Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019

HOUSE BILL NO. 1045
(Representative Toman)

AN ACT to create and enact subsection 16 to section 9-16-01, section 9-16-19, a new section to chapter 10-19.1, and section 10-32.1-102 of the North Dakota Century Code, relating to electronic transaction definitions, blockchain technology and smart contracts, number of shareholders, and series limited liability companies; to amend and reenact sections 9-16-02, 10-06.1-17, 10-19.1-01, and 10-19.1-01.2, subsection 6 of section 10-19.1-66, subsection 1 of section 10-19.1-73.3, sections 10-19.1-76.3 and 10-19.1-81, subsections 1, 2, and 11 of section 10-19.1-84, subsection 1 of section 10-19.1-110, subsection 2 of section 10-19.1-146, and subsection 2 of section 10-35-28 of the North Dakota Century Code, relating to electronic transactions, filing of an annual report by corporations engaged in farming or ranching, Business Corporation Act definitions, knowledge and notice, share certificates, corporate voting list and voting trusts, acceptance of shareholder act by the corporation, corporate records, corporate dissolution procedure, and the filing of an annual report by a publicly traded corporation; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Subsection 16 of section 9-16-01 of the North Dakota Century Code is created and enacted as follows:

16. "Writing" or "written" includes blockchain technology as defined in section 9-16-19.

SECTION 2. AMENDMENT. Section 9-16-02 of the North Dakota Century Code is amended and reenacted as follows:

9-16-02. Scope.

1. Except as otherwise provided in subsection 2 or 3, this chapter applies to electronic records and electronic signatures relating to a transaction.

2. ~~This~~Except as provided in subsection 3, this chapter does not apply to a transaction to the extent the transaction is governed by:

   a. A law governing the creation and execution of wills, codicils, or testamentary trusts;

   b. The Uniform Commercial Code other than section 41-01-20 and chapters 41-02 and 41-02.1; and

   c. Chapters 41-03, 41-04, 41-04.1, 41-05, 41-07, 41-08, or 41-09.

3. Section 9-16-19 applies only to title 10 and transactions governed by chapters 41-02, 41-02.1, and 41-07.

4. This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection 2 or 3, to the extent it is governed by a law other than those specified in subsection 2 or 3.

~~4.~~5. A transaction subject to this chapter is also subject to other applicable substantive law.

SECTION 3. Section 9-16-19 of the North Dakota Century Code is created and enacted as follows:

9-16-19. Signatures and records secured through blockchain technology - Smart contracts - Ownership of information - Definitions.

1. A signature secured through blockchain technology is considered to be in an electronic form and to be an electronic signature.

2. A record or contract secured through blockchain technology is considered to be in an electronic form and to be an electronic record.

3. Smart contracts may exist in commerce. A contract relating to a transaction may not be denied legal effect, validity, or enforceability solely because the contract contains a smart contract term.

4. Notwithstanding title 10 or chapters 41-02, 41-02.1, and 41-07, a person in or affecting interstate or foreign commerce using blockchain technology to secure information the person owns or has the right to use retains the same rights of ownership or use with respect to that information as before the person secured the information using blockchain technology. This subsection does not apply to the use of blockchain technology to secure information in connection with a transaction to the extent the terms of the transaction expressly provide for the transfer of rights of ownership or use with respect to that information.

5. As used in this subsection:

   a. "Blockchain technology" means distributed ledger technology that uses a distributed, decentralized, shared, and replicated ledger, which may be public or private, permissioned or permissionless, or driven by tokenized crypto economics or tokenless and which is protected with cryptography, is immutable, and auditable and provides an uncensored truth.

   b. "Smart contract" means an event-driven program, with state, that runs on a distributed, decentralized, shared, and replicated ledger and which can take custody over and instruct transfer of assets on that ledger.

