed by chapter 10-36.
- 19 29. "Manager" means an individual who is eighteen years of age or more who under the
20 operating agreement of a manager-managed limited liability company is responsible,
21 alone or in concert with others, for performing the management functions stated in
22 subsection 3 of section 10-32.1-39.
- 23 30. "Manager-managed limited liability company" means a limited liability company that
24 qualifies as such under subsection 1 of section 10-32.1-39.
- 25 31. "Member" means a person that has become a member of a limited liability company
26 under section 10-32.1-27 and has not dissociated under section 10-32.1-48.
- 27 32. "Member-managed limited liability company" means a limited liability company that is
28 not a manager-managed limited liability company or a board-managed limited liability
29 company.
- 30 33. "Nonprofit limited liability company" means a limited liability company organized under
31 or governed by chapter 10-36.

1 34. "Notice" has the meaning provided in section 10-32.1-04.

2 35. "Operating agreement" means the agreement, whether or not referred to as an
3 operating agreement and whether oral, in a record, implied, or in any combination
4 thereof, of all the members of a limited liability company, including a sole member,
5 concerning the matters described in subsection 1 of section 10-32.1-13 and includes
6 the operating agreement as amended or restated.

7 36. With respect to "oppressive":

8 a. "Oppressive", with respect to an application brought by a member under
9 paragraph 2 of subdivision 3 of subsection 1 of section 10-32.1-50, means
10 conduct:

11 (1) Engaged in by one or more:

12 (a) Members in a member-managed limited liability company or who are
13 otherwise in control of any limited liability company;

14 (b) Managers in a manager-managed limited liability company; or

15 (c) Governors of a board-managed limited liability company;

16 (2) That occurs with respect to the capacity of the applicant member as:

17 (a) A member, manager, or governor of a limited liability company; or

18 (b) An employee of a limited liability company with thirty-five or fewer
19 members; and

20 (3) That is unfairly prejudicial to the applicant member in a capacity listed in
21 subdivision b, because the conduct frustrated an expectation of the
22 applicant member that:

23 (a) Is reasonable in light of the reasonable expectations of the other
24 members;

25 (b) Was material to the decision of the applicant to become a member of
26 the limited liability company or for a substantial time has been material
27 during the continuing membership of the member;

28 (c) Was known to other members or that the other members had reason
29 to know; and

- 1 (d) Is not contrary to the operating agreement as applied consistently with
2 the contractual obligation of good faith and fair dealing under
3 subsection 4 of section 10-32.1-41.
- 4 b. For the purposes of subdivision a, conduct:
- 5 (1) Includes words, action, inaction, and any combination of words, action, or
6 inaction; and
- 7 (2) Is not oppressive solely by reason of a good faith disagreement as to the
8 content, interpretation, or application of the operating agreement of the
9 company.
- 10 37. "Organization":
- 11 a. Means, whether domestic or foreign, a limited liability company, corporation,
12 general partnership, limited partnership, limited liability partnership, limited
13 liability limited partnership, or any other person having a governing statute; but
- 14 b. Excludes:
- 15 (1) Any nonprofit corporation, whether a domestic nonprofit corporation which is
16 incorporated under chapter 10-33 or a foreign nonprofit corporation which is
17 incorporated in another jurisdiction; or
- 18 (2) Any nonprofit limited liability company, whether a domestic nonprofit limited
19 liability company which is organized under chapter 10-36 or a foreign
20 nonprofit limited liability company which is organized in another jurisdiction.
- 21 38. "Organizer" means a person that acts under section 10-32.1-20 to form a limited
22 liability company.
- 23 39. "Originating records" means for an organization which is:
- 24 a. A corporation, its articles of incorporation;
- 25 b. A limited liability company, its articles of organization;
- 26 c. A limited partnership, its certificate of limited partnership;
- 27 d. A limited liability partnership, its registration; or
- 28 e. A limited liability limited partnership, its certificate of limited liability limited
29 partnership.
- 30 40. "Owners" means the holders of ownership interests in an organization.
- 31 41. "Ownership interests" means for a domestic or foreign organization that is:

- 1 a. A corporation, its shares;
- 2 b. A limited liability company, its transferable interests;
- 3 c. A limited partnership, its partnership interests or transferable interests;
- 4 d. A general partnership, its partnership interests or transferable interests;
- 5 e. A limited liability partnership, its partnership interests or transferable interests;
- 6 f. A limited liability limited partnership, its partnership interests or transferable
- 7 interests; or
- 8 g. Any other organization, its governance or transferable interests.
- 9 42. "Principal executive office" means:
- 10 a. If the limited liability company has an elected or appointed president, then an
- 11 office where the elected or appointed president of the limited liability company
- 12 has an office; or
- 13 b. If the limited liability company has no elected or appointed president, then the
- 14 registered office of the limited liability company.
- 15 43. "Record" means information that is inscribed on a tangible medium or that is stored in
- 16 an electronic or other medium and is retrievable in perceivable form.
- 17 44. "Recorded in the real property records" means that a certified copy of a record
- 18 meeting the applicable requirements of this chapter, including containing a legal
- 19 description of the property affected by the record, as filed with the secretary of state,
- 20 has been recorded in the office of the county recorder in the county in which the real
- 21 property affected by the record is located.
- 22 45. "Registered office" means:
- 23 a. The office that a limited liability company is required to designate and maintain
- 24 under section 10-32.1-16; or
- 25 b. The office that a foreign limited liability company is required to designate and
- 26 maintain under section 10-32.1-78.
- 27 46. "Series" means a category of membership interests, within a class of membership
- 28 interests, that has some of the same rights and preferences as other membership
- 29 interests within the same class, but that differ in one or more rights and preferences
- 30 from another category of membership interests within that class.
- 31 47. "Sign" or "Signed" means:

- 1 a. That the signature of a person, which may be a facsimile affixed, engraved,
2 printed, placed, stamped with indelible ink, transmitted by facsimile
3 telecommunication or electronically, or in any other manner reproduced on the
4 record, is placed on a record with the present intention to authenticate that
5 record.
- 6 b. With respect to a record required by this chapter to be filed with the secretary of
7 state, that:
- 8 (1) The record has been signed by a person authorized to do so by this chapter,
9 the articles or organization, a member-control agreement, or the bylaws or a
10 resolution approved by the governors as required by section 10-32.1-39 or
11 the members as required by section 10-32.1-39; and
- 12 (2) The signature and the record are communicated by a method or medium
13 acceptable by the secretary of state.
- 14 c. The initial articles of organization must be signed by at least one person acting as
15 an organizer.
- 16 d. A record filed on behalf of a dissolved limited liability company that has no
17 members must be signed:
- 18 (1) By the person winding up the activities of the company under subsection 3
19 of section 10-31.2-51; or
- 20 (2) By a person appointed under subsection 4 of section 10-32.1-51, to wind up
21 those activities.
- 22 e. A statement of denial by a person under section 10-32.1-25 must be signed by
23 that person.
- 24 f. Any other record filed under this chapter may be signed by an agent pursuant to
25 chapters 3-01, 3-02, 3-03, and 3-04.
- 26 48. "State" means a state of the United States, the District of Columbia, Puerto Rico, the
27 United States Virgin Islands, or any territory or insular possession subject to the
28 jurisdiction of the United States.
- 29 49. "Termination" means the end of the existence of a limited liability company as a legal
30 entity and occurs when:

- 1 a. Articles of dissolution and termination are filed with the secretary of state under
2 section 10-32.1-51 together with the fees provided in section 10-32.1-92.
3 b. Articles of dissolution and termination are considered filed with the secretary of
4 state under subsection 3 of section 10-32.1-59, together with the fees provided in
5 section 10-32.1-92.
6 c. Notice of termination has been issued by the secretary of state as provided in
7 section 10-32.1-90.

8 50. "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage,
9 security interest, encumbrance, gift, and transfer by operation of law.

10 51. "Transferable interest" means the right, as originally associated with the capacity of a
11 person as a member, to receive distributions from a limited liability company in
12 accordance with the operating agreement, whether or not the person remains a
13 member or continues to own any part of the right.

14 52. "Transferee" means a person to which all or part of a transferable interest has been
15 transferred, whether or not the transferor is a member.

16 53. "Vote" includes authorization by written action.

17 54. "Winding up" means the period triggered by dissolution during which the limited liability
18 company ceases to carry on business, except to the extent necessary for concluding
19 affairs, and disposing of assets under section 10-32.1-51.

20 55. "Written action" means:

21 a. A written record signed by every person required to take the action described;
22 and

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

25 (1) Each counterpart constitutes the action of the persons signing it; and

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

28 **10-32.1-03. Legal recognition of electronic records and electronic signatures.**

29 For purposes of this chapter:

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

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

7 **10-32.1-04. Knowledge and notice.**

- 8 1. A person knows a fact when the person:
9 a. Has actual knowledge of it; or
10 b. Is deemed to know it under subdivision a of subsection 4, or law other than this
11 chapter.
12 2. A person has notice of a fact when the person:
13 a. Has reason to know the fact from all of the facts known to the person at the time
14 in question; or
15 b. Is deemed to have notice of the fact under subdivision b of subsection 4.
16 3. A person notifies another of a fact by taking steps reasonably required to inform the
17 other person in ordinary course, whether or not the other person knows the fact.
18 4. A person that is not a member is deemed:
19 a. To know of a limitation on authority to transfer real property as provided in
20 subsection 7 of section 10-32.1-24; and
21 b. To have notice of:
22 (1) The dissolution of a limited liability company, ninety days after a notice of
23 dissolution under paragraph 1 of subdivision b of subsection 2 of section
24 10-32.1-51, becomes effective;
25 (2) The termination of a limited liability company, ninety days after the articles of
26 dissolution and termination under paragraph 6 of subdivision b of subsection
27 2 of section 10-32.1-51, becomes effective; and
28 (3) The merger, conversion, or domestication of a limited liability company,
29 ninety days after the articles of merger, conversion, or domestication under
30 sections 10-32.1-67 through 10-32.1-71 becomes effective.

1 **10-32.1-05. Application to existing relationships.**

- 2 1. On or after July 1, 2015, a limited liability company may not be formed under chapter
3 10-32.
- 4 2. Before January 1, 2016, this chapter governs only:
- 5 a. A limited liability company formed on or after July 1, 2015; and
6 b. Except as otherwise provided in subsection 3, a limited liability company formed
7 before July 1, 2015, which elects, in the manner provided in its articles of
8 organization, operating agreement or bylaws for amending the operating
9 agreement, to be subject to this chapter.
- 10 3. Except as otherwise provided in subsection 4, on and after January 1, 2016, this
11 chapter governs all limited liability companies.
- 12 4. For the purposes of applying this chapter to a limited liability company formed before
13 July 1, 2015:
- 14 a. The articles of organization of the company are deemed to be the articles of
15 organization of the company; and
- 16 b. For the purposes of applying subsection 21 of section 10-32.1-02, and subject to
17 subsection 4 of section 10-32.1-15, language in the articles of organization,
18 bylaws, operating agreement, or member control agreement, or any combination
19 of those documents of a limited liability company formed before July 1, 2015, that
20 becomes subject to this chapter will operate as if that language were in the
21 operating agreement of the limited liability company when it becomes subject to
22 this chapter.

23 **10-32.1-06. Reservation of legislative right.**

24 The legislative assembly reserves the right to amend or repeal the provisions of this
25 chapter. A limited liability company organized under or governed by this chapter is subject to
26 this reserved right.

27 **10-32.1-07. Nature, purpose, and duration of a limited liability company.**

- 28 1. A limited liability company is an entity distinct from its members.
- 29 2. Except for a nonprofit limited liability company subject to chapter 10-36, which must
30 comply with that chapter, a limited liability company may have any lawful purpose.

1 3. A limited liability company has perpetual duration unless stated otherwise in articles of
2 organization filed with the secretary of state prior to July 1, 2015.

3 **10-32.1-08. Powers.**

4 1. Except as provided in subsection 2, a limited liability company has the capacity to sue
5 and be sued in its own name and the power to do all things necessary or convenient to
6 carry on its activities.

7 2. Until a limited liability company has or has had at least one member, the company
8 lacks the capacity to do any act or carry on any activity except:

9 a. Delivering to the secretary of state for filing:

10 (1) A statement of change under section 10-32.1-17;

11 (2) An amendment to the certificate under section 10-32.1-21;

12 (3) A statement of correction under section 10-32.1-88;

13 (4) An annual report under section 10-32.1-89;

14 (5) A notice of termination under section 10-32.1-51; and

15 (6) Articles of dissolution and termination under section 10-32.1-51;

16 b. Admitting a member under section 10-32.1-27; and

17 c. Dissolving under section 10-32.1-50.

18 3. A limited liability company that has or has had at least one member may ratify an act
19 or activity that occurred when the company lacked capacity under subsection 2.

20 **10-32.1-09. Governing law.**

21 The law of this state governs:

22 1. The internal affairs of a limited liability company; and

23 2. The liability of a member as member, a manager as manager, and a governor as
24 governor, for the debts, obligations, or other liabilities of a limited liability company.

25 **10-32.1-10. Supplemental principles of law.**

26 Unless displaced by particular provisions of this chapter, the principles of law and equity
27 supplement this chapter.

28 **10-32.1-11. Limited liability company name.**

29 1. The limited liability company name:

- 1 a. Must be expressed in letters or characters used in the English language as those
2 letters or characters appear in the American standard code for information
3 interchange table;
- 4 b. Must contain the words "limited liability company", or must contain the
5 abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may
6 be used interchangeably for all purposes authorized by this chapter, including
7 real estate matters, contracts, and filings with the secretary of state;
- 8 c. May not contain:
- 9 (1) The word "corporation", "incorporated", "limited partnership", "limited liability
10 partnership", "limited liability limited partnership", or any abbreviation of
11 these words; or
- 12 (2) The words "limited" or "company" without association to the words "limited
13 liability company" or the abbreviations of these words as provided in
14 subsection b;
- 15 d. May not contain a word or phrase that indicates or implies that the limited liability
16 company:
- 17 (1) Is organized for a purpose other than:
- 18 (a) A lawful business purpose for which a limited liability company may be
19 organized under this chapter; or
- 20 (b) For a purpose stated in its articles of organization; or
- 21 (2) May not be organized under this chapter; and
- 22 e. May not be the same as, or deceptively similar to:
- 23 (1) The name, whether foreign and authorized to do business in this state or
24 domestic, unless there is filed with the articles a record which complies with
25 subsection 3, of:
- 26 (a) Another limited liability company;
- 27 (b) A corporation;
- 28 (c) A limited partnership;
- 29 (d) A limited liability partnership; or
- 30 (e) A limited liability limited partnership;

- 1 (2) A name, the right of which is, at the time of organization, reserved in the
2 manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11,
3 45-13-04.2, or 45-22-05;
- 4 (3) A fictitious name registered in the manner provided in chapter 45-11;
5 (4) A trade name registered in the manner provided in chapter 47-25; or
6 (5) A trademark or service mark registered in the manner provided in chapter
7 47-22.
- 8 2. The secretary of state shall determine whether a limited liability company name is
9 deceptively similar to another name for purposes of this chapter.
- 10 3. If the secretary of state determines that a limited liability company name is deceptively
11 similar to another name for purposes of this chapter, then the limited liability company
12 name may not be used unless there is filed with the articles:
- 13 a. The written consent of the holder of the rights to the name to which the proposed
14 name has been determined to be deceptively similar; or
- 15 b. A certified copy of a judgment of a court in this state establishing the prior right of
16 the applicant to the use of the name in this state.
- 17 4. This section and section 10-32.1-12 do not:
- 18 a. Abrogate or limit:
- 19 (1) The law of unfair competition or unfair practices;
20 (2) Chapter 47-25;
21 (3) The laws of the United States with respect to the right to acquire and protect
22 copyrights, trade names, trademarks, service names, and service marks; or
23 (4) Any other rights to the exclusive use of names or symbols.
- 24 b. Derogate the common law or the principles of equity.
- 25 5. A domestic or foreign limited liability company that is the surviving organization in a
26 merger with one or more other organizations, or that acquires by sale, lease, or other
27 disposition to or exchange with an organization all or substantially all of the assets of
28 another organization including its name, may have the same name, subject to the
29 requirements of subsection 1, as that used in this state by any of the other
30 organizations, if the organization whose name is sought to be used:
- 31 a. Was organized, incorporated, formed, or registered under the laws of this state;

- 1 b. Is authorized to transact business or conduct activities in this state;
2 c. Holds a reserved name in the manner provided in section 10-19.1-14,
3 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
4 d. Holds a fictitious name registered in the manner provided in chapter 45-11;
5 e. Holds a trade name registered in the manner provided in chapter 47-25; or
6 f. Holds a trademark or service mark registered in the manner provided in chapter
7 47-22.
- 8 6. The use of a name by a limited liability company in violation of this section does not
9 affect or vitiate its limited liability company existence. However, a court in this state
10 may, upon application of the state or of an interested or affected person, enjoin the
11 limited liability company from doing business under a name assumed in violation of
12 this section, although its articles of organization may have been filed with the secretary
13 of state and a certificate of organization issued.
- 14 7. A limited liability company whose period of existence has expired or that is
15 involuntarily terminated by the secretary of state pursuant to section 10-32.1-89 may
16 reacquire the right to use that name by refiling articles of organization pursuant to
17 section 10-32.1-20, unless the name has been adopted for use or reserved by another
18 person, in which case the filing will be rejected unless the filing is accompanied by a
19 written consent or judgment pursuant to subsection 2. A limited liability company that
20 cannot reacquire the use of its limited liability company name shall adopt a new limited
21 liability company name which complies with the provisions of this section:
- 22 a. By refiling the articles of organization pursuant to section 10-32.1-20;
23 b. By amending pursuant to section 10-32.1-21; or
24 c. By reinstating pursuant to section 10-32.1-91.
- 25 8. Subject to section 10-32.1-73, this section applies to any foreign limited liability
26 company transacting business in this state, having a certificate of authority to transact
27 business in this state, or applying for a certificate of authority.
- 28 9. An amendment that only changes the name of the limited liability company may be
29 authorized by a resolution approved by the board and may, but need not, be submitted
30 to and approved by the members as provided in subdivision b of subsection 1 of
31 section 10-32.1-21.

1 10. A limited liability company that files its articles of organization with an effective date
2 later than the date of filing as provided in subdivision b of subsection 2 of section
3 10-32.1-20 shall maintain the right to the name until the effective date.

4 **10-32.1-12. Reserved name.**

- 5 1. The exclusive right to the use of a limited liability company name otherwise permitted
6 by section 10-32.1-11 may be reserved by any person.
- 7 2. The reservation is made by filing a request with the secretary of state that the name be
8 reserved together with the fees provided in section 10-32.1-92.
- 9 a. If the name is available for use by the applicant, then the secretary of state shall
10 reserve the name for the exclusive use of the applicant for a period of twelve
11 months.
- 12 b. The reservation may be renewed for successive twelve-month periods.
- 13 3. The right to the exclusive use of a limited liability company name reserved pursuant to
14 this section may be transferred to another person by or on behalf of the applicant for
15 whom the name was reserved by filing with the secretary of state a notice of the
16 transfer and specifying the name and address of the transferee together with the fees
17 provided in section 10-32.1-92.
- 18 4. The right to the exclusive use of a limited liability company name reserved pursuant to
19 this section may be canceled by or on behalf of the applicant for whom the name was
20 reserved by filing with the secretary of state a notice of the cancellation together with
21 the fees provided in section 10-32.1-92.
- 22 5. The secretary of state may destroy all reserved name requests and index thereof one
23 year after expiration.

24 **10-32.1-13. Operating agreement - Scope - Function - Limitations.**

- 25 1. Except as otherwise provided in subsections 2 and 3, the operating agreement
26 governs:
- 27 a. Relations among the members as members and between the members and the
28 limited liability company;
- 29 b. The rights and duties under this chapter of a person in the capacity of manager
30 or governor;
- 31 c. The activities of the company and the conduct of those activities; and

- 1 d. The means and conditions for amending the operating agreement.
- 2 2. To the extent the operating agreement does not otherwise provide for a matter
3 described in subsection 1, this chapter governs the matter.
- 4 3. An operating agreement may not:
- 5 a. Vary the capacity of a limited liability company under section 10-32.1-08 to sue
6 and be sued in its own name;
- 7 b. Vary the law applicable under section 10-32.1-09;
- 8 c. Vary the power of the court under section 10-32.1-22;
- 9 d. Subject to subsections 4 through 7, eliminate the duty of loyalty, the duty of care,
10 or any other fiduciary duty;
- 11 e. Subject to subsections 4 through 7, eliminate the contractual obligation of good
12 faith and fair dealing under subsection 4 of section 10-32.1-41;
- 13 f. Unreasonably restrict the duties and rights stated in section 10-32.1-42;
- 14 g. Vary the power of a court to decree dissolution in the circumstances specified in
15 subdivisions d and e of subsection 1 of section 10-32.1-50;
- 16 h. Vary the requirement to wind up the business of a limited liability company as
17 specified in subsection 1 and subdivision a of subsection 2 of section 10-32.1-51;
- 18 i. Unreasonably restrict the right of a member to maintain an action under sections
19 10-32.1-33 through 10-32.1-38;
- 20 j. Restrict the right to approve a merger, conversion, or domestication under
21 section 10-32.1-71 to a member that will have personal liability with respect to a
22 surviving, converted, or domesticated organization; or
- 23 k. Except as otherwise provided in subsection 2 of section 10-32.1-15, restrict the
24 rights under this chapter of a person other than a member, manager, or governor.
- 25 4. If not manifestly unreasonable, and without limiting the terms that may be included in
26 an operating agreement, the operating agreement may:
- 27 a. Restrict or eliminate the duty:
- 28 (1) As required in subdivision a of subsection 2 and in subsection 7 of section
29 10-32.1-41, to account to the limited liability company and to hold as trustee
30 for it any property, profit, or benefit derived by the member in the conduct or
31 winding up of the company's business, from a use by the member of the

- 1 company's property, or from the appropriation of a limited liability company
2 opportunity;
- 3 (2) As required in subdivision b of subsection 2 and in subsection 7 of section
4 10-32.1-41, to refrain from dealing with the company in the conduct or
5 winding up of the company's business as or on behalf of a party having an
6 interest adverse to the company; and
- 7 (3) As required by subdivision c of subsection 2 and in subsection 7 of section
8 10-32.1-41, to refrain from competing with the company in the conduct of
9 the business of the company before the dissolution of the company;
- 10 b. Identify specific types or categories of activities that do not violate the duty of
11 loyalty;
- 12 c. Alter the duty of care, except to authorize intentional misconduct or knowing
13 violation of law;
- 14 d. Alter any other fiduciary duty, including eliminating particular aspects of that duty;
15 and
- 16 e. Prescribe the standards by which to measure the performance of the contractual
17 obligation of good faith and fair dealing under subsection 4 of section 10-32.1-41.
- 18 5. The operating agreement may specify the method by which a specific act or
19 transaction that would otherwise violate the duty of loyalty may be authorized or
20 ratified by one or more disinterested and independent persons after full disclosure of
21 all material facts.
- 22 6. To the extent the operating agreement of a member-managed limited liability company
23 expressly relieves a member of a responsibility that the member would otherwise have
24 under this chapter and imposes the responsibility on one or more other members, the
25 operating agreement may, to the benefit of the member that the operating agreement
26 relieves of the responsibility, also eliminate or limit any fiduciary duty that would have
27 pertained to the responsibility.
- 28 7. The operating agreement may alter or eliminate the indemnification for a member,
29 manager, or governor provided by subsection 1 of section 10-32.1-40, and may
30 eliminate or limit the liability of a member, manager, or governor to the limited liability
31 company and members for money damages, except for:

- 1 a. Breach of the duty of loyalty;
2 b. A financial benefit received by the member or manager to which the member or
3 manager is not entitled;
4 c. A breach of a duty under section 10-32.1-32;
5 d. Intentional infliction of harm on the company or a member; or
6 e. An intentional violation of criminal law.
7 8. The court shall decide any claim under subsection 4 that a term of an operating
8 agreement is manifestly unreasonable. The court:
9 a. Shall make its determination as of the time the challenged term became part of
10 the operating agreement and by considering only circumstances existing at that
11 time; and
12 b. May invalidate the term only if, in light of the purposes and activities of the limited
13 liability company, it is readily apparent that:
14 (1) The objective of the term is unreasonable; or
15 (2) The term is an unreasonable means to achieve the objective of the
16 provision.

