

FISCAL NOTE
Requested by Legislative Council
12/22/2014

Amendment to: HB 1136

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties	\$0	\$0	\$0
Cities	\$0	\$0	\$0
School Districts	\$0	\$0	\$0
Townships	\$0	\$0	\$0

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

The intent of this bill is to adopt a uniform law related to Limited Liability Companies. There are no provisions in the bill having any more or any less fiscal impact than under current law.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

None

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

See agency comments

- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

See agency comments

- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

None requested

Name: Al Jaeger

Agency: Secretary of State

Telephone: 701-328-2900

Date Prepared: 12/30/2014

FISCAL NOTE
Requested by Legislative Council
12/22/2014

Bill/Resolution No.: HB 1136

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Name: Al Jaeger

Agency: Secretary of State

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Date Prepared: 12/30/2014

2015 HOUSE JUDICIARY

HB 1136

2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee Prairie Room, State Capitol

HB 1136
1/12/2015
21836

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to limited liability companies.

Minutes:

Testimony #1 & #2

Chairman K.Koppelman: Opened the hearing on HB 1136 with testimony in support.

Rep. L. Klemin: I am also a commissioner servicing on the ULC. (See Testimony #1)
(1:13-19:24)

Rep. Mary Johnson: Are existing LLC's now subject to this entire 10-32.1?

Rep. L. Klemin: They will be. There is a provision at the end of this bill that the new ones will become subject to this after the effective date of this act which will be August 1, 2015. Then until January 1, 2016 existing LLC's would have the ability to elect and be subject to this act. Then after that date then they will be subject to this act.

Vice Chairman Karls: What is the main difference between a corporation and an LLC? Are there definite advantages between the two?

Rep. L. Klemin: The main difference is how they are taxed. LLC's are taxed like partnerships and corporations are taxed like corporations. Corporations actually pay taxes unless they are a sub chapter S Corporation in which case the corporation can be taxed similar to a partnership. There are limits on the number of shareholders you can have in a sub chapter S Corporation. If you go over 25 I think it is then you will be taxed like a partnership. There are partnership laws to follow and discussed this. An LLC provides limited liability; whereas a partnership may not. An LLC is taxed just like a partnership so that the LLC itself doesn't pay taxes.

Chairman K.Koppelman: When it comes to a sole proprietorship converting to an LLC the main advantage is taxation and liability protection as well. A mom and pop sole proprietorship might look at becoming an LLC so that all their assets aren't subject to litigation or something if there is a liability claim. Am I accurately stating that?

Rep. L. Klemin: It seems like a lot of CPA's are recommending that businesses organize as LLC now rather than corporations.

Rep. G. Paur: In the definitions of foreign corporation is listed under F. Domestic Corporation is listed under C for corporation. Would that need any clarification?

Rep. L. Klemin: That may define corporation as a domestic corporation as domestic and foreign corporation as a foreign so that the default under there would be if it just said corporation it would be domestic unless you said foreign corporation.

Rep. G. Paur: There are limited liability corporations and limited liability companies; correct?

Rep. L. Klemin: Not exactly. Corporations do have limited liability. There are not limited liability corporations because that would be inconsistent. A corporation does have limited liability already so there is no reason to call it that. An LLC is a limited liability company. In ND we have tried to be as flexible as possible on how we allow businesses to operate so have statutes governing all of those entities.

Rep. K. Wallman: Do you have an estimated impact if this passes?

Rep. L. Klemin: I don't know if that can be quantified because if there is a profit it is either going to be taxed at the entity level or at the owner level.

Rep. K. Wallman: If an LLC can be a nonprofit; can a nonprofit be an LLC? Right now nonprofits can only use a certain percentage of their revenue for lobbying. What would prevent a nonprofit organization from switching to an LLC and using more of their revenue for lobbying?

Rep. L. Klemin: This is covered by federal law. In order to be nontaxable; typically a nonprofit is a corporation now and we have the nonprofit corporation law. Under federal law as long as they abide by certain rules that govern their operation then they are not subject to taxation. I think if they are an LLC or a nonprofit corporation they would be a nonprofit corporation they would still be subject to those same federal rules.

Chairman K.Koppelman: What is the difference between LLP's and multimember LLC where they operate like a partnership? Does this bill address LLP's?

Rep. L. Klemin: One of the differences is how they are operated and managed. LLP's would have a general partner and limited partners. Limited partners do not actually operate the business. They are basically just investors whereas a general partner is the one that operates the business. In an LLC the members or owners can take a much more active role in the operation of the business without becoming subject to liability as a general partner. Those are some of the differences.

Chairman K.Koppelman: Your map in the testimony; does it reflect the latest permutation with what we are looking at or does it reflect the adoption of the original LLC act of 2006?

Rep. L. Klemin: This map reflects those states that have adopted the last amendments. Almost all of these states have existing LLC act already.

Chairman K.Koppelman: Is the original act more prevalent in more states?

Rep. L. Klemin: There are many more states that have adopted the original LLC Act which we did in 1996 in North Dakota. The new act was from 2006 and 2011 and 2013 there were some amendments.

Chairman K.Koppelman: The question Rep. K. Wallman asked regarding revenue to the state you will notice the fiscal note and that is how you know what the impact is.

Al Jaeger, Secretary of State: (See Testimony #2) Went through the testimony and discussed it. (32:42-41:54). Because of the length of the bill it was sent into Legislative Counsel and they put it all together. We have not had a chance to go through it to be sure all the cross references is right so that is why we ask for a little bit of time. Questions?

Chairman K.Koppelman: We will hold the bill.

Rep. P. Anderson: We talk about the Minnesota version; how are about the SD version?

Al Jaeger: Since Fargo is close to Minnesota we do more with Minnesota. The basic of limited liability companies no matter what state you are in has been the same over the years. I don't understand the legal part of this. We bring forth business options.

Chairman K.Koppelman: Rep. L. Klemin touched on reorganization transactions. How does your office deal with this? When that occurs can a company be considered domestic in more states or is it a transfer from that status from one state to another.

Clara Jenkins: This will be something new for us. Domestication is going to be. They will then transfer to a ND LLC. You cannot be domestic in two jurisdictions. It would have to be allowable under the other jurisdictions law before we could file it here.

Chairman K.Koppelman: What would you envision those kinds of requests before?

Clara Jenkins: Would it require location in our state.

Chairman K.Koppelman: If an oil field product company was in Oklahoma and they decided to move to ND so they want to domestic here would they have to physically locate here?

Clara Jenkins: They would not have to have a physical presence in this state in order to be an LLC. Oklahoma could do this.

Rep. K. Wallman: Why would we want to do this?

Clara Jenkins: There is some value in adopting a uniform act. When we adopt a uniform act any court actions that occur in another state on an issue related to an issue that might

be under consideration here the courts could look to those jurisdictions for guidance on how those issues were resolved.

Rep. L. Klemin: In response to effective LLC's. That is found on page 21 of the bill in Section 132.105 application to existing relationships and the operative dates are July 1, 2015. Any new LLC is bound by this law on or after that date. Then there is a transaction to January 1, 2016.

Chairman K.Koppelman: Is there any subservient change to any LLC that would become subservient to this law once it becomes law?

Rep. L. Klemin: It is business as usual except for default rules. There is this section that I just referred to that says certain things will be read into the operating agreement of an existing LLC as if they had it in there already so they don't have to go out and change all their documentation.

Al Jaeger: In real estate even though a broker can be an LLC under a broker because because of that reason. This is a form of business that is good for one person.

Tony Weiler, Executive Director of the Bar Association: We support this legislation.

Chairman K.Koppelman: If Mr. Guy wishes to come in at a later date we will recess this hearing.

Opposition: None

Recessed.

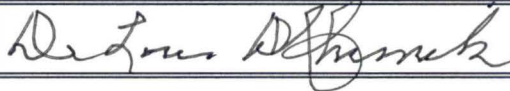
2015 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee Prairie Room, State Capitol

HB 1136
1/21/2015
22282

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

Proposed amendment #1

Chairman K.Koppelman opened the meeting on HB 1136. This is the result of the process that the secretary explained to us when that bill was before us of consulting between his office and Mr. Bill Guy, the attorney who does allot of this work and has appeared in our committee many times in these issues.

Rep. L. Klemin: (See proposed amendment #1) When I presented this bill I asked the committee to hold this bill pending a review mainly by Clara Jenkins of the Secretary of State's office to make sure we had all the cross references and other things correct and she did work on that with Mr. Guy from Fargo and so these are those amendments.

Rep. L. Klemin Made a Motion to Move the amendments: Seconded by Rep. Lois Delmore:

Discussion:

Rep. K. Wallman: There is a definition for remote communication on page 17. This is a terrific definition and is this a definition that is already in statue for remote communication or is this new language that could be applied to other statues?

Rep. L. Klemin: I don't know if this is elsewhere in the ND Century Code or not. I would say that this likely comes out of the Uniform Limited Liability Company Act and was unintentionally omitted when that was put together so now it has been put in. It certainly could be used any time.

Voice vote passed.

Rep. L. Klemin Moved a Do Pass As Amended on HB 1136; Seconded by Rep. D. Larson:

Roll Call Vote 11 Yes 0 No 2 Absent Carrier: Rep. L. Klemin

January 21, 2015

1-21-15 1/2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1136

Page 1, line 20, remove "and"

Page 1, line 22, after "companies" insert "; and to provide a penalty"

Page 6, line 11, replace "10-32.1-88" with "10-32.1-89"

Page 7, line 20, remove the overstrike over "or"

Page 7, line 21, after "~~10-32-54~~" insert "10-32.1-33"

Page 7, line 27, remove the overstrike over "or"

Page 7, line 28, after the overstruck comma insert "section 10-32.1-33,"

Page 8, line 2, remove the overstrike over "or"

Page 8, line 2, after "~~10-32-54~~" insert "10-32.1-33"

Page 8, line 13, remove the overstrike over "or"

Page 8, line 13, after "~~10-32-54~~" insert "10-32.1-33"

Page 10, line 17, replace "10-32.1-19" with "10-32.1-89"

Page 11, line 2, after the second underscored comma insert "a statement of correction, restated articles of organization,"

Page 11, line 5, after the third underscored comma insert "articles of domestication,"

Page 11, line 5, after "authority" insert "or a statement amending or canceling a statement of authority"

Page 14, line 27, after "32." insert: "\"Membership interest\" means one of the units, however designated, of which the proprietary interests of a member in a limited liability company is divided."

33."

Page 14, line 30, replace "33." with "34."

Page 15, line 1, replace "34." with "35."

Page 15, line 2, replace "35." with "36."

Page 15, line 7, replace "36." with "37."

Page 16, line 10, replace "37." with "38."

Page 16, line 21, replace "38." with "39."

Page 16, line 23, replace "39." with "40."

Page 16, line 30, replace "40." with "41."

Page 16, line 31, replace "41." with "42."

Page 17, line 9, replace "42." with "43."

Page 17, line 15, replace "43." with "44."

Page 17, line 17, replace "44." with "45."

Page 17, line 22, replace "45." with "46."

Page 17, after line 26, insert:

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

Page 17, line 27, replace "46." with "48."

Page 17, line 31, replace "47." with "49."

Page 18, line 26, replace "48." with "50."

Page 18, line 29, replace "49." with "51."

Page 19, line 8, replace "50." with "52."

Page 19, line 10, replace "51." with "53."

Page 19, line 14, replace "52." with "54."

Page 19, line 16, replace "53." with "55."

Page 19, line 17, replace "54." with "56."

Page 19, line 20, replace "55." with "57."

Page 51, line 18, replace "34" with "35"

Page 70, line 20, replace the underscored semicolon with an underscored period

Page 75, line 25, replace "37" with "38"

Page 98, line 5, after the first underscored period insert "**Foreign limited liability company -**"

Page 104, line 12, replace "47" with "49"

Page 104, line 27, remove "or"

Page 104, line 28, after the underscored comma insert "or an annual report electronically transmitted to the secretary of state with a transmission time before November sixteenth,"

Page 105, remove lines 12 through 30

Page 106, line 1, replace "7." with "5."