SECTION 4. AMENDMENT. Section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

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

Before April sixteenth of each year, ~~every~~a corporation engaged in farming or ranching after June 30, 1981, and ~~every~~a limited liability company engaged in farming or ranching shall file with the secretary of state an annual report signed as provided in subsection ~~54~~58 of section 10-19.1-01 if a corporation and subsection 47 of section 10-32.1-02 if a limited liability company. If the corporation or limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or limited liability company by the receiver or trustee. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this section or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this section meets the filing date requirement. An annual report must include the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.

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

3. With respect to each corporation:

a. A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

b. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

4. With respect to each shareholder or member:

a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;

b. The number of shares or membership interests or percentage of shares or membership interests owned by each;

c. The relationship of each;

d. A statement of whether each is a citizen or permanent resident alien of the United States; and

e. A statement of whether at least one is an individual residing on or operating the farm or ranch.

5. With respect to management:

a. If a corporation, then the names and addresses of the officers and members of the board of directors; or

b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.

6. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].

7. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years or for each year of existence if less than five years.

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

9. A corporation engaged in farming which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-19.1, except that the penalties must be calculated from the date of the report required by this section.

10. A limited liability company engaged in farming which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-32.1, except that the penalties must be calculated from the date of the report required by this section.

SECTION 5. AMENDMENT. Section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-01. Definitions.

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

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.

2. "Acquiring organization" means the foreign or domestic organization acquiring the ownership interests of another foreign or domestic organization participating in an exchange.

3. "Address" means:

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

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

4. "Articles" means:

   a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, articles of conversion, and articles of dissolution.

   b. In the case of a foreign corporation, the term includes all records serving a similar function required to be filed with the secretary of state or other officer of the state of incorporation of the foreign corporation.

5. "Authenticated electronic communication" means:

   a. That the electronic communication is delivered:

      (1) To the principal place of business of the corporation; or

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

   b. That the electronic communication ~~sets forth~~provides information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.

6. "Ballot" means a written ballot or a ballot transmitted by electronic communications.

7. "Board" or "board of directors" means the board of directors of a corporation.

8. "Board member" means:

   a. An individual serving on the board of directors in the case of a corporation; and

   b. An individual serving on the board of governors in the case of a limited liability company.

9. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.

10. "Class", when used with reference to ownership interests, means a category of ownership interests that differs in designation or one or more rights or preferences from another category of ownership interests of the organization.

11. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.

12. "Constituent corporation" means a corporation or a foreign corporation that:

    a. In a merger, is either the surviving corporation or a foreign or domestic corporation that is merged into the surviving organization; or

    b. In an exchange, is either the acquiring corporation or a foreign or domestic corporation whose shares are acquired by the acquiring organization.

13. "Constituent organization" means an organization that:

    a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or

    b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.

14. "Converted organization" means the organization into which a converting organization converts pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.

15. "Converting organization" means an organization that converts into another organization pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.

16. "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.

17. "Data address" means the string of alphanumeric characters on a distributed or other electronic network or database which may be accessed only by knowledge or possession of a private key to facilitate or record transactions on the distributed or other electronic network or database.

18. "Director" means a member of the board.

~~18.~~19. "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares, and may be in the form of a dividend, an interim distribution, or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.

~~19.~~20. "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.

~~20.~~21. "Domestic organization" means an organization created under the laws of this state.

~~21.~~22. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

~~22.~~23. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper, including a process of communication which uses a distributed or other electronic network or database, or that:

    a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and

    b. May be directly reproduced in paper form by the recipient through an automated process.

~~23.~~24. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

~~24.~~25. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.

~~25.~~26. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:

a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-19.1-147, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.

b. That the secretary of state did then:

(1) Record the actual date on which the record was filed, and if different the effective date of filing; and

(2) Record the record in the office of the secretary of state.

~~26.~~27. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.

~~27.~~28. "Foreign limited liability company" means a limited liability company organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.1.

~~28.~~29. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.