17 **10-32.1-14. Operating agreement effect on a limited liability company and persons**
18 **becoming members - Preformation agreement.**

- 19 1. A limited liability company is bound by and may enforce the operating agreement,
20 whether or not the company has itself manifested assent to the operating agreement.
21 2. A person that becomes a member of a limited liability company is deemed to assent to
22 the operating agreement.
23 3. Two or more persons intending to become the initial members of a limited liability
24 company may make an agreement providing that upon the formation of the company
25 the agreement will become the operating agreement. One person intending to become
26 the initial member of a limited liability company may assent to terms providing that
27 upon the formation of the company the terms will become the operating agreement.

28 **10-32.1-15. Operating agreement - Effect on third parties and relationship to records**
29 **effective on behalf of a limited liability company.**

- 30 1. An operating agreement may specify that its amendment requires the approval of a
31 person that is not a party to the operating agreement or the satisfaction of a condition.

1 An amendment is ineffective if its adoption does not include the required approval or
2 satisfy the specified condition.

3 2. The obligations of a limited liability company and its members to a person in the
4 capacity of the person as a transferee or dissociated member are governed by the
5 operating agreement. Subject only to any court order issued under subdivision b of
6 subsection 2 of section 10-32.1-45, to effectuate a charging order, an amendment to
7 the operating agreement made after a person becomes a transferee or dissociated
8 member is effective with regard to any debt, obligation, or other liability of the limited
9 liability company or its members to the person in the capacity of the person as a
10 transferee or dissociated member.

11 3. If a record that has been delivered by a limited liability company to the secretary of
12 state for filing has become effective under this chapter and contains a provision that
13 would be ineffective under subsection 3 of section 10-32.1-13, if contained in the
14 operating agreement, then the provision is likewise ineffective in the record.

15 4. Subject to subsection 3, if a record that has been delivered by a limited liability
16 company to the secretary of state for filing has become effective under this chapter
17 and conflicts with a provision of the operating agreement, then:

18 a. The operating agreement prevails as to members, dissociated members,
19 transferees, managers, and governors; and

20 b. The record prevails as to other persons to the extent they reasonably rely on the
21 record.

22 **10-32.1-16. Registered office and registered agent.**

23 Every limited liability company shall have a registered office and a registered agent, in the
24 manner prescribed by chapter 10-01.1.

25 **10-32.1-17. Change of registered office or registered agent.**

26 Every limited liability company may change its registered office or change its registered
27 agent, and the agent may resign or change its business address or name, in the manner
28 prescribed by chapter 10-01.1.

29 **10-32.1-18. Resignation of registered agent.**

30 The registered agent of every limited liability company may resign in the manner prescribed
31 by chapter 10-01.1.

1 **10-32.1-19. Service of process on a limited liability company, foreign limited liability**
2 **company, and nonresident managers and governors.**

- 3 1. A registered agent appointed by a limited liability company or foreign limited liability
4 company is an agent of the company for service of any process, notice, or demand
5 required or permitted by law to be served on the company.
- 6 2. If a limited liability company or foreign limited liability company does not appoint or
7 maintain a registered agent in this state or if the registered agent with reasonable
8 diligence cannot be found at the address of the registered agent, then the secretary of
9 state is an agent of the company upon whom process, notice, or demand may be
10 served.
- 11 3. Any process, notice, or demand required or permitted by law to be served on the
12 limited liability company, the foreign limited liability company, a manager, a governor,
13 or a member of a member-managed limited liability company may be served upon the
14 secretary of state as provided in section 10-01.1-13.
- 15 4. This section does not affect the right to serve process, notice, or demand in any other
16 manner provided by law.

17 **10-32.1-20. Formation of a limited liability company - Articles of organization.**

- 18 1. One or more individuals of the age of eighteen years or more or other persons may act
19 as organizers to form a limited liability company by signing and filing with the secretary
20 of state articles of organization together with the fees provided in section 10-32.1-92.
- 21 2. The articles of organization:
- 22 a. Must state:
- 23 (1) The name of the limited liability company, which must comply with section
24 10-32.1-11;
- 25 (2) With respect to the registered agent:
- 26 (a) The name of the commercial registered agent of the limited liability
27 company as provided in chapter 10-01.1; or
- 28 (b) The name and address of a noncommercial registered agent in this
29 state as provided in chapter 10-01.1;
- 30 (c) The address of the principal executive office;
- 31 (d) The name and address of each organizer; and

- 1 b. May state an effective date of organization, which must not be later than ninety
2 days from the date of filing with the secretary of state.
- 3 3. Subject to subsection 3 of section 10-32.1-15, articles of organization may also
4 contain statements as to matters other than those required by subsection 2. However,
5 a statement in articles of organization is not effective as a statement of authority.
- 6 4. With respect to formation:
- 7 a. A limited liability company is formed when articles of organization have been filed
8 with the secretary of state or at a later date as specified in the articles of
9 organization.
- 10 b. If the secretary of state finds that the articles of organization conform to law and
11 that all fees have been paid under section 10-32.1-92, then the secretary of state
12 shall file the articles of organization and issue a certificate of organization to the
13 organizers or their representative.
- 14 c. Except as against this state in a proceeding to terminate or revoke the certificate
15 of organization or in a judicial proceeding pursuant to section 10-32.1-51, the
16 filing of the articles of organization by the secretary of state is conclusive proof
17 that the organizer satisfied all conditions to the formation of a limited liability
18 company.
- 19 d. The formation of a limited liability company does not by itself cause any person to
20 become a member. However, this chapter does not preclude an agreement,
21 made before or after formation of a limited liability company, which provides that
22 one or more persons will become members, or acknowledging that one or more
23 persons became members, upon or otherwise in connection with the formation of
24 the limited liability company.

25 **10-32.1-21. Amendment or restatement of articles of organization.**

- 26 1. Articles of organization may be amended or restated at any time.
- 27 a. Before any contribution is reflected in the required records of a limited liability
28 company, the articles of organization may be amended by the organizers or by
29 the board. The articles of organization may also be amended by the board to
30 establish or fix the rights and preferences of a class or series of membership
31 interests before any contribution pertaining to that class or series is reflected in

1 the records of the limited liability company by filing articles of amendment with
2 the secretary of state.

3 b. With respect to amendment after contribution:

4 (1) Except as otherwise provided in subdivision a, after any contribution has
5 been reflected in the records of a limited liability company, the articles of
6 organization may be amended in the manner set forth in this subdivision.

7 (2) A resolution approved by the affirmative vote of a majority of the governors
8 present, or proposed by a member or members owning five percent or more
9 of the voting power of the members entitled to vote, that sets forth the
10 proposed amendment must be submitted to a vote at the next regular or
11 special meeting of the members of which notice has not yet been given but
12 still can be timely given. Any number of amendments may be submitted to
13 the members and voted upon at one meeting, but the same or substantially
14 the same amendment proposed by a member or members need not be
15 submitted to the members or be voted upon at more than one meeting
16 during a fifteen-month period. The resolution may amend the articles of
17 organization in their entirety to restate and supersede the original articles of
18 organization and all amendments to them.

19 (3) Written notice of the meeting of the members setting forth the substance of
20 the proposed amendment must be given to each member entitled to vote in
21 the manner provided in subsection 5 of section 10-32.1-39 for the giving of
22 notice of meetings of members.

23 (4) The proposed amendment is adopted:

24 (a) When approved by the affirmative vote of the members required by
25 section 10-32.1-39; or

26 (b) If the articles of organization provide for a specified proportion equal
27 to or larger than the majority necessary to transact a specified type of
28 business at a meeting, or if it is proposed to amend the articles to
29 provide for a specified proportion equal to or larger than the majority
30 necessary to transact a specified type of business at a meeting, then

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

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

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

11 2. To amend its articles of organization, a limited liability company must file with the
12 secretary of state an amendment stating:

13 a. The name of the company;

14 b. The changes the amendment makes to the articles of organization as most
15 recently amended or restated; and

16 c. A statement that the amendment was adopted pursuant to this chapter.

17 3. If only a change of address of the principal executive office is required, then an
18 amendment need not be filed. However, the change of address of the principal
19 executive office must then be reported in the next annual report filed after the change
20 or be submitted in writing to the secretary of state without a filing fee.

21 4. To restate its articles of organization, a limited liability company must file with the
22 secretary of state a restatement, designated as such in its heading, stating:

23 a. In the heading or an introductory paragraph, the present name of the company;
24 and

25 b. The changes the restatement makes to the articles of organization as most
26 recently amended or restated, except that the name and address of each
27 organizer may be omitted.

28 5. Subject to subsection 3 of section 10-32.1-15 and subsection 3 of section 10-32.1-87,
29 an amendment to or restatement of articles of organization is effective when filed with
30 the secretary of state or at a later date as specified in the amendment to, or
31 restatement of, the articles of organization.

- 1 6. The owners of the outstanding transferable interests of a class or series are entitled to
2 vote as a class or series upon a proposed amendment to the articles of organization,
3 whether or not entitled to vote on the amendment by the provisions of the articles of
4 organization, if the amendment would:
- 5 a. Effect an exchange, reclassification, or cancellation of all or part of the
6 membership interests of the class or series, or effect a combination of
7 outstanding membership interests of a class or series into a lesser number of
8 membership interests of the class or series if each other class or series is not
9 subject to a similar combination;
- 10 b. Effect an exchange, or create a right of exchange, of all or any part of the
11 membership interests of another class or series for the membership interests of
12 the class or series;
- 13 c. Change the rights or preferences of the membership interests of the class or
14 series;
- 15 d. Create a new class or series of membership interests having rights and
16 preferences prior and superior to the membership interests of that class or series,
17 or increase the rights and preferences or the number of membership interests, of
18 a class or series having rights and preferences prior or superior to the
19 membership interests of that class or series;
- 20 e. Divide the membership interests of the class into series and determine the
21 designation of each series and the variations in the relative rights and
22 preferences between the membership interests of each series or authorize the
23 board to do so;
- 24 f. Limit or deny any existing preemptive rights of the membership interests of the
25 class or series; or
- 26 g. Cancel or otherwise affect distributions on the membership interests of the class
27 or series.
- 28 7. With respect to the effect of the amendment:
- 29 a. An amendment does not affect an existing cause of action in favor of or against
30 the limited liability company, nor a pending suit to which the limited liability
31 company is a party, nor the existing rights of persons other than members.

- 1 b. If the limited liability company name is changed by the amendment, a suit
2 brought by or against the limited liability company under its former name does not
3 abate for that reason.
- 4 c. An amendment restating the articles in their entirety supersedes the original
5 articles and all amendments to the original articles.
- 6 8. If the secretary of state finds that the articles of amendment conform to law, and that
7 all fees have been paid as provided in section 10-32.1-92, then the articles of
8 amendment must be recorded in the office of the secretary of state.
- 9 9. A limited liability company that amends its name and which is the owner of a service
10 mark, trademark, or trade name, is a general partner named in a fictitious name
11 certificate, is a general partner in a limited partnership or a limited liability limited
12 partnership, or is a managing partner of a limited liability partnership that is on file with
13 the secretary of state must change or amend the name of the limited liability company
14 in each registration when the limited liability company files an amendment.
- 15 10. With respect to the amendment of articles of organization in court-supervised
16 reorganization:
- 17 a. Whenever a plan of reorganization of a limited liability company has been
18 confirmed by decree or order of a court of competent jurisdiction in proceedings
19 for the reorganization of the limited liability company, pursuant to the provisions of
20 any applicable statute of the United States relating to reorganization of limited
21 liability companies, the articles may be amended, in the manner provided in this
22 section, in as many respects as may be necessary to carry out the plan and to
23 put it into effect, so long as the articles as amended contain only provisions which
24 might be lawfully contained in original articles of organization at the time of
25 making the amendment. In particular, and without limitation upon any general
26 power of amendment, the articles may be amended to:
- 27 (1) Change the limited liability company name, period of duration, or
28 organizational purposes of the limited liability company.
- 29 (2) Repeal, alter, or amend the bylaws of the limited liability company.

1 (3) Change the preferences, limitations, relative rights in respect of all or any
2 part of the membership interests of the limited liability company, and
3 classify, reclassify, or cancel all or any part thereof.

4 (4) Authorize the issuance of bonds, debentures, or other obligations of the
5 limited liability company, whether convertible into membership interests of
6 any class or bearing warrants or other evidence of optional rights to
7 purchase or subscribe for membership interests of any class, and fix the
8 terms and conditions thereof.

9 (5) Constitute or reconstitute and classify or reclassify the board and appoint
10 governors and managers in place of or in addition to all or any of the
11 governors or managers then in office.

12 b. Amendments to the articles pursuant to subdivision a must be made in the
13 following manner:

14 (1) Articles of amendment approved by decree or order of the court must be
15 signed and verified in duplicate by the person or persons designated or
16 appointed by the court for that purpose and must set forth the name of the
17 limited liability company, the amendments of the articles approved by the
18 court, the date of the decree or order approving the articles of amendment,
19 the title of the proceedings in which the decree or order was entered by a
20 court having jurisdiction of the proceedings for the reorganization of the
21 limited liability company pursuant to the provisions of an applicable statute
22 of the United States.

23 (2) An original of the articles of amendment must be filed with the secretary of
24 state. If the secretary of state finds that the articles of amendment conform
25 to law, and that all fees have been paid as provided in section 10-32.1-92,
26 then the articles of amendment must be recorded in the office of the
27 secretary of state.

28 c. The articles of amendment become effective upon their acceptance by the
29 secretary of state or at any other time within ninety days after their acceptance if
30 the articles of amendment so provide.

- 1 d. The articles are deemed to be amended accordingly, without any action by the
2 governors or members of the limited liability company and with the same effect as
3 if the amendment had been adopted by the unanimous action provided for in
4 section 10-32.1-39.

5 **10-32.1-22. Signing and filing pursuant to a judicial order.**

- 6 1. If a person required by this chapter to sign a record or file a record with the secretary
7 of state does not do so, then any other person that is aggrieved may petition the
8 appropriate court to order:
9 a. The person to sign the record;
10 b. The person to file the record with the secretary of state for filing; or
11 c. The secretary of state to file the record unsigned.
12 2. If a petitioner under subsection 1 is not the limited liability company or foreign limited
13 liability company to which the record pertains, then the petitioner shall make the
14 company a party to the action.

15 **10-32.1-23. No agency power of a member as a member.**

- 16 1. A member is not an agent of a limited liability company solely by reason of being a
17 member.
18 2. The status of a person as a member does not prevent or restrict law other than this
19 chapter from imposing liability on a limited liability company because of the conduct of
20 the person.

21 **10-32.1-24. Statement of authority.**

- 22 1. A limited liability company may file with the secretary of state a statement of authority.
23 The statement:
24 a. Must include the name of the company and the address of its registered office;
25 b. With respect to any position that exists in or with respect to the company, may
26 state the authority, or limitations on the authority, of all persons holding the
27 position to:
28 (1) Execute an instrument transferring real property held in the name of the
29 company; or
30 (2) Enter into other transactions on behalf of, or otherwise act for or bind, the
31 company; and

- 1 c. May state the authority, or limitations on the authority, of a specific person to:
2 (1) Execute an instrument transferring real property held in the name of the
3 company; or
4 (2) Enter into other transactions on behalf of, or otherwise act for or bind, the
5 company.
- 6 2. To amend or cancel a statement of authority filed with the secretary of state under
7 subsection 1 of section 10-32.1-86, a limited liability company must file with the
8 secretary of state an amendment or cancellation stating:
- 9 a. The name of the company;
10 b. The address of its registered office;
11 c. The caption of the statement being amended or canceled and the date the
12 statement being affected became effective; and
13 d. The contents of the amendment or a declaration that the statement being
14 affected is canceled.
- 15 3. A statement of authority affects only the power of a person to bind a limited liability
16 company to persons that are not members.
- 17 4. Subject to subsection 4 of section 10-32.1-04 and to subsection 3, and except as
18 otherwise provided in subsections 6, 7, and 8, a limitation on the authority of a person
19 or a position contained in an effective statement of authority is not by itself evidence of
20 knowledge or notice of the limitation by any person.
- 21 5. Subject to subsection 3, a grant of authority not pertaining to transfers of real property
22 and contained in an effective statement of authority is conclusive in favor of a person
23 that gives value in reliance on the grant, except to the extent that when the person
24 gives value:
- 25 a. The person has knowledge to the contrary;
26 b. The statement has been canceled or restrictively amended under subsection 2;
27 or
28 c. A limitation on the grant is contained in another statement of authority that
29 became effective after the statement containing the grant became effective.
- 30 6. Subject to subsection 3, an effective statement of authority that grants authority to
31 transfer real property held in the name of the limited liability company, whether or not a

1 certified copy of the statement is recorded in the real property records, is conclusive in
2 favor of a person that gives value in reliance on the grant without knowledge to the
3 contrary, except to the extent that when the person gives value:

4 a. The statement has been canceled or restrictively amended under subsection 2
5 and a certified copy of the cancellation or restrictive amendment has been
6 recorded in the real property records; or

7 b. A limitation on the grant is contained in another statement of authority that
8 became effective after the statement containing the grant became effective and a
9 certified copy of the later-effective statement is recorded in the real property
10 records.

11 7. Subject to subsection 3, if a certified copy of an effective statement containing a
12 limitation on the authority to transfer real property held in the name of a limited liability
13 company is recorded in the real property records, then all persons are deemed to
14 know of the limitation.

15 8. Subject to subsection 9, an effective notice of dissolution is a cancellation of any filed
16 statement of authority for the purposes of subsection 6 and is a limitation on authority
17 for the purposes of subsection 7.

18 9. After a notice of dissolution becomes effective, a limited liability company may file with
19 the secretary of state and, if appropriate, may record in the real property records, a
20 statement of authority that is designated as a postdissolution statement of authority.
21 The statement operates as provided in subsections 6 and 7.

22 10. An effective statement of denial operates as a restrictive amendment under this
23 section and may be recorded by certified copy in the real property records for the
24 purposes of subdivision a of subsection 6.

25 **10-32.1-25. Statement of denial.**

26 A person named in a filed statement of authority granting that person authority may file with
27 the secretary of state for filing a statement of denial that:

28 1. Provides the name of the limited liability company and the caption of the statement of
29 authority to which the statement of denial pertains; and

30 2. Denies the grant of authority.

1 **10-32.1-26. Liability of members, managers, and governors.**

- 2 1. The debts, obligations, or other liabilities of a limited liability company, whether arising
3 in contract, tort, or otherwise:
- 4 a. Are solely the debts, obligations, or other liabilities of the company; and
5 b. Do not become the debts, obligations, or other liabilities of a member, manager,
6 or governor solely by reason of the member acting as a member, manager acting
7 as a manager, or governor acting as a governor.
- 8 2. The failure of a limited liability company to observe formalities relating exclusively to
9 the management of its internal affairs is not a ground for imposing liability on the
10 members, managers, or governors for the debts, obligations, or other liabilities of the
11 company.
- 12 3. Except as relates to the failure of a limited liability company to observe any formalities
13 relating exclusively to the management of its internal affairs, the case law that states
14 the conditions and circumstances under which the corporate veil of a corporation may
15 be pierced under North Dakota law also applies to limited liability companies.

16 **10-32.1-27. Becoming a member.**

- 17 1. If a limited liability company is to have only one member upon formation, then the
18 person becomes a member as agreed by that person and the organizer of the
19 company. That person and the organizer may be, but need not be, different persons. If
20 different, then the organizer acts on behalf of the initial member.
- 21 2. If a limited liability company is to have more than one member upon formation, then
22 those persons become members as agreed by the persons before the formation of the
23 company. The organizer acts on behalf of the persons in forming the company and
24 may be, but need not be, one of the persons.
- 25 3. A shelf limited liability company shall not be allowed under this chapter.
- 26 4. After a limited liability company has or has had at least one member, a person
27 becomes a member:
- 28 a. As provided in the operating agreement;
29 b. As the result of a transaction effective under sections 10-32.1-55 through
30 10-32.1-71;
31 c. With the consent of all the members; or

1 d. If, within ninety consecutive days after the company ceases to have any
2 members:

3 (1) The last person to have been a member, or the legal representative of that
4 person, designates a person to become a member; and

5 (2) The designated person consents to become a member.

6 5. A person may become a member without acquiring a transferable interest and without
7 making or being obligated to make a contribution to the limited liability company.