Renumber accordingly

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL NO. HB 1136**

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0224.01001.02000

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
Other Actions: ☐ Reconsider ☐

Motion Made By Rep. L. Klemin: Seconded By Rep. Lois Delmore:

Representative	Yes	No	Representative	Yes	No
Chairman K. Koppelman			Rep. Pamela Anderson		
Vice Chairman Karls			Rep. Delmore		
Rep. Brabandt			Rep. K. Wallman		
Rep. Hawken					
Rep. Mary Johnson					
Rep. Klemin					
Rep. Kretschmar					
Rep. D. Larson					
Rep. Maragos					
Rep. Paur					

Total (Yes) _____ No _____

Absent _____

Floor Assignment: _____

If the vote is on an amendment, briefly indicate intent:

**2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL NO. HB 1136**

House JUDICIARY Committee

☐ Subcommittee ☐ Conference Committee

Amendment LC# or Description: 15.0244.01001.02000

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Chairman K. Koppelman	✓		Rep. Pamela Anderson	✓	
Vice Chairman Karls	✓		Rep. Delmore	✓	
Rep. Brabandt	✓		Rep. K. Wallman	✓	
Rep. Hawken	—				
Rep. Mary Johnson	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. D. Larson	✓				
Rep. Maragos	—				
Rep. Paur	✓				

Total (Yes) 11 No 0

Absent 2

Floor Assignment: Rep. L. Klemin:

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1136: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1136 was placed on the Sixth order on the calendar.

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2015 SENATE JUDICIARY

HB 1136

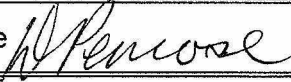
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1136
3/16/2015
24858

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

1,2

Ch. Hogue: We will open the hearing on HB 1136.

Alvin Jaeger, Secretary of State: Support (see attached #1).

Sen. Grabinger: If SB 2351, which is corporate farming bill, would we need to redo this again if that passes.

Alvin Jaeger: I would guess that the answer would be "no".

Sen. Grabinger: This forbids an out-of-state corporation in this bill, for the LLC.

Alvin Jaeger: When that bill was heard in the House, that there was a concern with the way it was worded. We thought that there would be a lot of unintended consequences, we weren't passing judgment on whether it was good or bad, and it was neutral testimony. Out of that, it was somewhat revamped because of the processes that are currently in law now regarding how the reporting of agriculture, animals, etc. I would suspect that it shouldn't make a difference.

Sen. Nelson: Will Clara explain the amendments.

Alvin Jaeger: No, I think we will leave that to William Guy for Wednesday, 3/18. The amendments came out after the MN bill. There were earlier amendments that were put on in the House for minor housekeeping corrections. The new amendments happened since it was heard on the House side. This isn't anything that they rejected. The hearing was held very early in the session.

Clara Jenkins, Secretary of State: Support (see attached 2), read testimony of Rep. Klemin and explained the changes.

Ch. Hogue: I wanted to ask you about the statements of authority. Since these are optional, I have no obligation to update those when I have different officers or different leadership within the LLC.

Clara Jenkins: Those authorization statements are optional; there is no requirement or statute that they be updated. That doesn't mean that you don't have to file an annual report with us every year that would provide us with the names of your current governing board. That has to happen. This authorization statement is not. That's why I question the value of them. I don't really foresee a lot with these being filed.

Ch. Hogue: I could foresee the title companies, title insurance companies wanting these entities to do it, so that they can rely on those to declare that it's been valid issuing debt or conveyance. What provision is that statement of authority?

Clara Jenkins: It is listed on page 39. Section 10-32.1-22.

Sen. Casper: Is there anything that we are updating in here where you would have to disclose where the owners of an LLC operate, beyond the registered agent, to become public who the officers are.

Clara Jenkins: LLC right now files an annual report with us every year; that discloses their board, names and addresses of the managing members and also has the registered agent listed. That has not changed.

Sen. Casper: Will the members and board members be published on the Secretary of State's website. Say I search for a LLC, it comes up on the Secretary of State's website, which I often do, select the LLC on the website. It may say Bill Guy, registered agent, Vogel Law Firm. That is about as much information, plus the address. Are we doing anything to change that procedure?

Clara Jenkins: It is public information, but our web utilities do not allow us to expose the names and addresses of the officers. Our intent was not to expose it to the public until the majority of the filers are filing online. This puts a huge data entry burden on the SOS's office to do that. That is planned for the future, where officers of organizations will be exposed on our website.

Ch. Hogue: Thank you. Further testimony in support.

Tony Weiler, Executive Director of ND State Bar Association: Support. Sen. Grabinger this is an example of where an expert in the Bar Association or expert attorney, such as Mr. Guy who has dealt with changes to the SOS's code basically for a year along with the lay person, Ms. Jenkins. They spent a lot of time and work on this to get it to the point it is in now and in line with MN's, and they started working on this over a year ago. A bill like this was shown to me and asked if they could bring it forth on behalf of the Association and so in that instance I did have it reviewed by other members of the bar, who are experts in LLC act than I.

Ch. Hogue: Thank you. Further testimony in support. Testimony in opposition. Neutral testimony. We will recess the hearing pending testimony by Mr. William Guy on Wednesday, 3/18/2015.

2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1136
3/18/2015
25048

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

1,2,3

Ch. Hogue: We will continue the recessed hearing on HB 1136.

William Guy, III, ND Uniform Limited Liability Company Act: Support (see attached 1, 2). The amendments passed out are different than the ones passed out on Monday, 3/16/2015 (see attached #3). Upon careful reading there were a couple of typos so this would be in lieu of what was handed out on Monday.

Ch. Hogue: Ms. Jenkins said that she had amendments to pass out. These are the amendments that you're referring to.

William Guy: (continued on with attachment #1).

Ch. Hogue: For clarity, what you distributed clarifies the purpose of the amendments that were previously distributed.

William Guy: Yes. It is a good bill and will bring us into line with the rest of the nation that is slowly adopting the model uniform act. It still enables us to structure our LLC's as they were under our existing statutes, so people won't have to totally redo their LLC structures.

Ch. Hogue: Thank you. Further testimony. We will close the hearing.

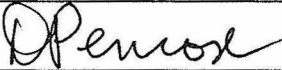
2015 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1136
3/24/2015
25366

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Minutes:

Ch. Hogue: Let's take a look at HB 1136. The amendments from 3/16/2015 are not the most recent. The most recent amendments were from 3/18/2015.

Sen. Nelson: I move the amendments from 3/18/2015.

Sen. Casper: Second the motion

Ch. Hogue: We will take a voice vote, motion carried. We now have the bill before us as amended. What are the committee wishes in regard to HB 1136?

Sen. Luick: I move a Do Pass as Amended.

Sen. Casper: Second the motion.

6 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Sen. Nelson

March 24, 2015

10
3/25/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1136

Page 19, line 19, after the second underscored quotation mark insert "or "membership interest""

Page 21, line 23, after the first "the" insert "limited liability"

Page 21, line 23, after "company" insert "under chapter 10-32 at the time the limited liability company becomes subject to this chapter"

Page 21, line 24, after "the" insert "limited liability"

Page 21, line 25, replace "21" with "35"

Page 21, line 26, after the first underscored comma insert "the"

Page 21, line 26, after the second underscored comma insert "and any"

Page 21, line 31, replace the underscored period with "; and

c. Subject to the operating agreement of the limited liability company:

- (1) The limited liability company shall keep the records specified in subdivision k of subsection 1 of section 10-32-51, at the principal executive office of the limited liability company, or at another place or places within the United States as determined under subsection 1 of section 10-32-51, before the limited liability company became subject to this chapter;
- (2) For the purpose of applying paragraph 1, subsections 3 and 4 of section 10-32-56, continue to apply to the limited liability company as if those provisions had not been repealed;
- (3) Subsection 1 of section 10-32.1-30, does not apply to the limited liability company;
- (4) The profits and losses of the limited liability company are to be allocated among the members, and among classes and series of members, in proportion to the value of the contributions of the members reflected in the records required by paragraph 1;
- (5) The voting power of each membership interest is in proportion to the value of the contributions of the members reflected in the records required by paragraph 1;
- (6) Distributions of cash or other assets of the limited liability company, including distributions on the dissolution of the limited liability company, must be allocated in proportion to the value of the contributions of the members reflected in the records required by paragraph 1;
- (7) Subdivision a of subsection 1 and subsections 2 and 3 of 10-32-54 and section 10-32-55 continue to apply to the limited

liability company as if those provisions had not been repealed;
and

- (8) For the purpose of applying paragraph 7, subsection 1 of section 10-32-40.1 continues to apply to the limited liability company as if that provision had not been repealed."

Page 22, line 14, after the underscored period insert: "With respect to loans, guarantees, and suretyship:

- a. Without in any way limiting the generality of the power of a limited liability company to do all things necessary or convenient to carry on its activities, 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 pursuant to this chapter and the operating agreement of the limited liability company, and:
- (1) Is in the usual and regular course of business of the limited liability company;
- (2) Is with, or for the benefit of, a related 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, any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the limited liability company;
- (3) 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
- (4) Whether or not any separate consideration has been paid or promised to the limited liability company, has been approved by:
- (a) The owners of two-thirds of the voting power of persons other than the interested person or persons; or
- (b) The unanimous vote of all members, whether or not ordinarily entitled to vote.
- b. Any loan, guaranty, surety contract, or other financial assistance described in subdivision a may be with or without interest and may be unsecured or may be secured in any manner including, without limitation, a grant of a security interest in the transferable interest of a member in the limited liability company.
- c. This subsection does not grant any authority to act as a bank or to carry on the business of banking."

Page 28, line 6, replace the second "subsection" with "subsections"

Page 28, line 6, after "7" insert "and 8"

Page 28, line 12, replace the second "subsection" with "subsections"

Page 28, line 12, after "7" insert "and 8"

Page 28, line 16, replace the second "subsection" with "subsections"

Page 28, line 16, after "7" insert "and 8"

Page 29, line 8, replace "subsection 1" with "subsection 2"

Page 31, line 18, remove "appoint or"

Page 38, after line 16, insert:

"11. If a member-managed limited liability company, a manager of a manager-managed limited liability company, or a governor of a board-managed limited liability company, knows that any information in articles of organization filed with the secretary of state was inaccurate when the articles were filed, or has become inaccurate owing to changed circumstances, the member, manager, or governor shall promptly:

a. Cause the articles to be amended; or

b. If appropriate, file with the secretary of state a change of registered agent or change of registered office in the manner prescribed by chapter 10-01.1."

Page 43, line 6, replace "Any" with "Subject to paragraphs 1 through 4 of subdivision c of subsection 4 of section 10-32.1-05, any"

Page 46, line 10, after "member-managed" insert "or board-managed"

Page 46, line 14, after "member" insert ", manager,"

Page 50, line 12, replace "5" with "11"

Page 54, line 25, replace "For" with "Subject to subsection 4 of section 10-32.1-05, for"

Page 54, line 26, replace "then current profits" with "distributions"

Page 54, line 27, after "company" insert "before dissolution"

Page 59, line 15, after the second underscored comma insert "subject to subsection 4 of section 10-32.1-05"

Page 59, line 16, remove "member's"

Page 59, line 16, after "interest" insert "of the member"

Page 59, line 16, remove "then"

Page 59, line 17, replace "current profits" with "distributions"

Page 59, line 17, after "company" insert "before dissolution"

Page 62, line 29, after "member-managed" insert "or board-managed"

Page 77, line 2, replace "coowns" with "co-owns"

Page 77, line 4, replace "coowning" with "co-owning"

Page 77, line 9, replace "coowning" with "co-owning"

Page 77, line 10, after "interest" insert ", or interests"

Page 77, line 10, after "member" insert ", or members"

Renumber accordingly

Date: 3/24/15
Voice Vote # 1

2015 SENATE STANDING COMMITTEE
VOICE VOTE
BILL/RESOLUTION NO. 1136

Senate Judiciary Committee

☐ Subcommittee

Amendment LC# or Description: 3/18/15 Technical Amendments

Recommendation: ☒ Adopt Amendment

☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation

☐ As Amended ☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Seconded By

Motion Made By Sen. Nelson Sen. Casper

Senators	Yes	No	Senators	Yes	No
Ch. Hogue			Sen. Grabinger		
Sen. Armstrong			Sen. C. Nelson		
Sen. Casper					
Sen. Luick					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote: motion Carried

Date: 3/24/15

Roll Call Vote #: 2

2015 SENATE STANDING COMMITTEE
ROLL CALL VOTE

BILL/RESOLUTION NO. 1136

Senate

JUDICIARY

Committee

☐ Subcommittee

Amendment LC# or Description: 15, 0224- 02001 03000

Recommendation:

☐ Adopt Amendment

☒ Do Pass

☐ Do Not Pass

☐ Without Committee Recommendation

☒ As Amended

☐ Rerefer to Appropriations

☐ Place on Consent Calendar

Other Actions:

☐ Reconsider

☐

Motion Made By Sen. Luick Seconded By Sen. Casper

Senators	Yes	No	Senators	Yes	No
Chairman Hogue	✓		Sen. Grabinger	✓	
Sen. Armstrong	✓		Sen. C. Nelson	✓	
Sen. Casper	✓				
Sen. Luick	✓				

Total (Yes) 6 No 0

Absent 0

Floor

Assignment

Sen. Nelson

REPORT OF STANDING COMMITTEE

HB 1136, as engrossed: Judiciary Committee (Sen. Hogue, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1136 was placed on the Sixth order on the calendar.

