

# CORPORATIONS

## CHAPTER 100

### HOUSE BILL NO. 1165

(Representative Byerly)

## SECURITIES ACTIVITIES STATUTES OF LIMITATION

AN ACT to create and enact a new subsection to section 10-04-09, a new subsection to section 10-04-10.1, a new subsection to section 10-04-11, a new subsection to section 10-04-15, a new subsection to section 10-04-18, a new subsection to section 43-10.1-06.1, a new section to chapter 43-10.1, a new subsection to section 51-19-09, a new subsection to section 51-19-11, a new subsection to section 51-19-13, a new subsection to section 51-23-07, a new subsection to section 51-23-20, and a new section to chapter 51-23 of the North Dakota Century Code, relating to statutes of limitations and civil remedies for certain commodities activities; to amend and reenact section 10-04-16, subsection 1 of section 10-04-17, subsection 1 of section 43-10.1-06.2, sections 43-10.1-07, 43-10.1-08, subsection 5 of section 51-19-12, subdivisions f, g, and h of subsection 2 of section 51-19-13, and section 51-19-14 of the North Dakota Century Code, relating to statutes of limitations for certain securities and commodities activities and civil remedies for violations of certain pre-need funeral activities and franchise investment activities; and to provide a penalty.

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

**SECTION 1.** A new subsection to section 10-04-09 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

**SECTION 2.** A new subsection to section 10-04-10.1 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after six years from the date of the alleged violation.

**SECTION 3.** A new subsection to section 10-04-11 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

**SECTION 4.** A new subsection to section 10-04-15 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after six years from the date of the alleged violation.

<sup>36</sup> SECTION 5. AMENDMENT. Section 10-04-16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-04-16. Orders, injunctions, and prosecutions for violations. ~~Whenever~~ If it ~~shall appear~~ appears to the commissioner, either upon complaint or otherwise, that any person has engaged in, or is engaging in, or is about to engage in any act or practice or transaction ~~which that~~ is prohibited by this chapter or by any order of the commissioner issued ~~pursuant to any section of~~ under this chapter or which is declared to be illegal in this chapter, the commissioner may, ~~in his discretion~~:

1. Issue any order including, ~~but not limited to~~, cease and desist, stop, and suspension orders, which the commissioner deems necessary or appropriate in the public interest or for the protection of investors. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty against any person found in an administrative action to have violated any provision of this chapter, or any ~~regulation~~, rule; or order adopted or issued under this chapter, in an amount not to exceed ten thousand dollars for each violation. ~~The attorney general, upon the commissioner's request, commissioner~~ may bring actions to recover penalties pursuant to this section in district court. ~~However, any~~ A person aggrieved by an order issued pursuant to this subsection may request a hearing before the commissioner if ~~such a written~~ request is made within ten days after receipt of the order. ~~The provisions of subsections~~ Subsections 2, 3, 4, and 5 of section 10-04-12 apply to any hearing conducted ~~hereunder under this subsection~~. If, after a hearing, the commissioner ~~shall sustain~~ sustains an order previously issued, the sustaining order is subject to appeal to the district court of Burleigh County by serving on the commissioner within twenty days after the date of entry of the sustaining order a written notice of appeal signed by the appellant stating:
  - a. The order of the commissioner from which the appeal is taken.
  - b. The grounds upon which a reversal or modification of ~~such the~~ order is sought.
  - c. A demand for a certified transcript of the record of ~~such the~~ order.

~~The provisions of subdivisions~~ Subdivisions a and b of subsection 3 of section 10-04-13 apply to an appeal ~~hereunder~~ under this subsection.

2. Apply to the district court of any county in this state for an injunction restraining ~~such the~~ person and ~~his the person's~~ agents, employees, partners, officers, and directors from continuing ~~such the~~ act, practice, or transaction or engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts ~~may~~ warrant. In any proceeding for an injunction, the commissioner may apply for and on due showing be ~~entitled to have~~ issued the court's subpoena requiring the appearance forthwith of any defendant and ~~his the~~ defendant's agents, employees, partners, officers, or directors, and the

---

<sup>36</sup> Section 10-04-16 was also amended by section 2 of House Bill No. 1089, chapter 313.

production of ~~such the~~ documents, books, and records ~~as may appear~~ necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant ~~such the~~ injunction as the facts ~~may~~ warrant, and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

3. Refer ~~such any~~ evidence ~~as may be~~ available concerning ~~such the~~ act, practice, or transaction to the ~~attorney general or the proper state's attorney~~ appropriate criminal prosecutor who may, with or without ~~such a~~ the reference, institute the necessary criminal proceedings. ~~In any criminal proceeding, the attorney general or the state's attorney~~ The prosecutor may apply for and on due showing be ~~entitled to have~~ issued the court's subpoena requiring the appearance forthwith of any defendant and ~~his the~~ defendant's agents, employees, partners, officers, and directors, and the production of ~~such any~~ documents, books, and records ~~as may appear~~ necessary for the prosecution of ~~such the~~ criminal proceedings. ~~The court may impose upon any defendant convicted of any of the offenses described in this section such penalty, in accord with the provisions of section 10-04-18, as the facts may warrant.~~

**SECTION 6. AMENDMENT.** Subsection 1 of section 10-04-17 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. That no action ~~shall~~ may be brought under this section for the recovery of the purchase price after five years from the date of ~~such sale or contract for sale nor more than one year after the purchaser has received information as to matter or matters upon which the proposed recovery is based that the aggrieved party knew or reasonably should have known about the facts that are the basis for the alleged violation;~~ and

**SECTION 7.** A new subsection to section 10-04-18 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this chapter by the commissioner after five years from the date that the commissioner knew or reasonably should have known about the facts that are the basis for the alleged violation. This subsection does not apply to any action under sections 10-04-09, 10-04-10.1, 10-04-11, and 10-04-15.

**SECTION 8.** A new subsection to section 43-10.1-06.1 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after six years from the date of the violation.

**SECTION 9. AMENDMENT.** Subsection 1 of section 43-10.1-06.2 of the North Dakota Century Code is amended and reenacted as follows:

1. Issue any order, including ~~but not limited to~~ cease and desist, stop, and suspension orders, which ~~he~~ the commissioner deems necessary or appropriate in the public interest or for the protection of purchasers; ~~provided, however, that any.~~ The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a

civil penalty in an amount not to exceed ten thousand dollars for each violation against any person found in an administrative action to have violated this chapter. The commissioner may bring an action in district court to recover penalties under this section. Any person aggrieved by an order issued pursuant to under this subsection may request a hearing before the commissioner if such the request is made, in writing, within ten days after receipt of the order. Such The hearing and any appeal therefrom must be held in accordance with chapter 28-32 as must be any appeal therefrom.

**SECTION 10. AMENDMENT.** Section 43-10.1-07 of the North Dakota Century Code is amended and reenacted as follows:

43-10.1-07. Prosecution for violations of law. If, as a result of verification procedures or investigations as provided in sections 43-10.1-05 and 43-10.1-06.2, or based upon other reliable information, the securities commissioner, after consultation with the attorney general, believes that grounds for criminal prosecution of the operator or manager of any licensed funeral establishment or cemetery association or any other person exist for violation of this chapter or any other law of this state, the securities commissioner may forward such information and refer any evidence as is available or known to him to the state's attorney of the county having jurisdiction over such concerning a violation for such criminal prosecution of such operator, manager, or other person as the information and evidence requires this chapter or of any rule or order issued under this chapter to the appropriate criminal prosecutor who may, with or without the reference, institute criminal proceedings under this chapter. The criminal prosecutor may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, and directors, and the production of any documents, books, and records necessary for the prosecution of the criminal proceedings.

**SECTION 11. AMENDMENT.** Section 43-10.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**43-10.1-08. Penalties.**

1. Any person who willfully violates any provision of this chapter or any rule or order of the commissioner made pursuant to the provisions of under this chapter; or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful is guilty of a class C B felony.
2. An information must be filed or an indictment must be found under this chapter within five years after the commissioner or criminal prosecutor knew or reasonably should have known about the facts that are the basis for the prosecution.
3. "Willfully" means the person was aware of the consequences of the person's actions, and proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required. Each act or omission is a separate offense, and a prosecution or conviction for an offense does not bar a prosecution or conviction for any other offense.

**SECTION 12.** A new section to chapter 43-10.1 of the North Dakota Century Code is created and enacted as follows:

Statute of limitations. No action may be brought under this chapter by the commissioner after five years from the date that the commissioner knew or reasonably should have known about the facts that are the basis for the alleged violation. This section does not apply to section 43-10.1-06.1.

<sup>37</sup> SECTION 13. A new subsection to section 51-19-09 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

SECTION 14. A new subsection to section 51-19-11 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after six years from the date of the alleged violation.

SECTION 15. AMENDMENT. Subsection 5 of section 51-19-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. No action may be brought under this section after ~~three~~ five years from the date of such sale or contract for sale nor more than one year after the purchaser has received information as to matter or matters upon which the proposed recovery is based that the aggrieved party knew or reasonably should have known about the facts that are the basis for the alleged violation. This subsection does not apply to any action under sections 51-19-09 and 51-19-11.

SECTION 16. AMENDMENT. Subdivisions f, g, and h of subsection 2 of section 51-19-13 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- f. If, in the opinion of the commissioner, the offer of any franchise is subject to registration under this chapter and it is being or has been offered for sale without ~~such~~ the offer first being registered, the commissioner may order the franchiser or offeror of ~~such~~ the franchise to desist and refrain from the further offer or sale of ~~such~~ the franchise unless and until ~~such~~ the offer has been duly registered under this chapter. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty in an amount not to exceed ten thousand dollars for each violation against any person found in an administrative action to have violated this chapter. The commissioner may bring an action in district court to recover penalties under this section. If, after ~~such an~~ the order has been made, a request for a hearing is filed in writing by the person to whom ~~such~~ the order was directed, a hearing must be held; ~~unless such.~~ Unless the hearing is commenced within fifteen business days

<sup>37</sup> Section 51-19-09 was also amended by section 6 of House Bill No. 1089, chapter 313.

after the request is made or the person affected consents to a later date, ~~such the order must be deemed~~ is rescinded.

- g. If, in the opinion of the commissioner, the offer of any franchise exempt from registration under this chapter is being or has been offered for sale without complying with ~~the provisions of~~ section 51-19-04 or subsection 2 of section 51-19-11, the commissioner may order the franchiser or offeror of ~~such the~~ franchise to desist and refrain from the further offer or sale of ~~such the~~ franchise unless and until ~~such an~~ offer is made in compliance with this chapter. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty in an amount not to exceed ten thousand dollars for each violation against any person found in an administrative action to have violated this chapter. The commissioner may bring an action in district court to recover penalties under this section. If, after ~~such an the~~ order has been made, a request for a hearing is filed in writing by the person to whom ~~such the~~ order was directed, a hearing must be held. Unless ~~such the~~ hearing is commenced within fifteen business days after the date, ~~such the order must be deemed~~ is rescinded.
- h. The commissioner may refer ~~such~~ evidence ~~as is~~ available concerning any violation of this chapter or of any rule or order ~~hereunder issued under this chapter~~ to the ~~county attorney of the county in which the violation occurred~~ appropriate criminal prosecutor who may, with or without ~~such a the~~ reference, institute ~~appropriate~~ criminal proceedings under this chapter. The criminal prosecutor may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, and directors, and the production of any documents, books, and records necessary for the prosecution of the criminal proceedings.

SECTION 17. A new subsection to section 51-19-13 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

No action may be brought under this chapter by the commissioner after five years from the date that the commissioner knew or reasonably should have known about the facts that are the basis for the alleged violation. This subsection does not apply to any action under sections 51-19-09 and 51-19-11.

SECTION 18. AMENDMENT. Section 51-19-14 of the North Dakota Century Code is amended and reenacted as follows:

**51-19-14. Criminal penalties.**

1. Any person who willfully violates any provision of this chapter or who willfully violates any rule or order under this chapter is guilty of a class B felony; ~~but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order.~~
2. Any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer or sale of any franchise or willfully engages, directly or indirectly, in any act, practice,

or course of business which operates or would operate as a fraud or deceit upon any person in connection with the offer, purchase, or sale of any franchise is guilty of a class B felony.

3. Nothing in this chapter limits the power of the state to punish any person for any conduct ~~which~~ that constitutes a crime.
4. An information must be filed or an indictment must be found under this chapter within five years after the commissioner or criminal prosecutor knew or reasonably should have known about the facts that are the basis for the prosecution.
5. "Willfully" means the person was aware of the consequences of the person's actions, and proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required. Each act or omission is a separate offense, and a prosecution or conviction for an offense does not bar a prosecution or conviction for any other offense.

**SECTION 19.** A new subsection to section 51-23-07 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this section by the commissioner after six years from the date of the alleged violation.

<sup>38</sup> **SECTION 20.** A new subsection to section 51-23-20 of the North Dakota Century Code is created and enacted as follows:

No action may be brought under this chapter after five years from the date that the commissioner knew or reasonably should have known about the facts that are the basis for the alleged violation. This subsection does not apply to any action under section 51-23-07.

**SECTION 21.** A new section to chapter 51-23 of the North Dakota Century Code is created and enacted as follows:

Remedies. Every sale or contract for sale made in violation of this chapter, or of any rule or order issued by the commissioner under this chapter, is voidable at the election of the purchaser. The person making a sale or contract for sale, and every director, officer, salesperson, or agent of or for the person who participated or aided in any way in making the sale is jointly and severally liable to the purchaser. The purchaser may sue either to recover the full amount paid by the purchaser and any court costs, interest at a rate consistent with section 47-14-05, and reasonable attorney's fees, less the amount of any income received on the commodities upon tender to the seller of the commodities sold or of the contracts made. If the person no longer owns the commodities, the person may sue for damages that would be recoverable upon a tender, less the value of the commodities when the purchaser disposed of the commodities and interest from the date of disposition. However:

---

<sup>38</sup> Section 51-23-20 was also amended by section 7 of House Bill No. 1089, chapter 313.

1. No action may be brought under this section for the recovery of the purchase price after five years from the date of the sale or contract for sale.
2. No purchaser may claim or have the benefit of this section if the purchaser refused or failed to accept, within thirty days from the date of the offer, an offer in writing of the seller to take back the commodity contract in question and to refund the full amount paid by the purchaser, together with interest on the amount for the period from the date of payment by the purchaser to the date of repayment.
3. This chapter does not limit any statutory or common-law right of any person in any court for any act involved in the sale of commodities.

Approved April 7, 1995  
Filed April 7, 1995



**CHAPTER 101****SENATE BILL NO. 2349**

(Senator W. Stenehjem)

**CORPORATION AND LIMITED LIABILITY COMPANY  
ANNUAL REPORTS**

AN ACT to create and enact two new subsections to section 10-06.1-17 and section 10-23-03.3 of the North Dakota Century Code, relating to annual reports required of farm corporations and limited liability companies engaged in farming and reinstatement of corporations and foreign corporations following dissolution or revocation for failure to file an annual report; to amend and reenact sections 10-23-01, 10-23-02, 10-23-03, and 10-23-06 of the North Dakota Century Code, relating to annual reports of domestic and foreign corporations and license fees paid by corporations; and to provide a penalty.

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

**SECTION 1.** Two new subsections to section 10-06.1-17 of the 1993 Supplement to the North Dakota Century Code are created and enacted as follows:

A corporation engaged in farming which fails to file an annual report is subject to the penalties provided in section 10-23-02 except that the penalties must be calculated from the date of the report required by this section.

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

<sup>39</sup> **SECTION 2. AMENDMENT.** Section 10-23-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-23-01. Annual report of domestic and foreign corporations.** Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall file, within the time prescribed by sections 10-23-02 and 10-23-03, an annual report setting forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
2. The address of the registered office of the corporation in this state, the name of its registered agent in this state at that address, and the address of its principal office.

---

<sup>39</sup> Section 10-23-01 was also amended by section 45 of Senate Bill No. 2343, chapter 103.

3. A brief statement of the character of the business in which the corporation is actually engaged in this state.
4. The names and respective addresses of the directors and officers of the corporation.
5. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
6. 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.
7. A statement, expressed in dollars, of the amount of stated capital of stockholders' equity in the corporation. "Stated capital" means, at any particular time, Stockholders' equity is the net difference between total assets and total liabilities and may include the sum of the following:
  - a. The par value of all shares of the corporation having a par value, which have been issued Consideration received for issued shares or capital stock.
  - b. The amount of the consideration received by the corporation for all shares of the corporation without par value, which have been issued, except such part of the consideration thereof as may have been allocated to capital surplus in a manner permitted by law Additional paid-in capital.
  - c. Such amounts not included in subdivisions a and b as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation must be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees and other charges imposed by chapters 10-19.1 through 10-23. Capital surplus.
  - d. Undivided profits.
  - e. Retained earnings or retained deficit.
  - f. Unrealized holding gains or losses.
  - g. Consideration paid for treasury stock.
  - h. Any other amounts that the corporation has transferred to stockholders' equity.

Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stockholders' equity of a foreign corporation must be determined on the same basis and in the same manner as the stockholders' equity of a domestic corporation, for

the purpose of computing fees and other charges imposed by chapters 10-19.1 through 10-23.

8. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the total gross amount of business transacted by income of the corporation for the twelve months ending on the thirty-first day of December preceding the date herein provided for the filing of the annual report and the gross amount thereof ~~transacted~~ accumulated by the corporation at or from places of business in this state. If, on the thirty-first day of December preceding the time herein provided for the filing of such the report, the corporation had not been in existence for a period of twelve months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve months, the statement with respect to business transacted total gross income must be furnished for the period between the date of incorporation or the date of its authorization to transact business in this state, as the case may be, and such thirty-first day of December.
  
9. Such Any additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess the proper amount of fees payable by such the corporation.

~~Such~~ The annual report must be made on forms prescribed and furnished by the secretary of state, and the information therein contained must be given as of the date of the execution of the report, except as to the information required by subsections 7, 8, and 9 which must be given as of the close of business on the thirty-first day of December next preceding the date herein provided for the filing of such the report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. It must be signed as prescribed in subsection 28 of section 10-19.1-01 or, if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation. The secretary of state may destroy all the annual reports provided for in this section after they have been on file for six years. The secretary of state, or any employee or legal representative of the secretary of state, may not disclose the information reported under subsections 6, 7, and 8 to any person, except a person who is verified to be a shareholder of the corporation or a legal representative of the shareholder for which information is requested or to the tax commissioner or any employee or legal representative of the tax commissioner, who may not disclose the information and may use the information only for the administration of the tax laws.

**SECTION 3. AMENDMENT.** Section 10-23-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-23-02. Filing of annual report of domestic corporation - Penalty for late filing.** The annual report for the preceding year of a domestic corporation must be delivered to the secretary of state on or before the first day of August of each year, except that the first annual report of a domestic corporation must be filed on or before the first day of August of the year next succeeding the calendar year in which its certificate of incorporation was issued by the secretary of state or the year next succeeding the calendar year of the effective date stated in the articles of incorporation. Proof to the satisfaction of the secretary of state that on or before the first day of August, such the report was postmarked by the United States postal service, or other carrier service, in a sealed envelope, properly addressed, with postage prepaid, must be deemed a compliance with this requirement. If the secretary of state finds that such the report conforms to the requirements of section

10-23-01, the report must be filed. If the report does not ~~so~~ conform, it must be returned to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for the failure to file such the report within the time hereinabove provided do not apply, if such the report is corrected to conform to the requirements of section 10-23-01 and returned to the secretary of state on or before thirty days after such the annual report was returned to the corporation received the annual report for corrections. The secretary of state may extend the filing date for the annual report of any corporation, if a written application for an extension is received before the filing deadline. A corporation with a fiscal year ending within three months prior to the filing deadline may make a written request for an extension to apply to reports for subsequent years until the fiscal year is changed.

Each domestic corporation that fails or refuses to file its annual report for any year within the time prescribed by this section is subject to a penalty of twenty dollars if filed within ninety days after the due date, or sixty dollars if filed thereafter. A corporation which fails to file its annual report along with those statutory filing and penalty fees within one year after the date required by this section ceases to exist and is considered involuntarily dissolved by operation of law.

**SECTION 4. AMENDMENT.** Section 10-23-03 of the North Dakota Century Code is amended and reenacted as follows:

**10-23-03. Filing of annual report of foreign corporations - Penalty for late filing.** The annual report for the preceding year of a foreign corporation shall be delivered to the secretary of state on or before the ~~first fifteenth~~ day of ~~April~~ May of each year, except that the first annual report of a foreign corporation shall be filed on or before the ~~first fifteenth~~ day of ~~April~~ May of the year next succeeding the calendar year in which its certificate of authority was issued by the secretary of state. Proof to the satisfaction of the secretary of state that on or before the ~~first fifteenth~~ day of ~~April~~ such May the report was postmarked by the United States postal service, or other carrier service, in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds that such the report conforms to the requirements of section 10-23-01, the report shall be filed. If the report does not ~~so~~ conform, it shall promptly be returned to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for the failure to file such the report within the time hereinabove provided shall not apply, if such the report is corrected to conform to the requirements of section 10-23-01 and returned to the secretary of state on or before thirty days after such the annual report was returned to the corporation received the annual report for corrections. The secretary of state may extend the filing date for the annual report of any corporation, if a written application for an extension is received before the filing deadline. A corporation with a fiscal year ending within three months prior to the filing deadline may make a written request for an extension to apply to reports for subsequent years until the fiscal year is changed.