~~29.~~30. "Good faith" means honesty in fact in the conduct of an act or transaction.

~~30.~~31. "Governing body" means for an organization that is:

a. A corporation, its board of directors;

b. A limited liability company, its board of governors; or

c. Any other organization, the body selected by its owners that has the ultimate power to determine the policies of the organization and to control its policies.

~~31.~~32. "Governing statute" of an organization means:

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

(1) If a corporation, then this chapter;

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

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

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

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

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

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

~~32.~~33. "Identity" means the name of a shareholder or the data address for which the shareholder has knowledge or possession of the private key uniquely associated with the data address.

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

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

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

~~33.~~35. "Legal representative" means a person empowered to act for another person, including an agent, a manager, an officer, a partner, or an associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.

~~34.~~36. "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by chapter 10-32.1.

~~35.~~37. "Network signature" means a string of alphanumeric characters which when broadcasted by a shareholder to the data address's corresponding distributed or other electronic network or database provides reasonable assurances to a corporation that the shareholder has knowledge or possession of the private key uniquely associated with the data address.

38. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.

~~36.~~39. "Notice":

a. Is given by a shareholder of a corporation to the corporation or an officer of the corporation:

(1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; or

(2) When given by a form of electronic communication consented to by the corporation to which the notice is given if by:

(a) Facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.

(b) Electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.

(c) Posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

(d) Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.

b. Is given by a publicly held corporation to a shareholder ~~if~~:

(1) If the notice is addressed to the shareholder or group of shareholders in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934,

as amended, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.;

(2) When an electronic transmission has been made to a data address provided by the shareholder; or

(3) When electronically transmitted to the shareholder in a manner by which the shareholder has consented, when directed to the shareholder.

c. Is given, in all other cases:

(1) When mailed to the person at an address designated by the person or at the last-known address of the person;

(2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable to the person at an address designated by the person or at the last-known address of the person;

(3) When handed to the person;

(4) When left at the office of the person with a clerk or other person in charge of the office or:

(a) If there is no one in charge, when left in a conspicuous place in the office; or

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

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

(a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice.

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

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

[1] The posting; or

[2] The giving of the separate notice.

(d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person; or

(6) When the method is fair and reasonable when all of the circumstances are considered.

d. Is given by mail when deposited in the United States mail with sufficient postage affixed.

e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.

f. Is deemed received when it is given.

~~37.~~40. "Officer" means an individual who is eighteen years of age or more who is:

a. Elected, appointed, or otherwise designated as the president, the treasurer, or any other officer pursuant to section 10-19.1-52; or

b. Deemed elected as an officer pursuant to section 10-19.1-56.

~~38.~~41. "Organization":

a. Means, whether domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or any other person subject to a governing statute; but

b. Excludes:

(1) ~~Any~~A nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction; and

(2) ~~Any~~A nonprofit limited liability company, whether a domestic nonprofit limited liability company which is organized under chapter 10-36 or a foreign nonprofit limited liability company which is organized in another jurisdiction.

~~39.~~42. "Originating records" means for an organization that is:

a. A corporation, its articles of incorporation;

b. A limited liability company, its articles of organization;

c. A limited partnership, its certificate of limited partnership;

d. A limited liability partnership, its registration; or

e. A limited liability limited partnership, its certificate of limited liability limited partnership.

~~40.~~43. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.

~~41.~~44. "Owners" means the holders of ownership interests in an organization.

~~42.~~45. "Ownership interests" means for a domestic or foreign organization that is:

a. A corporation, its shares;

b. A limited liability company, its membership interests;

c. A limited partnership, its partnership interests;

d. A general partnership, its partnership interests;

e. A limited liability partnership, its partnership interests;

f. A limited liability limited partnership, its partnership interests; or

g. Any other organization, its governance or transferable interests.