Page 19, line 19, after the second underscored quotation mark insert "or "membership interest""

Page 21, line 23, after the first "the" insert "limited liability"

Page 21, line 23, after "company" insert "under chapter 10-32 at the time the limited liability company becomes subject to this chapter"

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- (1) Is in the usual and regular course of business of the limited liability company;
- (2) Is with, or for the benefit of, a related 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, any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the limited liability company;
- (3) 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
- (4) Whether or not any separate consideration has been paid or promised to the limited liability company, has been approved by:
- (a) The owners of two-thirds of the voting power of persons other than the interested person or persons; or
- (b) The unanimous vote of all members, whether or not ordinarily entitled to vote.

- b. Any loan, guaranty, surety contract, or other financial assistance described in subdivision a may be with or without interest and may be unsecured or may be secured in any manner including, without limitation, a grant of a security interest in the transferable interest of a member in the limited liability company.

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Renumber accordingly

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2015 TESTIMONY

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Pjl

TESTIMONY OF REP. LAWRENCE R. KLEMIN

HOUSE JUDICIARY COMMITTEE

HOUSE BILL NO. 1136

JANUARY 12, 2015

Mr. Chairman and members of the House Judiciary Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am also a Commissioner serving on the Uniform Law Commission (ULC). At 123 pages, House Bill 1136 is likely to be one of the longest bills we will see in the Legislature this year. House Bill 1134 enacts the Uniform Limited Liability Company Act, which was last amended by the National Uniform Law Commission in 2013. House Bill 1136 also includes certain amendments made last year in our neighboring state, the State of Minnesota. The existing limited liability company law in North Dakota, which is being repealed by House Bill 1136, is also similar to the old Minnesota law, so we need to be consistent when we enact our new law. The Minnesota changes don't change the uniform law in any significant respect, but rather, add other provisions to it which are similar to provisions we now have in our corporate law.

I would like to thank Bill Guy, attorney in Fargo, and Clara Jenkins of the office of the North Dakota Secretary of State, for the time they spent in preparing House Bill 1136 to keep our new LLC act consistent with the Minnesota act and the existing structure of the North Dakota LLC law. Secretary of State Al Jaeger and Clara Jenkins will also be offering testimony on House Bill 1136. Bill Guy was unable to be here today.

Limited liability companies (LLCs) are a relatively new form of unincorporated business organization that provides corporate-style limited liability to its owners. LLCs began to be widely used in the late 1980s after IRS Revenue Ruling 88-76 upheld the taxation of LLCs as partnerships. Every state has enacted some sort of LLC legislation, and LLC filings in almost all states far outnumber the number of new corporate filings on an annual basis.

The list below describes some of the more significant provisions in the LLC Act:

1. The operating agreement. The operating agreement determines whether an LLC is board-managed, member-managed or manager-managed. The act also makes it clear that the operating agreement is binding on the LLC even in the case of a single member LLC and even if the LLC has taken no formal action to adopt the operating agreement.

2. LLCs may engage in any lawful purpose. An LLC is not restricted to for-profit business activities. It can have "any lawful purpose, regardless of whether for profit." This expands the availability of LLCs to activities that are not traditional businesses, such as ownership of a family vacation home and, subject to other federal and state laws, allow an organization whose activities might be classified as non-profit to select an LLC as its form of entity.

3. Internal affairs default rules. The act contains a basic set of internal affairs default rules governing the relationship of board governors, members and managers of an LLC between themselves and each other, most of which can be varied by the operating

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agreement. For example, if the operating agreement is silent on the type of management structure, an LLC is member-managed by default. There are also default rules for decisions by members and managers and for other matters.

4. Flexible management structure. It is possible to have any type of management structure the LLC members want, including a corporate-style board of governors and officers. The management structure is set forth in the operating agreement.

5. Duties of governors, managers and members. The act specifies the fiduciary duty of loyalty and the duty of care for managers and clarifies the contractual status of the duty of good faith and fair dealing. These and other duties may be restricted or eliminated "if not manifestly unreasonable." The operating agreement may limit or eliminate liability of a manager to the LLC or other members for monetary damages except for breaches of the duty of loyalty, liability for improper distributions, or conduct involving bad faith, willful or intentional conduct, or knowing violation of law, limitations that are similar to those found in state corporation statutes.

6. Agency authority. The authority of governors, members and managers to bind an LLC is determined by agency law and not by status as a governor in a board-managed LLC, a member of a member-managed LLC or a manager of manager-managed LLC. Statements of authority may be filed in the office of the Secretary of State and in the case of real estate, in the office where real estate records are kept to provide notice that only certain members or managers have authority to conduct business on behalf of the LLC.

7. Charging orders. The act clarifies and simplifies the rules governing charging orders, the exclusive remedy for a creditor of a member to obtain a member's financial rights to distributions from the LLC. The act also provides the rules for foreclosing on a charging order and makes it absolutely clear that, except in the case of a single member LLC, a purchaser of a foreclosed interest only obtains the financial rights to distributions to the member and does not become a member of the LLC by virtue of the foreclosure or have any rights to participate or interfere with the management of the LLC or to demand inspection of the LLC's documents or records.

8. Distributions. The act specifies the circumstances under which distributions from an LLC can and cannot be made and contains provisions for recovery of improper distributions. The act also makes it clear that payment for reasonable compensation and for retirement plans or other benefits programs are not distributions.

9. A remedy for oppressive conduct. Reflecting case law developments around the country, the act permits a member to seek a court order "dissolving the company on the grounds that the managers or those in control of the company have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant."

10. Direct and derivative claims, special litigation committees. Under the act, a member can bring a direct action for injuries to that member and can bring a derivative action to enforce a claim of an LLC. If a derivative action is filed, the LLC may form a special litigation committee to investigate the asserted claims. This stays the litigation

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ry 3

while the committee does its investigation. The objective of the investigation is to determine if the litigation has merit and is for the good of the company.

11, Reorganization transactions. The act has comprehensive provisions authorizing LLCs to merge, have interest exchanges, or convert into another type of entity and also authorizes other types of entities to merge, have interest exchanges with and convert into an LLC. In addition, the act authorizes an LLC to domesticate in another state and also authorizes a foreign LLC to domesticate in the enacting state.

I would like to provide a brief explanation of House Bill 1136. I am not going to go through any great detail in explaining all of the provisions in the new law or we would be here all week. However, if you have questions later, I will try to answer them.

Sections 1 through 18 on pages 1 through 10, and Sections 20 through 40 on pages 117 through 123, are amendments to existing North Dakota statutes to update cross-references to the new LLC act. Section 41 on page 123 repeals Chapter 10-32 of the North Dakota Century Code, which is the current LLC statute. Section 19 on pages 10 through 117 enacts the new LLC act in North Dakota.

The following is an outline of the new LLC act in Section 19.

Sections 10-32.1-01 through 10-32.1-19 [Article 1 of the ULLCA] contain general provisions, including: definitions; sections on a LLC's duration, purposes, powers, name, and agent for service of process; and key provisions concerning the role and effect of the operating agreement and the flexibility to structure the management and other rights and obligations of the governors, members and managers in a manner that fits the needs of the specific LLC.

Sections 10-32.1-20 through 10-32.1-22 [Article 2 of the ULLCA] provide for the formation of limited liability companies and for the filing of records pertaining to an LLC.

Sections 10-32.1-23 through 10-32.1-26 [Article 3 of the ULLCA] govern the relations of governors, members and managers to third parties – i.e. with non-members dealing with or affected by the limited liability company.

Sections 10-32.1-27 through 10-32.1-42 [Article 4 of the ULLCA] state the default rules for the members' relationship with the limited liability company and provides templates for board-management, member-management and manager-management.

Sections 10-32.1-43 through 10-32.1-46 [Article 5 of the ULLCA] implement the "pick your partner" principle, which is at the core of the law of unincorporated business organizations, and delimits the rights of transferees of members' distribution of interests and creditors of members seeking to enforce or foreclosure on a charging order.

Sections 10-32.1-47 through 10-32.1-49 [Article 6 of the ULLCA] state the causes and consequences of a person's dissociation as a member of a limited liability company.

Sections 10-32.1-50 through 10-32.1-54 [Article 7 of the ULLCA] delineate the causes and consequences of the dissolution of a limited liability company.

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Sections 10-32.1-55 through 10-32.1-71 [Article 10 of the ULLCA] govern organic reorganizations – mergers, interest exchanges, conversions, and domestications.

Sections 10-32.1-72 through 10-32.1-84 [Article 9 of the ULLVA] govern foreign limited liability companies.

Sections 10-32.1-85 through 10-32.1-96 relate to the powers of the Secretary of State, filing and record provisions, annual reports, involuntary termination by the Secretary of State, filing fees, forms, and other matters relating to the Secretary of State.

Sections 10-32.1-97 through 10-32.1-98 relate to actions by the Attorney General.

Sections 10-32.1-99 through 10-32.1-101 [Article 11 of the ULLCA] contain miscellaneous provisions.

Article 8 of the ULLCA, which provides for direct and derivative claims by members and for the establishment, conduct, and judicial review of special litigation committees, has not been included in House Bill 1136.

We are still reviewing House Bill 1136 to ensure that all of the provisions and cross-references are proper and that there are no typographical errors that need to be corrected. Consequently, we ask that the House Judiciary Committee defer taking action on House Bill 1136 until this review process has been completed.

Thank you.

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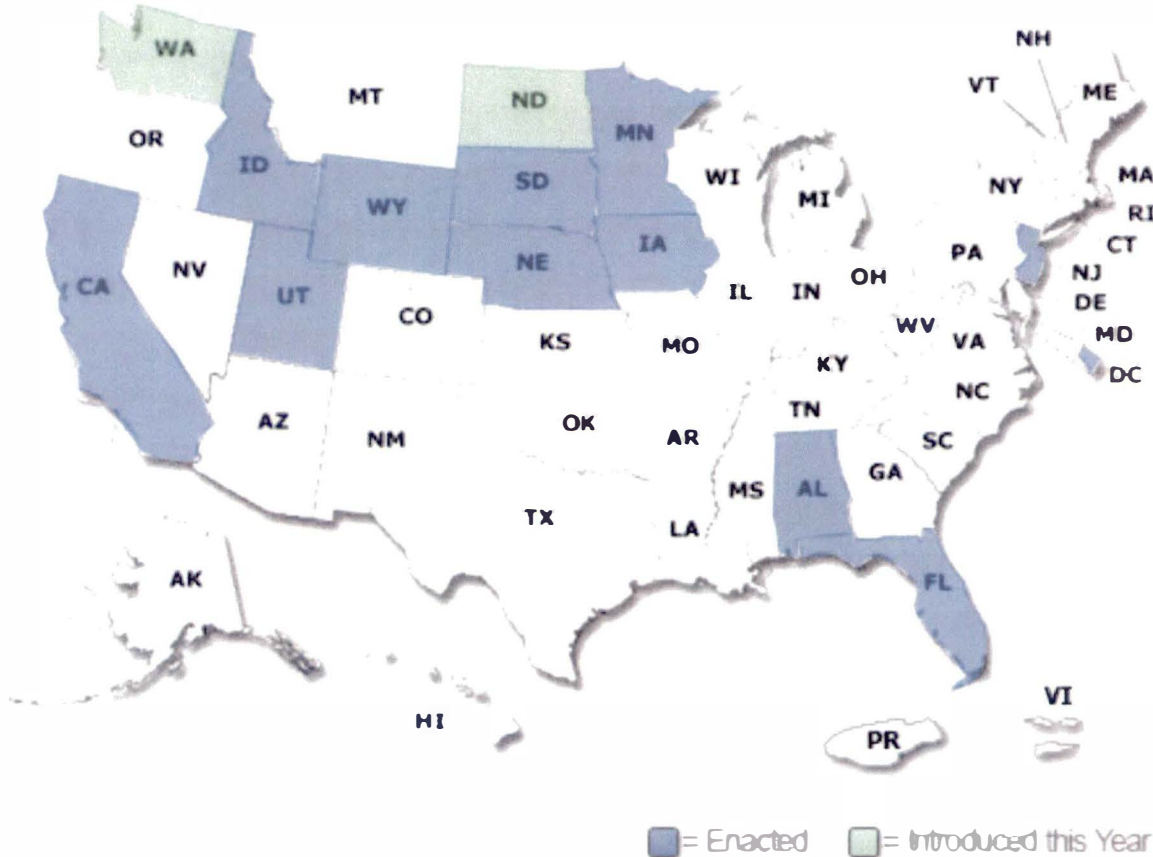
Uniform Law Commission
The National Conference of Commissioners on Uniform State Laws