Each foreign corporation that fails or refuses to file its annual report for any year within the time prescribed by this section shall be subject to a penalty of twenty dollars.

**SECTION 5.** Section 10-23-03.3 of the North Dakota Century Code is created and enacted as follows:

**10-23-03.3. Reinstatement after involuntary dissolution or revocation.** A corporation that was dissolved for failure to file an annual report, or a foreign corporation whose authority was forfeited by failure to file an annual report, may be

reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a one hundred thirty-five dollar fee. The fees must be paid and the report filed within one year following the dissolution or revocation. Reinstatement under this section does not affect the rights or liabilities for the time from the termination or revocation to the reinstatement.

**SECTION 6. AMENDMENT.** Section 10-23-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-23-06. License fees payable by domestic corporations - Exempting building and loan and savings and loan associations.** The secretary of state shall charge and collect from each domestic corporation license fees, based upon the value of its authorized shares, at the time of:

1. Filing articles of incorporation.
2. Filing articles of amendment increasing the number or value of authorized shares.
3. Filing articles of merger or consolidation increasing the number or value of authorized shares which the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number or value of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.
4. Filing an annual report after authorized shares have been issued.

The license fees must be the sum of fifty dollars for the first fifty thousand dollars of its authorized shares, or fraction thereof, and the further sum of ten dollars if paid at the time of authorization, or twelve dollars if paid after authorized shares are issued, for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of fifty thousand dollars.

The license fees payable on an increase in authorized shares must be imposed only on the additional shares, but the amount of previously authorized shares must be taken into account in determining the rate applicable to the additional authorized shares.

For the purposes of this section, shares without par value must be considered worth one dollar per share.

The minimum sum of fifty dollars must be paid for authorized shares at the time of filing articles of incorporation. A corporation increasing authorized shares by articles of amendment or articles of merger must have previously paid for a minimum of fifty thousand dollars of authorized shares. Thereafter, a corporation may postpone the payment for any additional amounts until the filing of an annual report after the unpaid shares are issued. Additional amounts must be paid in increments of ten thousand dollars of its authorized shares.

The provisions of this section do not apply to a building and loan or savings and loan association.

Approved April 12, 1995

Filed April 13, 1995

## CHAPTER 102

## SENATE BILL NO. 2222

(Senators Thane, Lips, Heitkamp)  
(Representative Hausauer)

COOPERATIVE ASSOCIATION STOCK AND  
DIVIDENDS

AN ACT to amend and reenact subsection 1 of section 10-15-20 and section 10-15-21 of the North Dakota Century Code, relating to the rate of dividends upon stock issued by a cooperative association and the issuance of stock certificates by a cooperative association; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 10-15-20 of the North Dakota Century Code is amended and reenacted as follows:

1. A cooperative organized with capital stock may issue the amount of stock stated in its articles. ~~Such~~ The stock may be divided into two or more classes with ~~such~~ the designations, preferences, limitations, and relative rights as ~~shall be~~ stated in the articles, except that:
  - a. Stock as such has no voting power.
  - b. Stock without par value ~~shall~~ may not be authorized or issued.
  - c. The rate of dividends upon stock ~~shall~~ may not exceed ~~six~~ eight percent of its par value for any year, and dividends may not be cumulative.

SECTION 2. AMENDMENT. Section 10-15-21 of the North Dakota Century Code is amended and reenacted as follows:

10-15-21. **Stock certificates.** No stock certificate may be issued except upon payment of at least the par value of the stock it represents. No cooperative ~~shall~~ may issue stock or bonds except for money, labor done, or money or property actually received. All fictitious increase of stock or indebtedness ~~shall be~~ are void. If payment for stock is not in money, the board ~~shall determine~~ the value of the consideration ~~shall be determined by the board~~ and ~~such~~ the determination, if made in good faith, ~~shall be~~ is conclusive.

Each certificate for stock ~~shall~~ must bear the manual or facsimile signature of a principal officer and ~~shall~~ must state:

1. The name of the cooperative, the number, par value and class of the shares represented by the certificate, and whether or not it is membership stock.
2. Any restrictions on the issuance or transfer of ~~such~~ the stock, including those provided by law and the articles.

3. If more than one class of stock is authorized, the designation of the several classes, and their respective preferences, limitations, and relative rights. In lieu of the full statement, this information may be given in summary form, or the certificate may state that the cooperative will, upon request, furnish the information required by this subsection.

**SECTION 3. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 2, 1995

Filed March 3, 1995

**CHAPTER 103****SENATE BILL NO. 2343**

(Senators W. Stenehjelm, Langley, G. Nelson)  
(Representatives Kliniske, Kretschmar, Mahoney)

**LIMITED LIABILITY COMPANY AND CORPORATION  
LAW REVISIONS**

AN ACT to create and enact three new subsections to section 1-01-49 of the North Dakota Century Code, relating to the definition of individual, organization, and person; to amend and reenact sections 5-01-01, 5-02-02, 10-19.1-01, subsections 4 and 5 of section 10-19.1-10, subdivision b of subsection 1 of section 10-19.1-13, subsection 3 of section 10-19.1-16, sections 10-19.1-18, 10-19.1-19, subsection 6 of section 10-19.1-20, subsection 12 of section 10-19.1-26, subsection 2 of section 10-19.1-30, subsection 3 of section 10-19.1-43, sections 10-19.1-44, 10-19.1-46, subsection 2 of section 10-19.1-51, section 10-19.1-53, subsection 3 of section 10-19.1-61, sections 10-19.1-61.1, 10-19.1-62, subsections 4 and 9 of section 10-19.1-65, subsection 2 of section 10-19.1-68, section 10-19.1-73, subsection 3 of section 10-19.1-73.1, subsection 2 of section 10-19.1-74, subsections 2 and 3 of section 10-19.1-79, subsection 1 of section 10-19.1-80, subsection 4 of section 10-19.1-84, section 10-19.1-85, subsections 1 and 3 of section 10-19.1-87, subsections 5 and 10 of section 10-19.1-88, subsection 1 of section 10-19.1-89, subsections 1 and 7 of section 10-19.1-91, subsections 1 and 4 of section 10-19.1-92, subsection 1 of section 10-19.1-93, subsection 1 of section 10-19.1-95, subsections 3 and 4 of section 10-19.1-98, subsection 6 of section 10-19.1-100, subsection 1 of section 10-19.1-104, sections 10-19.1-106, 10-19.1-109, subsection 1 of section 10-19.1-110, sections 10-19.1-115, 10-19.1-129, 10-23-01, 10-32-02, subsections 1 and 2 of section 10-32-07, subdivision b of subsection 1 of section 10-32-10, subsections 5, 7, 12, 14, and 21 of section 10-32-23, sections 10-32-28, 10-32-30, 10-32-31, 10-32-32, 10-32-33, subsection 2 of section 10-32-35, subdivision d of subsection 1 of section 10-32-50, subdivision b of subsection 1 of section 10-32-51, subsection 4 of section 10-32-64, sections 10-32-88, 10-32-89, subsection 1 of section 10-32-97, section 10-32-98, subsection 1 of section 10-32-99, subsections 1 and 3 of section 10-32-108, section 10-32-109, subsection 1 of section 10-32-112, subsection 1 of section 10-32-114, sections 10-32-131, 10-32-136, subsection 1 of section 10-32-138, sections 10-32-140, 10-32-143, subsection 2 of section 10-32-144, subsections 1, 2, and 3 of section 10-32-149, subsection 3 of section 40-57.1-04.4, sections 57-38-60.2, 57-39.2-18.1, 57-43.1-17.3, and 57-43.2-16.2 of the North Dakota Century Code, relating to retail licensing qualifications for corporations, limited liability companies, limited partnerships, and general partnerships, the Business Corporation Act, limited liability companies, and the responsibility of a limited liability company or its officers, governors, or managers to file required tax returns or pay the tax due; to repeal section 1-01-28 of the North Dakota Century Code, relating to the definition of person; and to declare an emergency.

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



<sup>40</sup> SECTION 1. Three new subsections to section 1-01-49 of the North Dakota Century Code are created and enacted as follows:

"Individual" means a human being.

"Organization" includes a foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited partnership, partnership, trust, or any legal or commercial entity.

"Person" means an individual, organization, government, political subdivision, or governmental agency or instrumentality.

<sup>41</sup> SECTION 2. AMENDMENT. Section 5-01-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**5-01-01. Definitions.** In this title:

1. "Alcohol" means neutral spirits distilled at or above one hundred ninety degrees proof, whether or not such product is subsequently reduced, for nonindustrial use.
2. "Alcoholic beverages" means any liquid suitable for drinking by human beings, which contains one-half of one percent or more of alcohol by volume.
3. "Beer" means any malt beverage containing more than one-half of one percent of alcohol by volume.
4. "Distilled spirits" means any alcoholic beverage that is not beer, wine, sparkling wine, or alcohol.
5. "Licensed premises" means the premises on which beer, liquor, or alcoholic beverages are normally sold or dispensed and must be delineated by diagram or blueprint which must be included with the license application or the license renewal application.
6. "Liquor" means any alcoholic beverage except beer.
7. "Microbrew pub" means a brewer that brews twenty-five or fewer barrels of beer per week and sells beer produced or manufactured on the premises for consumption on or off the premises, or serves beer produced or manufactured on the premises for purposes of sampling the beer.
8. "Organization" means a domestic or foreign corporation, general partnership, limited partnership, or limited liability company.

---

<sup>40</sup> Section 1-01-49 was also amended by section 1 of Senate Bill No. 2344, chapter 55, and section 2 of House Bill No. 1027, chapter 120.

<sup>41</sup> Section 5-01-01 was also amended by section 1 of House Bill No. 1143, chapter 73; section 1 of Senate Bill No. 2198, chapter 74; and section 2 of Senate Bill No. 2344, chapter 55.

9. "Sparkling wine" means wine made effervescent with carbon dioxide.

9+ 10. "Wine" means the alcoholic beverage obtained by fermentation of agricultural products containing natural or added sugar or such beverage fortified with brandy and containing not more than twenty-four percent alcohol by volume.

<sup>42</sup> SECTION 3. AMENDMENT. Section 5-02-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5-02-02. **Qualifications for license.** No retail license may be issued to any person unless the applicant files a sworn application, accompanied by the required fee, showing the following qualifications:

1. The applicant, other than ~~corporate an organization~~, must be a legal resident of the United States and a resident of the state of North Dakota and be a person of good moral character.
2. If applicant is a:
  - a. A corporation, the then:
    - (1) The manager of the licensed premises and the officers; and directors; and stockholders must be legal residents of the United States and persons of good moral character; and
    - (2) The shareholders:
      - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
      - (b) Which are organizations, must meet the requirements of this section for applicants which are organizations.

Corporate applicants must first be properly registered with the secretary of state.

- b. A limited liability company, then:
  - (1) The manager of the licensed premises and the managers and governors must be legal residents of the United States and of good moral character.
  - (2) The members:
    - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
    - (b) Which are organizations, must meet the requirements of this section for applicants which are organizations.

<sup>42</sup> Section 5-02-02 was also amended by section 3 of Senate Bill No. 2344, chapter 55.

- (3) The applicant must first be properly registered with the secretary of state.
- c. A limited partnership, then:
- (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character.
  - (2) The general partners and limited partners:
    - (a) If individuals, must be legal residents of the United States and of good moral character; and
    - (b) If organizations, must meet the requirements of this section for applicants which are organizations.
  - (3) The applicant must first be properly registered with the secretary of state.
- d. A general partnership, then:
- (1) The manager of the licensed premises must be a legal resident of the United States and of good moral character; and
  - (2) The partners:
    - (a) Who are individuals, must be legal residents of the United States and of good moral character; and
    - (b) Which are organizations, must meet the requirements of this section for applicants which are organizations.
3. The applicant or manager must not have been convicted of an offense determined by the attorney general to have a direct bearing upon an applicant's or manager's ability to serve the public as an alcoholic beverage retailer; or, following conviction of any offense, is determined not to be sufficiently rehabilitated under section 12.1-33-02.1.
  4. The building in which business is to be conducted must meet local and state requirements regarding the sanitation and safety.
  5. The applicant for a state license must have first secured a local license.
  6. The attorney general, or local governing body, may require the applicant to set forth such other information in the application as necessary to enable them to determine if a license should be granted.
  7. The applicant may not have any financial interest in any wholesale alcoholic beverage business.

<sup>43</sup> SECTION 4. AMENDMENT. Section 10-19.1-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-01. Definitions. For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Address" means mailing address. In the case of a registered office or principal executive office, the term means the office address, which may not be a post-office box.
3. "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, and articles of dissolution.
  - b. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.
4. "Board" or "board of directors" means the board of directors of a corporation.
5. "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.
6. "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.
7. "Closely held corporation" means a corporation which does not have more than thirty-five shareholders.

---

<sup>43</sup> Section 10-19.1-01 was also amended by section 4 of Senate Bill No. 2344, chapter 55.

8. "Constituent corporation" means a domestic or foreign corporation that is a party to a merger or exchange.
9. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
10. "Director" means a member of the board.
11. "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. A distribution may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.
12. "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.
13. "Filed with the secretary of state" means that a signed original of a document, together with the fees provided in chapter 10-23, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law. The secretary of state shall then endorse on the original the word "filed" and the month, day, and year, and record the document in the office of the secretary of state.
- ~~13~~ 14. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under this chapter.
- ~~14~~ 15. "Foreign limited liability company" means a limited liability company organized for profit that is 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.
- ~~15~~ 16. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.
- ~~16~~ 17. "Intentionally" means that the person referred to either 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 if the person intentionally does the act or causes the result prohibited by the statute, or 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.
- ~~17~~ 18. A person "knows" or has "knowledge" of a fact when 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 of the fact.
- ~~18~~ 19. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of, an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a

receiver, guardian, custodian, or conservator of the person or estate of a person.

- ~~19.~~ 20. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.
- ~~20.~~ 21. "Notice" is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation.
- a. In all other cases, "notice" is given to a person:
- (1) When mailed to the person at an address designated by the person or at the last known address of the person; or
  - (2) When handed to the person; or
  - (3) 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 therein.
- b. Notice by mail is given when deposited in the United States mail with sufficient postage affixed.
- c. Notice is deemed received when it is given.
- ~~21.~~ 22. "Officer" means a person elected, appointed, or otherwise designated as an officer by the board, and any other person deemed elected as an officer pursuant to section 10-19.1-56.
- ~~22.~~ 23. "Organization" means a domestic or foreign corporation, limited liability company, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.
- ~~23.~~ 24. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.
- ~~24.~~ 25. "Owners" means:
- a. Shareholders in the case of a corporation; and
  - b. Members in the case of a limited liability company.
- ~~25.~~ 26. "Ownership interests" means:
- a. Shares in the case of a corporation; and

- b. Membership interests in the case of a limited liability company.
- ~~26~~ 27. "Parent" of a specified corporation means a corporation or limited liability company that directly, or indirectly through related corporations or limited liability companies, owns more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.
- ~~27.~~ ~~"Person" includes an individual and an organization.~~
28. "Principal executive office" means an office where the elected or appointed president of a corporation has an office. If the corporation has no elected or appointed president "principal executive office" means the registered office of the corporation.
29. "Related ~~corporation~~ organization" of a specified corporation means a:
- a. A parent or subsidiary of the specified corporation or another;
  - b. Another subsidiary of a parent of the specified corporation;
  - c. A limited liability company owning, directly or indirectly, more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation;
  - d. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly by the specified corporation;
  - e. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly by either:
    - (1) A parent of the specified corporation; or
    - (2) A limited liability company owning, directly or indirectly, more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation; or
  - f. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly by a limited liability company owning, directly or indirectly, more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.
30. "Security" has the meaning given it in subsection 13 of section 10-04-02.
31. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its 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.
32. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.

33. "Shareholder" means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.
34. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors or the holders of the required proportion or number of the voting power of the shares present and entitled to vote. A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.
35. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
36. "Subsidiary" of a specified corporation means:
  - a. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related corporations or limited liability companies, by the specified corporation; or
  - b. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company.
37. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.
38. "Vote" includes authorization by written action.
39. "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the person signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

<sup>44</sup> SECTION 5. AMENDMENT. Subsections 4 and 5 of section 10-19.1-10 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

---

<sup>44</sup> Section 10-19.1-10 was also amended by section 1 of House Bill No. 1319, chapter 104.



4. The following provisions govern a corporation unless modified either in the articles or in the bylaws:
  - a. Directors serve for an indefinite term that expires upon the election and qualification of a successor as provided in section 10-19.1-35.
  - b. The compensation of directors is fixed by the board as provided in section 10-19.1-37.
  - c. The method provided in section 10-19.1-41 must be used for removal of directors.
  - d. The method provided in section 10-19.1-42 must be used for filling board vacancies.
  - e. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-19.1-43.
  - f. ~~A director may call a board meeting, and the~~ The notice of the a board meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-19.1-43.
  - g. A majority of the board is a quorum for a board meeting as provided in section 10-19.1-45.
  - h. A committee must consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present as provided in subsection 2 of section 10-19.1-48.
  - i. The board may establish a special litigation committee as provided in section 10-19.1-48.
  - j. Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-19.1-59.
  - k. Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions as provided in section 10-19.1-71.
  - l. No fewer than ten nor more than fifty days' notice is required for a meeting of shareholders as provided in subsection ~~2~~ 3 of section 10-19.1-73.
  - m. The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting as provided in section 10-19.1-76.
  - n. The board may fix a date up to fifty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of an entitled to vote at the meeting as provided in subsection 1 of section 10-19.1-77.
  - o. Indemnification of certain persons is required as provided in section 10-19.1-91.

- p. The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-19.1-92.
5. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board fixing a greater than majority director or shareholder vote or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:
- a. The members of the first board may be named in the articles as provided in subsection 1 of section 10-19.1-32.
  - b. A manner for increasing or decreasing the number of directors as provided in section 10-19.1-33.
  - c. Additional qualifications for directors may be imposed as provided in section 10-19.1-34.
  - d. Directors may be classified as provided in section 10-19.1-38.
  - e. The day or date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-19.1-43.
  - f. Absent directors may be permitted to give written consent or opposition to a proposal as provided in section 10-19.1-44.
  - g. A larger than majority vote may be required for board action as provided in section 10-19.1-46.
  - h. Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the president as provided in section 10-19.1-53.
  - i. Additional officers may be designated as provided in section 10-19.1-54.
  - j. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-19.1-53.
  - k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-19.1-58.
  - l. A certain officer or agent may be authorized to sign share certificates as provided in subsection 1 of section 10-19.1-66.
  - m. The transfer or registration of transfer of securities may be restricted as provided in section 10-19.1-70.
  - n. The day or date, time, and place of regular shareholder meetings may be fixed as provided in subsection 3 of section 10-19.1-71.
  - o. Certain persons may be authorized to call special meetings of shareholders as provided in subsection 1 of section 10-19.1-72.

- p. Notices of shareholder meetings may be required to contain certain information as provided in subsection ~~3~~ 4 of section 10-19.1-73.
- q. A larger than majority vote may be required for shareholder action as provided in section 10-19.1-74.
- r. Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection 4 of section 10-19.1-77.
- s. Corporate actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-19.1-87.
- t. The rights and priorities of persons to receive distributions may be established as provided in section 10-19.1-92.
- u. A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles as provided in section 10-19.1-50.

**SECTION 6. AMENDMENT.** Subdivision b of subsection 1 of section 10-19.1-13 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. Must contain the word "corporation", "incorporated", or "limited", or must contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." ~~but that word or abbreviation may not be immediately preceded by the word "and" or the character "&"~~.

**SECTION 7. AMENDMENT.** Subsection 3 of section 10-19.1-16 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the secretary of state a statement as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision ~~e~~ f, and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

**SECTION 8. AMENDMENT.** Section 10-19.1-18 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-18. Procedure for amendment before issuance of when no shares are outstanding.** Before the issuance of shares by a corporation, the articles also may be amended pursuant to section 10-19.1-30 by the incorporators or by the board. The articles may be amended by the board to change or cancel a statement pursuant to subsection ~~3~~ 4 of section 10-19.1-61, establishing or fixing the rights and preferences of a class or series of shares before the issuance of any shares of that class or series or at any subsequent time that no shares of that class or series are outstanding by filing articles of amendment or a statement of cancellation, as appropriate, with the secretary of state. If a statement filed pursuant to subsection 4 of section 10-19.1-61

is cancelled, the shares of the class and series originally covered by the statement have the status of authorized but unissued, undesignated shares, unless the articles otherwise provide. If the articles provide that the cancelled shares may not be reissued, the statement of cancellation must include the information specified in subsection 2 of section 10-19.1-93.