~~43.~~46. "Parent" of a specified organization means an organization that directly, or indirectly through related organizations, owns more than fifty percent of the voting power of the ownership interests entitled to vote for directors or other members of the governing body of the specified organization.

~~44.~~47. "Principal executive office" means:

a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of a corporation has an office; or

b. If the corporation has no elected or appointed president, then the registered office of the corporation.

~~45.~~48. "Publicly held corporation" means a corporation that has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78L], or is subject to section 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(d)].

~~46.~~49. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~47.~~50. "Record of shareholders" means a record administered by or on behalf of a corporation and which records the identity of all the corporation's shareholders and the number and class of shares held by each shareholder in accordance with section 10-19.1-84. The term includes a record of all issuances and transfers of shares of a corporation at the discretion of the corporation;

51. "Registered office" means the place in this state designated in a corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office.

~~48.~~52. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:

a. Owns, directly or indirectly, at least fifty percent of the ownership interests of another organization;

b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or

c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.

~~49.~~53. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

~~50.~~54. "Security" has the meaning given in section 10-04-02.

~~51.~~55. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to a corporation's articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

~~52.~~56. "Share" means one of the units, however designated, into which the shareholders' proprietary interests of the shareholder in a corporation are divided.

~~53.~~57. "Shareholder" means a person registered on the books or records of a corporation or the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation or the owner of a private key uniquely associated with a data address that facilitates or records the sending and receiving of shares.

~~54.~~58. "Signed" means:

a. That the signature of a person, which may be a facsimile affixed, engraved, by network signature, printed, placed, stamped with indelible ink, transmitted by facsimile

telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record with the present intention to authenticate that record; and

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

(1) The record is signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the directors as required under section 10-19.1-46 or the shareholders as required under section 10-19.1-74; and

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

~~55.~~59. "Subscriber" means a person that subscribes for shares in a corporation, whether before or after incorporation.

~~56.~~60. "Subsidiary" of a specified organization means an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

~~57.~~61. "Surviving corporation" means the domestic or foreign corporation resulting from a merger which:

a. May pre-exist the merger; or

b. May be created by the merger.

~~58.~~62. "Surviving organization" means the organization resulting from a merger which:

a. May pre-exist the merger; or

b. May be created by the merger.

~~59.~~63. "Vote" includes authorization by written action.

~~60.~~64. "Written action" means:

a. A written record signed by all of the persons required to take the action; or

b. The counterparts of a written record signed by any of the persons taking the action described.

(1) Each counterpart constitutes the action of the person signing; and

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

SECTION 6. AMENDMENT. Section 10-19.1-01.2 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-01.2. Knowledge and notice.

1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.

2. A person has notice of a fact if the person:

a. Knows of the fact;

b. Has received notice of the fact as provided in subsection ~~36~~39 of section 10-19.1-01;

c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or

d. Has notice of it under subsection 3.

3. Subject to subsection 8, a person has notice of:

a. The intention of a corporation to dissolve, ninety days after the effective date of the filed notice of intent to dissolve;

b. The dissolution of a corporation, ninety days after the effective date of the filed articles of dissolution;

c. The conversion of a corporation, ninety days after the effective date of the filed articles of conversion; or

d. The merger of a corporation, ninety days after the effective date of the filed articles of merger.

4. A person notifies or gives a notification to another person by taking the steps provided in subsection ~~36~~39 of section 10-19.1-01, whether or not the other person learns of it.

5. A person receives a notification as provided in subsection ~~36~~39 of section 10-19.1-01.

6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection ~~36~~39 of section 10-19.1-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.

a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.

b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

7. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by an officer or director is effective immediately as knowledge of, notice to, or receipt of a notification by the corporation, except in the case of a fraud on the corporation committed by or with the consent of the officer or director. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by a shareholder who is not an officer or director, is not effective as knowledge by, notice to, or receipt of a notification by the corporation.

8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a corporation unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.