8 **10-32.1-28. Form of contribution.**

9 A contribution may consist of tangible or intangible property or other benefit to a limited
10 liability company, including money, services performed, promissory notes, other agreements to
11 contribute money or property, and contracts for services to be performed.

12 **10-32.1-29. Liability for contributions.**

13 1. The obligation of a person to make a contribution to a limited liability company is not
14 excused by the death, disability, or other inability of the person to perform personally. If
15 a person does not make a required contribution, then the person or the estate of the
16 person is obligated to contribute money equal to the value of the part of the
17 contribution which has not been made, at the option of the company.

18 2. A creditor of a limited liability company which extends credit or otherwise acts in
19 reliance on an obligation described in subsection 1 may enforce the obligation.

20 **10-32.1-30. Sharing of and right to distributions before dissolution.**

21 1. Any distributions made by a limited liability company before its dissolution and winding
22 up must be in equal shares among members and dissociated members, except to the
23 extent necessary to comply with any transfer effective under section 10-32.1-44 and
24 any charging order in effect under section 10-32.1-45.

25 2. A person has a right to a distribution before the dissolution and winding up of a limited
26 liability company only if the company decides to make an interim distribution. The
27 dissociation of a person does not entitle the person to a distribution.

28 3. A person does not have a right to demand or receive a distribution from a limited
29 liability company in any form other than money. Except as otherwise provided in
30 subsection 3 of section 10-32.1-54, a limited liability company may distribute an asset
31 in kind if each part of the asset is fungible with each other part and each person

1 receives a percentage of the asset equal in value to the share of distributions of the
2 person.

3 4. If a member or transferee becomes entitled to receive a distribution, then the member
4 or transferee has the status of, and is entitled to all remedies available to, a creditor of
5 the limited liability company with respect to the distribution.

6 **10-32.1-31. Limitations on distribution.**

7 1. A limited liability company may not make a distribution if after the distribution:

8 a. The company would not be able to pay its debts as they become due in the
9 ordinary course of the activities of the company; or

10 b. The total assets of the company would be less than the sum of its total liabilities
11 plus the amount that would be needed, if the company were to be dissolved,
12 wound up, and terminated at the time of the distribution, to satisfy the preferential
13 rights upon dissolution, winding up, and termination of members whose
14 preferential rights are superior to those of persons receiving the distribution.

15 2. A limited liability company may base a determination that a distribution is not
16 prohibited under subsection 1 on financial statements prepared on the basis of
17 accounting practices and principles that are reasonable in the circumstances or on a
18 fair valuation or other method that is reasonable under the circumstances.

19 3. Except as otherwise provided in subsection 6, the effect of a distribution under
20 subsection 1 is measured:

21 a. In the case of a distribution by purchase, redemption, or other acquisition of a
22 transferable interest in the company, as of the date money or other property is
23 transferred or debt incurred by the company; and

24 b. In all other cases, as of the date:

25 (1) The distribution is authorized, if the payment occurs within one hundred
26 twenty days after that date; or

27 (2) The payment is made, if the payment occurs more than one hundred twenty
28 days after the distribution is authorized.

29 4. The indebtedness of a limited liability company to a member incurred by reason of a
30 distribution made according to this section is at parity with the indebtedness of the
31 company to its general, unsecured creditors.

- 1 5. The indebtedness of a limited liability company, including indebtedness issued in
2 connection with or as part of a distribution, is not a liability for purposes of
3 subsection 1 if the terms of the indebtedness provide that payment of principal and
4 interest are made only to the extent that a distribution could be made to members
5 under this section.
- 6 6. If indebtedness is issued as a distribution, then each payment of principal or interest
7 on the indebtedness is treated as a distribution, the effect of which is measured on the
8 date the payment is made.
- 9 7. In subsection 1, "distribution" does not include amounts constituting reasonable
10 compensation for present or past services or reasonable payments made in the
11 ordinary course of business under a bona fide retirement plan or other benefits
12 program.

13 **10-32.1-32. Liability for improper distributions.**

- 14 1. Except as otherwise provided in subsection 2, if a member of a member-managed
15 limited liability company, manager of a manager-managed limited liability company, or
16 governor of a board-managed limited liability company consents to a distribution made
17 in violation of section 10-32.1-31 and in consenting to the distribution fails to comply
18 with section 10-32.1-41, then the member, manager, or governor is personally liable to
19 the company for the amount of the distribution that exceeds the amount that could
20 have been distributed without the violation of section 10-32.1-31.
- 21 2. To the extent the operating agreement of a member-managed limited liability company
22 expressly relieves a member of the authority and responsibility to consent to
23 distributions and imposes that authority and responsibility on one or more other
24 members, the liability stated in subsection 1 applies to the other members and not the
25 member that the operating agreement relieves of authority and responsibility.
- 26 3. A person that receives a distribution knowing that the distribution to that person was
27 made in violation of section 10-32.1-31 is personally liable to the limited liability
28 company but only to the extent that the distribution received by the person exceeded
29 the amount that could have been properly paid under section 10-32.1-31.
- 30 4. A person against which an action is commenced because the person is liable under
31 subsection 1 may:

1 a. Implead any other person that is subject to liability under subsection 1 and seek
2 to compel pro rata contribution from the person in that action to the extent of the
3 liability of the person as provided in subsection 1; and

4 b. Implead any person that received a distribution in violation of section 10-32.1-31
5 and seek to compel contribution from the person in the amount by which the
6 distribution received by the person exceeded the amount that could have been
7 properly paid under section 10-32.1-31.

8 5. An action under this section is barred if not commenced within two years after the
9 distribution.

10 **10-32.1-33. Direct action by a member.**

11 1. Subject to subsection 2, a member may maintain a direct action against another
12 member, a manager, a governor, or the limited liability company to enforce the rights of
13 the member and otherwise protect the interests of the member, including rights and
14 interests under the operating agreement or this chapter or arising independently of the
15 membership relationship.

16 2. A member maintaining a direct action under this section must plead and prove an
17 actual or threatened injury that is not solely the result of an injury suffered or
18 threatened to be suffered by the limited liability company.

19 **10-32.1-34. Derivative action.**

20 A member may maintain a derivative action to enforce a right of a limited liability company

21 if:

22 1. The member first makes a demand on the other members in a member-managed
23 limited liability company, the managers of a manager-managed limited liability
24 company, or the board of governors of a board-managed limited liability company
25 requesting that they cause the company to bring an action to enforce the right, and the
26 member or board does not bring the action within a reasonable time; or

27 2. A demand under subsection 1 would be futile.

28 **10-32.1-35. Proper plaintiff.**

29 1. Except as otherwise provided in subsection 2, a derivative action under section
30 10-32.1-34 may be maintained only by a person that is a member at the time the
31 action is commenced and remains a member while the action continues.

1 2. If the sole plaintiff in a derivative action dies while the action is pending, then the court
2 may permit another member of the limited liability company to be substituted as
3 plaintiff.

4 **10-32.1-36. Pleading.**

5 In a derivative action under section 10-32.1-34, the complaint must state with particularity:

6 1. The date and content of the demand of the plaintiff and the response to the demand
7 by the other members, managers, or board of governors; or

8 2. If a demand has not been made, the reasons a demand under subsection 1 of section
9 10-32.1-34, would be futile.

10 **10-32.1-37. Special litigation committee.**

11 1. If a limited liability company is named as or made a party in a derivative proceeding,
12 then the company may appoint a special litigation committee to investigate the claims
13 asserted in the proceeding and determine whether pursuing the action is in the best
14 interests of the company. If the company appoints a special litigation committee, then
15 on motion by the committee made in the name of the company, except for good cause
16 shown, the court shall stay discovery for the time reasonably necessary to permit the
17 committee to make its investigation. This subsection does not prevent the court from
18 enforcing the right of a person to information under section 10-32.1-42 or, for good
19 cause shown, granting extraordinary relief in the form of a temporary restraining order
20 or preliminary injunction.

21 2. A special litigation committee may be composed of one or more disinterested and
22 independent individuals, who may be members.

23 3. A special litigation committee may be appointed:

24 a. In a member-managed limited liability company:

25 (1) By the consent of a majority of the members not named as defendants or
26 plaintiffs in the proceeding; and

27 (2) If all members are named as defendants or plaintiffs in the proceeding, then
28 by a majority of the members named as defendants;

29 b. In a manager-managed limited liability company:

30 (1) By a majority of the managers not named as defendants or plaintiffs in the
31 proceeding; and

- 1 (2) If all managers are named as defendants or plaintiffs in the proceeding, then
2 by a majority of the managers named as defendants; and
- 3 c. In a board-managed limited liability company:
- 4 (1) By a majority of governors not named as defendants or plaintiffs in the
5 proceeding; and
- 6 (2) If all governors are named as defendants or plaintiffs in the proceeding, then
7 by a majority of the governors named as defendants.
- 8 4. After appropriate investigation, a special litigation committee may determine that it is in
9 the best interests of the limited liability company that the proceeding:
- 10 a. Continue under the control of the plaintiff;
11 b. Continue under the control of the committee;
12 c. Be settled on terms approved by the committee; or
13 d. Be dismissed.
- 14 5. After making a determination under subsection 4, a special litigation committee shall
15 file with the court a statement of its determination and its report supporting its
16 determination, giving notice to the plaintiff. The court shall determine whether the
17 members of the committee were disinterested and independent and whether the
18 committee conducted its investigation and made its recommendation in good faith,
19 independently, and with reasonable care, with the committee having the burden of
20 proof. If the court finds that the members of the committee were disinterested and
21 independent and that the committee acted in good faith, independently, and with
22 reasonable care, then the court shall enforce the determination of the committee.
23 Otherwise, the court shall dissolve the stay of discovery entered under subsection 1
24 and allow the action to proceed under the direction of the plaintiff.
- 25 **10-32.1-38. Proceeds and expenses.**
- 26 1. Except as otherwise provided in subsection 2:
- 27 a. Any proceeds or other benefits of a derivative action under section 10-32.1-34,
28 whether by judgment, compromise, or settlement, belong to the limited liability
29 company and not to the plaintiff; and
- 30 b. If the plaintiff receives any proceeds, then the plaintiff shall remit them
31 immediately to the company.

1 2. If a derivative action under section 10-32.1-34 is successful in whole or in part, then
2 the court may award the plaintiff reasonable expenses, including reasonable attorney
3 fees and costs, from the recovery of the limited liability company.

4 **10-32.1-39. Management of a limited liability company.**

5 1. A limited liability company is a member-managed limited liability company unless the
6 operating agreement:

7 a. Expressly provides that:

8 (1) The company is or will be "manager-managed" or "board-managed";

9 (2) The company is or will be "managed by managers" or "managed by a
10 board"; or

11 (3) Management of the company is or will be "vested in managers" or "vested in
12 a board"; or

13 b. Includes words of similar import.

14 2. In a member-managed limited liability company, the following rules apply:

15 a. The management and conduct of the company are vested in the members.

16 b. Each member has equal rights in the management and conduct of the activities
17 of the company.

18 c. A difference arising among members as to a matter in the ordinary course of the
19 activities of the company may be decided by a majority of the members.

20 d. An act outside the ordinary course of the activities of the company may be
21 undertaken only with the consent of all members.

22 e. The operating agreement may be amended only with the consent of all members.

23 3. In a manager-managed limited liability company, the following rules apply:

24 a. Except as otherwise expressly provided in this chapter, any matter relating to the
25 activities of the company is decided exclusively by the managers.

26 b. Each manager has equal rights in the management and conduct of the activities
27 of the company.

28 c. A difference arising among managers as to a matter in the ordinary course of the
29 activities of the company may be decided by a majority of the managers.

30 d. The consent of all members is required to:

- 1 (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the
2 property of the company, with or without the good will, outside the ordinary
3 course of the activities of the company;
- 4 (2) Approve a merger, conversion, or domestication under sections 10-32.1-55
5 through 10-32.1-71;
- 6 (3) Undertake any other act outside the ordinary course of the activities of the
7 company; or
- 8 (4) Amend the operating agreement.
- 9 e. A manager may be chosen at any time by the consent of a majority of the
10 members and remains a manager until a successor has been chosen, unless the
11 manager at an earlier time resigns, is removed, or dies, or, in the case of a
12 manager that is not an individual, terminates. A manager may be removed at any
13 time by the consent of a majority of the members without notice or cause.
- 14 f. A person need not be a member to be a manager, but the dissociation of a
15 member that is also a manager removes the person as a manager. If a person
16 that is both a manager and a member ceases to be a manager, that cessation
17 does not by itself dissociate the person as a member.
- 18 g. The ceasing of a person to be a manager does not discharge any debt,
19 obligation, or other liability to the limited liability company or members which the
20 person incurred while a manager.
- 21 4. In a board-managed limited liability company, the following rules apply:
- 22 a. The activities and affairs of a limited liability company are to be managed by and
23 under the direction of a board of governors, which shall consist of one or more
24 governors as determined by members holding a majority of the voting power of
25 the members. Except as specifically stated in this subsection and in subsection 5
26 of section 10-32.1-21 and subject to section 10-32.1-24:
- 27 (1) The board acts only through an act of the board;
- 28 (2) No individual governor has any right or power to act for the limited liability
29 company; and
- 30 (3) Only officers, managers, or other agents designated by the board or through
31 a process approved by the board have the right to act for the limited liability

1 company, and that right extends only to the extent consistent with the terms
2 of the designation.

3 b. A governor must be an individual. An individual need not be a member to be a
4 governor, but the dissociation of a member who is an individual and who also a
5 governor disqualifies the individual as a governor. If an individual who is both a
6 governor and a member ceases to be a governor, that cessation does not by
7 itself dissociate the individual as a member. The ceasing of an individual to be a
8 governor does not discharge any debt, obligation, or other liability to the limited
9 liability company or members which the individual incurred while a governor.

10 c. The method of election and any additional qualifications for governors will be as
11 determined by members holding a majority of the voting power of the members.
12 Governors are elected by a plurality of the voting power present and entitled to
13 vote on the election of governors at a duly called or held meeting at which a
14 quorum is present.

15 d. A member may waive notice of a meeting for the election of governors. The
16 waiver of notice by a member under this subdivision is effective whether given
17 before, at, or after the meeting, and whether given in a record, orally, or by
18 attendance. Attendance by a member at a meeting for election of governors is a
19 waiver of notice of that meeting, except where the member objects at the
20 beginning of the meeting to the transaction of business because the meeting is
21 not lawfully called or convened and does not participate in the meeting after the
22 objection.

23 e. Once elected, a governor holds office for the term for which the governor was
24 elected and until a successor is elected, or until the earlier death, resignation,
25 disqualification, or removal of the governor. A governor may resign at any time. A
26 governor may be removed at any time, without cause and without advance
27 notice, by a majority of the voting power of all of the members. The existence of
28 vacancies does not affect the power of the board to function if at least one
29 governor remains in office.

30 f. When a vacancy occurs, the limited liability company shall immediately notify all
31 members in a record of the vacancy, stating the cause of the vacancy and the

1 date the notice is sent. Within thirty days of that date, the members may fill the
2 vacancy in the same method the members may elect governors under
3 subdivision c. If the vacancy is not filled by the members under this subdivision,
4 then the vacancy may be filled by the affirmative vote of a majority of the
5 remaining governors, even though less than a quorum.

6 g. The board shall meet from time to time as determined by members holding a
7 majority of the voting power of the members, at a place decided by the board. If
8 the day or date, time, and place of a board of governors meeting have been
9 provided in a board resolution, or announced at a previous meeting of the board
10 of governors, then no notice is required. Notice of an adjourned meeting need not
11 be given other than by announcement at the meeting at which adjournment is
12 taken. If notice is required for a meeting, then notice shall be made in the manner
13 stated in subdivision h.

14 h. A governor may call a board meeting by giving at least ten days' notice in a
15 record to all governors of the date, time, and place of the meeting. The notice
16 need not state the purpose of the meeting. As to each governor, the notice is
17 effective when given.

18 i. "Notice" shall be determined as provided in subsection 34 of section 10-32.1-02.

19 j. A governor may waive notice of a meeting of the board of governors. A waiver of
20 notice by a governor entitled to notice is effective whether given before, at, or
21 after the meeting, and whether given in a record, orally, or by attendance.
22 Attendance by a governor at a meeting is a waiver of notice of that meeting,
23 except where the governor objects at the beginning of the meeting to the
24 transaction of business because the meeting is not lawfully called or convened
25 and does not participate in the meeting after the objection.

26 k. A majority of the governors currently holding office is a quorum for the transaction
27 of business. When a quorum is present at a duly called or held meeting of the
28 board, the vote of a majority of the directors present constitutes an act of the
29 board. If a quorum is present when a duly called or held meeting is convened,
30 then the governors present may continue to transact business until adjournment.

1 even though the withdrawal of a number of governors originally present leaves
2 less than the proportion or number otherwise required for a quorum.

3 l. Any meeting among governors may be conducted solely by one or more means
4 of remote communication through which all of the governors may participate with
5 each other during the meeting, if the number of governors participating in the
6 meeting would be sufficient to constitute a quorum. Participation in a meeting
7 through remote communication constitutes presence in person at the meeting.

8 m. A governor may participate in a board of governors meeting by means of remote
9 communication, through which the governor, other governors so participating,
10 and all governors physically present at the meeting may participate with each
11 other during the meeting. Participation in a meeting through remote
12 communication constitutes presence in person at the meeting.

13 n. An action required or permitted to be taken at a board meeting may be taken by
14 written action signed by the number of governors that would be required to take
15 the same action at a meeting of the board of governors at which all governors
16 were present. The written action is effective when signed by the required number
17 of governors, unless a different effective time is provided in the written action.
18 When written action is permitted to be taken by less than all governors, then all
19 governors must be notified immediately of its text and effective date. Failure to
20 provide the notice does not invalidate the written action. A governor who does not
21 sign or consent to the written action has no liability for the action or actions taken
22 by the written action.

23 o. If the board designates a person as "chief manager", "president", "chief executive
24 officer", or another title of similar import, then that person shall:

25 (1) Serve as an agent of the limited liability company at the will of the board,
26 without prejudice to any rights the person may have under a contract with
27 the limited liability company;

28 (2) Have general active management of the business of the limited liability
29 company, subject to the supervision and control of the board;

30 (3) See that all orders and resolutions of the board of governors are carried into
31 effect;

- 1 (4) Sign and deliver in the name of the limited liability company any deeds,
2 mortgages, bonds, contracts, or other instruments pertaining to the business
3 of the limited liability company, except in cases in which the authority to sign
4 and deliver is required by law to be exercised by another person or is
5 expressly delegated by the board of governors to some other officer or
6 agent of the limited liability company;
- 7 (5) Maintain records of and, whenever necessary, certify all proceedings of the
8 board of governors and the members; and
- 9 (6) Perform other duties prescribed by the board of governors.
- 10 p. If the board designates a person as "treasurer", "chief financial officer", or
11 another title of similar import, then that person shall:
- 12 (1) Serve as an agent of the limited liability company at the will of the board,
13 without prejudice to any rights the person may have under a contract with
14 the limited liability company;
- 15 (2) Keep accurate financial records for the limited liability company;
- 16 (3) Deposit all money, drafts, and checks in the name of and to the credit of the
17 limited liability company in the banks and depositories designated by the
18 board of governors;
- 19 (4) Endorse for deposit all notes, checks, and drafts received by the limited
20 liability company as ordered by the board of governors, making proper
21 vouchers for them;
- 22 (5) Disburse limited liability company funds and issue checks and drafts in the
23 name of the limited liability company, as ordered by the board of governors;
- 24 (6) Give to the chief executive officer and the board of governors, whenever
25 requested, an account of all transactions by the chief financial officer and of
26 the financial condition of the limited liability company; and
- 27 (7) Perform other duties prescribed by the board of governors or by the chief
28 executive officer.
- 29 q. The consent of all members is required to:

1 (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the
2 property of the company, with or without the good will, outside the ordinary
3 course of the activities of the company;

4 (2) Approve a merger, conversion, or domestication under sections 10-32.1-55
5 through 10-32.1-71; and

6 (3) Amend the operating agreement.

7 r. For purposes of this subsection, each member possesses voting power in
8 proportion to the interest of the member in then current profits of the limited
9 liability company and a majority of the voting power of the members is a quorum
10 at a meeting of the members.

11 5. Any member may demand a meeting of the members to take action requiring consent
12 of members under this chapter upon not less than twenty days' notice to each member
13 in a record of the date and time of the meeting. Any meeting held upon member notice
14 shall be held at the principal executive office of the limited liability company if located
15 within this state, and at the registered office if the principal executive office is not
16 located within the state. Any action requiring the consent of members under this
17 chapter may be taken or approved without a meeting by the written consent of the
18 members holding the voting power required to take such action at a duly called
19 meeting at which all members were present. A member may appoint a proxy or other
20 agent to consent or otherwise act for the member by signing an appointing record,
21 personally or by the agent of the member.

22 6. The dissolution of a limited liability company does not affect the applicability of this
23 section. However, a person that wrongfully causes dissolution of the company loses
24 the right to participate in management in any capacity.

25 7. This chapter does not entitle a member to remuneration for services performed for a
26 member-managed limited liability company, except for reasonable compensation for
27 services rendered in winding up the activities of the company.

28 **10-32.1-40. Indemnification and insurance.**

29 1. For purposes of this section, unless the context otherwise requires:

30 a. "Limited liability company" includes a domestic or foreign limited liability company
31 that was the predecessor of the limited liability company referred to in this section

1 in a merger or other transaction in which the existence of the predecessor
2 ceased upon consummation of the transaction.

3 b. "Official capacity" means:

4 (1) With respect to a member of a member-managed company, a manager of a
5 manager-managed company, or a governor of a board-managed company,
6 actions taken in that capacity;

7 (2) With respect to a person other than a member of a member-managed
8 company, a manager of a manager-managed company, or a governor of a
9 board-managed company:

10 (a) The elective or appointive office or position held by a manager or
11 officer, member of a committee of the board of governors;

12 (b) The employment relationship undertaken by an employee of the
13 limited liability company; or

14 (c) The scope of the services provided by members of the limited liability
15 company who provide services to the limited liability company; and

16 (3) With respect to a governor, manager, member, or employee of the limited
17 liability company who, while a member, governor, manager, or employee of
18 the limited liability company, is or was serving at the request of the limited
19 liability company or whose duties in that position involve or involved service
20 as a governor, director, manager, officer, member, partner, trustee,
21 employee, or agent of another organization or employee benefit plan, the
22 position of that person as a governor, director, manager, officer, member,
23 partner, trustee, employee, or agent, as the case may be, of the other
24 organization or employee benefit plan.