Contact Us: 312.450.6600

Legislative Enactment Status

Limited Liability Company (2006) (Last Amended 2013)



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111 N. Wabash Avenue Suite 1010 Chicago, Illinois 60602

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.nd.gov/sos



SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0500

January 12, 2015

#2
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1-12-15
pg 1
PHONE (701) 328-2900
FAX (701) 328-2992
E-MAIL sos@nd.gov

TO: Rep. Koppelman, Chairman, and Members of the House Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: HB 1136 – Relating to Limited Liability Companies

As long-time members of this committee know, William L Guy III and Clara Jenkins of the Secretary of State's office have been involved for many years in the drafting of business entity legislation that has been considered by this committee and ultimately adopted by the entire legislative assembly. They were the initial drafters of Chapter 10-32 of the Century Code, the Limited Liability Company Act, when it was first adopted by the 53rd Legislative Assembly in 1993. And, they have been involved in recommending updates to the Chapter in every legislative session since then.

Since its adoption twenty-two years ago, 29,376 domestic Limited Liability Companies have filed Articles of Organization with the Secretary of State and 15,375 foreign Limited Liability Companies have obtained certificates of authority to transact business in North Dakota. As of January 9, there were 20,724 active domestic Limited Liability Companies on record with the Secretary of State, along with 9,885 active foreign Limited Liability Companies.

The Limited Liability Company business structure is very popular. During the twelve month period ending on June 30, 2013, the Secretary of State's office filed a monthly average of 362 Limited Liability Companies a month. During the same period, it filled an average of 84 new business corporations.

The Uniform Law Commission adopted the Limited Liability Company Act in 2006. According to their website, it has been adopted in twelve states with two states, North Dakota and Washington, considering the Act to date in 2015.

For the past two legislative sessions, the Uniform Act has been considered for introduction by interim committees. However, because of several concerns that resulted in the Uniform Act being amended in 2013 by the Uniform Law Commission and because the current Limited Liability Act in North Dakota was modeled after Minnesota's law, Mr. Guy and my office recommended that its introduction be delayed until Minnesota adopted the Uniform Act. They did that in 2014, with an effective date of August 1, 2015.

Since last year, Rep. Klemin, as a member of the North Dakota Uniform Law Commission, Mr. Guy, and Clara have been reviewing the Uniform Act and the Minnesota version of it and together with the Legislative Council drafted the bill that is before you today. It repeals the current Chapter 10-32 and then creates and enacts a new Chapter 10-32.1 governing Limited Liability Companies.

While this proposed legislation retains the characteristics of the Uniform Act and uses the Minnesota Act as a model, it also contains important North Dakota features. For example,

- it retains the elements of the current law adopted by prior legislative assemblies so that this new chapter remains in harmonization with all of other the business entity structures filed with the Secretary of State;
- it retains Chapter 10-36, which is the Nonprofit Limited Liability Company Act;
- it retains the administrative processes and procedures that are used in the filing of all business entity documents in the Secretary of State's office;
- and it retains the same filing fees that exist under the current Act.

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PROPOSED AMENDMENTS TO HOUSE BILL NO. 1136

On page 1, line 2, after the second "companies", insert "and to provide a penalty"

On page 6, line 11, replace "10-32.1-88" with "10-32.1-89"

On page 7, line 20, remove the overstrike on "or"

On page 7, line 21 after "~~10-32-54~~", insert "10-32.1-33,"

On page 7, line 27, remove the overstrike on "or"

On page 7, line 28, after "~~10-32-54~~", insert " section 10-32.1-33,"

On page 8, line 2, remove the overstrike on "or" and insert "section 10-32.1-33" after "~~10-32-54~~"

On page 8, line 13, remove the overstrike on "or" and insert "section 10-32.1-33" after "~~10-32-54~~"

On page 10, line 17, replace "10-32.1-19" with "10-32.1-89"

On page 11, line 2, after "amendment,", insert "a statement of correction, restated articles of organization,"

On page 11, line 5, after "conversion,", insert "articles of domestication,"

On page 11, line 5, after "authority", insert "or a statement amending or canceling a statement of authority"

On page 14, after line 29, insert "33. 'Membership interest' means one of the units, however designated, into which the proprietary interests of a member in a limited liability company is divided."

On page 14, line 30, replace "33" with "34"

On page 15, line 1, replace "34" with "35"

On page 15, line 2, replace "35" with "36"

On page 15, line 7, replace "36" with "37"

On page 16, line 10, replace "37" with "38"

On page 16, line 21, replace "38" with "39"

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On page 16, line 23, replace "39" with "40"

On page 16, line 30, replace "40" with "41"

On page 16, line 31, replace "41" with "42"

On page 17, line 9, replace "42" with "43"

On page 17, line 15, replace "43" with "44"

On page 17, line 17, replace "44" with "45"

On page 17, line 22, replace "45" with "46"

On page 17, after line 26, insert "47. 'Remote communication' means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis."

Renumber accordingly.

On page 51, line 18, replace "34" with "35"

On page 70, line 20, replace the "." with a ":", insert a line space after the period to create subsection "2.", and remove the extra spaces after "2."

On page 75, line 25, replace "37" with "38"

On page 98, line 5, insert "**Foreign limited liability company** – " after "**10-32.1-82.**"

On page 104, line 12, replace "47" with "49"

On page 104, line 27, remove "or"

On page 104, line 28, after "sixteenth.", insert "or an annual report electronically transmitted to the secretary of state with a transmission time before November sixteenth."

On page 105, remove lines 12 through 30.

Renumber lines accordingly.

On page 106, line 1, replace "7." with "5."

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.nd.gov/sos



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March 16, 2015

TO: Sen. Hogue, Chairman, and Members of the Senate Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: HB 1136 – Relating to Limited Liability Companies

As long-time members of this committee know, William L Guy III and Clara Jenkins of the Secretary of State's office have been involved for many years in the drafting of business entity legislation that has been considered by this committee and ultimately adopted by the entire legislative assembly. They were the initial drafters of Chapter 10-32 of the Century Code, the Limited Liability Company Act, when it was first adopted by the 53rd Legislative Assembly in 1993. And, they have been involved in recommending updates to the Chapter in every legislative session since then.

Since its adoption twenty-two years ago, 30,132 domestic Limited Liability Companies have filed Articles of Organization with the Secretary of State and 15,636 foreign Limited Liability Companies have obtained certificates of authority to transact business in North Dakota. As of March 13, there were 20,724 active domestic Limited Liability Companies on record with the Secretary of State, along with 9,885 active foreign Limited Liability Companies.

The Limited Liability Company business structure is very popular. During the twelve month period ending on June 30, 2013, the Secretary of State's office filed a monthly average of 362 Limited Liability Companies a month. During the same period, it filled an average of 84 new business corporations.

The Uniform Law Commission adopted the Limited Liability Company Act in 2006. According to their website, it has been adopted in twelve states with two states, North Dakota and Washington, considering the Act to date in 2015.

For the past two legislative sessions, the Uniform Act has been considered for introduction by interim committees. However, because of several concerns that resulted in the Uniform Act being amended in 2013 by the Uniform Law Commission and because the current Limited Liability Act in North Dakota was modeled after Minnesota's law, Mr. Guy and my office recommended that its introduction be delayed until Minnesota adopted the Uniform Act. They did that in 2014, with an effective date of August 1, 2015.

Since last year, Rep. Klemin, as a member of the North Dakota Uniform Law Commission, Mr. Guy, and Clara have been reviewing the Uniform Act and the Minnesota version of it and together with the Legislative Council drafted the bill that is before you today. It repeals the current Chapter 10-32 and then creates and enacts a new Chapter 10-32.1 governing Limited Liability Companies.

While this proposed legislation retains the characteristics of the Uniform Act and uses the Minnesota Act as a model, it also contains important North Dakota features. For example,

- it retains the elements of the current law adopted by prior legislative assemblies so that this new chapter remains harmonized with all other business entity structures filed with the Secretary of State;
- it retains Chapter 10-36, which is the Nonprofit Limited Liability Company Act;
- it retains the administrative processes and procedures that are used in the filing of all business entity documents in the Secretary of State's office;
- and it retains the same filing fees that exist under the current Act.

Since adoption of HB 1136 by the House Judiciary Committee, Minnesota adopted amendments to their act. Rather than wait two years to make the amendments to Chapter 10-32.1, you will find attached 5 pages of amendments for your consideration. These amendments reflect some simple text corrections and some substantive changes that will make North Dakota's LLC Act as consistent with Minnesota's as the drafting group deemed prudent. We request your favorable consideration and William L. Guy, III will be here on Wednesday, March 18th and will explain the substantive amendments to the committee when the hearing is reopened.

Clara will now provide a broad-category overview of the bill and both of us will defer any questions requiring legal interpretation until Wednesday for Mr. Guy to answer.

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1136

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Page 19, line 19, after "interest" insert " or "membership interest"

Page 21, line 23, after second "the" insert "limited liability", and after "company" insert "under chapter 10-32 at the time the limited liability company becomes subject to this chapter,"

Page 21, line 24, after "the" insert "limited liability"

Page 21, line 25, replace "21" with "35"

Page 21, line 26, after "10-32.1-15," insert "the" and after "organization," insert "and any"

Page 21, line 31, replace "." with " ; and"

Page 21, after line 31, insert:

"c. Subject to the operating agreement of the limited liability company:

- (1) The limited liability company shall keep the records specified in subdivision k of subsection 1 of section 10-32-51, at the principal executive office of the limited liability company, or at another place or places within the United States as determined under subsection 1 of section 10-32-51, before the limited liability company became subject to this chapter
- (2) For the purpose of applying paragraph (1), subsections 3 and 4 of section 10-32-56, continue to apply to the limited liability company as if those provisions had not been repealed;
- (3) Subsection 1 of section 10-32.1-30, does not apply to the limited liability company;
- (4) The profits and losses of the limited liability company are to be allocated among the members, and among classes and series of members, in proportion to the value of the contributions of the members reflected in the records required by paragraph (1);

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- (5) The voting power of each membership interest is in proportion to the value of the contributions of the members reflected in the records required by paragraph (1).
- (6) Distributions of cash or other assets of the limited liability company, including distributions on the dissolution of the limited liability company, must be allocated in proportion to the value of the contributions of the members reflected in the records required by paragraph (1);
- (7) Paragraph (1) of subsection 1 and subsections 2 and 3 of 10-32-54 and section 10-32-55 continue to apply to the limited liability company as if those provisions had not been repealed; and
- (8) For the purpose of applying paragraph (7), subsection 1 of section 10-32-40.1 continues to apply to the limited liability company as if that provision had not been repealed."

On page 22, line 14, after the "." insert "With respect to loans, guarantees and suretyship:

a. Without in any way limiting the generality of the power of a limited liability company to do all things necessary or convenient to carry on its activities, 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 pursuant to this chapter and the operating agreement of the limited liability company, and:

- (1) Is in the usual and regular course of business of the limited liability company;
- (2) Is with, or for the benefit of, a related 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, any of which relationships constitute consideration sufficient to make the loan, guarantee,

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suretyship, or other financial assistance so approved enforceable against the limited liability company;

(3) 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

(4) Whether or not any separate consideration has been paid or promised to the limited liability company, has been approved by:

(a) The owners of two-thirds of the voting power of persons other than the interested person or persons; or

(b) The unanimous affirmative vote of all members, whether or not ordinarily entitled to vote.

b. Any loan, guaranty, surety contract, or other financial assistance described in subdivision a may be with or without interest and may be unsecured or may be secured in any manner including, without limitation, a grant of a security interest in the transferable interest of a member in the limited liability company.

c. This subsection does not grant any authority to act as a bank or to carry on the business of banking."