9. With respect to notice given by a form of electronic communication:

a. Consent by an officer or director to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the officer or director. However, no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.

b. An affidavit of an officer or director or an authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

SECTION 7. AMENDMENT. Subsection 6 of section 10-19.1-66 of the North Dakota Century Code is amended and reenacted as follows:

6. Unless uncertificated shares are prohibited by the articles or bylaws, a corporation may provide that some or all of any or all classes and series of the corporation's shares will be uncertificated shares.

   a. The action by the corporation provided in this subsection does not apply to shares represented by a certificate until the certificate is surrendered to the corporation.

   b. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall ~~send~~give to the new shareholder the information required by this section to be stated on certificates.

   c. The information required under this section is not required to be ~~sent~~given to the new shareholder by a publicly held corporation that adopted a system of issuance, recordation, and transfer of the corporation's shares by electronic or other means not involving the issuance of certificates if the system complies with federal law.

   d. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

SECTION 8. AMENDMENT. Subsection 1 of section 10-19.1-73.3 of the North Dakota Century Code is amended and reenacted as follows:

1. After fixing a record date for notice of and voting at a meeting, a corporation shall prepare an alphabetical or numerical list of the ~~names~~identities of all its shareholders entitled to notice and to vote. The list must show ~~the address and~~:

   a. The number of shares each shareholder is entitled to vote at the meeting~~.~~;

   b. Each shareholder's physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name; and

   c. Each shareholder's authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address.

SECTION 9. A new section to chapter 10-19.1 of the North Dakota Century Code is created and enacted as follows:

Number of shareholders.

1. The following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

   a. Three or fewer co-owners;

   b. A corporation, partnership, trust, estate, or other entity;

c. The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account; or

d. One data address.

2. Shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe the names represent the same person.

SECTION 10. AMENDMENT. Section 10-19.1-76.3 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-76.3. Acceptance of shareholder act by the corporation.

1. If the name or network signature signed on a vote, consent, waiver, or proxy appointment corresponds to the record name or data address of a shareholder, the corporation if acting in good faith may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

2. Unless the articles or bylaws provide otherwise, if the name or network signature signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name or data address of a shareholder, the corporation if acting in good faith may accept the vote, consent waiver, or proxy appointment and give it effect as the act of the shareholder if:

   a. The shareholder is an organization and the name or network signature signed purports to be that of an officer, manager, or agent of the organization;

   b. The name or network signature signed purports to be that of an administrator, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

   c. The name or network signature signed purports to be that of a receiver or trustee in bankruptcy of the shareholder, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

   d. The name or network signature signed purports to be that of a pledgee, beneficial owner, or attorney in fact of the shareholder, and if, the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

   e. Two or more persons hold the shares as cotenants or fiduciaries and the name or network signature signed purports to be the name or data address of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.

3. The corporation may reject a vote, consent, waiver, or proxy appointment if the officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis to doubt the validity of the signature on it or the authority of the signatory to sign for the shareholder.

4. The corporation or its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section is not liable in damages to the shareholder for the consequences of the acceptance or rejection.

5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

SECTION 11. AMENDMENT. Section 10-19.1-81 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-81. Voting trusts.

1. Shares in a corporation may be transferred to a trustee pursuant to written agreement, for the purpose of conferring on the trustee the right to vote and otherwise represent the beneficial owner of those shares for a period not exceeding ten years, except that if the agreement is made in connection with an indebtedness of the corporation, the voting trust may extend until the indebtedness is discharged. Unless otherwise specified in the agreement, the voting trust may be terminated at any time by the beneficial owners of a majority of the voting power of the shares held by the trustee. A signed original of the agreement must be filed with the corporation.

2. When a voting trust agreement is signed, the trustee shall prepare a list of the identities of all owners of beneficial interests in the trust, together with the number and class of shares each transferred to the trust. The list must include each shareholder's:

   a. Physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name; or

   b. Authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address.