**SECTION 9. AMENDMENT.** Section 10-19.1-19 of the North Dakota Century Code is amended and reenacted as follows:

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

1. After Except as otherwise provided in section 10-19.1-18, after the issuance of shares by the corporation, the articles may be amended in the manner set forth in this section.
2. A resolution approved by the affirmative vote of a majority of the directors present, or proposed by a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the shareholders of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the shareholders and voted upon at one meeting, but the same or substantially the same amendment proposed by a shareholder or shareholders need not be submitted to the shareholders or be voted upon at more than one meeting during a fifteen-month period. The resolution may amend the articles in their entirety to restate and supersede the original articles and all amendments to them. The provisions of this subsection regarding shareholder proposed amendments do not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder govern.
3. Written notice of the shareholders' meeting setting forth the substance of the proposed amendment must be given to each shareholder entitled to vote in the manner provided in section 10-19.1-73 for the giving of notice of meetings of shareholders.
4. The proposed amendment to the articles is adopted:
  - a. When approved by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote shareholders required by section 10-19.1-74, except as provided in subdivision b and in subsection 5; or
  - b. If the articles provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles is the larger of:
    - (1) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact

the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or

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

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

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

6. Change the shares of the class or series, whether with or without par value, into the same or a different number of shares, either with or without par value, of ~~the same or~~ another class or series;

<sup>45</sup> **SECTION 11. AMENDMENT.** Subsection 12 of section 10-19.1-26 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. A corporation may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the corporation, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related ~~corporations'~~ organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

**SECTION 12. AMENDMENT.** Subsection 2 of section 10-19.1-30 of the North Dakota Century Code is amended and reenacted as follows:

2. After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall either hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation, including, without limitation, amending the articles, electing directors, adopting bylaws, electing officers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a corporate seal,

---

<sup>45</sup> Section 10-19.1-26 was also amended by section 11 of Senate Bill No. 2070, chapter 54.

approving forms of certificates or transaction statements for shares of the corporation, adopting a fiscal year for the corporation, accepting subscriptions for and issuing shares of the corporation, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting. Incorporators and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board pursuant to subsection 5 of section 10-19.1-43.

**SECTION 13. AMENDMENT.** Subsection 3 of section 10-19.1-43 of the North Dakota Century Code is amended and reenacted as follows:

3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to subsection 2 of section 10-19.1-30, at least three days' notice, to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

**SECTION 14. AMENDMENT.** Section 10-19.1-44 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-44. Absent directors.** If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as a the vote of a director present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

**SECTION 15. AMENDMENT.** Section 10-19.1-46 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-46. Act of the board.** The board shall take action by the affirmative vote of the greater of a majority of the directors present at a duly held meeting at the time the action is taken, or a majority of the minimum proportion or number of directors that would constitute a quorum for the transaction of business at the meeting, except where this chapter or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

**SECTION 16. AMENDMENT.** Subsection 2 of section 10-19.1-51 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this section:
  - a. A director does not have a material financial interest in a resolution fixing the compensation of the a director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, even though the first director is also receiving compensation from the corporation is not void or voidable or

considered to be a contract or other transaction between a corporation and one or more of its directors for purposes of this section even though the director receiving the compensation fixed by the resolution is present and voting at the meeting of the board or a committee at which the resolution is authorized, approved, or ratified, or even though other directors voting upon the resolution are also receiving compensation from the corporation; and

- b. A director has a material financial interest in each organization in which the director, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters, and brothers and sisters of the spouse of the a director, or any combination of them have a material financial interest. A contract or other transaction between a corporation and the spouse, parents, children and spouses of children, brothers and sisters, spouses of brothers and sisters, and brothers and sisters of the spouse of a director, or any combination of them, is considered to be a transaction between the corporation and the director.

**SECTION 17. AMENDMENT.** Section 10-19.1-53 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-53. Duties of officers and agents.** All officers and agents of the corporation, as between themselves and the corporation, have such authority and must perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board not inconsistent with the bylaws.

**1. The president shall:**

- a. Have general active management for the business of the corporation;
- b. When present, preside at all meetings of the board and of shareholders;
- c. See that all orders and resolutions of the board are carried into effect;
- d. Sign and deliver in the name of the corporation, any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the board to some officer or agent of the corporation;
- e. Maintain records of and, whenever necessary, certify all proceedings of the board and the shareholders; and
- f. Perform other duties prescribed by the board.

**2. The treasurer shall:**

- a. Keep accurate financial records for the corporation;

- b. Deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;
  - c. Endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers;
  - d. Disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;
  - e. Give to the president and the board, whenever requested, an account of all transactions by the treasurer and of the financial condition of the corporation; and
  - f. Perform other duties prescribed by the board or by the president.
3. All other officers and agents of the corporation, as between themselves and the corporation, have the authority and shall perform the duties in the management of the corporation as may be provided in the articles or bylaws, or as may be determined by resolution of the board not inconsistent with the articles and bylaws.

**SECTION 18. AMENDMENT.** Subsection 3 of section 10-19.1-61 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Subject to any restrictions in the articles, the power granted in subsection 2 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series established in the articles or by resolution of the directors:
- a. May be made dependent upon facts ascertainable outside the articles, or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and
  - b. May incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or series if the corporation retains at its principal executive office, a copy of the agreements, contracts, or other arrangements or portions incorporated by reference.

**SECTION 19. AMENDMENT.** Section 10-19.1-61.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-61.1. Share dividends, divisions, and combinations.**

1. A corporation may effect a share dividend or a division or combination of its shares as provided in this section. ~~As used in this section, the~~



terms "division" and "combination" mean dividing or combining shares of any class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.

2. Articles of amendment must be adopted by the board and the shareholders under sections 10-19.1-19 and 10-19.1-20 to effect a division or combination if, as a result of the proposed division or combination:
  - a. The rights or preferences of the holders of outstanding shares of any class or series will be adversely affected; or
  - b. The percentage of authorized shares of any class or series remaining unissued after the division or combination will exceed the percentage of authorized shares of that class or series that were unissued before the division or combination.

~~For purposes of this subsection, an increase or decrease in the relative voting rights of the shares that are the subject of the division or combination that arises solely from the increase or decrease in the number of shares outstanding is not an adverse effect on the outstanding shares of any class or series or any increase in the percentage of authorized shares remaining unissued arising solely from the elimination of fractional shares under section 10-19.1-68 must be disregarded.~~

3. If a division or combination is effected under this subdivision, articles of amendment must be prepared that contain the information required by section 10-19.1-21.
4. Subject to the restrictions provided in subsections 2 and 3 or any restrictions in the articles, a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 10-19.1-19 and 10-19.1-20. In effecting a division or combination under this subsection, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.
5. If a division or combination that includes an amendment of the articles is effected under subsection 4, then articles of amendment must be prepared that contain the information required by section 10-19.1-21 and a statement that the amendment will not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and will not result in the percentage of authorized shares that remains unissued after the division or combination exceeding the percentage of authorized shares that were unissued before the division or combination.
6. For purposes of this section, an increase or decrease in the relative voting rights of the shares that are the subject of the division or combination that arises solely from the increase or decrease in the number of shares outstanding is not an adverse effect on the outstanding shares of any class or series and any increase in the percentage of authorized shares remaining unissued arising solely from the elimination of fractional shares under section 10-19.1-68 must be disregarded.

**SECTION 20. AMENDMENT.** Section 10-19.1-62 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-62. Subscriptions for shares.**

1. A subscription for shares, whether made before or after the incorporation of a corporation, is not enforceable against the subscriber unless it is in writing and signed by the subscriber.
2. ~~A~~ Unless otherwise provided in the subscription agreement, or unless all of the subscribers and, if in existence, the corporation consents to a shorter or longer period, a subscription for shares is irrevocable for a period of six months; unless the subscription agreement provides for, or unless all of the subscribers consent to, an earlier revocation.
3. A subscription for shares, whether made before or after the incorporation of a corporation, shall be paid in full at the time or times, or in the installments, if any, specified in the subscription agreement. In the absence of a provision in the subscription agreement specifying the time at which the subscription is to be paid, the subscription shall be paid at the time or times determined by the board, but a call made by the board for payment on subscriptions shall be uniform for all shares of the same class or for all shares of the same series.
4. Unless otherwise provided in the subscription agreement, in the event of default in the payment of an installment or call when due, the corporation may proceed to collect the amount due in the same manner as a debt due the corporation; ~~or, if the amount due remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent subscriber, the board may declare a forfeiture of the subscription or cancel it in accordance with this subsection.~~
5. ~~Upon forfeiture of a subscription~~ If the amount due on a subscription for shares remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent subscriber, the shares subscribed for may be offered for sale by the corporation for a price in money equaling or exceeding the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to the sale. The excess of net proceeds realized by the corporation over the sum of the amount owed by the delinquent subscriber plus the expenses incidental to the sale shall be paid. If the shares subscribed for are sold pursuant to this subsection, the corporation shall pay to the delinquent subscriber or to a the delinquent subscriber's legal representative the lesser of (a) the excess of net proceeds realized by the corporation over the sum of the amount owed by the delinquent subscriber plus the expenses incidental to the sale; and (b) the amount actually paid by the delinquent subscriber. If the shares subscribed for are not sold pursuant to this subsection, the corporation may collect the amount due in the same manner as a debt due the corporation or cancel the subscription in accordance with subsection 6. The payment shall not exceed the amount actually paid by the delinquent subscriber.
6. ~~If, within twenty days after the corporation offers to sell the~~ amount due on a subscription for shares remains unpaid for a period of twenty days

after written notice of demand for payment has been given to the delinquent subscriber and the shares subscribed for by the delinquent subscriber; no prospective purchaser offers to purchase the shares for a money price sufficient to pay the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to the sale; or if the corporation has refunded to the subscriber or a legal representative a have not been sold pursuant to subsection 5, the corporation may cancel the subscription, in which event the shares subscribed for must be restored to the status of authorized but unissued shares, the corporation may retain the portion of the subscription price actually paid; the subscription may be canceled; the shares subscribed for may be restored to the status of authorized but unissued shares that does not exceed ten percent of the subscription price, and the corporation may retain the shall refund to the delinquent subscriber or the delinquent subscriber's legal representative that portion of the subscription price actually paid that does not exceed which exceeds ten percent of the subscription price.

**SECTION 21. AMENDMENT.** Subsections 4 and 9 of section 10-19.1-65 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. ~~A~~ Unless otherwise provided in the articles, a shareholder does not have a preemptive right pursuant to this section to acquire securities or rights to purchase securities that are:
  - a. Issued for a consideration other than money;
  - b. Issued pursuant to a plan of merger or exchange;
  - c. Issued pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote;
  - d. Issued upon exercise of previously issued rights to purchase securities of the corporation;
  - e. Issued pursuant to a public offering of the corporation's securities or rights to purchase securities. For purposes of this subdivision, "public offering" means an offering of the corporation's securities or rights to purchase securities if the resale or other distribution of those securities or rights to purchase securities is not restricted by either state or federal securities laws; or
  - f. Issued pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.
  
9. ~~No~~ If the shareholders of a corporation are entitled to cumulative voting in the election of directors, no amendment to the articles which has the effect of denying, limiting, or modifying the preemptive rights provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting are cast against the amendment.

**SECTION 22. AMENDMENT.** Subsection 2 of section 10-19.1-68 of the North Dakota Century Code is amended and reenacted as follows:

2. A corporation may not pay money for fractional shares if that action would result in the cancellation of more than twenty percent of the outstanding shares of a class or series. A determination by the board of the fair value of fractions of a share is conclusive in the absence of fraud. A certificate for a fractional share does, but scrip or warrants do not unless they provide otherwise, entitle the shareholder to exercise voting rights or to receive distributions. The board may cause scrip or warrants to be issued subject to the condition that they become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose.

**SECTION 23. AMENDMENT.** Section 10-19.1-73 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-73. Notice.**

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

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

2. If notice of an adjourned meeting is required under subdivision a of subsection 1, then the date for determination of shares entitled to notice of and entitled to vote at the adjourned meeting must comply with subsection 1 of section 10-19.1-77, except that if the date of the meeting is set by court order, the court may provide that the original date of determination will continue in effect or may fix a new date.
3. If a specific minimum notice period has not otherwise been fixed by law, the notice must be given at least ten days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than fifty days before the date of the meeting.

- ~~3-~~ 4. The notice must contain the date, time, and place of the meeting, the information with respect to dissenters' rights required by subsection 2 of section 10-19.1-88, if applicable, and any other information required by this chapter. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles or bylaws or deemed necessary or desirable by the board or by any other person or persons calling the meeting.
- ~~4-~~ 5. A shareholder may waive notice of a meeting of shareholders. A waiver of notice by a shareholder entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a shareholder at a meeting is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

**SECTION 24. AMENDMENT.** Subsection 3 of section 10-19.1-73.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Waiver of notice of a meeting by means of communication described in subsections 1 and 2 may be given in the manner provided in subsection 4 5 of section 10-19.1-73. Participation in a meeting by means of communications described in subsections 1 and 2 is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

**SECTION 25. AMENDMENT.** Subsection 2 of section 10-19.1-74 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. In any case where a class or series of shares is entitled by this chapter, the articles, the bylaws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares present of that class or series as is required pursuant to subsection 1, unless the articles require a larger proportion. Unless otherwise stated in the articles or bylaws in the case of voting as a class or series, the minimum percentage of the number of shares of the class or series which must be present shall be equal to the minimum percentage of all outstanding shares entitled to vote required to be present under section 10-19.1-76.

**SECTION 26. AMENDMENT.** Subsections 2 and 3 of section 10-19.1-79 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. Except as provided in subsection 3, shares of a corporation registered in the name of a subsidiary are not entitled to ~~vote~~ be voted on any matter.

3. Shares of a corporation in the name of or under the control of the corporation or a subsidiary in a fiduciary capacity are not entitled to vote be voted on any matter, except to the extent that the settlor or beneficial owner possesses and exercises a right to vote or gives the corporation or, with respect to shares in the name of or under control of a subsidiary, the subsidiary, binding instructions on how to vote the shares.

**SECTION 27. AMENDMENT.** Subsection 1 of section 10-19.1-80 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy with an officer of the corporation at or before the meeting at which the appointment is to be effective. A written appointment of a proxy may be signed by the shareholder or authorized by the shareholder by transmission of a telegraph, cablegram, or other means of electronic transmission: However, provided the telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which it can be determined corporation has no reason to believe that the telegram, cablegram, or other electronic transmission was not authorized by the shareholder. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, provided that the copy, facsimile, telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed by any one of them, unless the corporation receives from any one of those shareholders written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

**SECTION 28. AMENDMENT.** Subsection 4 of section 10-19.1-84 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. A shareholder or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the corporation shall make available within ten days after receipt by an officer of the corporation of the written demand:
  - a. The share register; and
  - b. All documents referred to in subsection 2.

**SECTION 29. AMENDMENT.** Section 10-19.1-85 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-85. Financial statements.**

1. A corporation shall; upon written request by a shareholder, furnish annual financial statements, including prepare annual financial statements within one hundred eighty days after the close of the

corporation's fiscal year. The financial statements shall include at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, which must be prepared on the basis of accounting methods reasonable in the circumstances and may be consolidated statements of the corporation and one or more of its subsidiaries. In the case of statements audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases, each copy must be accompanied by a statement of the treasurer or other person in charge of the corporation's financial records stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances, describing the basis of presentation, and describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

2. Upon written request by a shareholder, a corporation shall furnish its most recent annual financial statements as required under subsection 1 no later than ten business days after receipt of a shareholder's written request. "Furnish" for purposes of this subsection means that the corporation shall deliver or mail, postage prepaid, the financial statements to the address specified by the requesting shareholder.

**SECTION 30. AMENDMENT.** Subsections 1 and 3 of section 10-19.1-87 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:
  - a. An amendment of the articles that materially and adversely affects the rights or preferences of the shares of a dissenting shareholder in that it:
    - (1) Alters or abolishes a preferential right of the shares;
    - (2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of shares;
    - (3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares; or
    - (4) Excludes or limits the right of a shareholder to vote on a matter, or to accumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights;
  - b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation not made in the usual or regular course of its business, but not including a transaction permitted without shareholder approval in subsection 1 of section 10-19.1-104, or a disposition in dissolution described in subsection 2

of section 10-19.1-109 or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;

- c. A plan of merger to which the corporation is a party, except as provided in subsection 3;
  - d. A plan of exchange, whether under this chapter or under chapter 10-32, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to vote on the plan; or
  - e. Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.
3. ~~The~~ Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the shareholders of the surviving corporation in a merger if the shares of the shareholder are not entitled to be voted on the merger.

**SECTION 31. AMENDMENT.** Subsections 5 and 10 of section 10-19.1-88 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. In order to receive the fair value of shares, a dissenting shareholder must demand payment and deposit certificated shares within thirty days after the notice required by subsection 4 was given, but the dissenter retains all other rights of a shareholder until the proposed action takes effect.
10. If the corporation receives a demand under subsection 9, it shall, within sixty days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after a discussion with the corporation or file in court a petition requesting that the court determine the fair value of the shares plus interest. The petition shall be filed in the county in which the registered office of the corporation is located, except that a surviving foreign corporation that receives a demand relating to the shares of a constituent corporation shall file the petition in the county in this state in which the last registered office of the constituent corporation was located. The petition shall name as parties all dissenters who have demanded payment under subsection 9 and who have not reached agreement with the corporation. The corporation, after filing the petition, shall serve all parties with a summons and copy of the petition under the rules of civil procedure. The residents of this state may be served by registered mail or by publication as provided by law. Except as otherwise provided, the rules of civil procedure apply to the proceeding. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court deems proper, to receive evidence on and recommend the amount of the fair value of the shares. The court shall determine whether the shareholder or other shareholders in question have fully complied with the requirements of this section, and shall determine the fair value of the



shares, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the corporation or by a dissenter. The fair value of the shares as determined by the court is binding on all shareholders, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the shares as determined by the court, plus interest, exceeds the amount, if any, remitted under subsections 6, 7, and 8, but shall not be liable to the corporation for the amount, if any, by which the amount, if any, remitted to the dissenter under subsections 6, 7, and 8 exceeds the fair value of the shares as determined by the court, plus interest.

**SECTION 32. AMENDMENT.** Subsection 1 of section 10-19.1-89 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist any person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the directors present and:
  - a. Is in the usual and regular course of business of the corporation;
  - b. Is with, or for the benefit of, a related ~~corporation~~ organization, an organization in which the corporation has a financial interest, all organizations with which the corporation has a business relationship, or an organization to which the corporation has the power to make donations, any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the corporation;
  - c. Is with, or for the benefit of, an officer or other employee of the corporation or a subsidiary, including an officer or employee who is a director of the corporation or a subsidiary, and may reasonably be expected, in the judgment of the board, to benefit the corporation; or
  - d. Has Whether or not any separate consideration has been paid or promised to the corporation has been approved by:
    - (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested person or persons; or
    - (2) The unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote.

**SECTION 33. AMENDMENT.** Subsections 1 and 7 of section 10-19.1-91 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. For purposes of this section, the terms defined in this subsection have the meanings given them.

- a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
  - b. "Official capacity" means:
    - (1) With respect to a director, the position of director in a corporation;
    - (2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment relationship undertaken by an employee of the corporation; and
    - (3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, governor, officer, manager, partner, trustee, or employee of another organization or employee benefit plan, the position of that person as a director, governor, officer, manager, partner, trustee, or employee, as the case may be, of the other organization or employee benefit plan.
  - c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.
  - d. "Special legal counsel" means counsel who has not represented the corporation or a related ~~corporation~~ organization, or a director, officer, member of a committee of the board, or employee whose indemnification is in issue.
7. All ~~indemnification~~ determinations whether indemnification of a person is required because the criteria provided in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:
- a. By the board by a majority of a quorum: ~~Directors, if the directors who are at the time parties to the proceeding shall are not be~~ counted for determining either a majority or the presence of a quorum;
  - b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;
  - c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board cannot be obtained and the committee

cannot be established, by a majority of the full board including directors who are parties;

- d. If a determination is not made under subdivisions a, b, and c, by the shareholders, ~~excluding the votes of~~ but the shares held by parties to the proceeding may not be counted in determining the presence of a quorum and are not considered to be present and entitled to vote on the determination; or
- e. If an adverse determination is made under subdivisions a through d, or under subsection 8, or if no determination is made under subdivisions a through d, or under subsection 8, within sixty days after:
  - (1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or after  
a
  - (2) A a request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

The person seeking indemnification or payment or reimbursement of expenses pursuant to this subdivision has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

**SECTION 34. AMENDMENT.** Subsections 1 and 4 of section 10-19.1-92 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The board may authorize and cause the corporation to make a distribution only if the board determines, in accordance with subsection 2, that the corporation will be able to pay its debts in the ordinary course of business after making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous; ~~and the~~.
  - a. The corporation may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.
  - b. The effect of a distribution on the ability of the corporation to pay its debts in the ordinary course of business after making the distribution ~~shall~~ must be measured in accordance with subsection 3.
  - c. The right of the board to authorize, and the corporation to make, distributions may be prohibited, limited, or restricted by, or the rights and priorities of persons to receive distributions may be established by, the articles or bylaws or an agreement.
4. Indebtedness of a corporation incurred or issued in a distribution in accordance with this section to a shareholder who as a result of the

transaction is no longer a shareholder is on a parity with the indebtedness of the corporation to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the corporation or a related ~~corporation~~ organization, or subject to any other agreement between the corporation and the shareholder.