On page 28, line 6, replace "subsection" with "subsections", and after "7" insert "and 8"

On page 28, line 12, replace the second "subsection" with "subsections", and after "7" insert "and 8"

On page 28, line 16, replace the second "subsection" with "subsections", and after "7" insert "and 8"

On page 29, line 8, replace " subsection 1" with "subsection 2"

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On page 31, line 18, remove "appoint or"

On page 38, after line 16, insert a new subsection:

"11. If a member-managed limited liability company, a manager of a manager-managed limited liability company, or a governor of a board-managed limited liability company, knows that any information in articles of organization filed with the secretary of state was inaccurate when the articles were filed, or has become inaccurate owing to changed circumstances, the member, manager or governor shall promptly:

- a. Cause the articles to be amended; or
- b. If appropriate, file with the secretary of state a change of registered agent or a change of registered office in the manner prescribed by chapter 10-01.1."

On page 43, line 6, replace "Any" with "Subject to paragraphs (1) through (4) of subdivision (c) of subsection 4 of section 10-32.1-05, any"

On page 46, line 10, after "member-managed" insert "or board-managed"

On page 46, line 14 after "member" insert ", manger"

On page 50, line 12, replace "5" with "11"

On page 54, line 25, replace "For" with "Subject to subsection 4 of section 10-32.1-05, for"

On page 54, line 26, replace "then current profits" with "distributions"

On page 54, line 27, after "company" insert "prior to dissolution"

On page 59, line 15, after "members," insert "subject to subsection 4 of section 10-32.1-05"

On page 59, line 16, remove "member's" and after "interest", insert "of the member,", and remove "then"

On page 59, line 17, replace "current profits" with "distributions" and after "company" insert "prior to dissolution"

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On page 62, line 29, replace "member-managed" with "manager-managed or board-managed"

On page 77, line 2, replace "coowns" with "co-owns"

On page 77, line 4, replace "coowning" with "co-owning"

On page 77, line 9, replace "coowning" with "co-owning"

On page 77, line 10, after "interest" insert ", or interests" and after "member" insert ", or
members."

Renumber accordingly.

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TESTIMONY OF REP. LAWRENCE R. KLEMIN

HOUSE JUDICIARY COMMITTEE

HOUSE BILL NO. 1136

JANUARY 12, 2015

Given by Clara Jenkins

Mr. Chairman and members of the House Judiciary Committee. I am Lawrence R. Klemin, Representative from District 47 in Bismarck. I am also a Commissioner serving on the Uniform Law Commission (ULC). At 123 pages, House Bill 1136 is likely to be one of the longest bills we will see in the Legislature this year. House Bill 1134 enacts the Uniform Limited Liability Company Act, which was last amended by the National Uniform Law Commission in 2013. House Bill 1136 also includes certain amendments made last year in our neighboring state, the State of Minnesota. The existing limited liability company law in North Dakota, which is being repealed by House Bill 1136, is also similar to the old Minnesota law, so we need to be consistent when we enact our new law. The Minnesota changes don't change the uniform law in any significant respect, but rather, add other provisions to it which are similar to provisions we now have in our corporate law.

I would like to thank Bill Guy, attorney in Fargo, and Clara Jenkins of the office of the North Dakota Secretary of State, for the time they spent in preparing House Bill 1136 to keep our new LLC act consistent with the Minnesota act and the existing structure of the North Dakota LLC law. Secretary of State Al Jaeger and Clara Jenkins will also be offering testimony on House Bill 1136. Bill Guy was unable to be here today.

Limited liability companies (LLCs) are a relatively new form of unincorporated business organization that provides corporate-style limited liability to its owners. LLCs began to be widely used in the late 1980s after IRS Revenue Ruling 88-76 upheld the taxation of LLCs as partnerships. Every state has enacted some sort of LLC legislation, and LLC filings in almost all states far outnumber the number of new corporate filings on an annual basis.

The list below describes some of the more significant provisions in the LLC Act:

1. The operating agreement. The operating agreement determines whether an LLC is board-managed, member-managed or manager-managed. The act also makes it clear that the operating agreement is binding on the LLC even in the case of a single member LLC and even if the LLC has taken no formal action to adopt the operating agreement.
2. LLCs may engage in any lawful purpose. An LLC is not restricted to for-profit business activities. It can have "any lawful purpose, regardless of whether for profit." This expands the availability of LLCs to activities that are not traditional businesses, such as ownership of a family vacation home and, subject to other federal and state laws, allow an organization whose activities might be classified as non-profit to select an LLC as its form of entity.
3. Internal affairs default rules. The act contains a basic set of internal affairs default rules governing the relationship of board governors, members and managers of an LLC between themselves and each other, most of which can be varied by the operating

agreement. For example, if the operating agreement is silent on the type of management structure, an LLC is member-managed by default. There are also default rules for decisions by members and managers and for other matters.

4. Flexible management structure. It is possible to have any type of management structure the LLC members want, including a corporate-style board of governors and officers. The management structure is set forth in the operating agreement.

5. Duties of governors, managers and members. The act specifies the fiduciary duty of loyalty and the duty of care for managers and clarifies the contractual status of the duty of good faith and fair dealing. These and other duties may be restricted or eliminated "if not manifestly unreasonable." The operating agreement may limit or eliminate liability of a manager to the LLC or other members for monetary damages except for breaches of the duty of loyalty, liability for improper distributions, or conduct involving bad faith, willful or intentional conduct, or knowing violation of law, limitations that are similar to those found in state corporation statutes.

6. Agency authority. The authority of governors, members and managers to bind an LLC is determined by agency law and not by status as a governor in a board-managed LLC, a member of a member-managed LLC or a manager of manager-managed LLC. Statements of authority may be filed in the office of the Secretary of State and in the case of real estate, in the office where real estate records are kept to provide notice that only certain members or managers have authority to conduct business on behalf of the LLC.

7. Charging orders. The act clarifies and simplifies the rules governing charging orders, the exclusive remedy for a creditor of a member to obtain a member's financial rights to distributions from the LLC. The act also provides the rules for foreclosing on a charging order and makes it absolutely clear that, except in the case of a single member LLC, a purchaser of a foreclosed interest only obtains the financial rights to distributions to the member and does not become a member of the LLC by virtue of the foreclosure or have any rights to participate or interfere with the management of the LLC or to demand inspection of the LLC's documents or records.

8. Distributions. The act specifies the circumstances under which distributions from an LLC can and cannot be made and contains provisions for recovery of improper distributions. The act also makes it clear that payment for reasonable compensation and for retirement plans or other benefits programs are not distributions.

9. A remedy for oppressive conduct. Reflecting case law developments around the country, the act permits a member to seek a court order "dissolving the company on the grounds that the managers or those in control of the company have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant."

10. Direct and derivative claims, special litigation committees. Under the act, a member can bring a direct action for injuries to that member and can bring a derivative action to enforce a claim of an LLC. If a derivative action is filed, the LLC may form a special litigation committee to investigate the asserted claims. This stays the litigation

while the committee does its investigation. The objective of the investigation is to determine if the litigation has merit and is for the good of the company.

11, Reorganization transactions. The act has comprehensive provisions authorizing LLCs to merge, have interest exchanges, or convert into another type of entity and also authorizes other types of entities to merge, have interest exchanges with and convert into an LLC. In addition, the act authorizes an LLC to domesticate in another state and also authorizes a foreign LLC to domesticate in the enacting state.

I would like to provide a brief explanation of House Bill 1136. I am not going to go through any great detail in explaining all of the provisions in the new law or we would be here all week. However, if you have questions later, I will try to answer them.

Sections 1 through 18 on pages 1 through 10, and Sections 20 through 40 on pages 117 through 123, are amendments to existing North Dakota statutes to update cross-references to the new LLC act. Section 41 on page 123 repeals Chapter 10-32 of the North Dakota Century Code, which is the current LLC statute. Section 19 on pages 10 through 117 enacts the new LLC act in North Dakota.

The following is an outline of the new LLC act in Section 19.

Sections 10-32.1-01 through 10-32.1-19 [Article 1 of the ULLCA] contain general provisions, including: definitions; sections on a LLC's duration, purposes, powers, name, and agent for service of process; and key provisions concerning the role and effect of the operating agreement and the flexibility to structure the management and other rights and obligations of the governors, members and managers in a manner that fits the needs of the specific LLC.

Sections 10-32.1-20 through 10-32.1-22 [Article 2 of the ULLCA] provide for the formation of limited liability companies and for the filing of records pertaining to an LLC.

Sections 10-32.1-23 through 10-32.1-26 [Article 3 of the ULLCA] govern the relations of governors, members and managers to third parties – i.e. with non-members dealing with or affected by the limited liability company.

Sections 10-32.1-27 through 10-32.1-42 [Article 4 of the ULLCA] state the default rules for the members' relationship with the limited liability company and provides templates for board-management, member-management and manager-management.

Sections 10-32.1-43 through 10-32.1-46 [Article 5 of the ULLCA] implement the "pick your partner" principle, which is at the core of the law of unincorporated business organizations, and delimits the rights of transferees of members' distribution of interests and creditors of members seeking to enforce or foreclosure on a charging order.

Sections 10-32.1-47 through 10-32.1-49 [Article 6 of the ULLCA] state the causes and consequences of a person's dissociation as a member of a limited liability company.

Sections 10-32.1-50 through 10-32.1-54 [Article 7 of the ULLCA] delineate the causes and consequences of the dissolution of a limited liability company.

Sections 10-32.1-55 through 10-32.1-71 [Article 10 of the ULLCA] govern organic reorganizations – mergers, interest exchanges, conversions, and domestications.

Sections 10-32.1-72 through 10-32.1-84 [Article 9 of the ULLVA] govern foreign limited liability companies.

Sections 10-32.1-85 through 10-32.1-96 relate to the powers of the Secretary of State, filing and record provisions, annual reports, involuntary termination by the Secretary of State, filing fees, forms, and other matters relating to the Secretary of State.

Sections 10-32.1-97 through 10-32.1-98 relate to actions by the Attorney General.

Sections 10-32.1-99 through 10-32.1-101 [Article 11 of the ULLCA] contain miscellaneous provisions.

Article 8 of the ULLCA, which provides for direct and derivative claims by members and for the establishment, conduct, and judicial review of special litigation committees, has not been included in House Bill 1136.

We are still reviewing House Bill 1136 to ensure that all of the provisions and cross-references are proper and that there are no typographical errors that need to be corrected. Consequently, we ask that the House Judiciary Committee defer taking action on House Bill 1136 until this review process has been completed.

Thank you.

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TESTIMONY OF WILLIAM L. GUY III
IN SUPPORT OF
PROPOSED AMENDMENTS TO ENGROSSED
HOUSE BILL NO. 1136
March 18, 2015

Mr. Chairman and members of the committee, I am here to summarize the highlights of the Proposed Amendments to Engrossed House Bill No. 1136.

- Page 19, line 19 and page 21, lines 23-31, are grammatical and numerical changes.
- Page 21, the insert after line 31, consists of eight paragraphs that close the loop on eight issues that may arise during the transition of existing limited liability companies (LLCs) under Chapter 10-32 as we transition to Chapter 10-32.1:

(1) Requires existing LLCs to continue to maintain the required records under Chapter 10-32.

(2) Continues the existing requirements for making contributions to an existing LLC.

(3) Subsection 1 of **section 10-32.1-30**, which sets forth the default provisions for distributions to members under Chapter 10-32.1, will not apply during the transition.

(4) Continues the existing default provisions regarding the allocation of profits and losses among members and among classes and series of members during the transition.

(5) Continues the existing default provisions regarding the allocation of voting power among membership interests during the transition.

(6) Continues the existing default provisions requiring that distributions, including distributions upon dissolution, be in proportion to the value of the contribution of the member during the transition.

(7) Subdivision a of subsection 1, subsections 2 and 3 of **section 10-32-54** and **section 10-32-55**, regarding the rights of dissenting members, continue to apply during the transition.

(8) For the purpose of applying paragraph (7) (immediately preceding this paragraph (8)), subsection 1 of **section 10-32-40.1**, regarding voting rights, continues to apply during the transition.