3. Unless otherwise provided in the trust agreement, if there are two or more trustees, the manner of voting is determined as provided in subsection 5 of section 10-19.1-73.2.

SECTION 12. AMENDMENT. Subsection 1 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation shall keep, at the corporation's principal executive office or at another place or places within the United States determined by the board, a share register not more than one year old, containing the ~~name and address~~identities of each shareholder ~~and~~, in alphabetical or numerical order by class of shares showing the number and classes of shares held by each shareholder.

   a. The list must include each shareholder's:

      (1) Physical mailing address, if the identity of a shareholder on the list consists of the shareholder's name; or

      (2) Authorized means of receipt for electronic transmissions, if the identity of a shareholder on the list consists of the shareholder's data address.

   b. A record of shareholders may show both the shareholder's name and data address.

   c. A corporation shall also keep, at the corporation's principal executive office or at another place or places within the United States determined by the board, a record of the dates on which certificated or uncertificated shares were issued.

SECTION 13. AMENDMENT. Subsection 2 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

2. A corporation shall keep, at its principal executive office or at another place or places within the United States determined by the board, and, if its principal executive office or any such other place is outside of this state, shall make available at its registered office or at its principal executive office within this state within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subsection 4 or 5, originals or copies of:

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

b. Records of all proceedings of the board for the last three years;

c. Its articles and all amendments currently in effect;

d. Its bylaws and all amendments currently in effect;

e. Financial statements required by section 10-19.1-85 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;

f. Reports made to shareholders generally within the last three years;

g. A statement of the ~~names~~identities and usual business addresses of its directors and principal officers;

h. Voting trust agreements and beneficial interests owner's list described in section 10-19.1-81;

i. Shareholder control agreements described in section 10-19.1-83; and

j. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsection 8 of section 10-19.1-10.

SECTION 14. AMENDMENT. Subsection 11 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

11. The records maintained by a corporation, including its share register, financial records, and minute books, may ~~utilize any information storage technique~~be retained on, or by means of, or be in the form of any information storage device or method, including~~, for example~~, punched holes, printed ~~or~~, magnetized spots, ~~or~~ microimages~~, even though that makes them illegible visually~~, ~~if~~for any one or more distributed or other electronic networks or databases provided the records are retained in written form or in another form that can be converted ~~accurately and~~ into written form within a reasonable time, ~~into a form that~~ is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert ~~any of~~ the records referred to in subsection 4 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subsection 10. A copy of the conversion is admissible in evidence, and must be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

SECTION 15. AMENDMENT. Subsection 1 of section 10-19.1-110 of the North Dakota Century Code is amended and reenacted as follows:

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

   a. Publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located; and

   b. Giving written notice to known creditors and claimants pursuant to subsection ~~36~~39 of section 10-19.1-01.

SECTION 16. AMENDMENT. Subsection 2 of section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection ~~54~~58 of section 10-19.1-01. If the corporation

or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

SECTION 17. Section 10-32.1-102 of the North Dakota Century Code is created and enacted as follows:

10-32.1-102. Series of members, managers, transferable interests or assets - General powers of series - Governing authority - Distributions - Termination of series.

1. An operating agreement may establish or provide for the establishment of a designated series of members, managers, transferable interests, or assets that:

   a. Has separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations; or

   b. Has a separate business purpose or investment objective.

2. A series established in accordance with subsection 1 may carry on any business, purpose, or activity, whether or not for profit, which is not prohibited by this chapter.

3. Subject to subsection 4, if an operating agreement establishes or provides for the establishment of a particular series:

   a. The debts, obligations, or other liabilities of the particular series, whether arising in contract, tort, or otherwise, are enforceable against the assets of the series only and not against:

      (1) The assets of the limited liability company generally or any other series thereof; or

      (2) A member of the limited liability company.

   b. The debts, obligations, or other liabilities of the limited liability company generally or any other series thereof, whether arising in contract, tort, or otherwise, are not enforceable against the assets of the particular series.