**SECTION 35. AMENDMENT.** Subsection 1 of section 10-19.1-93 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A corporation may acquire its own shares, subject to section 10-19.1-92. ~~if the corporation pledges the shares to secure payment of the redemption price thereof; then the corporation shall not be deemed to have acquired the shares for the purposes of this subsection until the pledge is released. Shares so acquired~~
  - a. If a corporation acquires its own shares, then any of the acquired shares that are not pledged by the corporation as security for the future payment of some or all of the purchase price for the shares constitute authorized but unissued shares of the corporation, unless the articles provide that they may not be reissued; in which case. If the articles prohibit reissue, the number of authorized shares is reduced by the number of shares acquired.
  - b. If a corporation pledges acquired shares as security for future payment of all or part of the purchase price for the shares and reissues the pledged shares in its own name, then:
    - (1) The shares must continue to be issued and outstanding except for voting and determination of a quorum, and the shares are not considered to be present and entitled to vote at any meeting of shareholders;
    - (2) The corporation may not vote or exercise any other rights of a shareholder with respect to the pledged shares, but the pledgee shall have any rights, other than the right to vote, with respect to the shares which the pledgee is entitled to contract;
    - (3) If the pledge is foreclosed, the corporation shall reissue and deliver the pledged shares to or at the direction of the pledgee; and
    - (4) Shares that are released from a pledge have the status specified in subdivision a of subsection 1.

**SECTION 36. AMENDMENT.** Subsection 1 of section 10-19.1-95 of the North Dakota Century Code is amended and reenacted as follows:

1. In addition to any other liabilities, a director who is present and votes for or fails to vote against, except a director who is prohibited by section 10-19.1-51 from voting on the distribution, or who consents in writing to, a distribution made in violation of subsection 1 or 5 of section 10-19.1-92 or a restriction contained in the articles or bylaws or an agreement, and who fails to comply with the standard of conduct

provided in section 10-19.1-50, is liable to the corporation, its receiver or any other person winding up its affairs, jointly and severally with all other directors so liable and to other directors under subsection 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 10-19.1-92.

**SECTION 37. AMENDMENT.** Subsections 3 and 4 of section 10-19.1-98 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. A class or series of shares of the corporation is not entitled to vote as a class or series solely because the plan of merger ~~or exchange~~ affects a cancellation of shares of the class or series if the plan of merger or exchange affects a cancellation of all shares of the corporation of all classes and series that are outstanding immediately prior to the merger or exchange and shareholders of shares of that class or series are entitled to obtain payment for the fair value of their shares under section 10-19.1-87 in the event of the merger ~~or exchange~~.
4. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange to a vote at a meeting of shareholders of a surviving corporation is not required if:
  - a. The articles of the corporation will not be amended in the transaction;
  - b. Each holder of shares of the corporation that were outstanding immediately before the effective date of the transaction will hold the same number of shares with identical rights immediately thereafter;
  - c. The number of voting power of the outstanding shares of the corporation entitled to vote immediately after the merger or exchange, plus the number of voting power of the shares of the corporation entitled to vote issuable on conversion of ~~securities other than shares~~, or on the exercise of rights to purchase, securities issued by ~~virtue of the terms of in~~ the transaction, will not exceed by more than twenty percent the number of voting power of the outstanding shares of the corporation entitled to vote immediately before the transaction; and
  - d. The number of participating shares of the corporation immediately after the merger, plus the number of participating shares of the corporation issuable on conversion ~~of~~, or on the exercise of rights to purchase, securities issued in the merger, will not exceed by more than twenty percent the number of participating shares of the corporation immediately before the merger. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

**SECTION 38. AMENDMENT.** Subsection 6 of section 10-19.1-100 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. If all of the ~~stock~~ shares of one or more domestic subsidiaries ~~of the parent~~ that is a constituent party to a merger under this section ~~is~~ are not owned by the parent directly, or indirectly through related

corporations, immediately prior to the merger, the shareholders of each domestic subsidiary have dissenter's rights under section 10-19.1-87, without regard to subsection 3 of section 10-19.1-87 and section 10-19.1-88. If the parent is a constituent corporation but is not the surviving corporation in the merger, and the articles of incorporation of the surviving corporation immediately after the merger differ from the articles of incorporation of the parent immediately prior to the merger in a manner that would entitle a shareholder of the parent to dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87, if the articles of incorporation of the surviving corporation constitute an amendment to the articles of the corporation of the parent, that shareholder of the parent has dissenter's rights as provided under sections 10-19.1-87 and 10-19.1-88. Except as provided in this subsection, sections 10-19.1-87 and 10-19.1-88 do not apply to any merger affected under this section.

**SECTION 39. AMENDMENT.** Subsection 1 of section 10-19.1-104 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation, by affirmative vote of a majority of the directors present; ~~may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business;~~ upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, ~~in which case no and without~~ shareholder approval is required, may:
  - a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;
  - b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business;  
or
  - c. Transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

**SECTION 40. AMENDMENT.** Section 10-19.1-106 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-106. Voluntary dissolution by incorporators.** A corporation that has not issued shares may be dissolved by the incorporators or directors in the manner set forth in this section:

1. A majority of the incorporators or directors shall sign articles of dissolution containing:
  - a. The name of the corporation;
  - b. The date of incorporation;
  - c. A statement that shares have not been issued;

- d. A statement that all consideration received from subscribers for shares to be issued, less expenses incurred in the organization of the corporation, has been returned to the subscribers; and
- e. A statement that no debts remain unpaid.
2. The articles of dissolution must be filed with the secretary of state, together with the fees provided in chapter 10-23.
3. When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.
4. The secretary of state shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:
  - a. The name of the corporation;
  - b. The date the articles of dissolution were filed with the secretary of state; and
  - c. A statement that the corporation is dissolved.

**SECTION 41. AMENDMENT.** Section 10-19.1-109 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-109. Procedure in dissolution.**

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible:
  - a. To collect or make provisions for the collection of all known debts due or owing to the corporation, including unpaid subscriptions for shares;
  - b. Except as provided in sections ~~10-19.1-100~~ 10-19.1-110, 10-19.1-110.1, and 10-19.1-124, to pay or make provision for the payment of all known debts, obligations, and liabilities of the corporation according to their priorities; and
  - c. To give notice to creditors and claimants under section 10-19.1-110 or to proceed under section ~~10-19.1-100~~ 10-19.1-110.1.
2. Notwithstanding section 10-19.1-104, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the shareholders.
3. All tangible or intangible property, including money, remaining after the discharge of, or after making adequate provision for the discharge of, the debts, obligations, and liabilities of the corporation must be distributed to the shareholders in accordance with subsection 4 of section 10-19.1-92.

**SECTION 42. AMENDMENT.** Subsection 1 of section 10-19.1-110 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. When a notice of intent to dissolve has been filed with the secretary of state, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or noncontingent. If notice to creditors and claimants is given, it must be given by 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 by giving written notice to known creditors and claimants pursuant to subsection ~~20~~ 21 of section 10-19.1-01.

**SECTION 43. AMENDMENT.** Section 10-19.1-115 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-115. Involuntary dissolution.**

1. A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:
  - a. In a supervised voluntary dissolution pursuant to section 10-19.1-114;
  - b. In an action by a shareholder when it is established that:
    - (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock;
    - (2) The directors or those in control of the corporation have acted fraudulently; or illegally; ~~or in a manner unfairly prejudicial~~ toward one or more shareholders in their capacities as shareholders; or directors; or as officers; or ~~as~~ employees of a closely held corporation;
    - (3) The directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation or as officers or employees of a closely held corporation;
    - (4) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
- ~~(4)~~ (5) The corporate assets are being misapplied or wasted; or



- (5) (6) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-19.1-124.
- c. In an action by a creditor when:
- (1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or
  - (2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or
- d. In an action by the attorney general to dissolve the corporation in accordance with section 10-19.1-118 when it is established that a decree of dissolution is appropriate.
2. In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation has accumulated or current operating profits.
3. In an action under subdivision b of subsection 1 involving a corporation that is not a publicly held corporation at the time the action is commenced and in which one or more of the circumstances described in that subdivision is established, the court, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, may order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under the circumstances of the case.
- a. The purchase price of any shares so sold must be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court. However, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms as set forth, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.
- b. Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under subsection 6 of section 10-19.1-88.
- c. If the parties are unable to agree on fair value within forty days of entry of the order, the court shall determine the fair value of the shares under the provisions of subsection 10 of section 10-19.1-88 and may allow interest or costs as provided in subsections 1 and 11 of section 10-19.1-88.

d. The purchase price must be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within forty days of entry of the order, as ordered by the court. Upon entry of an order for the sale of shares under this subsection and provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus any additional costs, expenses, and fees as may be awarded, will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as may be awarded.

4. In determining whether to order equitable relief or dissolution, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other. For purposes of this section, any written agreement, including an employment agreement and a buy-sell agreement, between or among shareholders or between or among one or more shareholders and the corporation is presumed to reflect the parties' reasonable expectation concerning the matters dealt with in the agreement.

~~4~~ 5. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buyout, or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.

~~5~~ 6. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.

~~6~~ 7. Proceedings under this section must be brought in a court within the county in which the registered office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

**SECTION 44. AMENDMENT.** Section 10-19.1-129 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-129. Service of process on corporation and nonresident directors.**

1. The registered agent must be an agent of the corporation and any nonresident director upon whom any process, notice, or demand required or permitted by law to be served on the corporation or director may be served. Acceptance of a directorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.

2. A process, notice, or demand required or permitted by law to be served upon a corporation may be served either upon the registered agent of the corporation, or upon an officer of the corporation, or upon the secretary of state as provided in this section.
3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person who is not a party, that no registered agent or officer can be found at the registered office must be provided to the secretary of state. Service on the secretary of state of any process, notice, or demand is deemed personal service upon the corporation and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand, along with the fees provided in chapter 10-23. The secretary of state shall immediately forward, by registered mail, addressed to the corporation at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
4. Process, notice, or demand may be served on a dissolved corporation as provided in this subsection. The court shall determine if service is proper. If a corporation has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subsection 2 so long as claims are not finally barred under section 10-19.1-124. If a corporation has been involuntarily dissolved pursuant to section 10-19.1-02.2, service may be made according to subsection 2.
5. A record of all processes, notices, and demands served upon the secretary of state under this section, including the date of service and the action taken with reference to it must be maintained in the office of the secretary of state.
- 5~~r~~ 6. Nothing in this section limits the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

<sup>46</sup> SECTION 45. AMENDMENT. Section 10-23-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-23-01. Annual report of domestic and foreign corporations.** Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall file, within the time prescribed by sections 10-23-02 and 10-23-03, an annual report setting forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.

---

<sup>46</sup> Section 10-23-01 was also amended by section 2 of Senate Bill No. 2349, chapter 101.

2. The address of the registered office of the corporation in this state, the name of its registered agent in this state at that address, and the address of its principal office.
3. A brief statement of the character of the business in which the corporation is actually engaged in this state.
4. The names and respective addresses of the directors and officers of the corporation.
5. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
6. 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.
7. A statement, expressed in dollars, of the amount of stated capital of the corporation. "Stated capital" means, at any particular time, the sum of the following:
  - a. The par value of all shares of the corporation having a par value, which have been issued.
  - b. The amount of the consideration received by the corporation for all shares of the corporation without par value, which have been issued, except such part of the consideration thereof as may have been allocated to capital surplus in a manner permitted by law.
  - c. Such amounts not included in subdivisions a and b as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation must be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees and other charges imposed by chapters 10-19.1 through 10-23.
8. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the twelve months ending on the thirty-first day of December preceding the date herein provided for the filing of the annual report and the gross amount thereof transacted by the corporation at or from places of business in this state. If, on the thirty-first day of December preceding the time herein provided for the filing of such report, the corporation had not been in existence for a period of twelve months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve months, the statement with respect to business transacted must be furnished for the period between the date of incorporation or the date of its authorization to transact business in this state, as the case may be, and such thirty-first day of December.

9. ~~Such~~ Any additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess the proper amount of fees payable by ~~such~~ the corporation.

Such annual report must be made on forms prescribed and furnished by the secretary of state, and the information therein contained must be given as of the date of the execution of the report, except as to the information required by subsections 7, 8, and 9 which must be given as of the close of business on the thirty-first day of December next preceding the date herein provided for the filing of such report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. It must be signed as prescribed in subsection ~~28~~ 35 of section 10-19.1-01 or, if the corporation is in the hands of a receiver or trustee, it must be executed on behalf of the corporation. The secretary of state may destroy all the annual reports provided for in this section after they have been on file for six years.

<sup>47</sup> SECTION 46. AMENDMENT. Section 10-32-02 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-02. Definitions. For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Acquiring organization" means the foreign or domestic limited liability company or foreign or domestic corporation that acquires in an exchange the shares of a domestic or foreign corporation or the membership interests of a limited liability company.
2. "Address" means mailing address, including a zip code. In the case of a registered office or principal executive office, the term means the mailing address and the actual office location which may not be a post-office box.
3. "Agreement to give transfer consent" means a member-control agreement under section 10-32-50, or a part of a member-control agreement, under which the members agree in advance to give any consent referred to in subsection 2 of section 10-32-32.
4. "Articles" or "articles of organization" means:
  - a. In the case of a limited liability company organized under this chapter, articles of organization, articles of amendment, 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 membership interests, articles of merger, articles of abandonment, and articles of termination.
  - b. In the case of a foreign limited liability company, the term includes all documents serving a similar function required to be filed with the secretary of state or other state office of the limited liability company's state of organization.

---

<sup>47</sup> Section 10-32-02 was also amended by section 26 of Senate Bill No. 2344, chapter 55.

5. "Board" or "board of governors" means the board of governors of a limited liability company.
6. "Board member" means:
  - a. An individual serving on the board of governors in the case of a limited liability company; and
  - b. An individual serving on the board of directors in the case of a corporation.
7. "Business continuation agreement" means a member-control agreement under section 10-32-50, or a part of a member-control agreement, made after the limited liability company has incurred an event of dissolution, under which the members:
  - a. Agree that, despite any dissolution, winding up and termination of the limited liability company as a legal entity, its business will be continued in a successor organization through a merger, transfer of assets, transfer of membership interests, or otherwise; and
  - b. Specify the terms and conditions under which the business continuation will occur.
8. "Class", when used with reference to membership interests, means a category of membership interests which differs in one or more rights or preferences from another category of membership interests of the limited liability company.
9. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.
10. "Constituent organization" means a limited liability company or a domestic or foreign corporation that is a party to a merger or an exchange.
11. "Contribution agreement" means an agreement between a person and a limited liability company under which:
  - a. The person agrees to make a contribution in the future; and
  - b. The limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.
12. "Contribution allowance agreement" means an agreement between a person and a limited liability company under which:
  - a. The person has the right, but not the obligation, to make a contribution in the future; and
  - b. The limited liability company agrees that, if the person makes the specified contribution at the time specified in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.

13. "Dissolution" means that the limited liability company has incurred an event under subsection 1 of section 10-32-109, subject only to sections 10-32-116 and 10-32-124, that obligates the limited liability company to wind up its affairs and to terminate its existence as a legal entity.
14. "Dissolution avoidance consent" means the consent of all remaining members:
  - a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after the occurrence of any event that terminates the continued membership of a member in the limited liability company; and
  - b. That the limited liability company must be continued as a legal entity without dissolution.
15. "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a limited liability company to any of its members in respect of membership interests. A distribution may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.
16. "Domestic corporation" means a corporation other than a foreign corporation organized for profit and incorporated under or governed by chapter 10-19.1.
17. "Filed with the secretary of state" means that a signed original of a document together with the fees provided in section 10-32-150, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law. The secretary of state shall endorse on the original the word "Filed" and the month, day, and year of filing, and record the document in the office of the secretary of state.
- ~~17~~ 18. "Financial rights" means a member's rights:
  - a. To share in profits and losses as provided in section 10-32-36;
  - b. To share in distributions as provided in section 10-32-60;
  - c. To receive interim distributions as provided in section 10-32-61; and
  - d. To receive termination distributions as provided in subdivision c of subsection 1 of section 10-32-131.
19. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under chapter 10-19.1.
- ~~18~~ 20. "Foreign limited liability company" means a limited liability company organized for profit which is organized under laws other than the laws of this state for a purpose or purposes for which a limited liability company may be organized under this chapter.

- ~~19~~ 21. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.
- ~~20~~ 22. "Governance rights" means all of a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.
- ~~21~~ 23. "~~Governing board~~" means:
- a. The board of governors in the case of a limited liability company; and
  - b. The board of directors in the case of a corporation.
- ~~22~~ 24. "Governor" means an individual serving on the board of governors.
- ~~23~~ 25. "Intentionally" means that the person referred to either 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 if the person intentionally does the act or causes the result prohibited by the statute, or 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.
- ~~24~~ 26. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
- ~~25~~ 27. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of the person or estate of a person.
- ~~26~~ 28. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under this chapter.
- ~~27~~ 29. "Manager" means a person elected, appointed, or otherwise designated as a manager by the board of governors, and any other person considered elected as a manager pursuant to section 10-32-92.
- ~~28~~ 30. "Member" means a person reflected in the required records of a limited liability company as the owner of some governance rights of a membership interest of the limited liability company.
- ~~29~~ 31. "Membership interest" means a member's interest in a limited liability company consisting of a member's financial rights, a member's right to assign financial rights as provided in section 10-32-31, a member's governance rights, and a member's right to assign governance rights as provided in section 10-32-32.
- ~~30~~ 32. "Notice" is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company when in writing and mailed or delivered to the limited liability company



or the manager at the registered office or principal executive office of the limited liability company.

- a. In all other cases, notice is given to a person:
  - (1) When mailed to the person at an address designated by the person or at the last known address of the person;
  - (2) When handed to the person; or
  - (3) 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 who is residing there.
- b. Notice by mail is given when deposited in the United States mail with sufficient postage affixed.
- c. Notice is considered received when it is given.

~~31+~~ 33. "Operating agreement" means rules, resolutions, or other provisions that:

- a. Relate to the management of the business or the regulation of the affairs of the limited liability company; and
- b. Have been made expressly part of the operating agreement by the action, taken from time to time under section 10-32-69, by the board of governors or the members.

~~32+~~ 34. "Organization" means a domestic or foreign limited liability company, corporation, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

~~33+~~ 35. "Owners" means:

- a. Members in the case of a limited liability company; and
- b. Shareholders in the case of a corporation.

~~34+~~ 36. "Ownership interests" means:

- a. Membership interests in the case of a limited liability company; and
- b. Shares in the case of a corporation.

~~35+~~ 37. "Parent" of a specified limited liability company means a limited liability company or corporation that directly; or indirectly ~~through related limited liability companies or corporations;~~ owns more than fifty percent

of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.

~~36~~ 37. "Person" includes an individual and an organization.

~~37~~ 38. "Pertains" means a contribution "pertains":

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

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

~~38~~ 39. "Principal executive office" means an office where the elected or appointed president of the limited liability company has an office. If the limited liability company has no elected or appointed president, "principal executive office" means the registered office of the limited liability company.

~~39~~ 40. "Registered office" means the place in this state designated in the articles of organization as the registered office of the limited liability company.

~~40~~ 41. "~~Related limited liability company~~ organization" of a specified limited liability company means a parent or subsidiary of the specified limited liability company or another subsidiary of a parent of the specified limited liability company.

~~41~~ 42. "Required records" are those records required to be maintained under section 10-32-51.

~~42~~ 43. "Security" has the meaning given it in subsection 13 of section 10-04-02.

~~43~~ 44. "Series" means a category of membership interests, within a class of membership interests, that has some of the same rights and preferences as other membership interests within the same class, but that differ in one or more rights and preferences from another category of membership interests within that class.