25 c. "Proceeding" means a threatened, pending, or completed civil, criminal,
26 administrative, arbitration, or investigative proceeding, including a proceeding by
27 or in the right of the limited liability company.

28 d. "Special legal counsel" means counsel who has not in the preceding five years:

29 (1) Represented the limited liability company or a related organization in a
30 capacity other than special legal counsel; or

1 (2) Represented a member, governor, manager, member of a committee of the
2 board of governors, or employee, or other person whose indemnification is
3 in issue.

4 2. With respect to indemnification:

5 a. Subject to the provisions of subsection 4, a limited liability company shall
6 indemnify a person made or threatened to be made a party to a proceeding by
7 reason of the former or present official capacity of the person against judgments,
8 penalties, fines, including, without limitation, excise taxes assessed against the
9 person with respect to an employee benefit plan, settlements, and reasonable
10 expenses, including attorney's fees and disbursements, incurred by the person in
11 connection with the proceeding, if, with respect to the acts or omissions of the
12 person complained of in the proceeding, the person:

13 (1) Has not been indemnified by another organization or employee benefit plan
14 for the same judgments, penalties, fines, including, without limitation, excise
15 taxes assessed against the person with respect to an employee benefit
16 plan, settlements, and reasonable expenses, including attorney's fees and
17 disbursements, incurred by the person in connection with the proceeding
18 with respect to the same acts or omissions;

19 (2) Acted in good faith;

20 (3) Received no improper personal benefit and complied with the duties stated
21 in sections 10-32.1-31 and 10-32.1-41, if applicable;

22 (4) In the case of a criminal proceeding, had no reasonable cause to believe
23 the conduct was unlawful; and

24 (5) In the case of acts or omissions occurring in the official capacity described
25 in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed
26 that the conduct was in the best interests of the limited liability company, or
27 in the case of acts or omissions occurring in the official capacity described
28 in paragraph 3 of subdivision b of subsection 1, reasonably believed that the
29 conduct was not opposed to the best interests of the limited liability
30 company. If the acts or omissions of the person complained of in the
31 proceeding relate to conduct as a director, officer, trustee, employee, or

1 agent of an employee benefit plan, then the conduct is not considered to be
2 opposed to the best interests of the limited liability company if the person
3 reasonably believed that the conduct was in the best interests of the
4 participants or beneficiaries of the employee benefit plan.

5 b. The termination of a proceeding by judgment, order, settlement, conviction, or
6 upon a plea of nolo contendere or its equivalent does not, of itself, establish that
7 the person did not meet the criteria set forth in this subsection.

8 3. Subject to the provisions of subsection 4, if a person is made or threatened to be
9 made a party to a proceeding, then the person is entitled, upon written request to the
10 limited liability company, to payment or reimbursement by the limited liability company
11 of reasonable expenses, including attorney's fees and disbursements, incurred by the
12 person in advance of the final disposition of the proceeding:

13 a. Upon receipt by the limited liability company of a written affirmation by the person
14 of a good faith belief that the criteria for indemnification in subsection 2 have
15 been satisfied and a written undertaking by the person to repay all amounts so
16 paid or reimbursed by the limited liability company, if it is ultimately determined
17 that the criteria for indemnification have not been satisfied; and

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

20 c. The written undertaking required by subdivision a is an unlimited general
21 obligation of the person making it, but need not be secured and shall be accepted
22 without reference to financial ability to make the repayment.

23 4. The articles of organization or the operating agreement either may prohibit
24 indemnification or advances of expenses otherwise required by this section or may
25 impose conditions on indemnification or advances of expenses in addition to the
26 conditions contained in subsections 2 and 3, including, without limitation, monetary
27 limits on indemnification or advances of expenses, if the conditions apply equally to all
28 persons or to all persons within a given class. A prohibition or limit on indemnification
29 or advances may not apply to or affect the right of a person to indemnification or
30 advances of expenses with respect to any acts or omissions of the person occurring
31 before the effective date of a provision in the articles of organization, a member control

1 agreement, or the date of adoption of a provision in the bylaws establishing the
2 prohibition or limit on indemnification or advances.

3 5. This section does not require, or limit the ability of, a limited liability company to
4 reimburse expenses, including attorney fees and disbursements, incurred by a person
5 in connection with an appearance as a witness in a proceeding at a time when the
6 person has not been made or threatened to be made a party to a proceeding.

7 6. With respect to the determination of eligibility:

8 a. All determinations whether indemnification of a person is required because the
9 criteria in subsection 2 have been satisfied and whether a person is entitled to
10 payment or reimbursement of expenses in advance of the final disposition of a
11 proceeding as provided in subsection 3 must be made:

12 (1) In a board-managed limited liability company:

13 (a) By the board of governors by a majority of a quorum, provided that
14 governors who are, at the time, parties to the proceeding shall not be
15 counted for determining either a majority or the presence of a quorum;

16 (b) If a quorum under subparagraph a cannot be obtained, then by a
17 majority of a committee of the board of governors, consisting solely of
18 two or more governors not at the time parties to the proceeding, duly
19 designated to act in the matter by a majority of the full board of
20 governors including governors who are parties; and

21 (c) If a determination is not made under subparagraph a or b, then by
22 special legal counsel, selected either by a majority of the board of
23 governors or a committee by vote pursuant to subparagraph a or b or,
24 if the requisite quorum of the full board of governors cannot be
25 obtained and the committee cannot be established, then by a majority
26 of the full board of governors including governors who are parties;

27 (2) In all other cases, then by the affirmative vote of the members, with each
28 member having voting power in proportion to the member's interest in then
29 current profits of the limited liability company, but the membership interests
30 held by parties to the proceeding must not be counted in determining the

1 presence of a quorum and are not considered to be present and entitled to
2 vote on the determination; or

3 (3) If an adverse determination is made under subparagraphs a or b, or if no
4 determination is made under subparagraphs a or b then within sixty days
5 after:

6 (a) The later to occur of the termination of a proceeding or a written
7 request for indemnification to the limited liability company; or

8 (b) A written request for an advance of expenses, as the case may be, by
9 a court in this state, which may be the same court in which the
10 proceeding involving the liability of the person took place, upon
11 application of the person and any notice which the court requires. The
12 person seeking indemnification or payment or reimbursement of
13 expenses pursuant to this subdivision has the burden of establishing
14 that the person is entitled to indemnification or payment or
15 reimbursement of expenses.

16 b. With respect to a person who is not, and was not at the time of the acts or
17 omissions complained of in the proceedings, a member, governor, manager, or
18 person possessing, directly or indirectly, the power to direct or cause the direction
19 of the management or policies of the limited liability company, the determination
20 whether indemnification of this person is required because the criteria set forth in
21 subsection 2 have been satisfied and whether this person is entitled to payment
22 or reimbursement of expenses in advance of the final disposition of a proceeding
23 as provided in subsection 3 may be made:

24 (1) In a board-managed limited liability company, by an annually appointed
25 committee of the board of governors, having at least one member who is a
26 governor, which committee shall report at least annually to the board of
27 governors concerning its actions; and

28 (2) In all other cases by a committee appointed annually by the members,
29 having at least one committee member who is a member of the limited
30 liability company, which committee shall report at least annually to the board
31 of governors concerning its actions.

- 1 7. A limited liability company may purchase and maintain insurance on behalf of a
2 member, manager, or governor of the company against liability asserted against or
3 incurred by the member, manager, or governor in that capacity or arising from that
4 status even if, under subsection 7 of section 10-32.1-13, the operating agreement
5 could not eliminate or limit the liability of a person to the company for the conduct
6 giving rise to the liability and whether or not the limited liability company would have
7 been required to indemnify the person against the liability under this section.
- 8 8. A limited liability company that indemnifies or advances expenses to a person
9 according to this section in connection with a proceeding by or on behalf of the limited
10 liability company shall report to the members in writing the amount of the
11 indemnification or advance and to whom and on whose behalf it was paid not later
12 than the next meeting of members.
- 13 9. Nothing in this section must be construed to limit the power of the limited liability
14 company to indemnify persons other than a governor, manager, member, employee, or
15 member of a committee of the board of the limited liability company, by contract or
16 otherwise.

17 **10-32.1-41. Standards of conduct for members, managers, and governors.**

- 18 1. A member of a member-managed limited liability company owes to the company and,
19 subject to subsection 2 of section 10-32.1-33, the other members the fiduciary duties
20 of loyalty and care stated in subsections 2 and 3.
- 21 2. The duty of loyalty of a member in a member-managed limited liability company
22 includes the duties:
- 23 a. To account to the company and to hold as trustee for it any property, profit, or
24 benefit derived by the member:
- 25 (1) In the conduct or winding up of the activities of the company;
26 (2) From a use by the member of the property of the company; or
27 (3) From the appropriation of a limited liability company opportunity;
- 28 b. To refrain from dealing with the company in the conduct or winding up of the
29 activities of the company as or on behalf of a person having an interest adverse
30 to the company; and

- 1 c. To refrain from competing with the company in the conduct of the activities of the
2 company before the dissolution of the company.
- 3 3. Subject to the business judgment rule, the duty of care of a member of a
4 member-managed limited liability company in the conduct and winding up of the
5 activities of the company is to act with the care that a person in a like position would
6 reasonably exercise under similar circumstances and in a manner the member
7 reasonably believes to be in the best interests of the company. In discharging this
8 duty, a member may rely in good faith on opinions, reports, statements, or other
9 information provided by another person that the member reasonably believes is a
10 competent and reliable source for the information.
- 11 4. A member in a limited liability company shall discharge the duties of the member and
12 exercise any rights under this chapter or under the operating agreement consistently
13 with the contractual obligation of good faith and fair dealing, including acting in a
14 manner, in light of the operating agreement, that is honest, fair, and reasonable.
- 15 5. It is a defense to a claim under subdivision b of subsection 2, and any comparable
16 claim in equity or at common law that the transaction was fair to the limited liability
17 company.
- 18 6. All of the members of a member-managed limited liability company or a
19 manager-managed limited liability company may authorize or ratify, after full disclosure
20 of all material facts, a specific act or transaction that otherwise would violate the duty
21 of loyalty.
- 22 7. In a manager-managed limited liability company, the following rules apply:
- 23 a. Subsections 1, 2, 3, and 5 apply to the manager or managers and not the
24 members.
- 25 b. The duty stated under subdivision c of subsection 2 continues until winding up is
26 completed.
- 27 c. Subsection 4 applies to the members and managers.
- 28 d. Subsection 6 applies only to the members.
- 29 e. A member does not have any fiduciary duty to the company or to any other
30 member solely by reason of being a member.
- 31 8. In a board-managed limited liability company, the following rules apply:

- 1 a. Subsections 1, 2, 3, and 5 apply to the governors and not the members.
- 2 b. The duty stated under subdivision c of subsection 2 continues until winding up is
3 completed.
- 4 c. Subsection 4 applies to the members and governors.
- 5 d. Subsection 6 applies only to the members.
- 6 e. A member does not have any fiduciary duty to the company or to any other
7 member solely by reason of being a member.

8 **10-32.1-42. Right of members, managers, governors, and dissociated members to**
9 **information.**

- 10 1. In a member-managed limited liability company, the following rules apply:
 - 11 a. On reasonable notice, a member may inspect and copy during regular business
12 hours, at a reasonable location specified by the company, any record maintained
13 by the company regarding the activities, financial condition, and other
14 circumstances of the company, to the extent the information is material to the
15 rights and duties of the member under the operating agreement or this chapter.
 - 16 b. The company shall furnish to each member:
 - 17 (1) Without demand, any information concerning the activities, financial
18 condition, and other circumstances of the company which the company
19 knows and is material to the proper exercise of the rights and duties of the
20 member under the operating agreement or this chapter, except to the extent
21 the company can establish that it reasonably believes the member already
22 knows the information; and
 - 23 (2) On demand, any other information concerning the activities, financial
24 condition, and other circumstances of the company, except to the extent the
25 demand or information demanded is unreasonable or otherwise improper
26 under the circumstances.
 - 27 c. The duty to furnish information under subdivision b also applies to each member
28 to the extent the member knows any of the information described in
29 subdivision b.
- 30 2. In a manager-managed limited liability company, the following rules apply:

- 1 a. The informational rights stated in subsection 1 and the duty stated in
2 subdivision c of subsection 1, apply to the managers or governors and not the
3 members.
- 4 b. During regular business hours and at a reasonable location specified by the
5 company, a member may obtain from the company and inspect and copy full
6 information regarding the activities, financial condition, and other circumstances
7 of the company as is just and reasonable if:
- 8 (1) The member seeks the information for a purpose material to the interest of
9 the member as a member;
- 10 (2) The member makes a demand in a record received by the company,
11 describing with reasonable particularity the information sought and the
12 purpose for seeking the information; and
- 13 (3) The information sought is directly connected to the purpose of the member.
- 14 c. Within ten days after receiving a demand pursuant to paragraph 3 of subdivision
15 b, the company shall in a record inform the member that made the demand:
- 16 (1) Of the information that the company will provide in response to the demand
17 and when and where the company will provide the information; and
- 18 (2) If the company declines to provide any demanded information, then the
19 reasons of the company for declining.
- 20 d. Whenever this chapter or an operating agreement provides for a member to give
21 or withhold consent to a matter, before the consent is given or withheld, the
22 company shall, without demand, provide the member with all information that is
23 known to the company and is material to the decision of the member.
- 24 3. On ten days' demand made in a record received by a limited liability company, a
25 dissociated member may have access to information to which the person was entitled
26 while a member if the information pertains to the period during which the person was a
27 member, the person seeks the information in good faith, and the person satisfies the
28 requirements imposed on a member by subdivision b of subsection 2. The company
29 shall respond to a demand made pursuant to this subsection in the manner provided in
30 subdivision c of subsection 2.

- 1 4. A limited liability company may charge a person that makes a demand under this
2 section the reasonable costs of copying, limited to the costs of labor and material.
- 3 5. A member or dissociated member may exercise rights under this section through an
4 agent or, in the case of an individual under legal disability, a legal representative. Any
5 restriction or condition imposed by the operating agreement or under subsection 7
6 applies both to the agent or legal representative and the member or dissociated
7 member.
- 8 6. The rights under this section do not extend to a person as transferee.
- 9 7. In addition to any restriction or condition stated in its operating agreement, a limited
10 liability company, as a matter within the ordinary course of its activities, may impose
11 reasonable restrictions and conditions on access to and use of information to be
12 furnished under this section, including designating information confidential and
13 imposing nondisclosure and safeguarding obligations on the recipient. In a dispute
14 concerning the reasonableness of a restriction under this subsection, the company
15 has the burden of proving reasonableness.

16 **10-32.1-43. Nature of a transferable interest.**

17 A transferable interest is personal property.

18 **10-32.1-44. Transfer of a transferable interest.**

- 19 1. A transfer, in whole or in part, of a transferable interest:
- 20 a. Is permissible;
- 21 b. Does not by itself cause the dissociation of a member or a dissolution and
22 winding up of the activities of the limited liability company; and
- 23 c. Subject to section 10-32.1-46, does not entitle the transferee to:
- 24 (1) Participate in the management or conduct of the activities of the company;
25 or
- 26 (2) Except as otherwise provided in subsection 3, have access to records or
27 other information concerning the activities of the company.
- 28 2. A transferee has the right to receive, in accordance with the transfer, distributions to
29 which the transferor would otherwise be entitled.
- 30 3. In a dissolution and winding up of a limited liability company, a transferee is entitled to
31 an account of the transactions of the company only from the date of dissolution.

- 1 4. A transferable interest may be evidenced by a certificate of the interest issued by the
2 limited liability company in a record, and, subject to this section, the interest
3 represented by the certificate may be transferred by a transfer of the certificate.
- 4 5. A limited liability company need not give effect to the rights of a transferee under this
5 section until the company has notice of the transfer.
- 6 6. A transfer of a transferable interest in violation of a restriction on transfer contained in
7 the operating agreement is ineffective as to a person having notice of the restriction at
8 the time of transfer.
- 9 7. Except as otherwise provided in subdivision b of subsection 4 of section 10-32.1-48,
10 when a member transfers a transferable interest, the transferor retains the rights of a
11 member other than the interest in distributions transferred and retains all duties and
12 obligations of a member.
- 13 8. When a member transfers a transferable interest to a person that becomes a member
14 with respect to the transferred interest, the transferee is liable for the obligations of the
15 member under section 10-32.1-29 and subsection 3 of section 10-32.1-32, known to
16 the transferee when the transferee becomes a member.

17 **10-32.1-45. Charging order.**

- 18 1. On application by a judgment creditor of a member or transferee, a court may enter a
19 charging order against the transferable interest of the judgment debtor for the
20 unsatisfied amount of the judgment. A charging order constitutes a lien on the
21 transferable interest of a judgment debtor and requires the limited liability company to
22 pay over to the person to which the charging order was issued any distribution that
23 would otherwise be paid to the judgment debtor.
- 24 2. To the extent necessary to effectuate the collection of distributions pursuant to a
25 charging order in effect under subsection 1, the court may:
 - 26 a. Appoint a receiver of the distributions subject to the charging order, with the
27 power to make all inquiries the judgment debtor might have made; and
 - 28 b. Make all other orders necessary to give effect to the charging order.
- 29 3. Upon a showing that distributions under a charging order will not pay the judgment
30 debt within a reasonable time, then the court may foreclose the lien and order the sale
31 of the transferable interest. The purchaser at the foreclosure sale obtains only the

1 transferable interest, does not thereby become a member, and is subject to section
2 10-32.1-44.

3 4. At any time before foreclosure under subsection 3, the member or transferee whose
4 transferable interest is subject to a charging order under subsection 1 may extinguish
5 the charging order by satisfying the judgment and filing a certified copy of the
6 satisfaction with the court that issued the charging order.

7 5. At any time before foreclosure under subsection 3, a limited liability company or one or
8 more members whose transferable interests are not subject to the charging order may
9 pay to the judgment creditor the full amount due under the judgment and thereby
10 succeed to the rights of the judgment creditor, including the charging order.

11 6. This chapter does not deprive any member or transferee of the benefit of any
12 exemption laws applicable to the transferable interest of the member or transferee.

13 7. This section provides the exclusive remedy by which a person seeking to enforce a
14 judgment against a member or transferee may, in the capacity of judgment creditor,
15 satisfy the judgment from the transferable interest of the judgment debtor.

16 **10-32.1-46. Power of the personal representative of a deceased member.**

17 If a member dies, then the personal representative of the deceased member or other legal
18 representative may exercise the rights of a transferee provided in subsection 3 of section
19 10-32.1-44, and, for the purposes of settling the estate, the rights of a current member under
20 section 10-32.1-42.

21 **10-32.1-47. Power of a member to dissociate - Wrongful dissociation.**

22 1. A person has the power to dissociate as a member at any time, rightfully or wrongfully,
23 by withdrawing as a member by express will under subsection 1 of section 10-32.1-48.

24 2. The dissociation of a person from a limited liability company is wrongful only if the
25 dissociation:

26 a. Is in breach of an express provision of the operating agreement; or

27 b. Occurs before the termination of the company and:

28 (1) The person withdraws as a member by express will;

29 (2) The person is expelled as a member by judicial order under subsection 5 of
30 section 10-32.1-48;

1 (3) The person is dissociated under subdivision a of subsection 7 of section
2 10-32.1-48, by becoming a debtor in bankruptcy; or

3 (4) In the case of a person that is not a trust other than a business trust, an
4 estate, or an individual, the person is expelled or otherwise dissociated as a
5 member because it willfully dissolved or terminated.

6 3. A person that wrongfully dissociates as a member is liable to the limited liability
7 company and, subject to section 10-32.1-33, to the other members for damages
8 caused by the dissociation. The liability is in addition to any other debt, obligation, or
9 other liability of the member to the company or the other members.

10 **10-32.1-48. Events causing dissociation.**

11 A person is dissociated as a member from a limited liability company when:

12 1. The company has notice of the express will of the person to withdraw as a member,
13 but, if the person specified a withdrawal date later than the date the company had
14 notice, then on that later date:

15 2. An event stated in the operating agreement as causing the dissociation of the person
16 occurs:

17 3. The person is expelled as a member pursuant to the operating agreement;

18 4. The person is expelled as a member by the unanimous consent of the other members
19 if:

20 a. It is unlawful to carry on the activities of the company with the person as a
21 member;

22 b. There has been a transfer of all of the transferable interest of the person in the
23 company, other than:

24 (1) A transfer for security purposes; or

25 (2) A charging order in effect under section 10-32.1-45 which has not been
26 foreclosed;

27 c. The person is a corporation and, within ninety days after the company notifies the
28 person that it will be expelled as a member because:

29 (1) The person has filed articles of dissolution or the equivalent;

30 (2) Its charter has been revoked;

- 1 (3) Its right to conduct business has been suspended by the jurisdiction of its
2 incorporation;
- 3 (4) The articles of dissolution have not been revoked; or
- 4 (5) Its charter or right to conduct business has not been reinstated; or
- 5 d. The person is a limited liability company or partnership that has been dissolved
6 and whose business is being wound up;
- 7 5. On application by the company, the person is expelled as a member by judicial order
8 because the person:
- 9 a. Has engaged, or is engaging, in wrongful conduct that has adversely and
10 materially affected, or will adversely and materially affect, the activities of the
11 company;
- 12 b. Has willfully or persistently committed, or is willfully and persistently committing, a
13 material breach of the operating agreement or the duties or obligations of the
14 person under section 10-32.1-41; or
- 15 c. Has engaged, or is engaging, in conduct relating to the activities of the company
16 which makes it not reasonably practicable to carry on the activities with the
17 person as a member;
- 18 6. In the case of a person who is an individual:
- 19 a. The individual dies; or
- 20 b. In a member-managed limited liability company:
- 21 (1) A guardian or general conservator for the individual is appointed; or
- 22 (2) There is a judicial order that the individual has otherwise become incapable
23 of performing the duties of the individual as a member under this chapter or
24 the operating agreement;
- 25 7. In a member-managed limited liability company, the person:
- 26 a. Becomes a debtor in bankruptcy;
- 27 b. Executes an assignment for the benefit of creditors; or
- 28 c. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or
29 liquidator of the person or of all or substantially all of the property of the person;

- 1 8. In the case of a person that is a trust or is acting as a member by virtue of being a
2 trustee of a trust, the entire transferable interest of the trust in the company is
3 distributed;
- 4 9. In the case of a person that is an estate or is acting as a member by virtue of being a
5 personal representative of an estate, the entire transferable interest of the estate in
6 the company is distributed;
- 7 10. In the case of a member that is not an individual, partnership, limited liability company,
8 corporation, trust, or estate, the termination of the member;
- 9 11. The company participates in a merger under sections 10-32.1-55 through 10-32.1-71,
10 if:
- 11 a. The company is not the surviving entity; or
- 12 b. Otherwise as a result of the merger, the person ceases to be a member;
- 13 12. The company participates in a conversion under sections 10-32.1-61 through
14 10-32.1-71;
- 15 13. The company participates in a domestication under sections 10-32.1-67 through
16 10-32.1-71, if, as a result of the domestication, the person ceases to be a member; or
- 17 14. The company terminates.
- 18 **10-32.1-49. Effect of the dissociation of a person as member.**
- 19 1. When a person is dissociated as a member of a limited liability company:
- 20 a. The right of the person to participate as a member in the management and
21 conduct of the activities of the company terminates;
- 22 b. If the company is member-managed, then the fiduciary duties of the person as a
23 member end with regard to matters arising and events occurring after the
24 dissociation of the person; and
- 25 c. Subject to sections 10-32.1-46 and 10-32.1-55 through 10-32.1-71, any
26 transferable interest owned by the person immediately before dissociation in the
27 capacity of the person as a member is owned by the person solely as a
28 transferee.
- 29 2. The dissociation of a person as a member of a limited liability company does not of
30 itself discharge the person from any debt, obligation, or other liability to the company
31 or the other members that the person incurred while a member.