4. The limitations on liabilities in subsection 3 apply if:

   a. The records for the particular series accounting for the assets of the series are separately maintained from the records accounting for the assets of the limited liability company or any other series thereof. Records that reasonably identify the assets of a particular series, including by specific listing, category, type, quantity, computational or allocational formula or procedure such as a percentage or share of assets, or by any other method in which the identity of the assets is objectively determinable, is deemed to account for the assets of the particular series separately from the assets of the limited liability company or any other series thereof;

   b. The operating agreement specifically provides for the limitations on liabilities; or

   c. Notice of the limitations on liabilities of the particular series is included in the articles of organization. Notice is sufficient whether or not the limited liability company has established or referenced any particular series in the notice.

5. This section, an operating agreement, or articles of organization may not restrict:

   a. A series or limited liability company on behalf of a series from agreeing in the operating agreement or otherwise that any debt, obligation, or other liability of the limited liability

company generally or any other series thereof is enforceable against the assets of the series;

b. A limited liability company from agreeing in the operating agreement or otherwise that any debt, obligation, or other liability of a series is enforceable against the assets of the limited liability company generally; or

c. Notwithstanding section 10-32.1-26, a member or manager from agreeing in the operating agreement or otherwise to be personally liable for any debt, obligation, or other liability of a series.

6. A series established under this section may, in its own name, contract, hold title to assets including real, personal and intangible property, grant liens and security interests, and sue or be sued. A series may:

a. Have separate rights, powers, or duties with respect to specified property or obligation of the limited liability company or profit and loss associated with any specified property or obligation;

b. Carry on a lawful purpose regardless of whether for profit, except for the purpose of acting as a financial institution or acting as an insurer; or

c. Hold assets directly or indirectly, including in the name of the series or the name of the limited liability company.

7. An operating agreement that establishes or provides for the establishment of a series may:

a. Provide for classes or groups of members or managers of the series having the relative rights, powers, and duties specified in the operating agreement;

b. Provide for and specify the future creation of additional classes or groups of members or managers of the series having the relative rights, powers, and duties as may be established, including rights, powers, and duties senior to existing classes and groups of members or managers of the series;

c. Provide for the taking of an action, including the amendment of the operating agreement, without the vote or approval of a member, manager, class, or group of members or managers of the series;

d. Provide that a member, class, or group of members of a series do not have voting rights; and

e. Grant to all or certain identified members, managers, class, or group of members or managers of the series the right to vote on a matter separately or with all or any class or group of members or managers of the series. Voting by members or managers may be on a per capita, number, financial interest, class, group, or other basis.

8. The management of a series is vested as follows:

a. In the members of the series pursuant to subsection 2 of section 10-32.1-39. A member shall cease to be a member of a series upon the divestment of all the member's transferable interests of the series. The fact a person ceases to be a member of a particular series must not by itself cause the person to cease to be a member of the limited liability company or any other series thereof or cause the termination of the series, regardless of whether the person was the last remaining member of the series; or

b. If the operating agreement provides for the management of the series in whole or in part by a manager, the management must be vested in one or more managers who must be chosen as provided in the operating agreement and who must hold the offices and have

the responsibilities as specified in the agreement. A manager ceases to be a manager of a series as provided in an operating agreement and subject to subdivision e of subsection 3 of section 10-32.1-39. The fact a person ceases to be a manager of a particular series must not by itself cause the person to cease to be a manager of the limited liability company or any other series thereof.

9. Notwithstanding section 10-32.1-30 and subject to subsections 10 and 12, if a member of a series becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the series with respect to the distribution. An operating agreement may provide for the establishment of a record date for allocations and distributions associated with a series.

