

**FIRST ENGROSSMENT
with House Amendments**Fifty-seventh
Legislative Assembly
of North Dakota**ENGROSSED SENATE BILL NO. 2142**

Introduced by

Industry, Business and Labor Committee

(At the request of the Secretary of State)

1 A BILL for an Act to amend and reenact subsections 10 and 11 of section 10-19.1-01,
2 subsection 6 of section 10-19.1-10, subsection 2 of section 10-19.1-19, subsections 1 and 3 of
3 section 10-19.1-31, subsection 2 of section 10-19.1-51, subsection 4 of section 10-19.1-61.1,
4 subsection 3 of section 10-19.1-64, subsections 1 and 2 of section 10-19.1-83, subsections 1
5 and 3 of section 10-19.1-87, subsection 7 of section 10-19.1-91, subsections 1 and 3 of section
6 10-19.1-98, section 10-19.1-100, subsection 2 of section 10-31-13, subsection 8 of section
7 10-31-13.1, subsections 9, 15, and 29 of section 10-32-02, subsection 2 of section 10-32-07,
8 subsection 1 of section 10-32-23, subsection 4 of section 10-32-30, subsection 7 of section
9 10-32-32, subsection 2 of section 10-32-35, subsection 2 of section 10-32-42, subsection 1 of
10 section 10-32-43, sections 10-32-44 and 10-32-50, subsection 1 of section 10-32-54,
11 subsection 1 of section 10-32-59, section 10-32-62, subsection 1 of section 10-32-68,
12 subsection 1 of section 10-32-69, section 10-32-70, subsection 1 of section 10-32-76,
13 subsection 3 of section 10-32-78, subsection 4 of section 10-32-80, section 10-32-82,
14 subsection 5 of section 10-32-86, subsection 2 of section 10-32-87, subsection 1 of section
15 10-32-89, subsection 7 of section 10-32-99, subsections 1, 2, and 3 of section 10-32-102,
16 sections 10-32-104 and 10-32-109, subsections 2 and 3 of section 10-32-119, subsection 1 of
17 section 10-32-131, and subdivision t of subsection 1 of section 10-32-150 of the North Dakota
18 Century Code, relating to business corporations, professional corporations, and limited liability
19 companies.

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

21 **SECTION 1. AMENDMENT.** Subsections 10 and 11 of section 10-19.1-01 of the 1999
22 Supplement to the North Dakota Century Code are amended and reenacted as follows:

23 10. "Constituent corporation" means a ~~domestic or~~ corporation or a foreign corporation
24 that ~~is a party to a merger or an exchange;~~

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

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

11. "Constituent organization" means a corporation, foreign corporation, ~~or a domestic limited liability company,~~ or foreign limited liability company that ~~is a party to a merger or an exchange;~~

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

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

SECTION 2. AMENDMENT. Subsection 6 of section 10-19.1-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. The articles may contain other provisions not inconsistent with section 10-19.1-32 or any other provision of law relating to the management of the business or the regulation of the affairs of the corporation.

SECTION 3. AMENDMENT. Subsection 2 of section 10-19.1-19 of the North Dakota Century Code is amended and reenacted as follows:

2. A resolution approved by the affirmative vote of a majority of the directors present, or proposed by a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the shareholders of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the shareholders and voted upon at one meeting, but the same or substantially the same amendment proposed by a shareholder or shareholders need not be submitted to the shareholders or be voted upon at more than one meeting during a fifteen-month period, except that if a corporation is registered or reporting under the federal securities laws, the provisions of this sentence do not apply to the extent that these provisions are in conflict with the federal securities laws or rules adopted under those laws. The resolution may amend the articles in their entirety to restate and

supersede the original articles and all amendments to them. ~~The provisions of this subsection regarding shareholder proposed amendments do not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder govern.~~

SECTION 4. AMENDMENT. Subsections 1 and 3 of section 10-19.1-31 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management or the regulation of the affairs of the corporation not inconsistent with section 10-19.1-32 or any other provision of law or the articles.
3. Unless the articles or bylaws provide otherwise, a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote may propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board.
 - a. The resolution must set forth the provisions proposed for adoption, amendment, or repeal.
 - b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2, 3, and 4 of section 10-19.1-19, for amendment of the articles.
 - c. ~~The provisions of this subsection regarding shareholder proposed amendments shall not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules in which case the federal securities laws or rules shall govern.~~
 - d. The articles or bylaws may impose different or additional requirements for the shareholders to adopt, amend, or repeal the bylaws.