~~44~~ 45. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles of organization or operating agreement or a resolution approved by the affirmative vote of the required proportion or number of governors or the required proportion of the voting power of membership interests present and entitled to vote. A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

~~45~~ 46. "Subsidiary" of a specified limited liability company means:

- a. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly; or indirectly ~~through related limited liability companies or corporations~~; by the specified limited liability company; or
  - b. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly; or indirectly ~~through related limited liability companies or corporations~~; by the specified limited liability company.
- ~~46-~~ 47. "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under subsection 6 of section 10-32-119, continues the business of the dissolved and terminated limited liability company.
- ~~47-~~ 48. "Surviving organization" means the foreign or domestic limited liability company or domestic or foreign corporation resulting from a merger.
- ~~48-~~ 49. "Termination" means the end of a limited liability company's existence as a legal entity and occurs when a notice of termination is:
- a. Filed with the secretary of state under section 10-32-117 together with the fees provided in section 10-32-150; or
  - b. Is considered filed with the secretary of state under subdivision c of subsection 2 of section 10-32-106 together with the fees provided in section 10-32-150.
- ~~49-~~ 50. "Vote" includes authorization by written action.
- ~~50-~~ 51. "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on its business, except to the extent necessary for concluding its affairs, and disposes of its assets under section 10-32-131.
- ~~51-~~ 52. "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

**SECTION 47. AMENDMENT.** Subsections 1 and 2 of section 10-32-07 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. The articles of organization must contain:
  - a. The name of the limited liability company;
  - b. The address of the principal executive office;
  - c. The address of the registered office of the limited liability company and the name of its registered agent at that address;

- d. The name and address of each organizer;
  - e. The A statement stating in years that the limited period of existence for the limited liability company; which must be a period of thirty years or less from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly authorize a longer period of duration;
  - f. A statement as to whether upon the occurrence of any event under subdivision e of subsection 1 of section 10-32-109 that terminates the continued membership of a member in the limited liability company, the remaining members will have the power to avoid dissolution by giving dissolution avoidance consent; and
  - g. A statement as to whether the members have the power to enter into a business continuation agreement.
2. The following provisions govern a limited liability company unless modified in the articles of organization:
- a. A limited liability company has general business purposes (section 10-32-04);
  - b. A limited liability company has certain powers (section 10-32-23);
  - c. The power to adopt, amend, or repeal the operating agreement is vested in the board of governors (section 10-32-68);
  - d. A limited liability company must allow cumulative voting for governors (section 10-32-76);
  - e. The affirmative vote of a majority of governors present is required for an action of the board of governors (section 10-32-83);
  - f. A written action by the board of governors taken without a meeting must be signed by all governors (section 10-32-84);
  - g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements (subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59);
  - h. All membership interests are ordinary membership interests entitled to vote and are of one class with no series (subdivisions a and b of subsection 5 of section 10-32-56);
  - i. All membership interests have equal rights and preferences in all matters not otherwise provided for by the board of governors (subdivision b of subsection 5 of section 10-32-56);
  - j. The restatement of value of previous contributions is to be determined according to a specified process (subsections 3 and 4 of section 10-32-57);
  - k. A member has certain preemptive rights, unless otherwise provided by the board of governors (section 10-32-37);

- l. The affirmative vote of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting is required for an action of the members, except where this chapter requires the affirmative vote of a majority of the voting power of all membership interests entitled to vote (subsection 1 of section 10-32-43);
- m. The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members (section 10-32-45);
- n. Members share in distributions in proportion to the value reflected in the required records of the contributions of members (section 10-32-60);
- o. Members share profits and losses in proportion to the value reflected in the required records of the contributions of members (section 10-32-36);
- p. A written action by the members taken without a meeting must be signed by all members (section 10-32-43);
- q. Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind (section 10-32-62); ~~and~~
- r. A member is not subject to expulsion (subsection 2 of section 10-32-30);
- s. Unanimous consent is required for the transfer of governance rights to a person not already a member (subsection 2 of section 10-32-32); and
- t. Unanimous consent is required to avoid dissolution (subdivision e of subsection 1 of section 10-32-109).

**SECTION 48. AMENDMENT.** Subdivision b of subsection 1 of section 10-32-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or; ~~in the case of an organization formed pursuant to chapter 10-31; must contain the words "professional limited liability company", or the abbreviation "P.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter including real estate matters, contracts, and filings with the secretary of state;~~

**SECTION 49. AMENDMENT.** Subsections 5, 7, 12, 14, and 21 of section 10-32-23 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. A limited liability company may sell, convey, mortgage, create a security interest in, encumber, assign, lease, exchange, transfer, or otherwise

dispose of all or any part of its real or personal property, or any interest in this property, wherever situated.

7. A limited liability company may make contracts and incur liabilities, borrow money, and secure any of its obligations by mortgage of or creation of a security interest in or other encumbrance or assignment of all or any of its property, franchises, and income.
12. A limited liability company may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the limited liability company, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related ~~limited liability companies'~~ organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.
14. A limited liability company may provide for its benefit life insurance and other insurance with respect to the services of any or all of its members, managers, governors, employees, and agents, or on the life of a member for the purpose of acquiring at the death of the member any or all membership interests in the limited liability company owned by the member.
21. A limited liability company may make advances ~~to its governors, managers, and employees and those of its subsidiaries~~ as provided in section 10-32-98.

**SECTION 50. AMENDMENT.** Section 10-32-28 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-28. Nature of a membership interest and statement of interest owned.**

1. A membership interest is personal property. A member has no interest in specific limited liability company property. All property of the limited liability company is property of the limited liability company itself.
2. At the request of any member, the limited liability company shall state in writing the particular membership interest owned by that member as of the moment the limited liability company makes the statement. The statement must describe the member's right to vote, to share in profits and losses, and to share in distributions, restrictions on assignments of financial rights under subsection 3 of section 10-32-31 or governance rights under subsection 6 of section 10-32-32, then in effect, as well as any assignment of the member's rights then in effect other than a security interest. The statement is not a certificated security, is not a negotiable instrument, and may not serve as a vehicle by which a transfer of any membership interest may be effected.
3. ~~For~~ Notwithstanding any other provision of law, for the purpose of any law relating to security interests, a membership interest, governance rights, and financial rights are each a general intangible, as defined in

section 41-09-06, and not a certificated security and not as defined in subdivision a of subsection 1 of section 41-08-02, an uncertificated security as defined in subdivision b of subsection 1 of section 41-08-02, chattel paper as defined in subdivision b of subsection 1 of section 41-09-05, an instrument as defined in subdivision i of subsection 1 of section 41-09-05, or an account as defined in section 41-09-06.

**SECTION 51. AMENDMENT.** Section 10-32-30 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-30. Termination of a membership interest.**

1. A member always has the power, though not necessarily the right, to terminate its membership by resigning or retiring at any time. A member's resignation or retirement, whether rightful or wrongful, causes dissolution under subdivision e of subsection 1 of section 10-32-109 unless dissolution ~~avoidance consent is obtained from the remaining members~~ is avoided under that subdivision. A member has no power to transfer all or part of the member's membership interest, except as provided in sections 10-32-31 and 10-32-32.
2. Unless otherwise provided in the articles of organization, a member may not be expelled.
3. If for any reason the continued membership of a member is terminated and:
  - a. If dissolution under subdivision e of subsection 1 of section 10-32-109 is avoided ~~through dissolution avoidance consent under that subdivision~~, then the member whose membership has terminated loses all governance rights and will be considered merely an assignee of the financial rights owned before the termination of membership; or
  - b. If dissolution under subdivision e of subsection 1 of section 10-32-109 is not avoided ~~through dissolution avoidance consent under that subdivision~~, the member whose continued membership has terminated retains all governance rights ~~and financial rights~~ owned before the termination of the membership and may exercise those rights through the winding up and termination of the limited liability company.
4. If a member resigns or retires in contravention of the articles of organization or a member-control agreement, then:
  - a. ~~The If dissolution avoidance consent is obtained, the member who has wrongfully resigned or retired is liable to all of the other members and to the limited liability company to the extent damaged by the wrongful resignation or retirement; and~~
  - b. If dissolution avoidance consent is not obtained ~~but the business of the limited liability company is continued under a business continuation agreement; then unless otherwise provided in the business continuation agreement:~~

- (1) The member who has wrongfully resigned or retired has the right as against the successor organization to have the value of the resigned or retired membership interest determined and paid in cash; but
- (2) In ascertaining the value of the resigned or retired membership interest, the value of the goodwill of the business must not be considered section 10-32-131 applies.

**SECTION 52. AMENDMENT.** Section 10-32-31 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-31. Assignment of financial rights.**

1. Except as provided in subsection 3, a member's financial rights are transferable in whole or in part.
2. An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled. An assignment of a member's financial rights does not dissolve the limited liability company and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the limited liability company, or to cause dissolution. The assignment may not allow the assignee to control the member's exercise of governance rights.
3. A restriction on the assignment of financial rights may be imposed in the articles, in the operating agreement, by a resolution adopted by the members, or by an agreement among or other written action by members or among them and the limited liability company. A restriction is not binding with respect to financial rights reflected in the required records before the adoption of the restriction, unless the owners of those financial rights are parties to the agreement or voted in favor of the restriction.
4. A Subject to subsection 5, a written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner, including a pledgee or a legal representative. Unless noted conspicuously in the required records, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.
5. With regard to restrictions on the assignment of financial rights, a would be assignee of financial rights is entitled to rely on a statement of membership interest issued by the limited liability company under section 10-32-28. A restriction on the assignment of financial rights, which is otherwise valid and in effect at the time of the issuance of a statement of membership interest but which is not reflected in that statement, is ineffective against an assignee who takes an assignment in reliance on the statement.
6. Notwithstanding any provision of law, articles of organization, member-control agreement, operating agreement, other agreement,



resolution, or action to the contrary, a security interest in a member's financial rights may be foreclosed and otherwise enforced, and a secured party may assign a member's financial rights in accordance with title 41 without the consent or approval of a member whose financial rights are subject to the security interest.

SECTION 53. AMENDMENT. Section 10-32-32 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-32. Assignment of a complete membership interest and of governance rights coupled with an assignment of financial rights.

1. ~~A member may assign the member's full membership interest only by assigning all of the member's governance rights coupled with a simultaneous assignment to the same assignee of all the member's financial rights.~~ A member's governance rights are assignable, in whole or in part, only as provided in this section.
2. Subject to subsection 6, a member may, without the consent of any other member, assign governance rights, in whole or in part, to another person already a member at the time of the assignment. Any other assignment of any governance rights is effective only if all the members, other than the member seeking to make the assignment, approve the assignment by unanimous written consent, unless the articles of organization provide for written consent by fewer than all members. Subject to subsection 6, a member may grant a security interest in a complete membership interest or governance rights without obtaining the consent required by this subsection. However, a secured party may not take or assign ownership of governance rights without first obtaining the consent required by this subsection. If a secured party has a security interest in both a member's financial rights and governance rights, including a security interest in a complete membership interest, this subsection's requirement that the secured party obtain consent applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights.
3. When an assignment of governance rights ~~coupled with financial rights~~ is effective under subsection 2:
  - a. ~~The~~ If the assignment is not a security interest, the assignee becomes a member, if not already a member; and
  - b. If the assignor does not retain any governance rights, the assignor ceases to be a member, and the ~~unanimous~~ written consent required under subsection 2, also constitutes the dissolution avoidance consent necessary to avoid dissolution that would otherwise ensue under subdivision e of subsection 1 of section 10-32-109 on account of the assignor ceasing to be a member if the consent required to avoid dissolution is not greater than the consent required under subsection 2.
4. When an assignment other than a security interest is effective under subsection 2, unless the written consent under subsection 2 otherwise provides:

- a. The assignee is liable for any in proportion to the interest assigned for the obligations of the assignor under section 10-32-56, including liability for unperformed promises that have been reflected as contributions in the required records, and section 10-32-65 existing at the time of transfer, except to the extent that, at the time the assignee became a member, the liability was unknown to the assignee, and could not be ascertained from the required records; and
  - b. The assignor is not released from liability to the limited liability company for obligations of the assignor existing at the time of transfer under sections 10-32-56 and 10-32-65.
5. If any purported or attempted assignment of governance rights is ineffective for failure to obtain the consent required in subsection 2:
- a. The purported or attempted assignment is ineffective in its entirety; and
  - b. Any assignment of financial rights that accompanied the purported or attempted assignment of governance rights is void.
6. Restrictions on the transfer of governance rights may be imposed following the same procedures and under the same conditions as stated in subsections 3 and 4 of section 10-32-31 for restricting the transfer of financial rights.
7. Notwithstanding any provision of law, articles of organization, member-control agreement, operating agreement, other agreement, resolution, or action to the contrary, a security interest in a member's full membership interest or governance rights may be foreclosed and otherwise enforced, and a secured party may assign a member's complete membership interest or governance rights in accordance with title 41, all without the consent or approval of the member whose full membership interest or governance rights are the subject of the security interest.

**SECTION 54. AMENDMENT.** Section 10-32-33 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-33. Effective date of assignments.** Any permissible assignment of financial rights under section 10-32-31 ~~and or~~ of governance rights ~~coupled with financial rights or a complete membership interest~~ under section 10-32-32 will be effective as to and binding on the limited liability company only when the assignee's name, address, and the nature and extent of the assignment are reflected in the required records of the limited liability company, except that a permissible and otherwise valid security interest in a complete membership interest, financial rights, or governance rights will be effective as to and binding on the limited liability company as provided in title 41 whether or not the information about the secured party or the permissible and otherwise valid security interest is reflected in the required records of the limited liability company.

**SECTION 55. AMENDMENT.** Subsection 2 of section 10-32-35 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If an event referred to in subsection 1 causes the termination of a member's membership interest and ~~the remaining members give dissolution avoidance consent~~ is avoided under subdivision e of subsection 1 of section 10-32-109, then:
  - a. As provided in subsection 3 of section 10-32-30, the terminated member's interest will be considered to be merely that of an assignee of the financial rights owned before the termination of membership; and
  - b. The rights to be exercised by the legal representative of the terminated member will be limited accordingly.

**SECTION 56. AMENDMENT.** Subdivision d of subsection 1 of section 10-32-50 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- d. A member-control agreement may include a business continuation agreement only if the articles of organization grant the members the power to enter into business continuation agreements and only if entered into after the limited liability company has incurred an event of dissolution.

**SECTION 57. AMENDMENT.** Subdivision b of subsection 1 of section 10-32-51 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- b. A current list of the full name and last-known business, residence, or mailing address of each assignee of financial rights other than a secured party and a description of the rights assigned;

**SECTION 58. AMENDMENT.** Subsection 4 of section 10-32-64 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Indebtedness of a limited liability company incurred or issued in a distribution in accordance with this section to a member who as a result of the transaction is no longer a member is on a parity with the indebtedness of the limited liability company to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the limited liability company or a related ~~limited liability company~~ organization, or subject to any other agreement between the limited liability company and the member.

**SECTION 59. AMENDMENT.** Section 10-32-88 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-88. Managers.** ~~The managers of a~~ A limited liability company must consist of ~~a president, one or more individuals exercising the functions of the offices, however designated, of president and treasurer and may have one or more vice presidents as may be prescribed in the operating agreement, and a secretary, and a treasurer, each of whom must be elected by the board at such time and in such manner as may be provided in the operating agreement.~~

**SECTION 60. AMENDMENT.** Section 10-32-89 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-89. Duties of managers and agents. All managers and agents of the limited liability company, as between themselves and the limited liability company, have such authority and must perform such duties in the management of the limited liability company as may be provided in the operating agreement, or as may be determined by resolution of the board not inconsistent with the operating agreement:

1. Unless the articles of organization or the operating agreement provides otherwise, the president shall:
  - a. Have general active management for the business of the limited liability company;
  - b. When present, preside at all meetings of the board of governors and of the members;
  - c. See that all orders and resolutions of the board of governors are carried into effect;
  - d. Sign and deliver in the name of the limited liability company any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the limited liability company, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or operating agreement or the board of governors to some other manager or agent of the limited liability company;
  - e. Maintain records of and, whenever necessary, certify all proceedings of the board of governors and members; and
  - f. Perform other duties prescribed by the board of governors.
2. Unless the articles of organization or the operating agreement provides otherwise, the treasurer shall:
  - a. Keep accurate financial records for the limited liability company;
  - b. Deposit all money, drafts, and checks in the name of and to the credit of the limited liability company in the banks and depositories designated by the board of governors;
  - c. Endorse for deposit all notes, checks, and drafts received by the limited liability company as ordered by the board of governors, making proper vouchers for them;
  - d. Disburse limited liability company funds and issue checks and drafts in the name of the limited liability company, as ordered by the board of governors;
  - e. Give to the president and the board of governors, whenever requested, an account of all transactions by the treasurer and of the financial condition of the limited liability company; and
  - f. Perform other duties prescribed by the board of governors or by the president.

3. Any other managers and agents of the limited liability company, as between themselves and the limited liability company, have the authority and shall perform the duties in the management of the limited liability company as may be provided in the articles of organization or the operating agreement, or as may be determined by resolution of the board not inconsistent with the articles of organization or the operating agreement.

**SECTION 61. AMENDMENT.** Subsection 1 of section 10-32-97 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the governors present and:
  - a. Is in the usual and regular course of business of the limited liability company;
  - b. Is with, or for the benefit of, a related ~~limited liability company organization~~, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has a business relationship, or an organization to which the limited liability company has the power to make donations;
  - c. Is with, or for the benefit of, a member who provides services to the limited liability company, or a manager or other employee of the limited liability company or a subsidiary, including a member, manager, or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of governors, to benefit the limited liability company; or
  - d. Has been approved by the owners of two-thirds of the voting power of persons other than the interested person or persons.

**SECTION 62. AMENDMENT.** Section 10-32-98 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-98. Advances.** A limited liability company may, without a vote of the governors or its members, advance money to its members who provide services, governors, managers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

**SECTION 63. AMENDMENT.** Subsection 1 of section 10-32-99 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:
  - a. "Limited liability company" includes a domestic or foreign limited liability company that was the predecessor of the limited liability

company referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

b. "Official capacity" means:

- (1) With respect to a governor, the position of governor in a limited liability company;
- (2) With respect to a person other than a governor, the elective or appointive office or position held by a manager, member of a committee of the board of governors, the employment relationship undertaken by an employee, ~~or~~ agent of the limited liability company, or the scope of the services provided by members of the limited liability company who provide services to the limited liability company; and
- (3) With respect to a governor, manager, member, employee, or agent of the limited liability company who, while a governor, manager, member, or employee of the limited liability company, is or was serving at the request of the limited liability company or whose duties in that position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

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

d. "Special legal counsel" means counsel who has not represented the limited liability company or a related ~~limited liability company~~ organization, or a governor, manager, member of a committee of the board of governors, employee, or agent whose indemnification is in issue.

**SECTION 64. AMENDMENT.** Subsections 1 and 3 of section 10-32-108 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a mortgage of or security interest in and otherwise encumber and assign for purposes of security all or substantially all of its property and assets whether or not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, in which case no member approval is required.

3. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current managers or authorized agents, or, if the limited liability company no longer exists, by its last managers.

**SECTION 65. AMENDMENT.** Section 10-32-109 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-109. Methods of dissolution.**

1. A limited liability company dissolves upon the occurrence of any of the following events:
  - a. When the period fixed in the articles of organization for the duration of the limited liability company expires;
  - b. By order of a court pursuant to sections 10-32-119 and 10-32-122;
  - c. By action of the organizers pursuant to section 10-32-110;
  - d. By action of the members pursuant to section 10-32-111; or
  - e. Upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, including:
    - (1) Death of any member;
    - (2) Retirement of any member;
    - (3) Resignation of any member;
    - (4) Redemption of a member's complete membership interest;
    - (5) Assignment of a member's governance rights under section 10-32-32 which leaves the assignor with no governance rights;
    - (6) A buyout of a member's membership interest under section 10-32-119 that leaves that member with no governance rights;
    - (7) Expulsion of any member;
    - (8) Bankruptcy of any member;
    - (9) Dissolution of any member;
    - (10) A merger in which the limited liability company is not the surviving organization;
    - (11) An exchange in which the limited liability company is not the acquiring organization; or
    - (12) The occurrence of any other event that terminates the continued membership of a member in the limited liability company;

However, but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member if either:

- (a) Either there are at least two remaining members or a new member is admitted as provided in section 10-32-06; and the
  - (b) The existence and business of the limited liability company is continued either by the consent of all remaining members under a right to ~~do so~~ consent stated in the articles of organization and the consent is obtained no later than ninety days after the termination of the continued membership, or under a separate right to continue stated in the articles of organization.
2. A limited liability company dissolved by one of the dissolution events specified in subsection 1 must be wound up and terminated under the following dissolution provisions:
  - a. When a limited liability company is dissolved under subdivision a of subsection 1 by reason of the expiration of its limited period of duration, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131;
  - b. When a limited liability company is dissolved under subdivision b of subsection 1 by reason of a court order, the limited liability company must be wound up and terminated under sections 10-32-119 through 10-32-126;
  - c. When a limited liability company is dissolved under subdivision c of subsection 1 by its organizers, the limited liability company must be wound up and terminated under section 10-32-110 and sections 10-32-112 through 10-32-118;
  - d. When a limited liability company is dissolved under subdivision d of subsection 1 by its members, the limited liability company must be wound up and terminated under sections 10-32-111 through 10-32-118 and section 10-32-131; and
  - e. When a limited liability company is dissolved under subdivision e of subsection 1 by reason of a termination of the continued membership of a member, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131.
3. Notwithstanding any provision of law, articles of organization, member-control agreement, operating agreement, other agreement, resolution, or action to the contrary, a limited liability company is not dissolved and is not required to be wound up upon the granting of a security interest in a member's membership interest, governance rights or financial rights, or upon the foreclosure or other enforcement of a security interest in a member's financial rights, or upon the secured party's assignment, acceptance, or retention of a member's financial rights in accordance with title 41.