1 **10-32.1-50. Events causing dissolution.**

2 1. A limited liability company is dissolved, and its activities must be wound up, upon the
3 occurrence of any of the following:

4 a. An event or circumstance that the operating agreement states causes
5 dissolution;

6 b. The consent of all the members;

7 c. Following the admission of the initial member or members, the passage of ninety
8 consecutive days during which the company has no members;

9 d. On application by a member, the entry by appropriate court of an order dissolving
10 the company on the grounds that:

11 (1) The conduct of all or substantially all of the activities of the company are
12 unlawful; or

13 (2) It is not reasonably practicable to carry on the activities of the company in
14 conformity with the articles of organization and the operating agreement;

15 e. On application by a member, the entry by appropriate court of an order dissolving
16 the company on the grounds that the managers, governors, or those members in
17 control of the company:

18 (1) Have acted, are acting, or will act in a manner that is illegal or fraudulent; or

19 (2) Have acted or are acting in a manner that is oppressive and was, is, or will
20 be directly harmful to the applicant; 2. In a proceeding brought

21 under subdivision e of subsection 1, the court may order a remedy other
22 than dissolution, which may include the sale for fair value of all membership

23 interests a member owns in a limited liability company to the limited liability
24 company or one or more of the other members. A remedy other than

25 dissolution may be ordered in any case where that remedy would be
26 appropriate under all the facts and circumstances of the case.

27 3. A proceeding brought under subdivision e of subsection 1 must be brought in a court
28 within the county in which the registered office of the limited liability company is
29 located. It is not necessary to make members parties to the action or proceeding
30 unless relief is sought against them personally.

1 **10-32.1-51. Winding up.**

2 1. A dissolved limited liability company shall wind up its activities, and the company
3 continues after dissolution only for the purpose of winding up.

4 2. In winding up its activities, a limited liability company:

5 a. Shall discharge the debts, obligations, or other liabilities of the company, settle
6 and close the activities of the company, and marshal and distribute the assets of
7 the company; and

8 b. May:

9 (1) File with the secretary of state a notice of dissolution stating the name of the
10 company and that the company is dissolved;

11 (2) Preserve the company activities and property as a going concern for a
12 reasonable time;

13 (3) Prosecute and defend actions and proceedings, whether civil, criminal, or
14 administrative;

15 (4) Transfer the property of the company;

16 (5) Settle disputes by mediation or arbitration;

17 (6) File with the secretary of state articles of dissolution and termination stating
18 the name of the company and that the company is terminated; and

19 (7) Perform other acts necessary or appropriate to the winding up.

20 3. If a dissolved limited liability company has no members, then the legal representative
21 of the last person to have been a member may wind up the activities of the company.

22 If the person does so, then the person has the powers of a sole manager under

23 subsection 3 of section 10-32.1-39, and is deemed to be a manager for the purposes
24 of subdivision b of subsection 1 of section 10-32.1-26.

25 4. If the legal representative under subsection 3 declines or fails to wind up the activities
26 of the company, then a person may be appointed to do so by the consent of

27 transferees owning a majority of the rights to receive distributions as transferees at the
28 time the consent is to be effective. A person appointed under this subsection:

29 a. Has the powers of a sole manager under subsection 3 of section 10-32.1-39, and
30 is deemed to be a manager for the purposes of subdivision b of subsection 1 of
31 section 10-32.1-26; and

- 1 b. Shall promptly file with the secretary of state an amendment to the articles of
2 organization of the company to:
3 (1) State that the company has no members;
4 (2) State that the person has been appointed pursuant to this subsection to
5 wind up the company; and
6 (3) Provide the mailing address of the person.
7 5. The appropriate court may order judicial supervision of the winding up of a dissolved
8 limited liability company, including the appointment of a person to wind up the activities
9 of the company:
10 a. On application of a member, if the applicant establishes good cause;
11 b. On the application of a transferee, if:
12 (1) The company does not have any members;
13 (2) The legal representative of the last person to have been a member declines
14 or fails to wind up the activities of the company; and
15 (3) Within a reasonable time following the dissolution a person has not been
16 appointed pursuant to subsection 4; or
17 c. In connection with a proceeding under subdivision d or e of subsection 1 of
18 section 10-32.1-50.

19 **10-32.1-52. Known claims against a dissolved limited liability company.**

- 20 1. Except as otherwise provided in subsection 4, a dissolved limited liability company
21 may give notice of a known claim under subsection 2 that has the effect as provided in
22 subsection 3.
23 2. A dissolved limited liability company may in a record notify its known claimants of the
24 dissolution. The notice must:
25 a. Specify the information required to be included in a claim;
26 b. Provide a mailing address to which the claim is to be sent;
27 c. State the deadline for receipt of the claim, which may not be less than one
28 hundred twenty days after the date the notice is received by the claimant; and
29 d. State that the claim will be barred if not received by the deadline.
30 3. A claim against a dissolved limited liability company is barred if the requirements of
31 subsection 2 are met and:

- 1 a. The claim is not received by the specified deadline; or
- 2 b. If the claim is timely received but rejected by the company:
 - 3 (1) The company causes the claimant to receive a notice in a record stating that
 - 4 the claim is rejected and will be barred unless the claimant commences an
 - 5 action against the company to enforce the claim within ninety days after the
 - 6 claimant receives the notice of rejection; and
 - 7 (2) The claimant does not commence the required action within the ninety days.
- 8 4. This section does not apply to a claim based on an event occurring after the effective
- 9 date of dissolution or a liability that on that date is contingent.

10 **10-32.1-53. Other claims against a dissolved limited liability company.**

- 11 1. A dissolved limited liability company may publish notice of its dissolution and request
- 12 persons having claims against the company to present them according to the notice.
- 13 2. The notice authorized by subsection 1 must:
 - 14 a. Be published at least once in a newspaper of general circulation in the county or
 - 15 counties in this state in which the principal executive office of the dissolved
 - 16 limited liability company is located or, if it has none in this state, then in the
 - 17 county or counties in which the registered office of the company is or was last
 - 18 located;
 - 19 b. Describe the information required to be contained in a claim and provide a
 - 20 mailing address to which the claim is to be sent; and
 - 21 c. State that a claim against the company is barred unless an action to enforce the
 - 22 claim is commenced within five years after publication of the notice.
- 23 3. If a dissolved limited liability company publishes a notice according to subdivision b,
- 24 unless the claimant commences an action to enforce the claim against the company
- 25 within five years after the publication date of the notice, then the claim of each of the
- 26 following claimants is barred:
 - 27 a. A claimant that did not receive notice in a record under section 10-32.1-52;
 - 28 b. A claimant whose claim was timely sent to the company but not acted on; and
 - 29 c. A claimant whose claim is contingent at, or based on an event occurring after, the
 - 30 effective date of dissolution.
- 31 4. A claim not barred under this section may be enforced:

- 1 a. Against a dissolved limited liability company, to the extent of its undistributed
2 assets; and
- 3 b. If assets of the company have been distributed after dissolution, then against a
4 member or transferee to the extent of the proportionate share of the claim of that
5 person or of the assets distributed to the member or transferee after dissolution,
6 whichever is less, but the total liability of a person for all claims under this
7 subdivision does not exceed the total amount of assets distributed to the person
8 after dissolution.

9 **10-32.1-54. Distribution of assets in winding up limited liability activities of the**
10 **company.**

- 11 1. In winding up its activities, a limited liability company must apply its assets to
12 discharge its obligations to creditors, including members that are creditors.
- 13 2. After a limited liability company complies with subsection 1, any surplus must be
14 distributed in the following order, subject to any charging order in effect under section
15 10-32.1-45:
- 16 a. To each person owning a transferable interest that reflects contributions made by
17 a member and not previously returned, an amount equal to the value of the
18 unreturned contributions; and
- 19 b. In equal shares among members and dissociated members, except to the extent
20 necessary to comply with any transfer effective under section 10-32.1-44.
- 21 3. If a limited liability company does not have sufficient surplus to comply with
22 subdivision a of subsection 2, then any surplus must be distributed among the owners
23 of transferable interests in proportion to the value of their respective unreturned
24 contributions.
- 25 4. All distributions made under subsections 2 and 3 must be paid in money.

26 **10-32.1-55. Merger, conversion, and domestication - Definitions.**

27 For the purposes of sections 10-32.1-55 through 10-32.1-71, unless the context otherwise
28 requires:

- 29 1. "Constituent limited liability company" means a constituent organization that is a
30 limited liability company.

- 1 2. "Constituent organization" means an organization that is party to a merger or
2 exchange.
- 3 3. "Converted organization" means the organization into which a converting organization
4 converts pursuant to sections 10-32.1-61 through 10-32.1-66.
- 5 4. "Converting limited liability company" means a converting organization that is a limited
6 liability company.
- 7 5. "Converting organization" means an organization that converts into another
8 organization pursuant to section 10-32.1-61.
- 9 6. "Domesticated company" means the company that exists after a domesticating foreign
10 limited liability company or limited liability company effects a domestication pursuant to
11 sections 10-32.1-67 through 10-32.1-71.
- 12 7. "Domesticating company" means the company that effects a domestication pursuant
13 to sections 10-32.1-67 through 10-32.1-71.
- 14 8. "Governing statute" of an organization means:
- 15 a. With respect to a domestic organization, the following chapters of this code which
16 govern the internal affairs of the organization:
- 17 (1) If a corporation, then chapter 10-19.1;
18 (2) If a limited liability company, then this chapter;
19 (3) If a general partnership, then chapters 45-13 through 45-21;
20 (4) If a limited partnership, then chapter 45-10.2;
21 (5) If a limited liability partnership, then chapter 45-22; and
22 (6) If a limited liability limited partnership, then chapter 45-23; and
- 23 b. With respect to a foreign organization, the laws of the jurisdiction under which the
24 organization is created and which govern the internal affairs of the organization.
- 25 9. "Organization" has the meaning provided in subsection 37 of section 10-32.1-02.
- 26 10. "Organizational documents" means:
- 27 a. For a domestic or foreign general partnership, its partnership agreement;
28 b. For a limited partnership or foreign limited partnership, its certificate of limited
29 partnership and partnership agreement;

- 1 c. For a domestic or foreign limited liability company, its certificate or articles of
2 organization and operating agreement, or comparable records as provided in its
3 governing statute;
- 4 d. For a business trust, its agreement of trust and declaration of trust;
- 5 e. For a domestic or foreign corporation for profit, its articles of incorporation,
6 bylaws, and other agreements among its shareholders which are authorized by
7 its governing statute, or comparable records as provided in its governing statute;
8 and
- 9 f. For any other organization, the basic records that create the organization and
10 determine its internal governance and the relations among the persons that own
11 it, have an interest in it, or are members of it.
- 12 11. "Originating Records" has the meaning provided in subsection 39 of section
13 10-32.1-02.
- 14 12. "Personal liability" means liability for a debt, obligation, or other liability of an
15 organization which is imposed on a person that coowns, has an interest in, or is a
16 member of the organization:
- 17 a. By the governing statute solely by reason of the person coowning, having an
18 interest in, or being a member of the organization; or
- 19 b. By the organizational documents of the organization under a provision of the
20 governing statute authorizing those documents to make one or more specified
21 persons liable for all or specified debts, obligations, or other liabilities of the
22 organization solely by reason of the person or persons coowning, having an
23 interest in, or being a member of the organization.
- 24 13. "Surviving organization" means the organization resulting from a merger which:
- 25 a. May preexist the merger; or
- 26 b. May be created by the merger.
- 27 **10-32.1-56. Merger and exchange.**
- 28 1. A limited liability company may merge with one or more other constituent organizations
29 pursuant to this section, sections 10-32.1-55 through 10-32.1-59 and 10-32.1-71, and
30 a plan of merger if:
- 31 a. The governing statute of each of the other organizations authorizes the merger;

- 1 b. The merger is not prohibited by the law of a jurisdiction that enacted any of the
2 governing statutes; and
- 3 c. Each of the other organizations complies with its governing statute in effecting
4 the merger.
- 5 2. A limited liability company may engage in an exchange with one or more other
6 constituent organizations pursuant to this section by which one of the constituent
7 organizations acquires all of the ownership interests of one or more classes or series
8 of another constituent organization pursuant to this section, sections 10-32.1-55
9 through 10-32.1-58, 10-32.1-60, and 10-32.1-71, and a plan of exchange if:
- 10 a. The governing statute of each of the other constituent organizations authorizes
11 the exchange;
- 12 b. The exchange is not prohibited by the law of a jurisdiction that enacted any of the
13 governing statutes; and
- 14 c. Each of the other constituent organizations complies with its governing statute in
15 effecting the exchange.
- 16 3. A plan of merger or exchange must be in a record and must include:
- 17 a. The name and form of each constituent organization and:
- 18 b. In the case of a merger:
- 19 (1) The name and form of the surviving organization and, if the surviving
20 organization is to be created by the merger, then a statement to that effect;
- 21 (2) The terms and conditions of the merger, including the manner and basis for
22 converting the interests in each constituent organization into any
23 combination of money, interests in the surviving organization, and other
24 consideration; and
- 25 (3) If the surviving organization is to be created by the merger, then the
26 originating record of the surviving organization that is proposed to be in a
27 record;
- 28 (4) If the surviving organization is not to be created by the merger, then any
29 amendments to be made by the merger to the organizational documents of
30 the surviving organization that are, or are proposed to be, in a record; and

1 (5) Any other provisions with respect to the proposed merger that are
2 considered necessary or desirable.

3 c. In the case of an exchange:

4 (1) The name of the acquiring organization;

5 (2) The terms and conditions of the exchange, including the manner and basis
6 of exchanging the ownership interests to be acquired for securities of, or
7 other ownership interests in, the acquiring organization or any other
8 organization or, in whole or part, for money or other property; and

9 (3) Any other provisions with respect to the proposed exchange that are
10 considered necessary or desirable.

11 4. If an organization is not the surviving organization but is the owner of a service mark,
12 trademark, or trade name, is a general partner named in a fictitious name certificate, is
13 a general partner in a limited partnership or a limited liability limited partnership, or is a
14 managing partner of a limited liability partnership that is on file with the secretary of
15 state, then it must change or amend the name of the organization to its name in each
16 registration when filing the articles of merger.

17 **10-32.1-57. Action on a plan of merger or exchange by a constituent limited liability**
18 **company.**

19 1. Subject to section 10-32.1-71, a plan of merger or exchange must be consented to by
20 all the members of a constituent limited liability company.

21 2. Subject to section 10-32.1-71 and any contractual rights, after a merger or exchange
22 is approved, and at any time before the merger or exchange becomes effective
23 according to this chapter, a constituent limited liability company may amend the plan
24 or abandon the merger or exchange:

25 a. As provided in the plan; or

26 b. Except as otherwise prohibited in the plan, with the same consent as was
27 required to approve the plan.

28 **10-32.1-58. Filings required for a merger or exchange - Effective date.**

29 1. After each constituent organization has approved a plan of merger or exchange,
30 articles of merger or exchange must be signed on behalf of:

- 1 a. Each constituent limited liability company, as provided in subsection 47 of section
2 10-32.1-02; and
- 3 b. Each other constituent organization, as provided in its governing statute.
- 4 2. Articles of merger under this section must include:
- 5 a. The name and form of each constituent organization and the jurisdiction of its
6 governing statute;
- 7 b. The name and form of the surviving organization, the jurisdiction of its governing
8 statute, and, if the surviving organization is created by the merger, then a
9 statement to that effect;
- 10 c. The date the merger is effective under the governing statute of the surviving
11 organization;
- 12 d. If the surviving organization is to be created by the merger:
- 13 (1) If it will be a limited liability company, then the articles of organization of the
14 company; or
- 15 (2) If it will be an organization other than a limited liability company, then the
16 organizational document that creates the organization that is in a public
17 record;
- 18 e. If the surviving organization preexists the merger, then any amendments
19 provided for in the plan of merger for the organizational document that created
20 the organization that are in a public record;
- 21 f. A statement as to each constituent organization that the merger was approved as
22 required by the governing statute of the organization;
- 23 g. If the surviving organization is a foreign organization not authorized to transact
24 business in this state, then the address of an office that the secretary of state
25 may use for the purposes of subsection 2 of section 10-32.1-59; and
- 26 h. Any additional information required by the governing statute of any constituent
27 organization.
- 28 3. Articles of exchange under this section must include:
- 29 a. The name and form of each constituent organization and the jurisdiction of its
30 governing statute;

- 1 b. The manner and basis of exchanging the ownership interests to be acquired for
2 securities of, or other ownership interests in, the acquiring organization or any
3 other organization or, in whole or part, for money or other property;
4 c. The date the exchange is effective under the governing statute of the acquiring
5 organization;
6 d. A statement as to each constituent organization that the exchange was approved
7 as required by the governing statute of the organization; and
8 e. Any additional information required by the governing statute of any constituent
9 organization.

10 4. The articles of merger or exchange, together with the fees provided in section
11 10-32.1-92, shall be filed with the secretary of state.

12 5. With respect to the effective date of merger or exchange:

13 a. A merger becomes effective under sections 10-32.1-55 through 10-32.1-59 and
14 10-32.1-71:

15 (1) If the surviving organization is a limited liability company, then upon the later
16 of:

17 (a) Compliance with subsection 4; or

18 (b) Subject to subsection 3 of section 10-32.1-86, the effective date
19 specified in the articles of merger; or

20 (2) If the surviving organization is not a limited liability company, then as
21 provided by the governing statute of the surviving organization.

22 b. An exchange becomes effective under sections 10-32.1-55 through 10-32.1-58,
23 10-32.1-60, and 10-32.1-71 upon the later of:

24 (1) Compliance with subsection 4; or

25 (2) Subject to subsection 3 of section 10-32.1-86, the effective date specified in
26 the articles of exchange.

27 **10-32.1-59. Effect of a merger.**

28 1. When a merger becomes effective:

29 a. The surviving organization continues or comes into existence;

30 b. Each constituent organization that merges into the surviving organization ceases
31 to exist as a separate entity;

- 1 c. All property owned by each constituent organization that ceases to exist vests in
2 the surviving organization upon compliance with the transfer requirements of
3 applicable law;
- 4 d. All debts, obligations, or other liabilities of each constituent organization that
5 ceases to exist continue as debts, obligations, or other liabilities of the surviving
6 organization;
- 7 e. An action or proceeding pending by or against any constituent organization that
8 ceases to exist may be continued as if the merger had not occurred;
- 9 f. Except as prohibited by other law, all of the rights, privileges, immunities, powers,
10 and purposes of each constituent organization that ceases to exist vest in the
11 surviving organization;
- 12 g. Except as otherwise provided in the plan of merger, the terms and conditions of
13 the plan of merger take effect;
- 14 h. Except as otherwise agreed, if a constituent limited liability company ceases to
15 exist, then the merger does not dissolve the limited liability company for the
16 purposes of sections 10-32.1-50 through 10-32.1-54;
- 17 i. If the surviving organization is created by the merger:
- 18 (1) If it is a limited liability company, then the articles of organization become
19 effective; or
- 20 (2) If it is an organization other than a limited liability company, then the
21 originating record that creates the organization becomes effective; and
- 22 j. If the surviving organization preexisted the merger, then any amendments
23 provided for in the articles of merger or the originating record that created the
24 organization become effective.
- 25 2. A surviving organization that is a foreign organization consents to the jurisdiction of the
26 courts of this state to enforce any debt, obligation, or other liability owed by a
27 constituent organization if before the merger the constituent organization was subject
28 to suit in this state on the debt, obligation, or other liability. A surviving organization
29 that is a foreign organization and not authorized to transact business in this state
30 appoints the secretary of state as its agent for service of process for the purposes of
31 enforcing a debt, obligation, or other liability under this subsection. Service of process

1 on the secretary of state under this subsection must be made in the same manner and
2 has the same consequences as in section 10-32.1-19.

3 3. As to any limited liability company that was a constituent organization and is not the
4 surviving constituent organization, the articles of merger serve as the articles of
5 dissolution and termination and, unless previously filed, the notice of dissolution.

6 **10-32.1-60. Effect of an exchange.**

7 When an exchange becomes effective, the membership interests in a limited liability
8 company to be exchanged under the terms of the plan are considered to be exchanged. The
9 members owning those membership interests are entitled only to the ownership interests,
10 securities, money, or other property into which those membership interests have been
11 converted or for which those membership interests have been exchanged according to the plan.

12 **10-32.1-61. Conversion.**

13 1. An organization other than a limited liability company may convert to a limited liability
14 company, and a limited liability company may convert to another organization other
15 than a general partnership as provided in this section and sections 10-32.1-62 through
16 10-32.1-66 and 10-32.1-71 and a plan of conversion, if:

- 17 a. The governing statute of the other organization authorizes the conversion;
18 b. The conversion is not prohibited by the law of the jurisdiction that enacted the
19 governing statute; and
20 c. The other organization complies with its governing statute in effecting the
21 conversion.