- On page 22, line 14, at the end of the existing language, additional language is inserted:
 - That clarifies the powers of an LLC regarding the making of loans, guarantees, and suretyships; and also,

- That makes clear that the existing language does not grant any authority to act as a bank.
- On page 28, line 6, line 12 and line 16 insert reference to an additional subsection 8.
- On page 29, line 8, is a numerical correction.
- On page 31, line 18, the words “appoint or” (are removed since they imply that a registered agent is optional).
- On page 38, after line 16, a new subsection 11 is added which requires that any information filed with the Secretary of State which is later determined to be inaccurate (or has become inaccurate) must be promptly corrected by the LLC management.
- On page 43, line 6, reference to “paragraphs (1) through (4) of subdivision c of subsection 4 of **section 10-32.1-05**” is inserted to include the application of this section to existing relationships.
- On page 46, line 10, reference to “board managed” is inserted.
- On page 46, line 14, reference to “manager” is inserted after “member”.
- On page 50, line 12, is a numerical correction.
- On page 54, line 25, inserts the words “subject to subsection 4 of **section 10-32.1-05**”, is inserted in order to include application to existing relationships.
- On page 54, line 26, the words “then profits” are replaced with the word “distributions”.
- On page 54, line 27, after the word “company”, the words “prior to dissolution” are inserted.
- On page 59, line 15, after the word “members”, the words “subject to subsection 4 of section 10-32.1-05” are inserted to include application to existing relationships.
- On page 59, line 16, is a grammatical change.
- On page 59, line 17, are two grammatical changes.
- On page 62, line 29, reference to “board managed” is included along with “member managed”.
- On page 77, lines 2, 4 and 9, are spelling corrections.
- On page 77, line 10, are grammatical corrections.

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TESTIMONY OF WILLIAM L. GUY III
NORTH DAKOTA UNIFORM LIMITED LIABILITY COMPANY ACT
DRAFTING TASKFORCE
IN SUPPORT OF
HOUSE BILL NO. 1136
March 18, 2015

Mr. Chairman and members of the committee, I am here on behalf of the taskforce which has prepared the legislation that you have before you as House Bill No. 1136. This legislation revokes in its entirety Chapter 10-32 and enacts new Chapter 10-32.1 as the North Dakota Uniform Limited Liability Company Act.

This legislation consists of the Revised Uniform Limited Liability Company Act (2006) as the substantive portions of this legislation were adopted in the State of Minnesota. The administrative provisions that guide and govern the office of the Secretary of State have, with some modifications, been carried over from Chapter 10-32. In addition, there are provisions to amend and reenact other sections of the North Dakota Century Code which will be impacted by the enactment of Chapter 10-32.1. Most of these changes will be "numerical changes."

I will now summarize the highlights of this legislation. Any "Section references" are to the sections in the legislation and not to the Chapter being amended.

1. **Sections 1-18** (pages 2-10) consist solely of numerical changes that either convert references to "Chapter 10-32" to "Chapter 10-32.1" or convert the section numbers in Chapter 10-32 to the corresponding section number in Chapter 10-32.1. No substantive changes occur in these sections.

2. **Section 19** (pages 10 - 117) creates and enacts Chapter 10-32.1.

- **10-32.1-01. Citation.** (page 10) States that this chapter may be cited as the "North Dakota Uniform Limited Liability Company Act."
- **10-32.1-02. Definitions.** (pages 10 - 19) Are for the most part, the definitions in this section are substantially similar to those in Chapter 10-32 with the following exceptions:

1. "Board managed LLC" refers to a LLC that qualifies as such under subsection 1 of Section 10-32.1-39.

2. "Governing body" means:

- a. In a member-managed LLC, its members;
- b. In a board-managed LLC, its board of governors; or
- c. In a manager-managed LLC, its managers

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3. "Governor" means a member of the Board, however designated, of a board-managed LLC.

4. "Manager" means an individual who is at least 18 years of age who under the Operating Agreement with member-managed LLC is responsible, either alone or in concert with others for performing the management functions set forth in subsection 3 of 10-32.1-39.

5. "Manager-Managed Limited Liability Company" means a LLC that qualifies as such under subsection 1 of 10-32.1-39.

6. "Member-Managed Limited Liability Company" means a LLC that is not a manager-managed LLC or a board-managed LLC.

7. With respect to "oppressive:"

a. With respect to an application brought by a member under paragraph 2 of subdivision 3 of subsection 1 of section 10-32.1-50 means conduct:

(1) engaged in by one or more:

- (a) members of a member-managed LLC;
- (b) managers of a manager-managed LLC; or
- (c) governors of a board-managed LLC.

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

- (a) a member, manager or governor of a LLC; or
- (b) an employee of a LLC with 35 or fewer members;

and

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

(a) is reasonable in light of the reasonable expectations of the other members;

(b) was material to the decision of the applicant to become a member of the LLC or for a substantial time has been material during the continuing membership of the member;

(c) was known to the other members that other members had reason to know; and

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(d) is not contrary to the Operating Agreement as applied consistently with the contractual obligation of good faith and fair dealing under subsection 4 of 10-32.1-41.

b. For purposes of subdivision a, conduct:

(1) includes words, action, inaction and a combination thereof; and

(2) is not oppressive solely by reason of a good faith disagreement as to the content and interpretation or application of the Operating Agreement of the company.

- **10-32.1-03. Legal Recognition of Electronic Records and Electronic Signatures** (pages 19 and 20). Is identical to its counterpart in Chapter 10-32.
- **10-32.1-04. Knowledge and Notice** (pages 20 and 21). Is identical to its counterpart in Chapter 10-32.
- **10-32.1-05. Application to Existing Relationships.** (page 21) Sets forth the timeline for the applicability of this new Chapter to existing LLCs and to the formation of new LLCs and provides:

1. That on and after July 1, 2015, an LLC may not be formed under current Chapter 10-32.

2. That before January 1, 2016, this Chapter governs only:

a. a LLC formed on or after July 1, 2015; and

b. except as otherwise provided in subsection 3, an LLC formed before July 1, 2015 which elects, in the manner provided in its organizational documents, to be subject to this Chapter.

3. That except as otherwise provided in subsection 4 on and after January 1, 2016 this Chapter governs all limited liability companies.

4. That for the purposes of applying this Chapter to an LLC formed before July 1, 2015:

a. language in the organizational documents of an LLC formed before July 1, 2015 that becomes subject to this Chapter will operate as if that language were in the Operating Agreement of the LLC when it becomes subject to this Chapter; and

b. subject to the Operating Agreement of the LLC:

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(1) The LLC will continue to keep the "required records" as required in 10-32-51;

(2) Section 10-32.1-30 which, unless otherwise provided in the Operating Agreement, requires equal distributions to all members does not apply to these old LLCs. Instead:

(a) Profits and losses;

(b) Voting power; and

(c) Distributions.

Shall be in proportion to the value of contributions of the members as reflected in the required records.

- **10-32.1-06. Reservation of Legislative Right.** (page 21) Makes clear that the legislature reserves the right to amend or repeal any provision of this Chapter.
- **10-32.1-07. Nature, Purpose and Duration of a Limited Liability Company.** (pages 21 and 22) Provides:
 1. that a LLC is an entity distinct from its members;
 2. that except for nonprofit limited liability companies subject to Chapter 10-36, LLC may have any lawful purpose; and
 3. that an LLC has perpetual duration unless otherwise stated in the Articles of Organization filed with the Secretary of State prior to July 1 of 2015.
- **10-32.1-08. Powers.** (page 22) Provides:
 1. That except as provided in subsection 2 a LLC has the power to do all things necessary or convenient to carry on its activities.
 2. That until an LLC has or has had at least one member, it lacks the capacity to do anything except:
 - a. file certain administrative documents with the Secretary of State;
 - b. admit a new member; and
 - c. dissolve.
 3. That an LLC that has or has had at least one member may ratify any act or activity that occurred when the company lacked that capacity.

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- **10-32.1-09. Governing Law.** (page 22) Provides that the law of this state governs internal affairs of the company and the liability of its members, managers and governors for the debts, obligations and other liabilities of the LLC.
- **10-32.1-10. Supplemental Principles of Law.** (page 22) Provides that unless otherwise provided in this Chapter, general principles of law and equity supplement this Chapter.
- **10-32.1-11. Limited Liability Company Name.** (pages 22-26). Provides the criteria governing the name of an LLC and is identical to its counterpart in Chapter 10-32.
- **10-32.1-12. Reserved Name.** (page 26). Sets forth the criteria and procedures for reserving a name and is identical to its counterpart in Chapter 10-32.
- **10-32.1-13. Operating Agreement – Scope - Function – Limitations.** (pages 26-29). Provides that the Operating Agreement is the principal organizational document (other than the Articles of Organization which are filed with the Secretary of State) which governs the operations of the LLC and combines scope, function and limitations that are currently provided for in the bylaws and member control agreement under Chapter 10-32.
- **10-32.1-14. Operating Agreement - Effect on a Limited Liability Company on Persons Becoming Members – Preformation Agreement.** (page 29) Provides:
 1. That an LLC is bound by and may enforce the Operating Agreement whether or not the LLC has itself actually agreed to the terms of the Operating Agreement.
 2. That when a person becomes a member of an LLC that person is deemed to agree to the terms of the Operating Agreement.
 3. That two or more persons who intend to become the initial members of an LLC can make an agreement in advance of its formation that will become the Operating Agreement as can a single person who intends to become the initial member of a single member LLC.
- **10-32.1-15. Operating Agreement – Effect on Third Parties and Relationship to Records Effective on behalf of a Limited Liability Company,** (pages 29, 30) Provides:
 1. That an Operating Agreement may specify that its amendment requires the approval of a third party.

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2. That the obligations of an LLC and its members to both transferees and to disassociated members are governed by the Operating Agreement.
 3. That if a record has been filed with the Secretary of State that contains a provision that would be ineffective with respect to an Operating Agreement, then that provision is also ineffective in the document that has been filed with the Secretary of State.
 4. That if a document filed with the Secretary of State conflicts with a provision of the Operating Agreement, then:
 - a. The Operating Agreement prevails as to its members, disassociated members, transferees, managers and governors; and
 - b. the filed document prevails with respect to all other persons to the extent that they reasonably rely upon the document.
- **10-32.1-16 through 10-32.1-18. Registered Office and Registered Agent.** (page 30) Are identical to their counterparts in our current statute and:
 1. Provide that every LLC is required to have both a registered office and a registered agent as set forth in Chapter 10-01.1; and
 2. Sets forth the procedures:
 - a. for changes of registered office and registered agent; and
 - b. the resignation of a registered agent.
 - **10-32.1-19. Service of Process on a Limited Liability Company, Foreign Limited Liability Company and Nonresident Managers and Governors.** (page 31)
 1. Provides:
 - a. That the registered agent is the agent of an LLC or a foreign LLC for service of any process, notice or demand which is required or permitted by law to be served on the LLC.
 - b. That if the LLC or foreign LLC does not maintain a registered agent, then that service of process may be made upon the Secretary of State.
 - c. That any service of process may be served on an LLC, a foreign LLC, manager, governor or member of a member-managed LLC may also be served on the Secretary of State.

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2. This section does not affect the right to serve process, notice or demand in any other manner provided by law.

- **10-32.1-20. Formation of a Limited Liability Company – Articles of Organization.** (pages 31 and 32) Sets forth the criteria for Articles of Organization and is substantially similar to its counterpart in our current statute.
- **10-32.1-21. Amendment or Restatement of Articles of Organization.** (pages 32-38) Sets forth the criteria for the amendment or restatement of the Articles of Organization and is substantially the same as its counterpart in our current statute.
- **10-32.1-22. Signing and Filing Pursuant to a Judicial Order.** (page 38) Provides:
 1. That if a person required to sign a document or file a document with the Secretary of State does not do so, then any aggrieved party may petition the court to order:
 - a. the person to sign the document;
 - b. the person to file the document with the Secretary of State; or
 - c. The Secretary of State to file the document unsigned.
 2. That if the petitioner under subsection 1 above is not a LLC or a foreign LLC to which the record pertains, then the petitioner shall make the company a party to the action.
- **10-32.1-23. No Agency Power of a Member as a Member.** (page 38) Provides:
 1. That a member is not an agent of the LLC solely by virtue of being a member.
 2. That the status of a person as a member does not prevent or restrict law other than this Chapter from imposing liability on the LLC because of the conduct of the person.
- **10-32.1-24. Statement of Authority.** (pages 38-40) Sets forth the procedures and criteria for filing Statements of Authority with the Secretary of State which provide legal notice of the authority or lack of authority of the LLC or its management to act or not act with regard to a particular matter.