**SECTION 66. AMENDMENT.** Subsection 1 of section 10-32-112 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. If dissolution of the limited liability company is approved pursuant to subsection 2 of section 10-32-111, or it occurs under subdivision a or e of subsection 1 of section 10-32-109, the limited liability company shall file with the secretary of state, together with the fees provided in section 10-32-150, a notice of dissolution. The notice must contain:
  - a. The name of the limited liability company; and
  - b. If the dissolution:
    - (1) Is approved pursuant to subsection 2 of section 10-32-111, the date and place of the meeting at which the dissolution was approved and a statement that the requisite vote of the members was received, or that members validly took action without a meeting; and
    - (2) Occurs under subdivision a of subsection 1 of section 10-32-109 by the expiration of the limited liability company's duration, a statement of the expiration date; or
    - (3) Occurs under subdivision e of subsection 1 of section 10-32-109 by the termination of a membership interest of a member, a statement that the continued membership of a member has terminated and the date of that termination.

**SECTION 67. AMENDMENT.** Subsection 1 of section 10-32-114 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. When a notice of dissolution has been filed with the secretary of state, and the business of the limited liability company is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under subsection 3 of section 10-32-112, then the limited liability company may give notice of the filing to each creditor of and claimant against the limited liability company known or unknown, present or future, and contingent or noncontingent. If notice to creditors and claimants is given, it must be given by 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 limited liability company are located and by giving written notice to known creditors and claimants pursuant to subsection ~~31~~ 32 of section 10-32-02.

**SECTION 68. AMENDMENT.** Section 10-32-131 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-131. Disposition of assets upon dissolution.**

1. ~~Except~~ Subject to subsection 4, except when the business of a dissolved limited liability company is being continued under subsection 2 or when the dissolved limited liability company is being wound up and terminated under subsection 3 of section 10-32-112, the assets of the dissolved

limited liability company must be disposed of to satisfy liabilities according to the following priorities:

- a. To creditors, including members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for interim distributions to members under section 10-32-61 or termination distributions under section 10-32-60;
- b. Unless otherwise provided in the articles of organization, to members and former members of the limited liability company in satisfaction of liabilities for distributions under section 10-32-60 or 10-32-61; and
- c. Unless otherwise provided in the articles of organization, to members first for a return of their contributions, as restated from time to time under section 10-32-57, and secondly respecting their membership interests in the proportions in which the members share in distributions.

~~A limited liability company may offset any amount due a member under this subsection by any amount owed to the limited liability company by the member and by the amount of damages, if any, suffered by the limited liability company as a result of that member's breach of a member-control agreement.~~

2. If a business continuation agreement exists, then after dissolution the board of governors shall resolve to implement the business continuation agreement and the assets of the dissolved limited liability company must be disposed of according to that agreement, except:
  - a. Members and former members have dissenters' rights as provided in sections 10-32-54 and 10-32-55, but:
    - (1) No dissenters' rights exist if the business of the dissolved limited liability company is being continued pursuant to a business continuation agreement made after the dissolution; and
    - (2) Any dissenters' rights that do exist are limited by ~~subsection~~ subsections 3 and 4.
  - b. If the business of the dissolved limited liability company is being continued, but not through a merger under subsection 3 of section 10-32-112, the dissolved limited liability company shall comply with either section 10-32-114 or 10-32-115.
3. If a person has agreed in a business continuation agreement to waive dissenters' rights and nonetheless asserts dissenters' rights under subsection 2:
  - a. Those rights must be honored; but
  - b. Unless the business continuation agreement provides otherwise, including providing for installment payments:

- (1) In determining the fair value of the membership interest, the value of the goodwill of the business of the dissolved limited liability company must not be considered; and
- (2) The payment due the dissenter is subject to an offset equal to:
  - (a) Any amount owed to the limited liability company by the member;
  - (b) The amount of damages, if any, suffered by the limited liability company as a result of the dissenter's breach of the business continuation agreement; and
  - (c) The amount of other damages, if any, ~~suffered by the limited liability company as a result of any breach by the dissenter of any other member-control agreement or part of a member-control agreement provided for in subsection 4.~~

4. A member who wrongfully resigns or retires is liable to the limited liability company for any damages caused by the member's wrongful resignation or retirement. Any member who breaches a member-control agreement is liable to the limited liability company for any damages caused by the breach. Any payment due a member under this section, including payments to dissenters due to winding up merger under subsection 3 of section 10-32-112, is subject to offset of these damages.

**SECTION 69. AMENDMENT.** Section 10-32-136 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-136. Name.** A foreign limited liability company may apply for a certificate of authority under any name that would be available to a domestic limited liability company, whether or not the name is the name under which it is authorized in its jurisdiction of organization. A trade name must be registered as provided in chapter 47-25 when applying for the certificate of authority under a name other than the name as authorized in the jurisdiction of origin.

**SECTION 70. AMENDMENT.** Subsection 1 of section 10-32-138 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. An applicant for the certificate shall file with the secretary of state a certificate of status from the filing office in the jurisdiction in which the foreign limited liability company is organized and an application executed by an authorized person and setting forth:
  - a. The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;
  - b. The jurisdiction of its organization;
  - c. The name and business address of the proposed registered agent in this state, which agent must be an individual resident of this state, a domestic corporation, or a foreign corporation having a place of business in, and authorized to do business in, this state; ~~and~~

- d. The address of the principal executive office of the foreign limited liability company; and
- e. The date the foreign limited liability company expires in the jurisdiction of its organization.

**SECTION 71. AMENDMENT.** Section 10-32-140 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-140. Amendments to the certificate of authority.** If any statement in the application for a certificate of authority by a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, including but not limited to a change in the name or address of the registered agent required to be maintained by section 10-32-141, the foreign limited liability company shall promptly file with the secretary of state an amendment to the certificate of authority, executed by an authorized person correcting the statement application for an amended certificate of authority executed by an authorized person correcting the statement and in the case of a change in its name, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized. In the case of a termination or merger, a foreign limited liability company that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized.

**SECTION 72. AMENDMENT.** Section 10-32-143 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-143. Certificate of withdrawal.**

1. A foreign limited liability company authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign limited liability company shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-32-150, which must set forth:
  - 1+ a. The name of the limited liability company and the state or country under the laws of which it is organized;
  - 2+ b. That the limited liability company is not transacting business in this state;
  - 3+ c. That the limited liability company surrenders its authority to transact business in this state;
  - 4+ d. That the limited liability company revokes the authority of its registered agent in this state to accept service of process and consents to that service of process on the limited liability company by service upon the secretary of state in any action, suit, or proceeding based upon any cause of action arising in this state during the time the limited liability company was authorized to transact business in this state; and

- 5- e. A post-office address to which a person may mail a copy of any process against the limited liability company.
2. The filing with the secretary of state of a certificate of termination, or a certificate of merger if the limited liability company is not the surviving organization, from the proper officer of the state or country under the laws of which the limited liability company is organized constitutes a valid application of withdrawal and the authority of the limited liability company to transact business in this state shall cease upon filing of the certificate.

**SECTION 73. AMENDMENT.** Subsection 2 of section 10-32-144 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. No certificate of authority of a foreign limited liability company may be revoked by the secretary of state unless:
- a. The secretary has given the foreign limited liability company not less than sixty days' notice by mail addressed to its registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to the its principal executive office required to be maintained pursuant to section 10-32-12; and
  - b. During the sixty-day period, the foreign limited liability company has failed to file the report of change regarding the registered agent, to file any amendment, or to correct the misrepresentation.

**SECTION 74. AMENDMENT.** Subsections 1, 2, and 3 of section 10-32-149 of the 1993 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. Each limited liability company, and each foreign limited liability company authorized to transact business in this state, shall file, within the time prescribed by subsection 3, an annual report setting forth:
  - a. The name of the limited liability company and the state or country under the laws of which it is organized.
  - b. The address of the registered office of the limited liability company in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.
  - c. A brief statement of the character of the business in which the limited liability company is actually engaged in this state.
  - d. The names and respective addresses of the managers and governors of the limited liability company or the names and respective addresses of at least two members of the limited liability company.
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 prescribed in subsection ~~45~~ 46 of section 10-32-02, or if the limited liability company is in the hands of a receiver or trustee, it must be

signed on behalf of the limited liability company 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.

3. The annual report of a limited liability company or foreign limited liability company must be ~~received by~~ delivered to the secretary of state ~~on or before November fifteenth~~ sixteenth of each year, except that the first annual report of a limited liability company or foreign limited liability company must be ~~received on or delivered before November fifteenth~~ sixteenth of the year following the calendar year in which the certificate of organization or certificate of authority was issued by the secretary of state. An annual report in a sealed envelope postmarked by the United States postal service before November sixteenth, or an annual report in a sealed packet with a verified shipment date by any other carrier service before November sixteenth, is in compliance with this requirement. The secretary of state must file the report if the report conforms to the requirements of subsection 2. If the report does not conform, it must be returned to the limited liability company for any necessary corrections. If the report is filed before the deadlines prescribed in this subsection, penalties for the failure to file a report within the time provided do not apply, if a report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction. The secretary of state may extend the annual filing date of any limited liability company or foreign limited liability company, if a written application for an extension is ~~received on or delivered before November fifteenth~~ sixteenth.

**SECTION 75. AMENDMENT.** Subsection 3 of section 40-57.1-04.4 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. If the project operator is a corporation or a limited liability company, any of its officers, governors, or managers charged with the responsibility for making either property, income, sales, or use tax returns and payments are subject to the provisions of subsections 1 and 2 with respect to all state or local tax liens of record for property, income, sales, or use taxes for which the individual is personally liable. If the project operator is a partnership, each general partner is subject to the provisions of subsections 1 and 2 with respect to all state or local tax liens of record for property, income, sales, or use taxes for which the individual is personally liable.

**SECTION 76. AMENDMENT.** Section 57-38-60.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-38-60.2. Governor and manager liability.** If a limited liability company is an employer and fails for any reason to file the required returns or to pay the tax due, the governor or manager, jointly or severally, charged with the responsibility of the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

**SECTION 77. AMENDMENT.** Section 57-39.2-18.1 of the North Dakota Century Code is amended and reenacted as follows:

**57-39.2-18.1. Corporate officer and limited liability company governor or manager liability.** If a corporation or limited liability company holding a permit issued pursuant to the provisions of this chapter fails for any reason to file the required returns or to pay the tax due, any of its officers, governors, or managers having control, or supervision of, or charged with the responsibility for making such returns and payments shall be personally liable for such failure. The dissolution of a corporation or limited liability company shall not discharge an officer's, governor's, or manager's liability for a prior failure of the corporation or limited liability company to make a return or remit the tax due. The sum due for such a liability may be assessed and collected pursuant to the provisions of this chapter for the assessment and collection of other liabilities.

**SECTION 78. AMENDMENT.** Section 57-43.1-17.3 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.1-17.3. Governor and manager liability.** If a limited liability company ~~is an employer and~~ holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.

**SECTION 79. AMENDMENT.** Section 57-43.2-16.2 of the North Dakota Century Code is amended and reenacted as follows:

**57-43.2-16.2. Governor and manager liability.** If a limited liability company ~~is an employer and~~ holding a license issued under this chapter fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a governor's or manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

<sup>48</sup> **SECTION 80. REPEAL.** Section 1-01-28 of the North Dakota Century Code is repealed.

**SECTION 81. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 11, 1995  
Filed April 12, 1995

---

<sup>48</sup> Section 1-01-28 was also repealed by section 30 of Senate Bill No. 2344, chapter 55.

**CHAPTER 104****HOUSE BILL NO. 1319**

(Representatives Wardner, Olson)  
(Senator Goetz)

**ARTICLES OF INCORPORATION CONTENTS**

AN ACT to amend and reenact subsection 1 of section 10-19.1-10 and section 10-19.1-12 of the North Dakota Century Code, relating to the contents of articles of incorporation and the effective date of incorporation.

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

<sup>49</sup> **SECTION 1. AMENDMENT.** Subsection 1 of section 10-19.1-10 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The articles of incorporation must contain:
  - a. The name of the corporation.
  - b. The address of the registered office of the corporation and the name of its registered agent, at that address.
  - c. The aggregate number of shares that the corporation has authority to issue.
  - d. The name and address of each incorporator.
  - e. The effective date of the corporation if a later date than that on which the certificate of incorporation is issued by the secretary of state. A later effective date may not be later than ninety days after the date on which the certificate of incorporation is issued.

**SECTION 2. AMENDMENT.** Section 10-19.1-12 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-12. Effective date of incorporation.** The corporate existence begins upon the issuance of the certificate of incorporation or at a later date as specified in the articles of incorporation. The certificate of incorporation is conclusive evidence that all conditions precedent and required to be performed by the incorporators have been performed and that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

Approved March 6, 1995  
Filed March 6, 1995

---

<sup>49</sup> Section 10-19.1-10 was also amended by section 5 of Senate Bill No. 2343, chapter 103.



**CHAPTER 105****HOUSE BILL NO. 1332**

(Representative Froseth)

**NONPROFIT CORPORATION ANNUAL REPORTS**

AN ACT to create and enact a new section to chapter 10-28 of the North Dakota Century Code, relating to annual reports for nonprofit corporations; to amend and reenact sections 10-24-09, 10-27-09, and subsection 15 of section 10-28-01 of the North Dakota Century Code, relating to registered agents of North Dakota nonprofit corporations and change of fees paid by nonprofit corporations for annual reports; and to provide an effective date.

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

**SECTION 1. AMENDMENT.** Section 10-24-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-24-09. Change or establishment of registered office or registered agent.** A corporation may change or establish its registered office or registered agent upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. If the address of its registered office is to be changed or established, the address to which the registered office is to be changed or established.
3. If its registered agent is to be changed or established, the name of its successor or established registered agent.
4. That the address of its registered office and the address of the office of its registered agent, as changed or established will be identical.
5. That the change or establishment was authorized by resolution duly adopted by its board of directors.

The statement must be executed by an officer of the corporation and delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed or established. If the secretary of state finds that the statement conforms to the provisions of chapters 10-24 through 10-28, the secretary of state shall file the statement and upon such filing the change or establishment of address of the registered office or the appointment of a new registered agent becomes effective.

The fee prescribed in chapter 10-28 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

Any registered agent of a corporation may resign as agent upon filing a written notice with the secretary of state, who shall forthwith mail a copy to the corporation at the last known address. The appointment of the agent shall terminate thirty days after receipt of the notice by the secretary of state.

**SECTION 2. AMENDMENT.** Section 10-27-09 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-27-09. Change or establishment of registered office or registered agent of foreign corporation.** A foreign corporation authorized to conduct affairs in this state may change or establish its registered office or its registered agent upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. If the address of its registered office is to be changed or established, the address to which the registered office is to be changed or established.
3. If its registered agent is to be changed or established, the name of its successor or established registered agent.
4. That the address of its registered office and the address of the office of its registered agent, as changed or established, will be identical.
5. That the change or establishment was authorized by resolution duly adopted by its board of directors.

The statement must be executed by an officer of the corporation and delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed or established. If the secretary of state finds that the statement conforms to the provisions of this chapter, the secretary of state shall file the statement and upon filing the change or establishment of address of the registered office or the appointment of a new registered agent becomes effective.

The fee prescribed in chapter 10-28 for change of registered office must be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

Any registered agent in this state appointed by a foreign corporation may resign by filing a written notice with the secretary of state who shall forthwith mail a copy to the foreign corporation at its principal office. The appointment of the registered agent shall terminate thirty days after receipt of the notice by the secretary of state.

**SECTION 3. AMENDMENT.** Subsection 15 of section 10-28-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15. Filing any other statement or annual report of a domestic or foreign corporation, twenty ten dollars.

**SECTION 4.** A new section to chapter 10-28 of the North Dakota Century Code is created and enacted as follows:

10-28-02.1. Annual report of nonprofit corporation and foreign nonprofit corporation - Involuntary dissolution - Revocation.

1. Each nonprofit corporation and each foreign nonprofit corporation authorized to conduct affairs in this state shall file, within the time prescribed by subsection 3, an annual report setting forth:

- a. The name of the nonprofit corporation or foreign nonprofit corporation and the state or country under the laws of which it is organized.
  - b. The address of the registered office of the nonprofit corporation or foreign nonprofit corporation in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.
  - c. A brief statement describing the purpose that the nonprofit corporation or foreign nonprofit corporation actually pursues in this state.
  - d. The names and addresses of the officers and directors of the nonprofit corporation or foreign nonprofit corporation.
  - e. The federal tax code by which its tax exemption is recognized, if any.
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 by a person authorized to do so by chapters 10-24 through 10-28, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors or members entitled to vote. If the nonprofit corporation or foreign nonprofit corporation is in the hands of a receiver or trustee, it must be signed by the receiver or trustee on behalf of the nonprofit corporation or foreign nonprofit corporation. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.
3. The annual report must be delivered to the secretary of state on or before February first of each year, except that the first annual report of a nonprofit corporation or foreign nonprofit corporation must be delivered to the secretary of state on or before February first of the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state. An annual report in a sealed envelope postmarked by the United States postal service on or before February first, or an annual report in a sealed packet with a verified shipment date by any other carrier service on or before February first, must be deemed compliance with this requirement. The secretary of state must file the report if the report conforms to the requirements of subsection 2. If the report does not conform, it must be returned to the nonprofit corporation or foreign nonprofit corporation for any necessary corrections. If the report is filed before the deadlines prescribed in this subsection, penalties for failure to file a report within the time provided do not apply if a report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction. The secretary of state may extend the annual filing date of any nonprofit corporation or foreign nonprofit corporation if a written application for an extension is received on or before February first.
4. Each nonprofit corporation or foreign nonprofit corporation that fails or refuses to file its annual report for any year within the time prescribed by

- subsection 3 must pay an additional fee of five dollars. A nonprofit corporation that fails to file its annual report, along with the statutory filing and penalty fees, within one year after February first, ceases to exist and is considered involuntarily dissolved by operation of law. The secretary of state shall revoke the certificate of authority to conduct affairs of any foreign nonprofit corporation that fails to file its annual report, along with the statutory filing and penalty fees within one year after February first. The secretary of state's determination that a certificate of authority must be revoked under this section is final.
5. After the date established under subsection 3, the secretary of state shall notify any nonprofit corporation or foreign nonprofit corporation failing to file its annual report that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked pursuant to subsection 4. The secretary of state shall mail the notice to the last registered agent at the last registered office of record. If the nonprofit corporation or foreign nonprofit corporation files its annual report after the notice is mailed, together with the annual report filing fee as prescribed by section 10-28-01 and the late filing penalty fee as prescribed by subsection 4, the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.
  6. A nonprofit corporation that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established in subsection 3, ceases to exist and is considered involuntarily dissolved by operation of law. The secretary of state shall note the dissolution of the nonprofit corporation's certificate of incorporation on the records of the secretary of state and shall give notice of the action to the dissolved nonprofit corporation. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record.
  7. A foreign nonprofit corporation that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established by subsection 3, forfeits its authority to conduct affairs in North Dakota. The secretary of state shall note the revocation of the foreign nonprofit corporation's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign nonprofit corporation. Notice by the secretary of state must be mailed to the foreign nonprofit corporation's last registered agent at the last registered office of record.
  8. A nonprofit corporation that was dissolved for failure to file an annual report, or a foreign nonprofit corporation whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a forty dollar fee. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this section does not affect the rights or liability for the time from the termination or revocation to the reinstatement.

**SECTION 5. EFFECTIVE DATE.** Sections 3 and 4 of this Act become effective on January 1, 1997.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 106****HOUSE BILL NO. 1328**

(Representatives Froseth, Galvin, Coats)  
(Senator O'Connell)

**NONPROFIT CORPORATION MERGER WITH  
FOREIGN CORPORATION**

AN ACT to create and enact section 10-25-06.1 of the North Dakota Century Code, relating to the merger of North Dakota nonprofit corporations with foreign nonprofit corporations.

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

**SECTION 1.** Section 10-25-06.1 of the North Dakota Century Code is created and enacted as follows:

**10-25-06.1. Merger with foreign nonprofit corporation.**

1. A nonprofit corporation may merge with a foreign nonprofit corporation by following the procedures in this section.
2. Each nonprofit corporation shall comply with sections 10-25-01 through 10-25-06.1 with respect to the merger and each foreign nonprofit corporation shall comply with the applicable laws under which it was incorporated or by which it is governed.
3. If the surviving corporation in a merger will be a nonprofit corporation, it shall comply with this chapter.
4. If the surviving corporation in a merger will be a foreign nonprofit corporation and will conduct affairs in this state, it shall comply with the provision of chapter 10-27 with respect to foreign corporations.
5. In every case the surviving corporation shall file with the secretary of state:
  - a. An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent corporation; and
  - b. An irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding and an address to which process may be forwarded.