22 2. For the purposes of sections 10-32.1-61 through 10-32.1-66 and 10-32.1-71, unless
23 the context otherwise requires:

24 a. "Act of the board" means action by the board as provided in section 10-32.1-39
25 whether:

- 26 (1) At a meeting of the board; or
27 (2) By a written action of the board.

28 b. "Act of the members" means action by the members as provided in section
29 10-32.1-39 whether:

- 30 (1) At a meeting of the members; or
31 (2) By a written action of the members.

1 c. "Certificate of creation" means:

- 2 (1) A certificate of incorporation, if the converted organization is a corporation
3 deemed to be incorporated under chapter 10-19.1;
4 (2) A certificate of organization, if the converted organization is a limited liability
5 company deemed to be organized under this chapter;
6 (3) A certificate of limited partnership, if the converted organization is a limited
7 partnership deemed to be formed under chapter 45-10.2;
8 (4) The filed registration of a limited liability partnership, if the converted
9 organization is a limited liability partnership deemed to be established under
10 chapter 45-22; or
11 (5) A certificate of limited liability limited partnership, if the converted
12 organization is a limited liability limited partnership deemed to be formed
13 under chapter 45-23.

14 d. "Date of origin" means the date on which:

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

- 1 e. "Filed registration" means the registration of a limited liability partnership which
2 has been filed with the secretary of state.
- 3 f. "General partnership" means an organization formed by two or more persons
4 under chapters 45-13 through 45-21.
- 5 g. "Organizational records" means for an organization that is:
6 (1) A corporation, its articles of incorporation and bylaws;
7 (2) A limited liability company, its articles of organization, operating agreement
8 or bylaws, and any member-control agreement;
9 (3) A limited partnership, its partnership agreement;
10 (4) A limited liability partnership, its partnership agreement; or
11 (5) A limited liability limited partnership, its partnership agreement.
- 12 h. "Originating records" has the meaning provided in subsection 39 of section
13 10-32.1-02.

14 **10-32.1-62. Plan of conversion.**

15 A plan of conversion must be in a record and must contain:

- 16 1. The name and form of the converting organization before conversion;
17 2. The name and form of the converted organization after conversion;
18 3. The terms and conditions of the proposed conversion;
19 4. The manner and basis of converting each ownership interest in the converting
20 organization into ownership interests in the converted organization or, in whole or in
21 part, into money or other property;
22 5. The organizational records of the converted organization; and
23 6. Any other provisions with respect to the proposed conversion that are deemed
24 necessary or desirable.

25 **10-32.1-63. Plan approval and amendment.**

- 26 1. If the converting organization is a limited liability company, then:
27 a. A resolution containing or amending the plan of conversion must be approved by
28 an act of the board of the converting limited liability company and must then be
29 approved by an act of its members.

- 1 (1) In the action by the members, a class or series of membership interests is
2 entitled to vote as a class or series on the approval or amendment of the
3 plan.
- 4 (2) Any amendment of the plan is subject to any contractual rights.
- 5 b. If the resolution containing or amending the plan of conversion is approved by the
6 members:
- 7 (1) At a member meeting, then:
- 8 (a) Written notice must be given to every member of the converting
9 limited liability company, whether or not entitled to vote at the meeting,
10 not less than fourteen days nor more than fifty days before the
11 meeting, in the manner provided in subsection 34 of section
12 10-32.1-02.
- 13 (b) The written notice must state that a purpose of the meeting is to
14 consider the proposed plan of conversion or an amendment to it.
- 15 (c) A copy or short description of the plan of conversion or the
16 amendment to it must be included in or enclosed with the notice.
- 17 (2) By a written action of the members, then a copy or short description of the
18 plan of conversion or the amendment to it must be included in or attached to
19 the written action.
- 20 2. If the converting organization is not a limited liability company, then the approval and
21 amendment of the plan of conversion must comply with its governing statute in
22 effecting the conversion.

23 **10-32.1-64. Articles of conversion.**

- 24 1. Upon receiving the approval required by section 10-32.1-63, articles of conversion
25 must be prepared in a record that must contain:
- 26 a. A statement that the converting organization is being converted into another
27 organization, including:
- 28 (1) The name of the converting organization immediately before the filing of the
29 articles of conversion;

- 1 (2) The name to which the name of the converting organization is to be
2 changed, which must be a name that satisfies the laws applicable to the
3 converted organization;
- 4 (3) The form of organization that the converted organization will be; and
5 (4) The jurisdiction of the governing statute of the converted organization;
- 6 b. A statement that the plan of conversion has been approved by the converting
7 organization as provided in section 10-32.1-63;
- 8 c. A statement that the plan of conversion has been approved as required by the
9 governing statute of the converted organization;
- 10 d. The plan of conversion without organizational records;
- 11 e. A copy of the originating record of the converted organization;
- 12 f. If the converted organization is a foreign organization not authorized to transact
13 business or conduct activities in this state, then the street and mailing address of
14 an office which the secretary of state may use for the purposes of subsection 4 of
15 section 10-32.1-66; and
- 16 g. If the converting organization is a general partnership, then the date of origin of
17 the general partnership.
- 18 2. The articles of conversion must be signed on behalf of the converting organization and
19 filed with the secretary of state.
- 20 a. If the converted organization is a domestic organization:
- 21 (1) Then the filing of the articles of conversion must also include the filing with
22 the secretary of state of the originating record of the converted organization.
- 23 (2) Upon both the articles of conversion and the originating record of the
24 converted organization being filed with the secretary of state together with
25 the fees provided in section 10-32.1-92, the secretary of state shall issue a
26 certificate of conversion and the appropriate certificate of creation to the
27 converted organization or its legal representative.
- 28 b. If the converted organization is a foreign organization:
- 29 (1) That is transacting business or conducting activities in this state, then:

- 1 (a) The filing of the articles of conversion must include the filing with the
2 secretary of state of an application for a certificate of authority by the
3 converted organization.
- 4 (b) Upon both the articles of conversion and the application for a
5 certificate of authority by the converted organization being filed with
6 the secretary of state together with the fees provided in section
7 10-32.1-92, the secretary of state shall issue a certificate of
8 conversion and the appropriate certificate of authority to the converted
9 organization or the legal representative.
- 10 (2) That is not transacting business or conducting activities in this state, then,
11 upon the articles of conversion being filed with the secretary of state
12 together with the fees provided in section 10-32.1-92, the secretary of state
13 shall issue a certificate of conversion to the converted organization or its
14 legal representative.
- 15 3. A converting organization that is the owner of a service mark, trademark, or trade
16 name, is a general partner named in a fictitious name certificate, is a general partner
17 in a limited partnership or a limited liability limited partnership, or is a managing
18 partner of a limited liability partnership that is on file with the secretary of state must
19 change or amend the name of the converting organization to the name of the
20 converted organization in each registration when filing the articles of conversion.

21 **10-32.1-65. Abandonment of a conversion.**

- 22 1. If the articles of conversion have not been filed with the secretary of state, and:
- 23 a. If the converting organization is a limited liability company, then:
- 24 (1) Before a plan of conversion has been approved by the converting limited
25 liability company as provided in section 10-32.1-63, it may be abandoned by
26 an act of its board.
- 27 (2) After a plan of conversion has been approved by the converting limited
28 liability company as provided in section 10-32.1-63, and before the effective
29 date of the plan, it may be abandoned:

- 1 (a) If the members of the converting limited liability company entitled to
2 vote on the approval of the plan as provided in section 10-32.1-63
3 have approved the abandonment by an act of the members; or
4 (b) If the plan provides for abandonment and if all conditions for
5 abandonment set forth in the plan are met.
6 b. If the converting organization is not a limited liability company, then the
7 abandonment of the plan of conversion must comply with its governing statute.
8 2. If articles of conversion have been filed with the secretary of state, but have not yet
9 become effective, then the converting organization shall file with the secretary of state
10 articles of abandonment that contain:
11 a. The name of the converting organization;
12 b. The provision of this section under which the plan is abandoned; and
13 c. If the plan is abandoned:
14 (1) By an act of the board under paragraph 1 of subdivision a of subsection 1,
15 or by an act of the members under subparagraph a of paragraph 2 of
16 subdivision a of subsection 1, then the text of the resolution abandoning the
17 plan; or
18 (2) As provided in the plan under subparagraph b of paragraph of subdivision a
19 of subsection 1, then a statement that the plan provides for abandonment
20 and that all conditions for abandonment set forth in the plan are met.

21 **10-32.1-66. Effective date of conversion - Effect.**

- 22 1. A conversion is effective when the filing requirements of subsection 2 of section
23 10-32.1-64 have been fulfilled or on a later date specified in the articles of conversion.
24 2. With respect to the effect of conversion on the converting organization and on the
25 converted organization:
26 a. An organization that has been converted as provided in sections 10-32.1-61
27 through 10-32.1-66 is for all purposes the same entity that existed before the
28 conversion.
29 b. Upon a conversion becoming effective:
30 (1) If the converted organization:

- 1 (a) Is a limited liability company, then the converted organization has all
2 the rights, privileges, immunities, and powers, and is subject to all the
3 duties and liabilities, of a limited liability company organized under this
4 chapter; or
- 5 (b) Is not a limited liability company, then the converted organization has
6 all the rights, privileges, immunities, and powers, and is subject to the
7 duties and liabilities as provided in its governing statute:
- 8 (2) All property owned by the converting organization remains vested in the
9 converted organization;
- 10 (3) All debts, liabilities, and other obligations of the converting organization
11 continue as obligations of the converted organization;
- 12 (4) An action or proceeding pending by or against the converting organization
13 may be continued as if the conversion had not occurred;
- 14 (5) Except as otherwise provided by other law, all rights, privileges, immunities,
15 and powers of the converting organization remain vested in the converted
16 organization; and
- 17 (6) Except as otherwise provided in the plan of conversion, the terms and
18 conditions of the plan of conversion take effect.
- 19 3. When a conversion becomes effective, each ownership interest in the converting
20 organization is deemed to be converted into ownership interests in the converted
21 organization or, in whole or in part, into money or other property to be received under
22 the plan, subject to any rights of a dissenter under section 10-32.1-33.
- 23 4. A converted organization that is a foreign organization consents to the jurisdiction of
24 the courts of this state to enforce any obligation owed by the converting limited liability
25 company, if before the conversion the converting limited liability company was subject
26 to suit in this state on the obligation.
- 27 5. A converted organization that is a foreign organization and not authorized to transact
28 business in this state appoints the secretary of state as its agent for service of process
29 for purposes of enforcing an obligation under this subsection as provided in section
30 10-01.1-13.

1 **10-32.1-67. Domestication.**

2 1. A foreign limited liability company may become a limited liability company pursuant to
3 this section, sections 10-32.1-67 through 10-32.1-71, and a plan of domestication if:

4 a. The governing statute of the foreign limited liability company authorizes the
5 domestication;

6 b. The domestication is not prohibited by the law of the jurisdiction that enacted the
7 governing statute; and

8 c. The foreign limited liability company complies with its governing statute in
9 effecting the domestication.

10 2. A limited liability company may become a foreign limited liability company pursuant to
11 this section, sections 10-32.1-67 through 10-32.1-71, and a plan of domestication if:

12 a. The governing statute of the foreign limited liability company authorizes the
13 domestication;

14 b. The domestication is not prohibited by the law of the jurisdiction that enacted the
15 governing statute; and

16 c. The foreign limited liability company complies with its governing statute in
17 effecting the domestication.

18 3. A plan of domestication must be in a record and must include:

19 a. The name of the domesticating company before domestication and the
20 jurisdiction of its governing statute;

21 b. The name of the domesticated company after domestication and the jurisdiction
22 of its governing statute;

23 c. The terms and conditions of the domestication, including the manner and basis
24 for converting interests in the domesticating company into any combination of
25 money, interests in the domesticated company, and other consideration; and

26 d. The originating record of the domesticated company.

27 **10-32.1-68. Action on a plan of domestication by a domesticating limited liability**
28 **company.**

29 1. A plan of domestication must be consented to:

30 a. By all the members, subject to section 10-32.1-71, if the domesticating company
31 is a limited liability company; and

- 1 b. As provided in the governing statute of the domesticating company if the
2 company is a foreign limited liability company.
- 3 2. Subject to any contractual rights, after a domestication is approved, and at any time
4 before articles of domestication are filed with the secretary of state under section
5 10-32.1-69, a domesticating limited liability company may amend the plan or abandon
6 the domestication:
- 7 a. As provided in the plan; or
- 8 b. Except as otherwise prohibited in the plan, by the same consent as was required
9 to approve the plan.

10 **10-32.1-69. Filings required for domestication - Effective date.**

- 11 1. After a plan of domestication is approved, a domesticating company shall file with the
12 secretary of state articles of domestication, together with the fees provided under
13 section 10-32.1-92, which articles of domestication must include:
- 14 a. A statement, as the case may be, that the company has been domesticated from
15 or into another jurisdiction;
- 16 b. The name of the domesticating company and the jurisdiction of its governing
17 statute;
- 18 c. The name of the domesticated company and the jurisdiction of its governing
19 statute;
- 20 d. The date the domestication is effective under the governing statute of the
21 domesticated company;
- 22 e. If the domesticating company was a limited liability company, then a statement
23 that the domestication was approved as required by this chapter;
- 24 f. If the domesticating company was a foreign limited liability company, then a
25 statement that the domestication was approved as required by the governing
26 statute of the other jurisdiction; and
- 27 g. If the domesticated company was a foreign limited liability company not
28 authorized to transact business in this state, then the address of an office that the
29 secretary of state may use for the purposes of subsection 2 of section
30 10-32.1-70.
- 31 2. A domestication becomes effective:

- 1 a. When the articles of organization takes effect, if the domesticated company is a
2 limited liability company; and
3 b. According to the governing statute of the domesticated company, if the
4 domesticated organization is a foreign limited liability company.

5 **10-32.1-70. Effect of domestication.**

- 6 1. When a domestication takes effect:
7 a. The domesticated company is for all purposes the company that existed before
8 the domestication;
9 b. All property owned by the domesticating company remains vested in the
10 domesticated company;
11 c. All debts, obligations, or other liabilities of the domesticating company continue
12 as debts, obligations, or other liabilities of the domesticated company;
13 d. An action or proceeding pending by or against a domesticating company may be
14 continued as if the domestication had not occurred;
15 e. Except as prohibited by other law, all of the rights, privileges, immunities, powers,
16 and purposes of the domesticating company remain vested in the domesticated
17 company;
18 f. Except as otherwise provided in the plan of domestication, the terms and
19 conditions of the plan of domestication take effect; and
20 g. Except as otherwise agreed, the domestication does not dissolve a domesticating
21 limited liability company for the purposes of sections 10-32.1-50 through
22 10-32.1-54.
23 2. A domesticated company that is a foreign limited liability company consents to the
24 jurisdiction of the courts of this state to enforce any debt, obligation, or other liability
25 owed by the domesticating company if, before the domestication, the domesticating
26 company was subject to suit in this state on the debt, obligation, or other liability. A
27 domesticated company that is a foreign limited liability company and not authorized to
28 transact business in this state appoints the secretary of state as its agent for service of
29 process for purposes of enforcing a debt, obligation, or other liability under this
30 subsection. Service on the secretary of state under this subsection must be made in
31 the same manner and has the same consequences as in section 10-32.1-19.

1 3. If a limited liability company has adopted and approved a plan of domestication under
2 section 10-32.1-68 providing for the company to be domesticated in a foreign
3 jurisdiction, then a statement surrendering the articles of organization of the company
4 must be filed with the secretary of state setting forth:

5 a. The name of the company;

6 b. A statement that the articles of organization are being surrendered in connection
7 with the domestication of the company in a foreign jurisdiction;

8 c. A statement that the domestication was approved as required by this chapter;
9 and

10 d. The jurisdiction of formation of the domesticated foreign limited liability company.

11 **10-32.1-71. Restrictions on approval of mergers, exchanges, conversions, and**
12 **domestications.**

13 1. If a member of a constituent, converting, or domesticating limited liability company will
14 have personal liability with respect to a surviving, constituent, converted, or
15 domesticated organization, then approval or amendment of a plan of merger,
16 exchange, conversion, or domestication is ineffective without the consent of the
17 member, unless:

18 a. The operating agreement of the company provides for approval of a merger,
19 exchange, conversion, or domestication with the consent of fewer than all the
20 members; and

21 b. The member has consented to the provision of the operating agreement.

22 2. A member does not give the consent required by subsection 1 merely by consenting to
23 a provision of the operating agreement that permits the operating agreement to be
24 amended with the consent of fewer than all the members.

25 **10-32.1-72. Foreign limited liability company - Governing law.**

26 1. The law of the state or other jurisdiction under which a foreign limited liability company
27 is formed governs:

28 a. The internal affairs of the company; and

29 b. The liability of a member as member, a manager as manager, and a governor as
30 governor for the debts, obligations, or other liabilities of the company.

1 2. A foreign limited liability company may not be denied a certificate of authority by
2 reason of any difference between the law of the jurisdiction under which the company
3 is formed and the law of this state.

4 3. A foreign limited liability company holding a valid certificate of authority in this state
5 has no greater rights and privileges than a domestic limited liability company. A
6 certificate of authority does not authorize a foreign limited liability company to engage
7 in any business or exercise any power that a limited liability company may not engage
8 in or exercise in this state.

9 **10-32.1-73. Foreign limited liability company - Name.**

10 A foreign limited liability company may apply for a certificate of authority under any name
11 that would be available to a domestic limited liability company, whether or not the name is the
12 name under which it is authorized in its jurisdiction of organization. A trade name must be
13 registered as provided in chapter 47-25 when applying for the certificate of authority under a
14 name other than the name as authorized in the jurisdiction of origin.

15 **10-32.1-74. Foreign limited liability company - Admission of foreign limited liability**
16 **company - Transacting business - Obtaining licenses and permits.**

17 A foreign limited liability company may not:

18 1. Transact business in this state or obtain any license or permit required by this state
19 until it has procured a certificate of authority from the secretary of state.

20 2. Transact in this state any business that is prohibited to a domestic limited liability
21 company organized under this chapter.

22 3. Be denied a certificate of authority because the laws of the state or country where the
23 limited liability company is organized differ from the laws of this state.

24 **10-32.1-75. Foreign limited liability company - Application for a certificate of**
25 **authority.**

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

29 a. The name of the foreign limited liability company and, if different, the name under
30 which it proposes to transact business in this state;

31 b. The jurisdiction of its organization;

- 1 c. With respect to a registered agent:
2 (1) The name of the commercial registered agent as required by chapter
3 10-01.1; or
4 (2) If a noncommercial registered agent, then the name and address in this
5 state of the noncommercial registered agent;
6 d. The date, if any, on which the foreign limited liability company expires in the
7 jurisdiction of its organization;
8 e. The purpose the foreign limited liability company proposes to pursue in
9 transacting its business in this state;
10 f. The names and addresses of the governors and managers of the foreign limited
11 liability company; and
12 g. Any additional information deemed appropriate by the secretary of state to
13 determine whether the foreign limited liability company is entitled to a certificate
14 of authority to transact business in this state.

- 15 2. The application must be accompanied by payment of the fees provided in section
16 10-32.1-92 together with a certificate of good standing or a certificate of existence duly
17 authenticated by the organizing officer of the state or country where the foreign limited
18 liability company is organized.

19 **10-32.1-76. Foreign limited liability company - Issuance of a certificate of authority.**

20 If the secretary of state finds that an application for a certificate of authority conforms to law
21 and all fees provided in section 10-32.1-92 have been paid, then the secretary of state shall:

- 22 1. Endorse on the application the word "filed" and the date of the filing;
23 2. File the application and the certificate of good standing or certificate of existence; and
24 3. Issue to the foreign limited liability company or its representative a certificate of
25 authority to transact business in this state.

26 **10-32.1-77. Foreign limited liability company - Amendments to a certificate of**
27 **authority.**

- 28 1. If any statement in the application for a certificate of authority by a foreign limited
29 liability company is false when made or if the foreign limited liability company changes
30 the name of the foreign limited liability company or purposes sought in this state, then
31 the foreign limited liability company promptly shall file with the secretary of state an

1 application for an amended certificate of authority executed by an authorized person
2 correcting the statement and in the case of a change in the name of the foreign limited
3 liability company, a certificate to that effect authenticated by the proper officer of the
4 state or country under the laws of which the foreign limited liability company is
5 organized.

6 2. In the case of a termination or merger, a foreign limited liability company that is not the
7 surviving organization need not file an application for an amended certificate of
8 authority but shall promptly file with the secretary of state a certificate to that effect
9 authenticated by the proper officer of the state or country under the laws of which the
10 foreign limited liability company is organized.

11 3. A foreign limited liability company that changes the name of the foreign limited liability
12 company and applies for an amended certificate of authority and that is the owner of a
13 service mark, trademark, or trade name, a general partner named in a fictitious name
14 certificate, a general partner in a limited partnership or a limited liability limited
15 partnership, or a managing partner in a limited liability partnership that is on file with
16 the secretary of state shall change the name of the foreign limited liability company in
17 each of the foregoing registrations which is applicable when the foreign limited liability
18 company files an application for an amended certificate of authority.

19 **10-32.1-78. Foreign limited liability company - Registered agent - Registered office.**

20 A foreign limited liability company authorized to transact business in this state shall
21 continuously maintain a registered agent and registered office in this state as provided in
22 chapter 10-01.1.

23 **10-32.1-79. Foreign limited liability company - Merger of a foreign limited liability**
24 **company authorized to transact business in this state.**

25 If a foreign limited liability company authorized to transact business in this state is a party to
26 a statutory merger permitted by the laws of the state or country under which the foreign limited
27 liability company is organized, and the limited liability company is not the surviving organization,
28 then the surviving organization shall, within thirty days after the merger becomes effective, file
29 with the secretary of state a certified statement of merger duly authenticated by the proper
30 officer of the state or country where the statutory merger was effected. Any foreign organization,
31 which is the surviving organization in a merger and which will continue to transact business in

1 this state, shall procure a certificate of authority if not previously authorized to transact business
2 in this state.