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- **10-32.1-25. Statement of Denial.** (page 40) Provides that a person named in a filed statement of authority as holding authority may file with the Secretary of State a statement of denial that denies the grant of authority.
- **10-32.1-26. Liability of Members, Managers, and Governors.** (page 41) Provides:
 1. That the debts of the LLC, whether arising in contract, tort or otherwise:
 - a. Are solely the obligations of the LLC; and
 - b. Do not become obligations of the member, manager or governor solely by reason of that person acting in that capacity.
 2. That the failure of the LLC to observe formalities relating exclusively to the management of its internal affairs is not a ground for imposing liabilities on members, managers or governors for the obligations of the company.
 3. That except as related to the failure of the company to observe any formalities relating exclusively to the management of its internal affairs, the case law that provides for the piercing of the corporate veil of the corporation under North Dakota law also applies to limited liability companies.
- **10-32.1-27. Becoming a Member.** (pages 41 and 42) Sets forth the processes by which either a single person or multiple persons become a member or members of an LLC, and is similar to its counterpart in our current statute.
- **10-32.1-28. Form of Contribution.** (page 42) Provides that a contribution to an LLC may consist of any tangible or intangible property or other benefit to the company and is somewhat less restrictive than its Chapter 10-32 counterpart, *which prohibits future services and promissory notes.*
- **10-32.1-29. Liability for Contributions.** (page 42) Provides:
 1. That the obligation of the person make a contribution to an LLC is not excused by death, disability, or any other inability to perform.
 2. That the obligation may be enforced against the estate of the person and by a creditor who extended credit in reliance upon that obligation.

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- **10-32.1-30. Sharing of and Right to Distributions before Dissolution.** (pages 42 and 43) Provides:

1. That distributions made by an LLC prior to dissolution and winding up must in equal shares among members and dissociated members, except as necessary to comply with transfers of transferable interest and with charging orders.
2. That prior to dissolution and winding up, the member has a right to a distribution only if the LLC decides to make an interim distribution of its assets. Dissociation of a member does not entitle the dissociated member to a distribution.
3. That distributions must be in money unless the company distributes assets in kind proportionately among its members.
4. That if entitled to receive a distribution, then the member or transferee has the status of and the remedies available to a creditor in order to enforce the distribution.

- **10-32.1-31. Limitations on Distributions.** (pages 43 and 44)

1. Provides:

a. That an LLC may not make a distribution, if, after the distribution:

(1) It would be unable to pay its debts as they become due in the ordinary course of business; or,

(2) The total assets of the company would be less than its total liabilities, if the company were to be dissolved at the time of the distribution.

b. That an LLC may base a determination that the previous subsection allows the distribution based on financial statements that are prepared on the basis of accounting practices and principles or on valuations that are reasonable under the circumstances.

2. Sets forth in subsections 3, 4, 5, 6, and 7 the details that will protect creditors and claimants from distributions that would impair their right to payment.

- **10-32.1-32. Liability for Improper Distributions.** (pages 44 and 45) Provides:

1. That the management of an LLC that causes or consents to distributions that violate 10-32.1-31 (section above) are personally liable for the amount of the

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improper distribution ... unless the Operating Agreement expressly relieves certain members of the management team of the responsibility for distributions.

2. That a person who knowingly receives an improper distribution:

- a. is personally liable for the improper amount; and,
- b. may implead other responsible parties to obtain contribution to the extent of their liability.

3. That actions under this section are barred if not commenced within two years of the distribution.

- **10-32.1-33. Direct Action by a Member.** (page 45) Provides:

1. That a member may maintain a direct action against another member, a manager, a governor, or the company itself to enforce the rights of the member and otherwise protect the interests of the member.

2. That the action brought under this section must be an actual or threatened injury to the member and not an injury suffered or threatened solely by the LLC.

- **10-32.1-34. Derivative Action.** (page 45) Provides that a member may bring a derivative action to enforce a right of the LLC if the company or its management has failed to take action to enforce the right within a reasonable time.

- **10-32.1-35. Proper Plaintiff.** (pages 45 and 46) Provides that a derivative action under the preceding section may only be maintained by a person who is a member at the time the action commences and remains a member while the action continues ... unless the sole plaintiff in the action dies, in which the court may substitute another member as the plaintiff.

- **10-32.1-36. Pleading.** (page 46) Sets forth several particular matters that must be included in a derivative action.

- **10-32.1-37. Special Litigation Committee.** (pages 46 and 47) Authorizes an LLC to designate a special litigation committee to investigate the claims being asserted in a derivative action, as well as the criteria for the composition of the committee and the recommendations that it may make after completing its investigation.

- **10-32.1-38. Proceeds and Expenses.** (pages 47 and 48) Provides that any proceeds from a successful derivative action belong to the company and not to the plaintiff, but that the court may award a successful plaintiff reasonable expenses from the recovery.

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- **10-32.1-39. Management of a Limited Liability Company.** (pages 48 - 54) The default management structure under Chapter 10-32 (our current statute) is that of a “board-managed” LLC. This section sets forth the rules for LLCs that are “member-managed,” “manager-managed” or “board-managed” and provides:

1. That the default management structure under this Act is that of a “member-managed” LLC, unless the Operating Agreement provides otherwise ... in which case the LLC may either be “manager-managed” or “board-managed”.

2. That in a member-managed LLC:

a. The management of the company is vested in the members with each member having equal rights of management.

b. Any difference among the members as to the matters in the ordinary course of business is to be decided by a majority of the members.

c. Any act outside of the ordinary course of business will be undertaken only with the consent of all members.

d. The Operating Agreement may only be amended by the consent of all members.

3. That in a manager-managed LLC:

a. The activities of the company are decided exclusively by the managers, each of whom has equal rights in the management of the company.

b. Any difference among managers as to matters in the ordinary course of business will be decided by a majority of the managers.

c. The consent of all members is required:

(1) To sell, lease, exchange, or otherwise dispose of all or substantially all of the property of the company with or without goodwill outside of the ordinary course of business;

(2) Approve a merger, conversion, or domestication;

(3) Undertake any other act outside the ordinary course of business; or

(4) Amend the Operating Agreement.

d. Basically managers have the same status and authority in the new Act as in our current statute.

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4. That in a board-managed LLC:

a. The activities of the company are managed by the Board of Directors, consisting of one or more directors who are elected by a majority of the voting power of the members.

(1) The Board acts only through an act of the Board.

(2) No individual Governor has the right to act on behalf of the company; and

(3) Only officers, managers, or other agents designated by the Board have the right have the right to act for the company and only within the terms of their designation.

b. The balance of this subsection (which runs from page 49 through 54) sets forth the rules for a board-managed LLC that are substantially the same as those in our current statute.

c. Thus, if designated as a "board-managed" LLC, an LLC organized under our current statute will be able to continue on in substantially the same manner as under our current statute from a governance perspective.

- **10-32.1-40. Indemnification and Insurance.** (pages 54 - 60) Sets forth the criteria for the indemnification of those who act on behalf of the company and is substantially the same as its counterpart in our current statute.
- **10-32.1-41. Standards of Conduct for Members, Managers and Governors.** (pages 60 - 64) Is similar to its counterpart in our current statute.
- **10-32.1-42. Rights of Members, Managers, Governors and Dissociated Members to Information.** (pages 62 - 64) Is similar to its counterpart in our current statute.
- **10-32.1-43. Nature of a Transferable Interest.** (page 64) Provides that a "transferable interest" is an ownership interest in a LLC and is identical to the term "membership interest" in our current statute. As is the case in our current statute, a transferable interest is personal property.
- **10-32.1-44. Transfer of a Transferable Interest.** (pages 64 - 65) Is substantially the same as its counterpart in our current statute.

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- **10-32.1-45. Charging Order.** (pages 65 - 66) Is substantially the same as its counterpart in our current statute and provides:
 1. That the rights of a judgment creditor are limited to a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment.
 2. That the LLC is required to pay over to the judgment creditor any distribution that would have otherwise been paid to the judgment debtor.
 3. That the sole and exclusive remedy by which a person seeking to enforce a judgment against a member may satisfy the judgment from the transferable interest of the judgment debtor.
- **10-32.1-46. Power of a Personal Representative of a Deceased Member.** (page 66) Is substantially the same as its counterpart in our current statute and provides that if a member dies, then the Personal Representative of a deceased member may exercise the rights of the deceased member for purposes of settling the estate.
- **10-32.1-47. Power of Member to Dissociate - Wrongful Dissociation.** (pages 66 - 67) Provides:
 1. That a member has the power to dissociate (i.e., withdraw) as a member at any time, rightfully or wrongfully as will be discussed in the next section.
 2. That the dissociation is wrongful only if it:
 - a. Is in breach of an expressed provision of the Operating Agreement;
 - b. Occurs before the termination of the company; and
 - (1) the withdrawal is by the express will of the member;
 - (2) the member is expelled by judicial order;
 - (3) the member has become a debtor in bankruptcy; or
 - (4) the member is an entity that willfully dissolved or terminated itself.
 3. That a wrongfully dissociated member is liable to the LLC and to the other members for damages caused by the dissociation.

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- **10-32.1.48. Events Causing Dissociation.** (pages 67-69) Provides that a member is dissociated from an LLC when:
 1. The company has notice of intention of the member to withdraw;
 2. An event in the Operating Agreement causes the dissociation;
 3. The member is expelled pursuant to the Operating Agreement;
 4. The member is expelled by the unanimous consent of the other members if:
 - a. it becomes unlawful to carry on the business of the LLC with the person as a member;
 - b. there has been a transfer of all of the transferable interest of the person in the company other than transfers for security purposes or pursuant to a charging order;
 - c. the member is a corporation and
 - (1) it has filed articles of dissolution;
 - (2) its charter has been revoked;
 - (3) its right to conduct business has been suspended in its jurisdiction of incorporation;
 - (4) the articles of dissolution have not been revoked; or
 - (5) its right to conduct business has not been reinstated or
 - d. the member is an LLC or a partnership which has been dissolved and wound up.
 5. On application by the LLC, the member is expelled by judicial order because the member:
 - a. has engaged in wrongful conduct which has adversely or materially affected the activities of the company;
 - b. has willfully or persistently committed a material breach of the Operating Agreement; or
 - c. has engaged in conduct which makes it impractical to continue the business with the person as a member.
 6. In the case of a member who is an individual:

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a. the individual dies; or

b. in a member-managed LLC:

(1) a guardian or general conservator for the member is appointed; or

(2) it has been determined by judicial order that the member is incapable of performing the duties of the individual as a member.

7. In a member-managed LLC, the member:

a. becomes a debtor in bankruptcy;

b. executes an assignment for the benefit of creditors; or

c. acquiesces to the appointment of a trustee or receiver substantially all of the property of the member.

8. In the case of a member that is a trust, the entire transferable interest held by the trust is distributed.

9. In the case of an estate, the entire transferable interest of the LLC in the estate is distributed.

10. In the case of a member other than an individual, partnership, LLC, corporation, trust or estate, the member is terminated.

11. The LLC participates in a merger, if:

a. the LLC is not the surviving entity; or

b. the person otherwise ceases to be a member.

12. The LLC participates in a conversion into another entity.

13. The LLC participates in a domestication and as a result ceases to be a member.

14. The LLC terminates.

- **10-32.1-49. Effective Dissociation of a Person as a Member.** (page 69 - 70) Provides:

1. That when a member is dissociated:

a. the right to participate in the management of the company ends;

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b. if the company is member-managed, then the fiduciary duties of the member end with regard to matters arising after the dissociation; and

c. any transferable interest owned by the person immediately before the dissociation is then owned by the person solely as a transferee (i.e., and no longer as a member).

2. That dissociation does not discharge the member from any debt to the LLC or other members.

- **10-32.1-50. Events Causing Dissolution.** (page 70) Provides:

1. That an LLC is dissolved, and its activities must be wound up, upon the occurrence of:

a. an event stated to cause dissolution in the Operating Agreement;

b. the consent of all members;

c. following the admission of at least one member, the passage of 90 consecutive days during which the LLC has no members;

d. a court order dissolving the LLC on the grounds that:

(1) the conduct of substantially all of the activities of the LLC are unlawful; or

(2) it is no longer practical to continue the business of the company in conformity with the Articles of Organization and the Operating Agreement.

e. the entry of a court order dissolving the company on the grounds that the management of the company:

(1) have, are or will act in a manner that is illegal; or

(2) have or are acting in a manner that is oppressive and was, is or will be directly harmful to the member in question.