Approved March 24, 1995

Filed March 27, 1995

**CHAPTER 107****HOUSE BILL NO. 1145**

(Industry, Business and Labor Committee)  
(At the request of the Bank of North Dakota)

**MYRON G. NELSON FUND CONVERSION AND  
OPERATION**

AN ACT to create and enact two new sections to chapter 10-30.2 of the North Dakota Century Code, relating to the conversion of the operations and resources of the Myron G. Nelson Fund, Incorporated, to a small business investment corporation; to amend and reenact sections 6-03-38, 7-02-10, 10-04-05, 10-04-06, subsection 2 of section 10-30.2-01, sections 10-30.2-07, 10-30.2-11, 10-30.2-12, 10-30.2-13.1, 10-30.2-14, 26.1-05-19, subdivision p of subsection 1 of section 57-38-01.2, and subdivision h of subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to reporting requirements and tax credits and permitting investment in the Myron G. Nelson Fund, Incorporated, and a small business investment company; and to repeal chapter 6-09.2 and sections 10-30.2-02, 10-30.2-03, 10-30.2-04, 10-30.2-05, 10-30.2-06, 10-30.2-08, 10-30.2-09, and 10-30.2-10 of the North Dakota Century Code, relating to industrial development bonds and the creation and operation of the Myron G. Nelson Fund, Incorporated.

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

**SECTION 1. AMENDMENT.** Section 6-03-38 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-38. Assets not to be used in other business - Exceptions - Penalty.** No bank, except as otherwise authorized in this title, may employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor may it employ or invest any of its assets or funds in the stock of any corporation, limited liability company, bank, partnership, firm, or association. However, a state bank may, to the extent that banks subject to the laws of the federal government are permitted to do so, ~~purchase voting common stock of Myron G. Nelson Fund, Incorporated, pursuant to section 10-30.2-04, or~~ purchase shares of stocks, or any other type of securities offered by small business investment companies organized and licensed under Public Law No. 85-699, known as the Small Business Investment Company Act of 1958 [72 Stat. 689; 15 U.S.C. 661 et seq.], and the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, or chapter 10-30, but in no event may any state bank hold securities of small business investment companies in an amount aggregating more than two percent of the bank's capital and surplus, nor in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it is lawful for a bank to make advances for grain or other products in store or in transit to market, and to invest in stocks of subsidiary corporations, when the activities of such corporations are incidental to banking activities, with the specific approval of the state banking board for each such subsidiary. The state banking board has the same power to make rules for the subsidiary corporations, and to examine its records and affairs, as it has for other financial corporations under section 6-01-04. If the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, it may direct the bank to divest itself of such subsidiary investments. In addition, the

state banking board has power to authorize state banks to engage in any banking activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this code. Any officer, director, or employee of any bank who invests or uses its funds contrary to this title is guilty of a class A misdemeanor.

**SECTION 2. AMENDMENT.** Section 7-02-10 of the North Dakota Century Code is amended and reenacted as follows:

**7-02-10. Power to make limited investments in certain securities.** A building and loan association has the power to invest not to exceed in the aggregate twenty percent of its assets in the following securities:

1. In commercial paper due in not more than one year from the date of the loan;
2. In first lien public utility, industrial, or equipment trust bonds; and
3. In first mortgage real estate bonds where the total issue thereof does not exceed fifty percent of the value of the property; and
4. ~~In voting common stock of Myron G. Nelson Fund, Incorporated, purchased pursuant to section 10-30-2-04.~~

**SECTION 3. AMENDMENT.** Section 10-04-05 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-04-05. Exempt securities.** Sections 10-04-04, 10-04-07, 10-04-07.1, and 10-04-08 shall not apply to any of the following securities:

1. Securities issued or guaranteed by the United States of America, or by any state, territory, or insular possession thereof, or by any political subdivision of any such state, territory, or insular possession, or by the District of Columbia, or by any public agency or instrumentality of one or more of any of the foregoing, or payable from assessments for improvements or revenues of publicly owned utilities therein; or a certificate of deposit for any of the foregoing, but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless the security is insured or unconditionally guaranteed by, or the revenues are derived from, a person whose securities are exempt from registration under this section.
2. Securities issued by and representing an interest in or a debt of, or guaranteed by, a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an act of Congress and supervised by the United States, or any agency thereof, or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member, or issued by and representing an interest in or a debt of, or guaranteed by, a state bank, trust company, savings bank, savings institution, or credit union organized and supervised under the laws of any state, and securities of any person subject to examination by the commissioner of banking and financial institutions of North Dakota.

3. Securities issued by a building and loan association subject to supervision by an agency of the state of North Dakota, or policy contracts, including variable or fixed annuity contracts, of an insurance company subject to supervision by an agency of the state of North Dakota.
4. Securities issued or guaranteed as to principal, interest, or dividends by a corporation or limited liability company owning or operating a railroad or other public service utility, if the corporation or limited liability company is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities by a public service commission, or by a board, body, or official having like powers, of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof, provided, however, that a corporation or limited liability company issuing securities exempted under this subsection and which has not filed an application for approval of such securities with the public service commission of the state of North Dakota, shall file with the commissioner a copy of the registration statement with all amendments thereto filed with the securities and exchange commission of the United States, if such a registration statement is made or filed, or a copy of the informative statement made to or filed with any commission, board, or body of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof, by which said corporation or limited liability company is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities, and shall pay a filing fee of twenty-five dollars.
5. Securities issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, or reformatory purposes and not for pecuniary profit.
6. Securities issued by an issuer which meets all of the following conditions:
  - a. If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus.
  - b. A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 [Pub. L. 73-290; 48 Stat. 881; 15 U.S.C. 78a et seq.] and has been so registered for the three years immediately preceding the offering date.
  - c. Neither the issuer nor a significant subsidiary has had a material default during the lesser of the last seven years or the issuer's existence in the payment of (1) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (2) rentals under leases with terms of three years or more. A "material default" is a failure to pay, the effect of which is to cause indebtedness to become due prior to its stated maturity or to cause termination or reentry under a lease prior to its stated expiration, if the indebtedness or the rental obligation for the



unexpired term exceeds five percent of the issuer's (and its consolidated subsidiaries') total assets, or if the arrearage in required dividend payments on preferred stock is not cured within thirty days.

- d. The issuer has had annual consolidated net income (before extraordinary items and the cumulative effect of accounting changes) as follows: (1) at least one million dollars in four of its last five fiscal years including its last fiscal year, and (2) if the offering is of interest-bearing or of fixed or floating rate dividend securities, at least one and a half times its annual interest and dividend expense, calculating net income before deduction for income taxes and depreciation and giving effect to the proposed offering and the intended use of the proceeds for its last fiscal year. Floating rate dividend shall be calculated with reference to interest rates in the marketplace at the time of the offering. "Last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than fifteen months from the commencement of the offering.
- e. If the offering is of stock or shares (other than preferred stock or shares), and except as otherwise required by law, the securities have voting rights at least equal to the securities of each of the issuer's outstanding classes of stock or shares (other than preferred stock or shares), with respect to (1) the number of votes per share, and (2) the right to vote on the same general corporate decisions.
- f. If the offering is of stock or shares (other than preferred stock or shares), the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least one thousand two hundred persons, and on that date there are at least seven hundred fifty thousand of the shares outstanding with an aggregate market value, based on the average bid price, of at least three million seven hundred fifty thousand dollars. In determining the number of persons who are beneficial owners of the stock or shares, the issuer or a broker-dealer may rely in good faith upon written information furnished by record owners.
- g. Provided that, if the securities to be issued are listed, or approved for listing upon notice of issuance, on the New York stock exchange, inc., or the American stock exchange, inc., and the current original listing standards of that exchange are satisfied as of the end of the issuer's most recent fiscal year, the conditions of subdivision c need be met for only five years and the annual net earnings requirement of paragraph 1 of subdivision d shall be two hundred fifty thousand dollars.
- h. And provided further that, if the issuer of the securities is a finance company with liquid assets of at least one hundred five percent of its liabilities (other than deferred income taxes, deferred investment tax credits, capital stock, and surplus) at the end of each of its last five fiscal years, the net income requirement of paragraph 2 of subdivision d, but before deduction for interest expense, shall be one and a quarter times its annual interest expense. "Finance

company" means a company engaged (directly or through consolidated subsidiaries) primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring. "Liquid assets" means cash, receivables payable on demand or not more than twelve years following the close of the company's last fiscal year, and readily marketable securities, in each case less applicable reserves and unearned income.

- i. If the issuer is a successor to another issuer, it shall be deemed to have met the conditions in subdivisions b, c, and d if: (1) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (2) if all predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.
7. Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, is not the subject of a public offering, is prime quality negotiable commercial paper which is eligible for discounting by federal reserve banks, has at the time of issuance a definite maturity (after all days of grace, if any) of not exceeding nine months, is payable in cash only, and is not convertible into and does not carry an option or right to receive payment or any bonus in any other security.
8. Securities, other than common stock, providing for a fixed return, which have been outstanding and in the hands of the public for not less than five years and upon which no default has occurred during the five years next preceding the date of sale. The exemptions herein specified must be proved by any person who may legally offer such securities for sale in the state of North Dakota by filing with the commissioner evidence in such form as he may require for each issue of securities for which exemption is provided herein and paying a filing fee of ten dollars.
9. Securities issued by any cooperative formed under the statutes of the state of North Dakota.
10. Any equipment security based on a chattel mortgage, lease, or agreement for the conditional sale of cars, motive power, or other rolling stock mortgaged, leased, sold to, or furnished for the use of a railroad or other public service utility corporation or limited liability company, and any equipment security where the ownership of or title to such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state thereof, or of the Dominion of Canada, to secure the payments of such equipment security whether it be an equipment trust certificate, bond, or note.
11. Any bond, note, or other evidence of debt issued by a holding corporation or limited liability company and secured by collateral consisting of any of the securities described in subsections 4 and 10, if the collateral securities equal in fair value at least one hundred twenty-five percent of the par value of the bonds, notes, or other

evidences of debts secured thereby. Before any security described in this subsection is offered for sale, the person intending to offer it shall file with the commissioner descriptive circulars of the collateral securities and pay a filing fee to the commissioner of twenty-five dollars. Unless the commissioner makes his order within three days after the receipt of such circulars requiring the securities to be qualified by application under this chapter, the securities shall be exempt.

12. The execution of orders for purchase of securities by a registered dealer provided such dealer acts as agent for the purchaser, has made no solicitation of the order to purchase such securities, has no direct material interest in the sale or distribution of the securities ordered, receives no commission, profit, or other compensation other than the commissions involved in the purchase and sale of the securities and delivery to the purchaser of written confirmation of the order which clearly itemizes the commissions paid to the registered dealer. Clear and complete records of all transactions exempted under this subsection shall be maintained by the registered dealer or broker.
  13. Securities issued by a venture capital corporation or limited liability company organized under chapter 10-30.1.
  14. ~~Securities issued by Myron G. Nelson Fund, Incorporated, pursuant to section 10-30.2-04.~~
  - ~~15.~~ Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing, if the security is recognized as a valid obligation by the issuer or guarantor. This exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise.
- ~~16.~~ 15. a. Any security listed or designated, or approved for listing or designation upon notice of issuance on:
- (1) The New York stock exchange;
  - (2) The American stock exchange;
  - (3) The national association of securities dealers automated quotation national market system; or
  - (4) Any other stock exchange or automated quotation system which the commissioner approves by rule;
- b. Any other security of the same issuer which is of senior or substantially equal rank;
- c. Any security called for by subscription rights or warrants so listed or approved; or
- d. Any warrant or right to purchase or subscribe to any of the foregoing.

The commissioner may withdraw this exemption by order as to any exchange or system, or any particular security, if the commissioner determines that the exchange, system, or particular security does not comply with paragraphs 1 through 4 of the memorandum of understanding regarding a model uniform marketplace exemption from state securities registration requirements [53 Federal Register 52550, December 28, 1988], as they may be amended by agreement of the parties to that memorandum. The commissioner shall make this determination in accordance with the provisions of section 10-04-06.1, except that no summary suspension may be entered pending a final determination for an exchange or system.

- ~~17~~ 16. Securities issued by the North Dakota education association dues credit trust to members of the North Dakota education association.

**SECTION 4. AMENDMENT.** Section 10-04-06 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-04-06. Exempt transactions.** Except as hereinafter in this section expressly provided, sections 10-04-04, 10-04-07, 10-04-07.1, 10-04-08, and 10-04-10 shall not apply to any of the following transactions:

1. Any judicial, executor's, administrator's, guardian's, or conservator's sale or any sale by a receiver or trustee in insolvency or bankruptcy.
2. The sale in good faith and not for the purpose of avoiding the provisions of this chapter by a pledgee of securities pledged for a bona fide debt, provided that the amount of such securities does not exceed two percent of the entire issue of each issue of such securities outstanding, and provided further that before proceeding to sell such pledged securities the pledgee shall notify the commissioner and obtain his permission to such sale, unless such securities are exempted under section 10-04-05.
3. Any isolated sale of any security made by or on behalf of a bona fide owner for the owner's account, such owner not being an issuer, underwriter, dealer, or salesman and such sale not being made in the course of repeated and successive transactions of a like character. This subsection shall not exempt any dealer or salesman participating in an isolated sale from registering in accordance with section 10-04-10, nor shall this exemption be available in connection with any sale not made in good faith but rather for the purpose of evading the registration requirements imposed under chapter 10-04.
4. Stock dividends or other distributions by a corporation or a limited liability company out of its earnings or surplus, or the sale or distribution of additional capital stock of a corporation or membership interest of a limited liability company to or among its own stockholders or members, where no commission or other remuneration is paid or given for soliciting or effecting such sale or distribution to stockholders or members.
5. Any offer or sale of securities to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer.

6. Any transaction incident to a vote by stockholders pursuant to the articles of incorporation or the applicable corporation or limited liability company statute on a merger, consolidation, reclassification of securities, or sale of corporate or limited liability company assets in consideration of the issuance of securities of another corporation or limited liability company, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.
7. The issuance and delivery of any securities in exchange for any other securities of the same issuer pursuant to a right of conversion entitling the holder of the securities surrendered to make such conversion; provided, that the securities surrendered were not offered for sale or sold in violation of section 10-04-04.
8. The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that:
  - a. Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics.
  - b. Such securities do not constitute an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer, its officers, or directors or by or through an underwriter.
  - c. A nationally recognized securities manual approved by the commissioner contains, and has contained for a period of not less than ninety days prior to the sale, the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen months prior to the date of such sale, and a profit and loss statement of the issuer for either the fiscal year preceding that date or the most recent year of operations.
  - d. Such securities are limited to issuers organized under the laws of any state, territory, or insular possession of the United States.
  - e. Provided, however, that even though the foregoing conditions might all be met, the exemption would not apply to the securities of open-end management companies, mutual funds, unit investment trusts, contractual plans, and face amount certificate companies.
9. a. Any transaction pursuant to an offer directed by the offeror to not more than twenty-five persons (other than those designated in subsection 5) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:
  - (1) The seller reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.

- (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5).
- (3) The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee of one hundred dollars, which fee must accompany the application for approval.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in paragraphs 1, 2, and 3 with or without the substitution of a limitation on remuneration.

- b. Any offer or sale in this state of common stock, limited liability company membership interests, or limited partnership interests of an issuer during any period of twelve consecutive months if all of the following conditions are met:
  - (1) The issuer reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.
  - (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5), except reasonable and customary commissions paid by the issuer to a dealer or salesman registered under this chapter or others who the commissioner may designate by rule.
  - (3) The issuer is both organized under the laws of this state and has its principal place of business in this state.
  - (4) No public advertising matter or general solicitation, other than tombstone advertisements that the commissioner shall prescribe by rule, is used in connection with any offers or sales.
  - (5) At least eighty percent of the net proceeds from the sale of the securities must be used in connection with the operations of the issuer in this state. "Net proceeds" means gross proceeds less commissions and sales expenses.
  - (6) An offering disclosure document in the form approved by the commissioner must be delivered to each offeree no less than seventy-two hours prior to the sale of the security.
  - (7) The gross proceeds of the offering may not exceed five hundred thousand dollars.
  - (8) The issuer must apply for and obtain the written approval of the commissioner prior to making any offer or sale in this state by filing an application prescribed by the commissioner, a copy of the offering disclosure document, and any other

information or documents the commissioner may require, together with a filing fee of one hundred dollars.

- (9) All funds raised in the offering are placed in an escrow account until the total offering has been sold.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption or waive the conditions in paragraphs 6 and 7.

- c. The offer or sale of a security offered or sold in compliance with a limited offering transactional exemption that the commissioner, by rule, may adopt to further the objectives of compatibility with the exemptions from securities registration authorized by the Securities Act of 1933 and uniformity among the states.
- d. The exemptions provided under subdivisions a, b, and c may not be combined.
10. The sale of capital stock of a corporation or membership interests of a limited liability company may be exempted by the securities commissioner if the corporation or limited liability company is organized under chapter 10-30 or approved by the small business administration as qualifying for loans under section 502 of the Small Business Investment Act of 1958, as amended; or the sale of memberships, including dues, in a nonprofit corporation incorporated under chapter 10-24 may be exempted by the securities commissioner if the corporation is organized and operated for the primary purpose of promoting community development.
11. Any security issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan; provided, that the securities which fund the plan or are the subject of the plan are otherwise exempt pursuant to section 10-04-05.
12. The sale of a security issued by the United States, or the state of North Dakota, or any political subdivision or instrumentality of the state of North Dakota; provided, that the offer for sale and sale are made by an official or employee of the issuer or of the Bank of North Dakota acting in an official capacity and not for personal pecuniary profit, or by a bank or similar financial association or institution or an official or employee thereof solely as an accommodation to customers of such association or institution and without asking or receiving a commission or remuneration other than an accommodation fee not to exceed fifty dollars in connection with the transaction.
13. The sale of capital stock of a venture capital corporation organized under chapter 10-30.1.
14. Any offer or sale of shares of capital stock issued by a professional corporation or professional limited liability company which is organized and operated pursuant to chapter 10-31.
15. ~~The offer or sale of a security issued by Myron G. Nelson Fund, Incorporated, pursuant to section 10-30.2-04.~~

16. The offer or sale of a security issued by the North Dakota education association dues credit trust to members of the North Dakota education association.

**SECTION 5. AMENDMENT.** Subsection 2 of section 10-30.2-01 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Corporation" means the ~~corporation established by section 10-30.2-02 Myron G. Nelson Fund, Incorporated.~~

**SECTION 6. AMENDMENT.** Section 10-30.2-07 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-30.2-07. Confidentiality of ~~corporation~~ records.** The following records of the corporation or a small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, are confidential:

1. ~~Commercial or financial information, whether obtained by the corporation directly or indirectly, of any entity in which an equity interest is purchased or considered for purchase pursuant to this chapter.~~
2. ~~Internal or interagency memorandums or letters which would not be available by law to a party other than in litigation with the corporation.~~

**SECTION 7. AMENDMENT.** Section 10-30.2-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-30.2-11. Tax credits for investment by banks, savings and loan associations, trust companies, and insurance companies.** A bank, savings and loan association, trust company, or insurance company that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, or investments in either equity or debt instruments or securities offered by a small business investment company created by the corporation and licensed by the ~~Small Business Administration~~ small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, is entitled, subject to section 10-30.2-13, to a credit in an amount equal to twenty-five percent of the total amount invested against the tax liability imposed against the taxpayer pursuant to sections 26.1-03-17, 57-35-02, 57-35.1-02, and 57-35.2-02, if applicable. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years. Except in the case of a tax credit that is carried forward from a prior tax year, no tax credit is allowed under this section to a taxpayer who received a tax credit for investment in the corporation and as a result of the dissolution of the corporation agreed to invest in the small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958



[Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.]

**SECTION 8. AMENDMENT.** Section 10-30.2-12 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-30.2-12. Income tax credits for investment.** A taxpayer that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, or in investments in either equity or debt instruments or securities offered by a small business investment company created by the corporation and licensed by the ~~Small Business Administration~~ small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.]; ~~and any amendments thereto~~; is entitled, subject to section 10-30.2-13, to a credit in the amount equal to twenty-five percent of the total amount invested against any state income tax liability imposed against the taxpayer. The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which the credit allowed by this section exceeds the taxpayer's tax liability in that year may be carried forward for seven taxable years. No taxpayer claiming a credit under this section is eligible to claim a credit for the same investment under chapter 10-30.1. Except in the case of a tax credit that is carried forward from a prior tax year, no tax credit is allowed under this section to a taxpayer who received a tax credit for investment in the corporation and as a result of the dissolution of the corporation agreed to invest in the small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.]

**SECTION 9. AMENDMENT.** Section 10-30.2-13.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-30.2-13.1. Investment reporting forms.** Within thirty days of the date on which an investment is purchased, or within sixty days from July 1, 1989, the ~~corporation; an affiliate of the corporation; or a~~ small business investment company created by the corporation and licensed by the ~~Small Business Administration~~ small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.], or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.]; ~~and any amendments thereto~~; must file with the state tax commissioner and provide to the investor the completed form prescribed by the state tax commissioner stating with respect to the investment in the ~~corporation or an affiliate of the corporation~~ small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.] the following:

1. The name, address, and identification number of the taxpayer who purchased the investment.

2. The dollar amount paid by the taxpayer for the investment.
3. The date on which the corporation or an affiliate of the corporation received full consideration for the investment.