3 **10-32.1-80. Foreign limited liability company - Conversion of a foreign limited liability**
4 **authorized to transact business in this state.**

5 If a foreign limited liability company authorized to transact business in this state converts to
6 another organization permitted by its governing statute, then within thirty days after the
7 conversion becomes effective, the newly created organization resulting from the conversion
8 shall file with the secretary of state a certified statement of conversion duly authenticated by the
9 proper officer of the jurisdiction in which the statutory conversion was effected. Any foreign
10 organization that is the converted organization in a conversion and which will continue to
11 transact business in this state shall obtain a certificate of authority or applicable registration in
12 accordance with the North Dakota governing statute applicable to the converted organization.

13 **10-32.1-81. Foreign limited liability company - Certificate of withdrawal.**

- 14 1. A foreign limited liability company authorized to transact business in this state may
15 withdraw from this state upon procuring from the secretary of state a certificate of
16 withdrawal. In order to procure the certificate, the foreign limited liability company shall
17 file with the secretary of state an application for withdrawal, together with the fees
18 provided in section 10-32.1-92, which must set forth:
- 19 a. The name of the foreign limited liability company and the state or country under
20 the laws of which it is organized;
 - 21 b. That the foreign limited liability company is not transacting business in this state;
 - 22 c. That the foreign limited liability company surrenders its authority to transact
23 business in this state;
 - 24 d. That service of process in any action, suit, or proceeding based upon any cause
25 of action arising in this state during the time the foreign limited liability company
26 was authorized to transact business in this state may thereafter be made on such
27 foreign limited liability company as provided in section 10-01.1-13; and
 - 28 e. A mailing address to which a person may mail a copy of any process against the
29 foreign limited liability company.
- 30 2. The filing with the secretary of state of articles of dissolution and termination, or a
31 certificate of merger if the foreign limited liability company is not the surviving

1 organization, from the proper officer of the state or country under the laws of which the
2 foreign limited liability company is organized constitutes a valid application of
3 withdrawal and the authority of the foreign limited liability company to transact
4 business in this state shall cease upon filing of the certificate.

5 **10-32.1-82. Transactions not constituting transacting business.**

6 1. A foreign limited liability company shall not be considered to be transacting business in
7 this state for the purposes of this chapter solely by reason of carrying on in this state
8 any one or more of the following, including:

9 a. Maintaining or defending any action or suit or any administrative or arbitration
10 proceeding, or effecting the settlement thereof or the settlement of claims or
11 disputes;

12 b. Holding meetings of its managers, governors, or members or carrying on other
13 activities concerning its internal affairs;

14 c. Maintaining bank accounts;

15 d. Maintaining offices or agencies for the transfer, exchange, and registration of its
16 securities, or appointing and maintaining trustees or depositories with relation to
17 its securities;

18 e. Holding title to and managing real or personal property, or any interest therein,
19 situated in this state, as executor of the will or administrator of the estate of any
20 decedent, as trustee of any trust, or as guardian of any person or conservator of
21 the estate of any person;

22 f. Making, participating in, or investing in loans or creating, as borrower or lender,
23 or otherwise acquiring indebtedness or mortgages or other security interests in
24 real or personal property;

25 g. Securing or collecting its debts or enforcing any rights in property securing its
26 debts; or

27 h. Conducting an isolated transaction completed within a period of thirty days and
28 not in the course of a number of repeated transactions of like nature.

29 2. For purposes of sections 10-32.1-72 through 10-32.1-85, the ownership in this state of
30 income-producing real property or tangible personal property, other than property
31 excluded under subsection 1, constitutes transacting business in this state.

1 3. This section does not apply in determining the contacts or activities that may subject a
2 foreign limited liability company to service of process, taxation, or regulation under law
3 of this state other than this chapter.

4 **10-32.1-83. Foreign limited liability company - Service of process on a foreign limited**
5 **liability company.**

6 Service of process on a foreign limited liability company must be as provided in section
7 10-01.1-13.

8 **10-32.1-84. Foreign limited liability company - Effect of failure to have a certificate of**
9 **authority.**

- 10 1. A foreign limited liability company transacting business in this state may not maintain
11 an action or proceeding in this state unless it has a certificate of authority to transact
12 business in this state.
- 13 2. The failure of a foreign limited liability company to have a certificate of authority to
14 transact business in this state does not impair the validity of a contract or act of the
15 company or prevent the company from defending an action or proceeding in this state.
- 16 3. A member, manager, or governor of a foreign limited liability company is not liable for
17 the debts, obligations, or other liabilities of the company solely because the company
18 transacted business in this state without a certificate of authority.
- 19 4. If a foreign limited liability company transacts business in this state without a certificate
20 of authority or cancels its certificate of authority, then it appoints the secretary of state
21 as its agent for service of process for rights of action arising out of the transaction of
22 business in this state.
- 23 5. A foreign limited liability company that transacts business in this state without a valid
24 certificate of authority is subject to a civil penalty, payable to the state, not to exceed
25 five thousand dollars. Each governor or, in the absence of governors, each member or
26 agent who authorizes, directs, or participates in the transaction of business in this
27 state on behalf of a foreign limited liability company that does not have a certificate is
28 subject to a civil penalty, payable to the state, not to exceed one thousand dollars.
- 29 6. The civil penalties set forth in subsection 5 may be recovered in an action brought
30 within the district court of Burleigh County by the attorney general. Upon a finding by
31 the court that a foreign limited liability company or any of its members, governors, or

1 agents have transacted business in this state in violation of this chapter, the court shall
2 issue, in addition to the imposition of a civil penalty, an injunction restraining the further
3 transaction of the business of the foreign limited liability company and the further
4 exercise of the rights and privileges of the foreign limited liability company in this state.
5 The foreign limited liability company must be enjoined from transacting business in this
6 state until all civil penalties plus any interest and court costs that the court may assess
7 have been paid and until the foreign limited liability company has otherwise complied
8 with the provisions of this chapter.

9 **10-32.1-85. Secretary of state - Powers - Enforcement.**

- 10 1. The secretary of state has the power and authority reasonably necessary to efficiently
11 administer this chapter and to perform the duties imposed thereby.
- 12 2. Subject to the provisions of this chapter, the secretary of state may propound to any
13 limited liability company, domestic or foreign, and to any manager, governor, or
14 member thereof, such interrogatories as may be reasonably necessary and proper to
15 ascertain whether the limited liability company has complied with all provisions of this
16 chapter which are applicable to the limited liability company, the manager, the
17 governor, or the member.
- 18 a. The interrogatories must be answered within thirty days after mailing or within
19 any additional time as may be fixed by the secretary of state. The answers to
20 such interrogatories must be full and complete and must be made in writing and
21 under oath.
- 22 b. If the interrogatories are directed:
- 23 (1) To an individual, then they must be answered by that individual; or
- 24 (2) To a limited liability company, then they must be answered by the persons
25 whom the management and conduct of the activities of the company are
26 vested pursuant to section 10-32.1-39.
- 27 c. The secretary of state need not file any record to which such interrogatories
28 relate until such interrogatories have been answered, and not then if the answers
29 disclose that such record is not in conformity with the provisions of this chapter.

- 1 d. The secretary of state shall certify to the attorney general, for such action as the
2 attorney general may deem appropriate, all interrogatories and answers thereto,
3 which disclose a violation of any of the provisions of this chapter.
- 4 e. Each person who fails or refuses within the time provided by subdivision a of
5 subsection 2 to answer truthfully and fully all interrogatories propounded to that
6 person by the secretary of state is guilty of an infraction.
- 7 f. Interrogatories propounded by the secretary of state and the answers thereto are
8 not open to public inspection. The secretary of state may not disclose any facts or
9 information obtained from the interrogatories or answers except insofar as may
10 be permitted by law or insofar as is required for evidence in any criminal
11 proceedings or other action by this state.

12 **10-32.1-86. Secretary of state - Filing of records with secretary of state - Effective**
13 **date.**

- 14 1. A record authorized or required to be filed with the secretary of state under this
15 chapter must be captioned to describe the purpose of the record, be in a medium
16 permitted by the secretary of state, and be delivered to the secretary of state. If the
17 filing fees required by section 10-32.1-92 have been paid, then, unless the secretary of
18 state determines that a record does not comply with the filing requirements of this
19 chapter, the secretary of state shall file the record and for all records, except annual
20 reports, send an image of the filed record to the person who filed the record.
- 21 2. Upon request and payment of the fee provided in section 10-32.1-92, the secretary of
22 state shall send to the requester a certified copy of a requested record.
- 23 3. Except as otherwise provided in this chapter, a record filed with the secretary of state
24 under this chapter may specify a delayed effective date which must be no later than
25 ninety days from the date of filing. Subject to section 10-32.1-18, subdivision a of
26 subsection 4 of section 10-32.1-20, and section 10-32.1-87, if the record does not
27 specify a delayed effective date, then a record filed with the secretary of state is
28 effective on the date the record is filed as evidenced by the endorsement of the
29 secretary of state of the date on the record.

1 **10-32.1-87. Secretary of state - Liability for inaccurate information in a filed record.**

2 1. If a record filed with the secretary of state under this chapter contains inaccurate
3 information, then a person that suffers a loss by reliance on the information may
4 recover damages for the loss from:

5 a. A person that signed the record, or caused another to sign it on behalf of the
6 person, and knew the information to be inaccurate at the time the record was
7 signed; and

8 b. Subject to subsection 2, a member of a member-managed limited liability
9 company or the manager of a manager-managed limited liability company, if:

10 (1) The record was filed with the secretary of state on behalf of the company;
11 and

12 (2) The member or manager had notice of the inaccuracy for a reasonably
13 sufficient time before the information was relied upon so that, before the
14 reliance, the member or manager reasonably could have:

15 (a) Effected an amendment under section 10-32.1-21;

16 (b) Filed a petition under section 10-32.1-22; or

17 (c) Filed a statement of correction under section 10-32.1-88.

18 2. To the extent that the operating agreement of a member-managed limited liability
19 company expressly relieves a member of responsibility for maintaining the accuracy of
20 information contained in records filed with the secretary of state under this chapter and
21 imposes that responsibility on one or more other members, the liability stated in
22 subdivision b of subsection 1, applies to those other members and not to the member
23 that the operating agreement relieves of the responsibility.

24 3. An individual who signs a record authorized or required to be filed under this chapter
25 affirms under penalty of perjury that the information stated in the record is accurate.

26 **10-32.1-88. Secretary of state - Correcting a filed record.**

27 1. Whenever a record authorized by this chapter to be filed with the secretary of state
28 has been filed and inaccurately records the action referred to in the record, contains
29 an inaccurate or erroneous statement, or was defectively or erroneously signed,
30 sealed, acknowledged, or verified, then the record may be corrected by filing a
31 statement of correction.

- 1 2. A statement of correction:
- 2 a. Must:
- 3 (1) Be signed by:
- 4 (a) The person that signed the original record; or
- 5 (b) By a person authorized to sign on behalf of that person;
- 6 (2) Set forth the name of the limited liability company that filed the record;
- 7 (3) Identify the record to be corrected by description and by the date of its filing
- 8 with the secretary of state;
- 9 (4) Identify the inaccuracy, error, or defect to be corrected; and
- 10 (5) Set forth a statement in corrected form of the portion of the record to be
- 11 corrected.
- 12 b. May not revoke or nullify the filed record.
- 13 3. The statement of correction must be filed with the secretary of state.
- 14 4. With respect to the effective date of correction:
- 15 a. A certificate issued by the secretary of state before a record is corrected, with
- 16 respect to the effect of filing the original record, is considered to be applicable to
- 17 the record as corrected as of the date the record as corrected is considered to
- 18 have been filed under this subsection.
- 19 b. After a statement of correction has been filed with the secretary of state, the
- 20 original record as corrected is considered to have been filed:
- 21 (1) On the date the statement of correction was filed:
- 22 (a) As to persons adversely affected by the correction; and
- 23 (b) For the purposes of subsection 3 of section 10-32.1-04; and
- 24 (2) On the date the original record was filed as to all other persons and for all
- 25 other purposes.
- 26 **10-32.1-89. Secretary of state - Annual report to the secretary of state.**
- 27 1. Each limited liability company, and each foreign limited liability company authorized to
- 28 transact business in this state, shall file, within the time provided by subsection 3, an
- 29 annual report setting forth:
- 30 a. The name of the limited liability company or foreign limited liability company and
- 31 the state or country under the laws of which it is organized.

- 1 b. The address of the registered office of the limited liability company or foreign
2 limited liability company in this state, the name of its registered agent in this state
3 at that address, and the address of its principal executive office.
- 4 c. A brief statement of the character of the business in which the limited liability
5 company or foreign limited liability company is actually engaged in this state.
- 6 d. The names and respective addresses of the managers and governors of the
7 limited liability company or foreign limited liability company or the name or names
8 and respective address or addresses of the managing member or members of
9 the limited liability company or foreign limited liability company.
- 10 2. The annual report must be submitted on forms prescribed by the secretary of state.
11 The information provided must be given as of the date of the execution of the report.
12 The annual report must be signed as provided in subsection 47 of section 10-32.1-02,
13 the articles, the bylaws, or a resolution approved by the affirmative vote of the required
14 proportion or number of the governors or members entitled to vote. If the limited
15 liability company or foreign limited liability company is in the hands of a receiver or
16 trustee, then the annual report must be signed on behalf of the limited liability
17 company or foreign limited liability company by the receiver or trustee. The secretary
18 of state may destroy any annual report provided for in this section after the annual
19 report is on file for six years.
- 20 3. The annual report of a limited liability company or foreign limited liability company
21 must be delivered to the secretary of state before November sixteenth of each year,
22 except that the first annual report of a limited liability company or foreign limited liability
23 company must be delivered before November sixteenth of the year following the
24 calendar year in which the certificate of organization or certificate of authority was
25 issued by the secretary of state.
- 26 a. An annual report in a sealed envelope postmarked by the United States postal
27 service before November sixteenth, or an annual report in a sealed packet with a
28 verified shipment date by any other carrier service before November sixteenth, is
29 in compliance with this requirement.
- 30 b. The secretary of state must file the report if the report conforms to the
31 requirements of subsections 1 and 2.

- 1 (1) If the report does not conform, then it must be returned to the limited liability
2 company or foreign limited liability company for any necessary corrections.
- 3 (2) If the report is filed before the deadlines provided in this subsection, then
4 penalties for the failure to file a report within the time provided do not apply
5 if the report is corrected to conform to the requirements of subsections 1
6 and 2 and returned to the secretary of state within thirty days after the
7 annual report was returned by the secretary of state for correction.
- 8 4. After the date established under subsection 3, the secretary of state shall notify any
9 limited liability company or foreign limited liability company failing to file its annual
10 report that its certificate of organization or certificate of authority is not in good
11 standing and that it may be terminated or revoked pursuant to section 10-32.1-90.
- 12 5. A limited liability company that does not file its annual report, along with
13 the statutory filing and penalty fees, within six months after the date established in
14 subsection 3, ceases to exist and is considered involuntarily terminated by operation
15 of law.
- 16 a. The secretary of state shall note the termination of the certificate of organization
17 of the limited liability company on the records of the secretary of state and shall
18 give notice of the action to the terminated limited liability company.
- 19 b. Notice by the secretary of state must be mailed to the last registered agent of the
20 foreign limited liability company at the last registered office.
- 21 6. A foreign limited liability company that does not file its annual report, along with the
22 statutory filing and penalty fees, within six months after the date established by
23 subsection 3, forfeits its authority to transact business in this state.
- 24 a. The secretary of state shall note the revocation of the certificate of authority of
25 the foreign limited liability company on the records of the secretary of state and
26 shall give notice of the action to the foreign limited liability company.
- 27 b. Notice by the secretary of state must be mailed to the last registered agent of the
28 foreign limited liability company at the last registered office.
- 29 c. The decision of the secretary of state that a certificate of authority must be
30 revoked under this subsection is final.

1 7. A limited liability company that was terminated for failure to file an annual report, or a
2 foreign limited liability company whose authority was forfeited by failure to file an
3 annual report, may be reinstated pursuant to section 10-32.1-91.

4 **10-32.1-90. Secretary of state - Involuntary termination - Revocation of certificate of**
5 **authority.**

6 1. With respect to the involuntary termination of a limited liability company by the
7 secretary of state:

8 a. A limited liability company may be involuntarily terminated by the secretary of
9 state if:

10 (1) The limited liability company has failed to:

11 (a) File with the secretary of state its annual report or any other record
12 required to be filed with the secretary of state under this chapter
13 together with the fees provided in section 10-32.1-92;

14 (b) Appoint and maintain a registered agent and registered office as
15 provided in chapter 10-01.1.

16 (2) A misrepresentation has been made of any material matter in any
17 application, report, affidavit, or other record submitted by the limited liability
18 company pursuant to this chapter.

19 b. A limited liability company that fails to file its annual report, together with the fees
20 provided in section 10-32.1-92, within six months after the date established in
21 subsection 3 of section 10-32.1-89 ceases to exist and is considered involuntarily
22 terminated by operation of law.

23 (1) The secretary of state shall note the termination of the certificate of
24 organization of the limited liability company on the records of the secretary
25 of state and shall give notice of the action to the terminated limited liability
26 company.

27 (2) Notice by the secretary of state must be mailed to the last registered agent
28 of the limited liability company at the last registered office in this state or, if
29 the limited liability company fails to appoint and maintain a registered agent
30 in this state, then mailed to the principal executive office.

1 (3) The decision of the secretary of state that the limited liability company has
2 been involuntarily terminated under this subsection is final.

3 (4) A limited liability company that was terminated for failure to file an annual
4 report may be reinstated as provided in subsection 1 of section 10-32.1-91
5 and may appeal as provided in subsection 2 of section 10-32.1-91.

6 c. Except for termination of a limited liability company for failure to file the annual
7 report as provided in section 10-32.1-89, no limited liability company may be
8 terminated by the secretary of state unless:

9 (1) The secretary of state has given the limited liability company not less than
10 sixty days notice by mail addressed to the registered agent at the registered
11 office in this state or, if the limited liability company fails to appoint and
12 maintain a registered agent in this state, then addressed to its principal
13 executive office; and

14 (2) During the sixty-day period, the limited liability company has failed to:

15 (a) File the report of change as provided in chapter 10-01.1 regarding the
16 registered office or the registered agent;

17 (b) File any other required record; or

18 (c) Correct the misrepresentation.

19 d. Upon the expiration of sixty days after the mailing of the notice, the existence of
20 the limited liability company is terminated. The secretary of state shall issue a
21 notice of termination and shall mail the notice to the registered agent at the
22 registered office in this state, or, if the limited liability company failed to appoint
23 and maintain a registered agent or a registered office in this state, then
24 addressed to the principal executive office of the limited liability company.

25 2. With respect to the revocation of a certificate of authority of a foreign limited liability
26 company by the secretary of state:

27 a. The certificate of authority of a foreign limited liability company to transact
28 business in this state may be revoked by the secretary of state if:

29 (1) The foreign limited liability company has failed to:

- 1 (a) File with the secretary of state its annual report or any other record
2 required to be filed with the secretary of state under this chapter
3 together with the fees provided in section 10-32.1-77;
4 (b) Appoint and maintain a registered agent and registered office as
5 provided in chapter 10-01.1;
6 (c) File with the secretary of state any amendment to its application for a
7 certificate of authority as provided in section 10-32.1-77;
8 (d) File with the secretary of state any merger as provided in section
9 10-32.1-79; or
10 (e) File with the secretary of state an application for certificate of
11 withdrawal of its authority as provided in section 10-32.1-81 when the
12 existence of the limited liability company has expired or the limited
13 liability company has been dissolved or terminated in the jurisdiction
14 of the organization; or
15 (2) A misrepresentation has been made of any material matter in any
16 application, report, affidavit, or other record submitted by the foreign limited
17 liability company pursuant to this chapter.
18 b. A foreign limited liability company that fails to file its annual report together with
19 the fees provided in section 10-32.1-92, within six months after the date
20 established by subsection 3 of section 10-32.1-89, forfeits the authority to
21 transact business in this state and its certificate of authority is considered
22 revoked by operation of law.
23 (1) The secretary of state shall note the revocation of the certificate of authority
24 of the foreign limited liability company on the records of the secretary of
25 state and shall give notice of the action to the foreign limited liability
26 company.
27 (2) Notice by the secretary of state must be mailed to the last registered agent
28 of the foreign limited liability company at its last registered office in this state
29 or, if the foreign limited liability company fails to appoint and maintain a
30 registered agent in this state, then mailed to its principal executive office.

- 1 (3) The decision of the secretary of state that a certificate of authority must be
2 revoked under this subsection is final.
- 3 (4) A foreign limited liability company whose authority was forfeited by, and
4 whose certificate of authority was revoked by the secretary of state for,
5 failure to file an annual report may be reinstated as provided in subsection 1
6 of section 10-32.1-91 and may appeal as provided in subsection 2 of section
7 10-32.1-91.
- 8 c. Except for revocation of the certificate of authority for failure to file the annual
9 report as provided in section 10-32.1-89, no certificate of authority of a foreign
10 limited liability company may be revoked by the secretary of state unless:
- 11 (1) The secretary of state has given the foreign limited liability company not less
12 than sixty days notice by mail addressed to its registered agent at the
13 registered office in this state or, if the foreign limited liability company fails to
14 appoint and maintain a registered agent in this state, then addressed to the
15 principal office; and
- 16 (2) During the sixty-day period, the foreign limited liability company has failed
17 to:
- 18 (a) File the report of change as provided in chapter 10-01.1 regarding the
19 registered office or registered agent;
- 20 (b) File any merger;
- 21 (c) File an application for withdrawal;
- 22 (d) File any other required record; or
- 23 (e) Correct the misrepresentation.
- 24 d. Upon the expiration of sixty days after the mailing of the notice, the authority of
25 the foreign limited liability company to transact business in this state ceases. The
26 secretary of state shall issue a notice of revocation and shall mail the notice to
27 the registered agent at the registered office in this state, or, if the foreign limited
28 liability company failed to appoint and maintain a registered agent or a registered
29 office in this state, then addressed to the principal executive office of the foreign
30 limited liability company.

1 **10-32.1-91. Secretary of state - Reinstatement following an involuntary termination or**
2 **revocation of authority - Appeals.**

3 1. With respect to reinstatement following involuntary termination or revocation of
4 authority:

5 a. A limited liability company that was terminated for failure to file an annual report,
6 or a foreign limited liability company whose authority was revoked for failure to
7 file an annual report, may be reinstated by filing a past-due report, together with
8 the statutory filing and penalty fees for an annual report and a reinstatement fee
9 as provided in section 10-32.1-92. The fees must be paid and the report filed
10 within one year following the involuntary termination or revocation.