2. That the court may order remedy other than dissolution and including sale of all membership interests.

- **10-32.1-51. Winding Up.** (pages 71 and 72) Provides:

1. That a dissolved LLC shall wind up its activities and continue after dissolution only for the purpose of winding up.

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2. That during the wind up, an LLC:

a. shall discharge all of its debts, settle the activities of the company and distribute the assets of the LLC; and

b. may:

(1) file with the Secretary of State a notice of dissolution;

(2) preserve the LLC activities and property as a going concern for a reasonable time;

(3) prosecute and defend actions, whether civil, criminal or administrative;

(4) transfer the property of the LLC;

(5) settle disputes by mediation or arbitration;

(6) file with the Secretary of State articles of dissolution and termination; and

(7) perform other acts appropriate to a winding up.

3. That if the dissolved LLC has no members, then the legal representative of the last person to have been a member may wind up the activities of the LLC.

4. That if the legal representative of the last member declines or fails to wind up the activities of the LLC, then a person may be appointed to do so by the consent of the transferees owning a majority of the rights to receive distributions.

5. That a court may order a judicially supervised wind up.

- **10-32.1-52. Known Claims Against a Dissolved Limited Liability Company.** (pages 72 and 73) Sets forth the procedures by which:

1. a dissolved LLC notifies its known claimants; and

2. rejected claims against a dissolved LLC are deemed to be barred.

- **10-32.1-53. Other Claims Against a Dissolved Limited Liability Company.** (pages 73 and 74) Sets forth the procedure for publication of notice of dissolution to unknown claimants and the fact that claims not presented within 5 years of the publication (the current statute allows 3 years).

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- **10-32.1-54. Distribution of Assets in Winding Up Limited Liability Activities of the Company.** (page 74) Sets forth the priorities for the application of a dissolved LLC's assets in first discharging any creditor obligations followed by the procedure for the distribution of assets among its members.
- **10-32.1-55. Merger, Conversion, and Domestication – Definitions.** (pages 74 -76) This section is pretty much self explanatory and is substantially the same as its counterpart in the current statute.
- **10-32.1-56. Merger and Exchange.** Authorizes an LLC to merge with another organization or to engage in an exchange and details the provisions that must be in the plan of merger or exchange.
- **10-32.1-57. Action on a Plan of Merger or Exchange by a Constituent Limited Liability Company.** (page 78)
 1. Requires that a plan of merger or exchange be consented to by all members of the LLC.
 2. Sets forth the procedure for amendment or abandonment of the plan.
- **10-32.1-58. Filings Required for a Merger or Exchange – Effective Date.** (pages 78 – 80) Sets forth the criteria for preparation and filing of articles of merger or exchange and the determination of the effective date of the merger or exchange.
- **10-32.1-59. Effect of a Merger.** (pages 80-82) Provides:
 1. That the surviving organization continues or comes into existence and that all other constituent organizations cease to exist as legal entities; and
 2. That all of the assets and obligations of the disappearing entities become assets and obligations of the surviving organization.

This section is similar to its counterpart under our current statute.
- **10-32.1-60. Effect of an Exchange.** (page 82) Sets forth the criteria for an effect of exchange of membership interests and is similar to its counterpart in our current statute.
- **10-32.1-61. Conversion.** (pages 82 – 84) Identifies which entities may convert into limited liability companies and the entities into which a LLC may convert . . . the only restriction being that a LLC may not convert into a general partnership (as is provided in our current statute). The balance of this section are definitions pertaining to conversions and are substantially the same as those in our current statute.

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- **10-32.1-62. Plan of Conversion.** (page 84) Sets forth the information and documents that must be included in a plan of conversion and is similar to its counterpart in our current statute.
- **10-32.1-63. Plan Approval and Amendment.** (pages 84 and 85) Sets forth the procedure for the approval of a plan of conversion by a LLC and by a converting organization that is not a LLC and is similar to our present statute.
- **10-32.1-64. Articles of Conversion.** (pages 85 – 87) Sets forth the content required of the articles of conversion and the filing procedures in the office of the Secretary of State and is similar to its counterpart in our current statute.
- **10-32.1-65. Abandonment of a Conversion.** (pages 87 and 88) Sets forth the procedure for the abandonment of a plan of conversion and is similar to that in our current statute.
- **10-32.1-66. Effective Date of Conversion – Effect.** Sets forth the procedure for determining the effective date of conversion and the effect of conversion and is similar to its counterpart in our current statute.
- **10-32.1-67 through 10-32.1-70. Domestication.** (pages 90 and 93)
 1. Domestication is a new concept under North Dakota law. However, it is essentially the conversion of an LLC in one state into an LLC in another state with the surviving entity either being a domestic LLC under North Dakota law or a foreign LLC organized in another state.
 2. Although this is a new concept under North Dakota law, the provisions in sections 68, 69 and 70 of Chapter 10-32.1 are quite similar to their counterparts for conversion of an LLC into an entity other than another LLC.
- **10-32.1-71. Restrictions on Approval of Mergers, Exchanges, Conversions and Domestications.** (page 93) Provides:
 1. That, if the member of an entity that results after a conversion or domestication will have personal liability with respect to the new entity, then that member must approve the plan of merger, exchange, a conversion or domestication unless the Operating Agreement calls for approval of fewer than all of the members and the member has consented to that provision of the Operating Agreement.
 2. That a member is not deemed to have given consent to the prior subsection merely by consenting to a provision in the Operating Agreement that permits the Operating Agreement to be amended by fewer than all of its members.

- **10-32.1-72 through 10-32.1-84. Foreign Limited Liability Companies.** (pages 93 through 100) These sections:
 1. Govern the conduct of foreign LLCs when doing business in North Dakota; and,
 2. Are substantially the same as their counterparts in our current statute.
- **10-32.1-85 through 10-32.1-96. Secretary of State.** (pages 100 through 116) Set forth the authority of the Secretary of State to administer and enforce this chapter and are substantially the same as their counterparts in our current statute except for section 10-32.1-90 (pages 106 through 109) which is a new section that consolidates the existing provisions in several other sections and clarifies the circumstances under which the Secretary of State can involuntarily terminate a domestic LLC or revoke the certificate of authority of a foreign LLC.
- **10-32.1-97 and 10-32.1-98. Attorney General.** (pages 116 and 117) Set forth the authority of the Attorney General in the enforcement of this chapter and are substantially the same as their counterparts in our current statute.
- **10-32.1-99. Uniformity of Application and Construction.** Provides that the courts give consideration to the need to provide uniformity of the law with respect to this chapter among the states that enact it.
- **10-32.1-100. Relation to electronic signatures in global and national commerce act.** Provides that this chapter modifies, limits and supercedes the federal Electronic Signatures in Global National Commerce Act, USC, title 15, section 7001 et seq.
- **10-32.1-101. Savings Clause.** Provides that this chapter does not affect any action commenced prior to the chapter taking effect.

3. **Sections 20-41** (pages 117 through 123) consists solely of numerical changes that either convert references to “chapter 10-32)” to “chapter 10-32.1” or convert the section numbers in chapter 10-32 to the corresponding section number in chapter 10-32.1. Those substantive changes occur in the sections.

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PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1136

Page 19, line 19, after "interest" insert " or "membership interest"

Page 21, line 23, after second "the" insert "limited liability", and after "company" insert "under chapter 10-32 at the time the limited liability company becomes subject to this chapter."

Page 21, line 24, after "the" insert "limited liability"

Page 21, line 25, replace "21" with "35"

Page 21, line 26, after "10-32.1-15," insert "the" and after "organization," insert "and any"

Page 21, line 31, replace " ." with " , and"

Page 21, after line 31, insert:

"c. Subject to the operating agreement of the limited liability company:

- (1) The limited liability company shall keep the records specified in subdivision k of subsection 1 of section 10-32-51, at the principal executive office of the limited liability company, or at another place or places within the United States as determined under subsection 1 of section 10-32-51, before the limited liability company became subject to this chapter;
- (2) For the purpose of applying paragraph (1), subsections 3 and 4 of section 10-32-56, continue to apply to the limited liability company as if those provisions had not been repealed;
- (3) Subsection 1 of section 10-32.1-30, does not apply to the limited liability company;
- (4) The profits and losses of the limited liability company are to be allocated among the members, and among classes and series of members, in proportion to the value of the contributions of the members reflected in the records required by paragraph (1);

- (5) The voting power of each membership interest is in proportion to the value of the contributions of the members reflected in the records required by paragraph (1).
- (6) Distributions of cash or other assets of the limited liability company, including distributions on the dissolution of the limited liability company, must be allocated in proportion to the value of the contributions of the members reflected in the records required by paragraph (1);
- (7) Subdivision a of subsection 1 and subsections 2 and 3 of 10-32-54 and section 10-32-55 continue to apply to the limited liability company as if those provisions had not been repealed; and
- (8) For the purpose of applying paragraph (7), subsection 1 of section 10-32-40.1 continues to apply to the limited liability company as if that provision had not been repealed."

On page 22, line 14, after the ":" insert "With respect to loans, guarantees and suretyship:

- a. Without in any way limiting the generality of the power of a limited liability company to do all things necessary or convenient to carry on its activities, 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 pursuant to this chapter and the operating agreement of the limited liability company, and:
 - (1) Is in the usual and regular course of business of the limited liability company;
 - (2) Is with, or for the benefit of, a related 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, any of which relationships constitute consideration sufficient to make the loan, guarantee,

suretyship, or other financial assistance so approved enforceable against the limited liability company;

(3) 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

(4) Whether or not any separate consideration has been paid or promised to the limited liability company, has been approved by:

(a) The owners of two-thirds of the voting power of persons other than the interested person or persons; or

(b) The unanimous affirmative vote of all members, whether or not ordinarily entitled to vote.

b. Any loan, guaranty, surety contract, or other financial assistance described in subdivision a may be with or without interest and may be unsecured or may be secured in any manner including, without limitation, a grant of a security interest in the transferable interest of a member in the limited liability company.

c. This subsection does not grant any authority to act as a bank or to carry on the business of banking."

On page 28, line 6, replace "subsection" with "subsections", and after "7" insert "and 8"

On page 28, line 12, replace the second "subsection" with "subsections", and after "7" insert "and 8"

On page 28, line 16, replace the second "subsection" with "subsections", and after "7" insert "and 8"

On page 29, line 8, replace "subsection 1" with "subsection 2"

On page 31, line 18, remove "appoint or"

On page 38, after line 16, insert a new subsection:

"11. If a member-managed limited liability company, a manager of a manager-managed limited liability company, or a governor of a board-managed limited liability company, knows that any information in articles of organization filed with the secretary of state was inaccurate when the articles were filed, or has become inaccurate owing to changed circumstances, the member, manager or governor shall promptly:

- a. Cause the articles to be amended; or
- b. If appropriate, file with the secretary of state a change of registered agent or a change of registered office in the manner prescribed by chapter 10-01.1."

On page 43, line 6, replace "Any" with "Subject to paragraphs (1) through (4) of subdivision c of subsection 4 of section 10-32.1-05, any"

On page 46, line 10, after "member-managed" insert "or board-managed"

On page 46, line 14 after "member" insert ", manager"

On page 50, line 12, replace "5" with "11"

On page 54, line 25, replace "For" with "Subject to subsection 4 of section 10-32.1-05, for"

On page 54, line 26, replace "then current profits" with "distributions"

On page 54, line 27, after "company" insert "prior to dissolution"

On page 59, line 15, after "members," insert "subject to subsection 4 of section 10-32.1-05"

On page 59, line 16, remove "member's" and after "interest", insert "of the member," and remove "then"

On page 59, line 17, replace "current profits" with "distributions" and after "company" insert "prior to dissolution"

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On page 62, line 29, replace "member-managed" with "manager-managed or board-managed"

On page 77, line 2, replace "coowns" with "co-owns"

On page 77, line 4, replace "coowning" with "co-owning"

On page 77, line 9, replace "coowning" with "co-owning"

On page 77, line 10, after "interest" insert ", or interests" and after "member" insert ", or members,"

Renumber accordingly.

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3/18/15