**SECTION 10. AMENDMENT.** Section 10-30.2-14 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-30.2-14. State and board of director immunity from liability.** The state of North Dakota and the board of directors are not liable for any damage incurred by an investor in the corporation, or a separate legal entity such as a limited partnership or limited liability company created by the corporation as an affiliate for the purpose of obtaining investment capital from the public or the small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.].

**SECTION 11.** Two new sections to chapter 10-30.2 of the North Dakota Century Code are created and enacted as follows:

Dissolution of corporation - Validation of acts and transfer of assets. The corporation is dissolved and the assets now held by the corporation are transferred to the Bank of North Dakota.

Final report. Notwithstanding the provisions of section 10-30.2-07, upon final establishment of the small business investment company created by the corporation and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.] the Bank of North Dakota shall prepare and publish a final report of the activities of the corporation for the information of the governor, the legislative assembly, and the public that must describe the manner of the corporation's dissolution and detail the distribution of the corporation's assets.

**SECTION 12. AMENDMENT.** Section 26.1-05-19 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**26.1-05-19. Authorized investment of funds of insurance companies.** A domestic insurance company may invest any of its funds and accumulations in:

1. Securities or obligations made specifically eligible for such investment by law.
2. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, the District of Columbia, or by any state, territory, or insular possession of the United States or by any county, city, township, school district, or other civil division of a state, including those payable from special revenues or earnings specifically pledged for the payment thereof, and those payable from special assessments, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, non-speculative purposes.

3. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by any instrumentality or agency of the United States of America, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.
4. Notes or bonds secured by mortgage or deed of trust insured by the federal housing administrator, debentures issued by the federal housing administrator, and securities issued by national mortgage associations.
5. Bonds issued by the industrial commission under chapter 4-36.
6. Bonds guaranteed under chapter 6-09.2.
7. Bonds issued by the North Dakota municipal bond bank pursuant to chapter 6-09.4.
8. Bonds issued by the state board of higher education under chapter 15-55.
9. Revenue bonds issued by the state water commission.
10. Interim financing notes issued by the state water commission pursuant to chapter 61-02.
11. Warrants issued by a city under chapter 40-24.
12. Bonds or notes issued pursuant to chapter 40-33.2.
13. Bonds or other obligations issued pursuant to chapter 40-58.
14. Bonds issued under chapter 40-61.
15. Bonds issued under chapter 54-30.
16. Notes or other evidences of indebtedness of the North Dakota life and health insurance guaranty association not in default.
17. Notes or other interest-bearing obligations of any state development corporation of which the company is a member, issued in accordance with chapter 10-30.
18. Bonds or other evidences of indebtedness issued, assumed, or guaranteed by the Dominion of Canada, or any province thereof, or by any municipality or district therein, provided that the obligations are valid and legally authorized and issued.
19. Mortgage bonds and debentures of any solvent railway company duly incorporated and authorized under the laws of this state or of any other state or insular possession of the United States, or of the Dominion of Canada or of any province thereof.
20. Mortgage bonds and debentures of any solvent industrial public utility or financial corporation duly incorporated and authorized under the laws of the United States of America or of any state or insular possession

thereof, or of the Dominion of Canada or of any province thereof, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes.

21. Preferred stock, of, or common or preferred stock guaranteed as to dividends by, and common stock of, any corporation organized under the laws of the United States, any state or possession of the United States, the Dominion of Canada, or any province of the Dominion of Canada, including rights to purchase or sell these securities or obligations if these rights are traded upon a contract market designated and regulated by a federal agency and purchased for legitimate hedging, nonspeculative purposes, subject to the following restrictions and limitations:
  - a. The company issuing the preferred stock or guaranteeing the dividends on the common stock must have earned an average amount per annum at least equal to five percent of the par value of its common and preferred stocks or in the case of stocks having no par value, of its issued or stated value outstanding at the date of purchase, over the period of seven fiscal years immediately preceding the date of purchase or which over such period earned an average annual amount at least equal to two times the total of its annual interest charges, preferred dividends, and dividends guaranteed by it, determined with reference to the date of purchase.
  - b. The company issuing any common stock must have earned an average amount per annum at least equal to six percent of the par value of its capital stock, or in the case of stock having no par value of the issued or stated value of such stock, outstanding at the date of purchase over the period of seven fiscal years immediately preceding the date of purchase.
  - c. The company issuing or guaranteeing the stock has not been in arrears in the payment of dividends thereunder for a period of ninety days within the five-year period immediately preceding purchase of the stock.
  - d. Investments in preferred, guaranteed, and common stocks may not exceed in the aggregate twenty percent of the life insurance company's admitted assets.
22. Savings accounts, under certificates of deposit or in any other form, in solvent banks and trust companies which have qualified for federal deposit insurance corporation protection, shares and savings accounts, under certificates of deposit, investment certificates, or in any other form, in solvent savings and loan associations organized under federal law or state law of any state which have qualified for federal savings and loan insurance corporation protection, and shares and deposit accounts, under certificates of deposit or in any other form, in solvent state or federally chartered credit unions which are insured by the national credit union administration. Investments in the shares and accounts are not limited to, or by, the amount of any such insurance protection. Short-term or liquidity investments such as certificates of deposit, repurchase agreements, bankers' acceptances, commercial paper, money

market mutual funds, or current interest accounts in solvent banks and trust companies, savings and loan associations, state or federally chartered credit unions, investment brokerage houses which are regulated by a federal agency, and such other types of investments as may be deemed appropriate and authorized by rule by the commissioner.

23. Loans made upon the security of its own policies, if a life insurance company, but no loan on any policy may exceed the reserve value thereof.
24. Notes secured by mortgages on improved unencumbered real estate, including leaseholds substantially having and furnishing the rights and protection of a first real estate mortgage, within the United States of America or any province of the Dominion of Canada. No loan may be made under this subsection unless at the date of acquisition the total indebtedness secured by such lien does not exceed seventy-five percent of the value of the property upon which it is a lien. The loan may be made in an amount exceeding seventy-five percent so long as any amount over seventy-five percent of the value of the property mortgaged is guaranteed or insured by the federal housing administration or guaranteed by the administrator of veterans' affairs or is insured by private mortgage insurance through an insurance company authorized to do business in this state. Loans may be amortized on the basis of a final maturity not exceeding thirty years from the date of the loan with an actual maturity date of the loan at any time less than thirty years. A loan on a single-family dwelling where the loan is amortized on the basis of a final maturity twenty-five years or less from the date of the loan may be made in an amount not exceeding eighty percent of the value of the property mortgaged. The loan on a single-family dwelling may be made in an amount exceeding eighty percent so long as any amount over eighty percent of the value of the property mortgaged is insured by private mortgage insurance through an insurance company authorized to do business in this state. Buildings may not be included in the valuation of such property unless they are insured and the policies are made payable to the company as its interest may appear. A loan may not be made in excess of the amount of insurance carried on the buildings plus the value of the land. No insurance company may hold less than the entire loan represented by the bonds or notes described in this subsection except that a company may own part of an aggregate obligation if all other participants in the investment are insurance companies authorized to do business in North Dakota or banks whose depositors are insured by the federal deposit insurance corporation or savings and loan associations whose members are insured by the federal savings and loan insurance corporation or unless the security of the bonds or notes, as well as all collateral papers, including insurance policies, executed in connection therewith, are made to and held by a trustee which is a solvent bank or trust company having a paid-in capital of not less than two hundred fifty thousand dollars, except in case of banks or trust companies incorporated under the laws of the state of North Dakota, wherein a paid-in capital of not less than one hundred thousand dollars is required. In case of proper notification of default, the trustee, upon request of at least twenty-five percent of the holders of the bonds outstanding, and proper indemnification, shall proceed to protect the rights of the bondholders under the provisions of the trust indentures. An insurance company may acquire such an interest in real estate directly or as a joint

- venture or through a limited or general partnership in which the insurance company is a partner. An insurance company acquiring such an interest in real estate on the basis of a joint venture or through a limited or general partnership may acquire such an interest so long as the company's interest does not exceed seventy-five percent of the value of the property.
25. First mortgage bonds on improved city real estate in any state, issued by a corporation duly incorporated under the laws of any state of the United States of America, if the loans on the real estate are made in accordance with the requirements as to first mortgage loans in subsection 24.
  26. Real estate for the production of income or for improvement or development for the production of income subject to the following provisions and limitations:
    - a. Real estate used primarily for farming or agriculture may not be acquired under this subsection.
    - b. Investments made by any company under this subsection may not at any time exceed ten percent of the admitted assets of the company.
    - c. An investment in any single parcel of real estate acquired under this subsection may not exceed two percent of the admitted assets of the company.
    - d. The real estate, including the cost of improvements, must be valued at cost and the improvements may be depreciated annually at an average rate of not less than two percent of the original cost.
    - e. An insurance company may acquire such real estate or an interest in such real estate directly or as a joint venture or through a limited or general partnership in which the insurance company is a partner.
  27. Land and buildings used as home or regional offices, subject to the following provisions and limitations:
    - a. Land and buildings thereon in which it has its principal office and any other real estate including regional offices requisite for its convenient accommodation in the transaction of its business.
    - b. Investments or total commitment in the land and buildings may not aggregate more than ten percent of the company's admitted assets without the consent of the commissioner.
    - c. The real estate, including the cost of improvements, must be valued at cost and the improvements must be depreciated annually at an average rate of not less than two percent of the original cost.
  28. Investments by loans or otherwise, in the purchase of electric or mechanical machines, including software, constituting a data processing system. The company may hold the system as an admitted asset for use in connection with the business of the company if, (a) its aggregate cost does not exceed five percent of the admitted assets of the company; and

- (b) the cost of the components constituting the system is fully amortized over a period of not to exceed seven years. If a data processing system consists of separate components acquired at different times, then the cost of each component must be amortized over a period not to exceed seven years commencing with the date of acquisition of each component.
29. Promissory notes amply secured by the pledge of bonds or other evidences of indebtedness in which the company is authorized to invest its funds by the provisions of this section.
30. ~~Loans, securities, or investments in addition to those permitted in this section, including voting common stock of Myron G. Nelson Fund, Incorporated, issued pursuant to section 10-30.2-04 whether or not the loans, securities, or investments qualify or are permitted as legal investments under its charter, or under other provisions of this section or under other provisions of the laws of this state. The aggregate of such company's investments under this subsection may not exceed either five percent of the company's admitted assets, or the amount equal to the company's unassigned surplus, whichever is less.~~
- ~~31.~~ Ownership of, or loans secured by first liens upon:
- a. Production payments or interests therein payable from oil, gas, other hydrocarbons, or other minerals in producing properties located in areas of established and continuing production within the United States or the adjacent continental shelf areas, which production payments are dischargeable from property interests appraised by independent petroleum engineers at the time of the acquisition or loan, based on current market prices, to have a current market value of at least one hundred fifty percent of the purchase price of, or the amount loaned upon the security of, such production payments. The term "production payments" means rights to oil, gas, other hydrocarbons, or other minerals in place or as produced which entitle the owner thereof to a specified fraction or percentage of production or the proceeds thereof, until a specified or determinable sum of money has been received, and which have investment qualities and characteristics in which the speculative elements are not predominant.
  - b. Royalty interests, overriding royalty interests, net profit interests, leasehold interests, working interests or other interests or rights in oil, gas, other hydrocarbons, or other minerals in place or as produce, which interests or rights may be subject to production payments of the nature described in subdivision a.

No domestic insurance company may invest more than five percent of its admitted assets in the ownership of such interests or rights. In determining the amount invested in such interests or rights at any given time, each insurance company may evaluate such interests or rights in such manner as will permit it to amortize the interests or rights over a period of time during which not more than seventy-five percent of the dollar value of the recoverable production accruing to such interests or rights will be produced, as determined by independent petroleum engineers at the time of investment.

- ~~32-~~ 31. Obligations secured by a pledge of personal property, as follows:

- a. Tangible personal property, or equipment trust certificates or other instruments evidencing an interest in or debt secured by tangible personal property, if there is a right to receive determined portions of rental, purchase, or other fixed obligatory payments for the use or purchase of such tangible personal property.
- b. Bonds, notes, or other evidences of indebtedness secured wholly or partially by tangible personal property, provided that at the date of acquisition the amount of such indebtedness does not exceed sixty-six and two-thirds percent of the value of such tangible personal property.

The aggregate outstanding investment made under subdivisions a and b may not exceed five percent of the admitted assets of the life insurance company.

32. Loans, securities, or investments issued by a small business investment company created by the Myron G. Nelson Fund, Incorporated, and licensed by the small business administration under the Small Business Investment Company Act of 1958 [Pub. L. 85-699; 72 Stat. 689; 15 U.S.C. 661 et seq.] or the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.]

The commissioner may adopt rules as to investments which are permissible for any domestic insurance company which may waive or increase any limitation on investments or authorize companies to invest their funds in investments which are not specifically mentioned in statutes relating to investments if the commissioner finds, after notice and hearing, that such funds would be well invested and available for the payment of losses. The commissioner, in adopting such rules, may not be any more restrictive, or place any greater limitations on, any type of investment in which companies are authorized by statute to invest their funds.

This section does not prohibit a company from taking any action deemed necessary or expedient for the protection of investments made by it or from accepting in good faith, to protect its interests, securities, or property not mentioned in this section in payment or to secure debts due to it.

**SECTION 13. AMENDMENT.** Subdivision p of subsection 1 of section 57-38-01.2 of the North Dakota Century Code is amended and reenacted as follows:

- p. Reduced by any dividends received from stock issued by Myron G. Nelson Fund, Incorporated, ~~pursuant to section 10-30.2-04~~ to the extent the dividends are included in taxable income.

**SECTION 14. AMENDMENT.** Subdivision h of subsection 1 of section 57-38-01.3 of the North Dakota Century Code is amended and reenacted as follows:

- h. Reduced by any dividends received from stock issued by Myron G. Nelson Fund, Incorporated, ~~pursuant to section 10-30.2-04~~ to the extent the dividends are included in taxable income.



**SECTION 15. REPEAL.** Chapter 6-09.2 of the North Dakota Century Code and sections 10-30.2-02, 10-30.2-03, 10-30.2-04, 10-30.2-05, 10-30.2-06, 10-30.2-08, 10-30.2-09, and 10-30.2-10 of the 1993 Supplement to the North Dakota Century Code are repealed.

Approved March 27, 1995  
Filed March 28, 1995

## CHAPTER 108

## HOUSE BILL NO. 1289

(Representative Berg)  
(Senator Krebsbach)

TECHNOLOGY TRANSFER ECONOMIC  
DEVELOPMENT FUND

AN ACT to create and enact two new sections to chapter 10-30.4 of the North Dakota Century Code, relating to the establishment of the technology transfer economic development fund and the authority of technology transfer, incorporated; to amend and reenact sections 4-01-19, 6-09.10-02.1, 10-30.3-11, and 10-30.4-03 of the North Dakota Century Code, relating to an agriculture marketing bureau, the duties of the credit review board, the income level requirement of the North Dakota future fund, and the organization and management of technology transfer, incorporated; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 4-01-19 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**4-01-19. Marketing bureau.** ~~Within the department~~ The commissioner of agriculture of this state shall establish and maintain a marketing bureau ~~must be established and maintained~~ for the purpose of gathering and disseminating statistical information on agricultural marketing problems of the state; and ~~to engage~~ engaging in marketing services of agricultural products. Any moneys received or generated by the pride of Dakota program must be deposited in the general fund in the state treasury.

<sup>50</sup> **SECTION 2. AMENDMENT.** Section 6-09.10-02.1 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-02.1. Additional duties of board.** In addition to other powers and duties enumerated in this chapter, the board shall:

1. Establish policy for the North Dakota agricultural mediation service.
2. Recommend policies and procedures to the industrial commission regarding farm loan programs of the Bank of North Dakota.
3. Recommend policies and procedures regarding the adult farm management program to the state board of vocational education.
4. ~~Develop and administer a grant program to provide farmers with access to the farm diversification analytic system. The program shall~~

---

<sup>50</sup> Section 6-09.10-02.1 was also amended by section 1 of Senate Bill No. 2305, chapter 98.

~~coordinate~~ Coordinate a farm management delivery system among the adult farm management program, agricultural mediation service, and the North Dakota state university extension service.

<sup>51</sup> SECTION 3. AMENDMENT. Section 10-30.3-11 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-30.3-11. North Dakota future fund uses - Distribution - Limitations.**

1. The fund moneys may be used for the purposes of this chapter as provided in section 10-30.3-02. Moneys may be used to provide working capital or for financing the purchase of fixed assets, but not to refinance existing debt. Moneys may also be used to make matching grants to county-authorized or city-authorized development corporations for the acquisition, leasing, or remodeling of real estate facilities for locating a prospective new primary sector business. A grant must be made as part of a package of financing in which the state is a participant.
2. The director of the department of economic development and finance shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation. ~~The rules must include a requirement that:~~
  - a. ~~Eighty-five percent of the full-time employees of a rural North Dakota business or North Dakota American Indian business receiving moneys or other assistance from the North Dakota future fund must be paid an income at least equal to one hundred percent of the federal poverty level for a family of four for the life of the loan; equity position; or other financial relationship;~~
  - b. ~~Every full-time employee of an urban North Dakota business receiving moneys or other assistance from the North Dakota future fund must be paid an income at least equal to one hundred percent of the federal poverty level for a family of four for the first year following the receipt of moneys from the fund; and~~
  - c. ~~After the first year following the receipt of moneys from the fund, ninety percent of the full-time employees of an urban North Dakota business receiving moneys or other assistance from the North Dakota future fund must be paid an income at least equal to one hundred percent of the federal poverty level for a family of four for the remaining period of the loan; equity position; or other financial relationship.~~

~~For purposes of this subsection, "full-time employee" means a person employed to work thirty-two hours or more per week. The rules must establish procedures for determining compliance with subdivisions a, b,~~

---

<sup>51</sup> Section 10-30.3-11 was repealed by section 11 of House Bill No. 1021, chapter 21.

~~and e and sanctions for failure to comply. The department may renegotiate, at any time, any contract entered into with a business under this section to reflect changes by the legislative assembly in the percentage of employees subject to the income requirement of this section.~~ The rules must include requirements for and methods of distribution of the funds generally targeted for a distribution of forty percent businesses in rural areas, twenty percent businesses in urban areas, twenty percent North Dakota American Indian businesses, and twenty percent to be undesignated. Any unused funds in any category may be transferred to the undesignated portion during the second year of the biennium under rules adopted by the director of the department of economic development and finance. Moneys in the undesignated portion of the funds may be utilized in any of the three targeted areas.

**SECTION 4. AMENDMENT.** Section 10-30.4-03 of the 1993 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-30.4-03. Organization.**

1. A board of directors shall manage the corporation. The board of directors shall adopt articles of incorporation and bylaws consistent with the requirements of section 10-30.4-02. The board of directors consists of:
  - a. ~~Until July 1, 1995, the~~ The president of the North Dakota state university of agriculture and applied science, or the president's designee and the president of the state university of North Dakota, or the president's designee.
  - b. ~~After June 30, 1995, two members appointed by the commissioner of higher education, one of which may be the commissioner.~~
  - e. The director of the department of economic development and finance.
  - ~~d~~ c. A representative of the North Dakota industrial development association, as appointed by that association.
  - ~~e~~ d. Three members appointed by the governor, representing the primary sector industries of agriculture, energy, manufacturing, and export services.
2. The members appointed under subdivisions ~~b, c and d; and e~~ of subsection 1 must be appointed in a manner that results in subsequent terms of three years staggered so that the term of at least one member expires each year. Members may be reappointed for additional terms.

**SECTION 5.** A new section to chapter 10-30.4 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Technology transfer economic development fund - Continuing appropriation. The technology transfer economic development fund is established from moneys appropriated from the general fund. The fund is a revolving fund and all moneys transferred into the fund, interest upon fund moneys, and payments to the fund are hereby appropriated for the purposes of this chapter. The fund is not subject to section 54-44.1-11. All assets, investments, contracts, partnerships, and business

transactions of technology transfer, incorporated before the effective date of this Act must be transferred to the technology transfer economic development fund on the effective date of this Act.

**SECTION 6.** A new section to chapter 10-30.4 of the 1993 Supplement to the North Dakota Century Code is created and enacted as follows:

Technology transfer economic development fund uses. The moneys in the technology transfer economic development fund may be used for the purposes of this chapter. Moneys may be used to make grants, loans, and other forms of suitable investments determined by the corporation to be appropriate for the commercialization of technology in this state. A portion of the fund may be used to defray the operating and administrative expenses of the corporation, including staff salaries and expenses. However, moneys from the return of project investments may not be used to defray the operating and administrative expenses of the corporation.

Approved April 7, 1995

Filed April 7, 1995