10. Notwithstanding subsection 1 of section 10-32.1-31, a limited liability company may make a distribution with respect to a series established under this section unless the total assets of the series after the distribution would be less than the sum of its total liabilities plus the amount that would be needed, if the series were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon winding up and termination of members whose preferential rights are superior to those of the persons receiving the distribution. A member that receives a distribution knowing the distribution was made in violation of this subsection is personally liable to the series for the amount of the distribution.

    a. This subsection does not affect an obligation or liability of a member under an agreement or other applicable law for the amount of a distribution, except an action under this subsection must be subject to subsection 5 of section 10-32.1-32.

    b. For purposes of this subsection, "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

11. Subject to section 10-32.1-51, a series established under this section may be terminated and its affairs wound up without causing the dissolution of the limited liability company. The termination of the series does not affect the limitations on liabilities of the series as provided in subsection 3. A series is terminated and its affairs must be wound up upon the occurrence of any of the following:

    a. The dissolution of the limited liability company under section 10-32.1-51;

    b. The time or happening of events specified in the operating agreement;

    c. The vote or consent of members of the series who own more than two-thirds of the interests in the profits of the series; or

    d. On application by a member or manager of the series, the entry of a court order terminating the series on the grounds the series is not reasonably practicable to carry on the purposes of the series in conformity with the operating agreement.

12. A person winding up the affairs of a series may, in the name of the limited liability company and for and on behalf of the limited liability company and the series, take any action with respect to the series as authorized by section 10-32.1-51. The person shall provide for the claims and obligations of the series and distribute the assets of the series as provided in section 10-32.1-54. Any action taken in accordance with this subsection does not affect the liability of members and does not impose liability on a liquidating trustee appointed in accordance with this subsection. Notwithstanding section 10-32.1-51, the following persons may wind up the affairs of a series:

    a. A manager of the series who has not wrongfully terminated the series;

b. If the series has no manager who qualifies under subdivision a, the members of the series or a person approved by the members;

c. The members who own more than fifty percent of the interests in the profits of the series; or

d. On application of a member or manager of the series or a personal representative or assignee of the member or manager, and upon cause shown, a court or a liquidating trustee appointed by the court.

13. A foreign limited liability company doing business in this state and governed by an operating agreement that establishes or provides for the establishment of a designated series of members, managers, transferable interests, or assets shall state the following on its certificate of authority:

a. That the operating agreement of the foreign limited liability company establishes or provides for the establishment of series having separate rights, powers, or duties with respect to specified property or obligations of the foreign limited liability company or profits and losses associated with specified property or obligations;

b. If any debt, obligation, or other liability of any particular series, whether arising in contract, tort, or otherwise, is enforceable against the assets of the particular series only and not against the assets of the foreign limited liability company generally or any other series thereof; and

c. If any debt, obligation, or other liability of the foreign limited liability company generally or any other series thereof, whether arising in contract, tort, or otherwise, is enforceable against the assets of the particular series.

14. The secretary of state may adopt rules reasonable and necessary to address requirements related to the secretary of state for registration and continuing existence of the series limited liability companies established under this section.

SECTION 18. AMENDMENT. Subsection 2 of section 10-35-28 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection ~~54~~58 of section 10-19.1-01, the articles or the bylaws, or by a resolution approved by the affirmative vote of the required proportion or number of the directors. If the publicly traded corporation is in the hands of a receiver or trustee, it must be signed on behalf of the publicly traded corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

SECTION 19. EFFECTIVE DATE. Section 17 of this Act becomes effective on July 1, 2020.

_____	_____
Speaker of the House	President of the Senate
_____	_____
Chief Clerk of the House	Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1045.

House Vote:	Yeas 90	Nays 1	Absent 3
Senate Vote:	Yeas 44	Nays 3	Absent 0

_____
Chief Clerk of the House

Received by the Governor at _____M. on _____, 2019.

Approved at _____M. on _____, 2019.

_____
Governor

Filed in this office this _____day of _____, 2019,

at _____ o'clock _____M.

_____
Secretary of State