11 b. With respect to a reinstatement which is more than one year after involuntary
12 termination or revocation:

13 (1) If the secretary of state terminates a limited liability company or revokes the
14 certificate of authority to transact business in this state of any foreign limited
15 liability company, pursuant to the provisions of section 10-32.1-90, then the
16 limited liability company or foreign limited liability company may appeal to
17 district court in the judicial district serving Burleigh County for reinstatement
18 by filing with the clerk of such court a petition, including:

19 (a) A copy of the articles of organization of the limited liability company
20 and a copy of the notice of termination given by the secretary of state;

21 or

22 (b) A copy of the certificate of authority of the foreign limited liability
23 company to transact business in this state and a copy of the notice of
24 revocation given by the secretary of state. The matter must be tried
25 de novo by the court. The court shall either sustain the action of the
26 secretary of state or direct the secretary of state to take such action
27 as the court may deem proper.

28 (2) If the court order sought is one for reinstatement of a limited liability
29 company that has been terminated as provided in subsection 1 of section
30 10-32.1-90, or for reinstatement of the certificate of authority of a foreign
31 limited liability company that has been revoked as provided in subsection 2

1 of section 10-32.1-90, then, together with any other actions the court deems
2 proper, any order which reverses the decision of the secretary of state shall
3 require the limited liability company or foreign limited liability company to:

4 (a) File the most recent past-due annual report;

5 (b) Pay the fees to the secretary of state for all past-due annual reports
6 as provided in subsection 24 of section 10-32.1-92; and

7 (c) Pay the reinstatement fee to the secretary of state as provided in
8 subsection 24 of section 10-32.1-92.

9 (3) Appeals from all final orders and judgments entered by the district court
10 under this section in review of any ruling or decision of the secretary of state
11 may be taken as in other civil actions.

12 c. Reinstatement returns the limited liability company to active status:

13 (1) As of the date of the reinstatement:

14 (a) In the office of the secretary of state;

15 (b) As to persons adversely affected by the reinstatement; and

16 (c) For purposes of subsection 3 of section 10-32.1-04; and

17 (2) As of the date of the involuntary termination or revocation:

18 (a) Validates contracts or other acts within the authority of the articles,
19 and the limited liability company is liable for those contracts or acts;
20 and

21 (b) Restores to the limited liability company all assets and rights of the
22 limited liability company and its members to the extent they were held
23 by the limited liability company and its members before the involuntary
24 dissolution or revocation occurred, except to the extent that assets or
25 rights were affected by acts occurring after the involuntary dissolution
26 or revocation, sold, or otherwise distributed after that time.

27 d. Reapplication for any license or permit by a reinstated limited liability company
28 shall be pursuant to the North Dakota statute governing the issuance of the
29 license or permit.

30 e. Appeals from all final orders and judgments by the district court under this
31 subsection may be taken as in other civil actions.

- 1 2. With respect to appeals of the rejection by the secretary of state of any record required
2 to be approved by the secretary of state before the record may be filed:
3 a. The secretary of state shall give written notice of the rejection to the person that
4 delivered the record, specifying the reasons for rejection.
5 b. Within thirty days after the service of the notice of denial, the limited liability
6 company or foreign limited liability company, as the case may be, may appeal to
7 the district court in the judicial district serving Burleigh County by filing with the
8 clerk of court a petition setting forth a copy of the record sought to be filed and a
9 copy of the written rejection of the record of the secretary of state.
10 c. The matter must be tried de novo by the court.
11 d. The court shall either sustain the action of the secretary of state or direct the
12 secretary of state to take such action as the court may deem proper.
13 e. Appeals from all final orders and judgments by the district court under this
14 subsection may be taken as in other civil actions.

15 **10-32.1-92. Secretary of state - Fees and charges.**

16 The secretary of state shall charge and collect for:

- 17 1. Filing articles of organization and issuing a certificate of organization, one hundred
18 thirty-five dollars.
19 2. Filing articles of amendment, fifty dollars.
20 3. Filing statement of correction, fifty dollars.
21 4. Filing restated articles of organization, one hundred twenty-five dollars.
22 5. Filing a statement of authority or a statement amending or canceling the statement of
23 authority of a limited liability company, twenty dollars.
24 6. Filing articles of conversion of a limited liability company, fifty dollars and:
25 a. If the organization resulting from the conversion will be a domestic organization
26 governed by the laws of this state, then the fees provided by the governing laws
27 to establish or register a new organization like the organization resulting from the
28 conversion; or
29 b. If the organization resulting from the conversion will be a foreign organization that
30 will transact business in this state, then the fees provided by the governing laws

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

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- 1 21. Filing an amendment to the certificate of authority by a foreign limited liability
2 company, fifty dollars.
- 3 22. Filing a certificate of fact stating a merger of a foreign limited liability company holding
4 a certificate of authority to transact business in this state, fifty dollars.
- 5 23. Filing a certified statement of conversion of a foreign limited liability company, fifty
6 dollars.
- 7 24. Filing an application for withdrawal of a foreign limited liability company and issuing a
8 certificate of withdrawal, twenty dollars.
- 9 25. Filing an annual report of a limited liability company or foreign limited liability company,
10 fifty dollars.
- 11 a. The secretary of state shall charge and collect additional fees for late filing of the
12 annual report as follows:
- 13 (1) After the date provided in subsection 3 of section 10-32.1-89, fifty dollars;
14 and
- 15 (2) After the termination of the limited liability company, or the revocation of the
16 certificate of authority of a foreign limited liability company, the
17 reinstatement fee of one hundred thirty-five dollars.
- 18 b. Fees paid to the secretary of state according to this subsection are not
19 refundable if an annual report submitted to the secretary of state cannot be filed
20 because it lacks information required by section 10-32.1-89, or the annual report
21 lacks sufficient payment as required by this subsection.
- 22 26. Filing any process, notice, or demand for service, the fee provided in section
23 10-01.1-03.
- 24 27. Submitting any record for approval before the actual time of submission for filing,
25 one-half of the fee provided in this section for filing the record.
- 26 28. Filing any other statement or report of a limited liability company or foreign limited
27 liability company, ten dollars.
- 28 29. Furnishing a copy of any record, or paper relating to a limited liability company or a
29 foreign limited liability company:
- 30 a. The fee provided in section 54-09-04 for copying a record; and
31 b. Five dollars for a search of records.

1 30. Furnishing a certificate of good standing, existence, or authorization:

2 a. Fifteen dollars; and

3 b. Five dollars for a search of records.

4 **10-32.1-93. Secretary of state - Certificate of existence and authorization.**

5 1. The secretary of state, upon request, compliance with subsection 2 and payment of
6 the fee required by section 10-32.1-92, shall furnish to any person a certificate of
7 existence for:

8 a. A limited liability company that exists; or

9 b. A foreign limited liability company that has an active certificate of authority.

10 2. The limited liability company or foreign limited liability company for which a certificate
11 of existence is requested must have:

12 a. Filed all annual reports; and

13 b. Paid all fees due to the secretary of state.

14 3. Any certificate furnished by the secretary of state under this section may be created
15 and furnished as an electronic record with the same force and effect as if produced in
16 a paper form.

17 **10-32.1-94. Secretary of state - Certificates and certified copies to be received in**
18 **evidence.**

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

23 2. A certificate by the secretary of state under the great seal of this state, as to the
24 existence or nonexistence of the facts relating to limited liability companies which
25 would not appear from a certified copy of any of the foregoing records or certificates,
26 may be taken and received in all courts, public offices, and official bodies as evidence
27 of the existence or nonexistence of the facts stated therein.

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

1 **10-32.1-95. Secretary of state - Confidential records.**

2 Any social security number or federal tax identification number disclosed or contained in
3 any record filed with the secretary of state under this chapter is confidential. The secretary of
4 state shall delete or obscure any social security number or federal tax identification number
5 before a copy of any record is released to the public.

6 **10-32.1-96. Secretary of state - Forms.**

7 All annual reports required by this chapter to be filed in the office of the secretary of state
8 must be made on forms prescribed by the secretary of state. Forms for all other records to be
9 filed in the office of the secretary of state may be furnished by the secretary of state upon
10 request. However, the use of such forms, unless otherwise specifically required by law, is not
11 mandatory.

12 **10-32.1-97. Attorney general - State interested in a proceeding.**

13 If it appears at any stage of a proceeding in a court in this state that the state is, or is likely
14 to be, interested in the proceeding or that it is a matter of general public interest, then the court
15 shall order that a copy of the complaint or petition be served upon the attorney general in the
16 same manner prescribed for serving a summons in a civil action. The attorney general shall
17 intervene in a proceeding when the attorney general determines that the public interest requires
18 it, whether or not the attorney general has been served.

19 **10-32.1-98. Attorney general - Action by the attorney general.**

- 20 1. A limited liability company may be involuntarily dissolved, wound up, and terminated
21 by a decree of a court in this state in an action filed by the attorney general when it is
22 established that:
- 23 a. The articles of organization were procured through fraud;
 - 24 b. The limited liability company was organized for a purpose not permitted by this
25 chapter;
 - 26 c. The limited liability company failed to comply with the requirements essential to
27 organization under this chapter;
 - 28 d. The limited liability company has flagrantly violated a provision of this chapter,
29 has violated a provision of this chapter more than once, or has violated more
30 than one provision of this chapter; or

- 1 e. The limited liability company has acted, or failed to act, in a manner that
2 constitutes surrender or abandonment of the limited liability company privileges
3 or enterprise.
- 4 2. The attorney general may bring an action to enjoin a foreign limited liability company
5 from transacting business in this state in violation of this chapter.
- 6 3. An action must not be commenced under this section until thirty days after notice to
7 the limited liability company by the attorney general of the reason for the filing of the
8 action. If the reason for filing the action is an act that the limited liability company has
9 done, or omitted to do, and the act or omission may be corrected by an amendment of
10 the articles of organization, a member control agreement, or the bylaws or by
11 performance of or abstention from the act, then the attorney general shall give the
12 limited liability company thirty additional days in which to effect the correction before
13 filing the action.

14 **10-32.1-99. Uniformity of application and construction.**

15 In applying and construing this uniform Act, consideration must be given to the need to
16 promote uniformity of the law with respect to its subject matter among states that enact it.

17 **10-32.1-100. Relation to electronic signatures in global and national commerce act.**

18 This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global
19 and National Commerce Act, United States Code, title 15, section 7001 et seq., but does not
20 modify, limit, or supersede section 101(c) of that Act, United States Code, title 15, section
21 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that
22 Act, United States Code, title 15, section 7003(b).

23 **10-32.1-101. Savings clause.**

24 This chapter does not affect an action commenced, proceeding brought, or right accrued
25 before this chapter takes effect.

26 **SECTION 20. AMENDMENT.** Paragraph 2 of subdivision e of subsection 1 of section
27 10-33-10 of the North Dakota Century Code is amended and reenacted as follows:

- 28 (2) A name the right to which is, at the time of incorporation, reserved in the
29 manner provided in section 10-19.1-14, ~~40-32-11~~10-32.1-12, 10-33-11,
30 45-10.2-11, 45-13-04.2, or 45-22-05;

1 **SECTION 21. AMENDMENT.** Subdivision c of subsection 6 of section 10-33-10 of the North
2 Dakota Century Code is amended and reenacted as follows:

3 c. Holds a reserved name in the manner provided in section 10-19.1-14,
4 ~~40-32-41~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

5 **SECTION 22. AMENDMENT.** Subsection 1 of section 10-33-72 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 1. Unless this chapter or the articles or bylaws require a greater vote or voting by class
8 and except for the election of directors which is governed by section
9 ~~40-32-34~~10-32.1-45, the members shall take action by the affirmative vote of the
10 greater of:

11 a. A majority of the members with voting rights present and entitled to vote on that
12 item of business; or

13 b. A majority of the voting power of the minimum number of members with voting
14 rights that would constitute a quorum for the transaction of business at the
15 meeting.

16 If the articles or bylaws require a larger proportion or number than is required by this
17 chapter for a particular action, then the articles or bylaws control.

18 **SECTION 23. AMENDMENT.** Section 10-36-03 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **10-36-03. Applicability of chapters ~~40-32~~10-32.1 and 10-33.**

21 1. In any case not provided for in this chapter, chapter 10-33 governs.

22 2. In applying chapter 10-33 to a nonprofit limited liability company and unless the
23 context otherwise requires, all references in chapter 10-33 to:

24 a. "Board" refers to the board of governors.

25 b. "Corporation" refers to a nonprofit limited liability company.

26 c. "Director" refers to a governor.

27 d. "Foreign corporation" refers to a foreign nonprofit limited liability company.

28 e. "Officer" refers to a manager.

29 3. Section ~~40-32-40~~10-32.1-11 applies to the name of a nonprofit limited liability company
30 as if it were a limited liability company governed under chapter ~~40-32~~10-32.1.

1 **SECTION 24. AMENDMENT.** Section 38-08.1-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **38-08.1-03. Deemed doing business within state - Resident agent.**

4 A person must be deemed doing business within this state when engaged in geophysical
5 exploration within the boundaries of this state, and shall, if not already qualified to do business
6 within the state under chapter 10-19.1, ~~40-3210-32.1~~, 45-10.2, 45-22, or 45-23 prior to such
7 exploration, file with the secretary of state an authorization provided under the governing statute
8 of the organization.

9 **SECTION 25. AMENDMENT.** Section 43-07-19 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **43-07-19. Nonresident contractors - Agent for service of process.**

12 Every applicant for a contractor's license who is not a resident of the state of North Dakota,
13 by signing and filing the application, appoints the secretary of state as the applicant's true and
14 lawful agent upon whom may be served all lawful process in any action or proceeding against
15 such nonresident contractor. Such appointment in writing is evidence of the contractor's consent
16 that any such process against the contractor which is so served upon the secretary of state
17 shall be of the same legal force and effect as if served upon the contractor personally within this
18 state. Registered foreign corporations entitled to do business in this state according to chapter
19 10-19.1, registered foreign limited liability companies entitled to do business in the state
20 according to chapter ~~40-3210-32.1~~, foreign limited liability partnerships entitled to do business in
21 the state according to chapter 45-22, and foreign limited partnerships entitled to do business in
22 the state according to chapter 45-10.2 and having a current registered agent and registered
23 address on file in the secretary of state's office need not appoint the secretary of state as agent
24 for service of process under this section. Within ten days after service of the summons upon the
25 secretary of state, notice of such service with the summons and complaint in the action shall be
26 sent to the defendant contractor at the defendant contractor's last-known address by registered
27 or certified mail with return receipt requested and proof of such mailing shall be attached to the
28 summons. The secretary of state shall keep a record of all process served upon the secretary of
29 state under this section, showing the day and hour of service. Whenever service of process was
30 made under this section, the court, before entering a default judgment, or at any stage of the
31 proceeding, may order such continuance as may be necessary to afford the defendant

1 contractor reasonable opportunity to defend any action pending against the defendant
2 contractor.

3 **SECTION 26. AMENDMENT.** Subsection 23 of section 45-10.2-02 of the North Dakota
4 Century Code is amended and reenacted as follows:

5 23. "Governing statute" means:

6 a. With respect to a domestic organization, the following chapters of this code which
7 govern the internal affairs of the organization:

8 (1) If a corporation, chapter 10-19.1;

9 (2) If a limited liability company, chapter ~~10-32~~10-32.1;

10 (3) If a general partnership, chapters 45-12 through 45-21;

11 (4) If a limited partnership, this chapter;

12 (5) If a limited liability partnership, chapter 45-22; and

13 (6) If a limited liability limited partnership, chapter 45-23; and

14 b. With respect to a foreign organization, the laws of the jurisdiction under which the
15 organization is created and under which the internal affairs of the organization
16 are governed.

17 **SECTION 27. AMENDMENT.** Paragraph 2 of subdivision f of subsection 1 of section
18 45-10.2-10 of the North Dakota Century Code is amended and reenacted as follows:

19 (2) A name the right to which is, at the time of the filing of the certificate of
20 limited partnership, reserved in the manner provided in section 10-19.1-14,
21 ~~10-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

22 **SECTION 28. AMENDMENT.** Subdivision c of subsection 6 of section 45-10.2-10 of the
23 North Dakota Century Code is amended and reenacted as follows:

24 c. Holds a reserved name in the manner provided in section 10-19.1-14,
25 ~~10-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

26 **SECTION 29. AMENDMENT.** Paragraph 2 of subdivision a of subsection 2 of section
27 45-10.2-94 of the North Dakota Century Code is amended and reenacted as follows:

28 (2) A certificate of organization, if the converted organization is a limited liability
29 company deemed to be organized under chapter ~~10-32~~10-32.1;

30 **SECTION 30. AMENDMENT.** Paragraph 2 of subdivision e of subsection 1 of section
31 45-13-04.1 of the North Dakota Century Code is amended and reenacted as follows:

1 (2) A name, the right of which is, at the time of filing, reserved in the manner
2 provided in section 10-19.1-14, ~~40-32-41~~10-32.1-12, 10-33-11, 45-10.2-11,
3 45-13-04.2, or 45-22-05;

4 **SECTION 31. AMENDMENT.** Subdivision c of subsection 6 of section 45-13-04.1 of the
5 North Dakota Century Code is amended and reenacted as follows:

6 c. Holds a reserved name in the manner provided in section 10-19.1-14,
7 ~~40-32-41~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

8 **SECTION 32. AMENDMENT.** Subdivision b of subsection 1 of section 45-21-01 of the North
9 Dakota Century Code is amended and reenacted as follows:

10 b. A certificate of organization, if the converted organization is a limited liability
11 company deemed to be organized under chapter ~~40-32~~10-32.1;

12 **SECTION 33. AMENDMENT.** Paragraph 2 of subdivision a of subsection 11 of section
13 45-21-01 of the North Dakota Century Code is amended and reenacted as follows:

14 (2) If a limited liability company, then chapter ~~40-32~~10-32.1;

15 **SECTION 34. AMENDMENT.** Paragraph 2 of subdivision e of subsection 1 of section
16 45-22-04 of the North Dakota Century Code is amended and reenacted as follows:

17 (2) A name, the right to which is at the time of registration reserved in the
18 manner provided in section 10-19.1-14, ~~40-32-41~~10-32.1-12, 10-33-11,
19 45-10.2-11, 45-13-04.2, or 45-22-05;

20 **SECTION 35. AMENDMENT.** Subdivision c of subsection 5 of section 45-22-04 of the North
21 Dakota Century Code is amended and reenacted as follows:

22 c. Holds a reserved name in the manner provided in section 10-19.1-14,
23 ~~40-32-41~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

24 **SECTION 36. AMENDMENT.** Paragraph 2 of subdivision a of subsection 13 of section
25 45-23-01 of the North Dakota Century Code is amended and reenacted as follows:

26 (2) If a limited liability company, then chapter ~~40-32~~10-32.1;

27 **SECTION 37. AMENDMENT.** Paragraph 2 of subdivision f of subsection 1 of section
28 45-23-03 of the North Dakota Century Code is amended and reenacted as follows:

29 (2) A name the right to which is, at the time of organization, reserved in the
30 manner provided in section 10-19.1-14, ~~40-32-41~~10-32.1-12, 10-33-11,
31 45-10.2-11, 45-13-04.2, or 45-22-05;

1 **SECTION 38. AMENDMENT.** Subdivision c of subsection 5 of section 45-23-03 of the North
2 Dakota Century Code is amended and reenacted as follows:

3 c. Holds a reserved name in the manner provided in section 10-19.1-14,
4 ~~10-32-41~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

5 **SECTION 39. AMENDMENT.** Section 50-22-02.2 of the North Dakota Century Code is
6 amended and reenacted as follows:

7 **50-22-02.2. Registrant name registration or certificate of authority required.**

8 The secretary of state may not issue or renew a registration provided for in this chapter if
9 the name of the registrant is an entity whose name is not in some manner registered with the
10 secretary of state as a corporation, limited liability company, trade name, fictitious name of a
11 partnership, limited partnership, or limited liability partnership. For a registrant that is a foreign
12 entity, a registration under this chapter means the same as a license or permit under section
13 10-19.1-134, ~~10-32-43~~10-32.1-74, 10-33-127, or 45-22-19, or other substantially equivalent
14 statute for the purpose of procuring a certificate of authority or similar authorization to act in this
15 state.

16 **SECTION 40. AMENDMENT.** Subsection 3 of section 54-44.4-09 of the North Dakota
17 Century Code is amended and reenacted as follows:

18 3. At the time of filing the application to become an approved vendor, the applicant, if
19 organized as a corporation, limited liability company, limited liability partnership, or
20 limited partnership, must be properly and currently registered with the secretary of
21 state according to its type of business organization as a corporation under
22 chapter 10-19.1, a limited liability company under chapter ~~10-32~~10-32.1, a limited
23 liability partnership under chapter 45-22, or a limited partnership under chapter
24 45-10.2. Any exemptions to registration under the above chapters that would
25 otherwise apply to those entities organized as such do not apply to this section and
26 registration must be made for the applicant to become an approved vendor. Applicants
27 for approved vendor status using a trade name or a fictitious partnership name must
28 be in full compliance with chapter 47-25 or 45-11 at the time of making the application.
29 Whenever any registration required by this section is canceled, revoked, or not
30 renewed, the vendor ceases to be an approved vendor.

1 By signing and filing the application, the vendor applicant appoints the secretary
2 of state as its true and lawful agent for service of process in this state upon whom may
3 be served all lawful process in any action or proceeding against the vendor if the
4 vendor or its registered agent cannot be found for service of process in this state. The
5 signed application is written evidence of the applicant's consent that any process
6 served against the applicant that is so served upon the secretary of state is of the
7 same legal force and effect as if served upon the applicant personally within this state.
8 Within ten days after service of the summons upon the secretary of state pursuant to
9 this subsection, notice of the service with the summons and complaint in the action
10 must be sent to the defendant vendor at the vendor's last-known address by certified
11 mail with return receipt requested and proof of mailing must be attached to the
12 summons. The secretary of state shall keep a record of all process served upon the
13 secretary of state under this section showing the day and hour of service. When
14 service of process is made as provided in this subsection, the court, before entering a
15 default judgment, or at any stage of the proceeding, may order a continuance as may
16 be necessary to afford the defendant vendor reasonable opportunity to defend any
17 action pending against the vendor.

18 **SECTION 41. REPEAL.** Chapter 10-32 of the North Dakota Century Code is repealed.