SECTION 5. AMENDMENT. Subsection 2 of section 10-19.1-51 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The contract or transaction described in subsection 1 is not void or voidable if:

- a. The contract or transaction was, and the person asserting the validity of the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;
- b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the ~~shareholders~~ holders of all outstanding shares, whether or not entitled to vote, and the contract or transaction is approved in good faith by:
 - (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors; or
 - (2) The unanimous affirmative vote of the holder of all outstanding shares, whether or not entitled to vote;
- c. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or
- d. The contract or transaction is a distribution described in subsection 1 of section 10-19.1-92 or a merger or exchange described in subsection 1 or 2 of section 10-19.1-96.

SECTION 6. AMENDMENT. Subsection 4 of section 10-19.1-61.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. Subject to the restrictions provided in subsections 2 and 3 or any restrictions in the articles that states that this subsection does not apply, a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 10-19.1-19 and 10-19.1-20. In effecting a division or combination under this subsection, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure

that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.

SECTION 7. AMENDMENT. Subsection 3 of section 10-19.1-64 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A corporation may issue rights to purchase after the terms, provisions, and conditions of the rights to purchase to be issued, including the conversion basis or the price at which securities may be purchased or subscribed for, are fixed by the board or by an officer pursuant to board authorization, subject to any restrictions in the articles.

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 10-19.1-83 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A written agreement ~~solely~~ among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subsections 2 and 3. The agreement may also include as parties persons who are neither shareholders or subscribers.
2. A written agreement ~~among persons~~ as described in subsection 1 which relates to the control of or the liquidation and dissolution of the corporation, the relations among ~~them~~ the shareholders and subscribers, or any phase of the business and affairs of the corporation, including the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders and others by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who, on the date the agreement first became effective, are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued. A written agreement as described in subsection 1 may provide for its amendment through nonunanimous means.

SECTION 9. AMENDMENT. Subsections 1 and 3 of section 10-19.1-87 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

- 1 1. A shareholder of a corporation may dissent from, and obtain payment for the fair
2 value of the shareholder's shares in the event of, any of the following corporate
3 actions:
 - 4 a. An amendment of the articles that materially and adversely affects the rights
5 or preferences of the shares of a dissenting shareholder in that it:
 - 6 (1) Alters or abolishes a preferential right of the shares;
 - 7 (2) Creates, alters, or abolishes a right in respect of the redemption of the
8 shares, including a provision respecting a sinking fund for the
9 redemption or repurchase of shares;
 - 10 (3) Alters or abolishes a preemptive right of the holder of the shares to
11 acquire shares, securities other than shares, or rights to purchase
12 shares or securities other than shares; or
 - 13 (4) Excludes or limits the right of a shareholder to vote on a matter, or to
14 accumulate votes, except as the right may be excluded or limited
15 through the authorization or issuance of securities of an existing or new
16 class or series with similar or different voting rights;
 - 17 b. A sale, lease, transfer, or other disposition of all or substantially all of the
18 property and assets of the corporation, but not including a transaction
19 permitted without shareholder approval in subsection 1 of section
20 10-19.1-104, or a disposition in dissolution described in subsection 2 of
21 section 10-19.1-109 or a disposition pursuant to an order of a court, or a
22 disposition for cash on terms requiring that all or substantially all of the net
23 proceeds of disposition be distributed to the shareholders in accordance with
24 their respective interests within one year after the date of disposition;
 - 25 c. A plan of merger to which the corporation is a party, except as provided in
26 subsection 3;
 - 27 d. A plan of exchange, whether under this chapter or under chapter 10-32, to
28 which the corporation is a ~~party~~ constituent organization as the corporation
29 whose shares will be acquired by the acquiring corporation, ~~if the shares of~~
30 ~~the shareholder are entitled to vote on the plan~~ except as provided in
31 subsection 3; or

e. Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.

3. Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the shareholders of the:

a. The surviving corporation in a merger if the shares of the shareholder are not entitled to be voted on the merger with respect to shares of the shareholders that are not entitled to be voted on the merger and are not canceled or exchanged in the merger; or

b. The corporation whose shares will be acquired by the acquiring corporation in a plan of exchange with respect to shares of the shareholders that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.

SECTION 10. AMENDMENT. Subsection 7 of section 10-19.1-91 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. All determinations whether indemnification of a person is required because the criteria provided in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:

a. By the board by a majority of a quorum, if the directors who are at the time parties to the proceeding are not counted for determining either a majority or the presence of a quorum;

b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;

c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board

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

d. If a determination is not made under subdivisions a, b, and c, by the ~~shareholders~~ affirmative vote of the shareholders required by section 10-19.1-74, other than the shareholders who are a party to the proceeding; or

e. If an adverse determination is made under subdivisions a through d, or under subsection 8, or if no determination is made under subdivisions a through d, or under subsection 8, within sixty days after:

(1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or

(2) A request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

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

SECTION 11. AMENDMENT. Subsections 1 and 3 of section 10-19.1-98 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A resolution containing the plan of merger or exchange must be approved by the governing board as required by section 10-19.1-46 or 10-32-83 of each constituent organization and must then be submitted at a regular or special meeting to the owners of each constituent organization, in the case of a plan of merger or the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of a plan of exchange. The plan of merger or exchange may require that it be submitted to the shareholders whether or not the board determines at any time after the board's initial approval of the plan that the plan is no longer advisable and recommends that the shareholders reject it. If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or

exchange under this subsection, written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders in the case of a domestic corporation and in the manner provided in section 10-32-40 in the case of a limited liability company. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.

3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series solely because the plan of merger or exchange affects a cancellation or exchange of ownership interests of the class or series if the plan of merger or exchange affects a cancellation or exchange of all ownership interests of the constituent organization of all classes and series that are outstanding immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section 10-19.1-87 or 10-32-54 in the event of the merger or exchange.

SECTION 12. AMENDMENT. Section 10-19.1-100 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-100. Merger of subsidiary into parent.

1. A parent owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary directly, or indirectly through related corporations or limited liability companies may merge the subsidiary into the parent or into any other subsidiary at least ninety percent of the outstanding ownership interests of each class and series of which is owned by the parent directly, or indirectly through related corporations or limited liability companies, without a vote of the owners of the parent or any subsidiary; or may merge the parent, or the parent and one or more subsidiaries into one of the subsidiaries under this section.

2. A resolution approved by the present directors of the parent as required by section 10-19.1-46 or of the present governors of the parent required by section 10-32-83 must set forth a plan of merger that contains:
 - a. The name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving constituent organization;
 - b. The manner and basis of converting the ownership interests of the subsidiary or subsidiaries or the parent into securities of the parent, subsidiary, or of another organization; or, in whole or in part, into money or other property;
 - c. If the parent is a constituent organization but is not the surviving constituent organization in the merger, a provision for the pro rata issuance of ownership interests of the surviving constituent organization to the owners of ownership interests of the parent on surrender of any ownership interests of the parent; and
 - d. If the surviving constituent organization is a subsidiary, a statement of any amendments to the articles of the surviving constituent organization that will be part of the merger.
3. If the parent is a constituent organization and is the surviving organization in the merger, it may change its corporate name, without a vote of its owners, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the board members of the parent present. Upon the effective date of the merger, the name of the parent must be changed.
4. If the parent is a constituent organization but is not the surviving constituent organization in a merger, the resolution is not effective unless the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98 if the parent is a domestic corporation, section 10-32-102 if the parent is a limited liability company, or in accordance with the laws of the jurisdiction under which the parent is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.

- 1 ~~4.~~ 5. A copy of the plan of merger must be mailed to each owner, other than the parent
2 and any subsidiary, of each subsidiary that is a constituent organization in the
3 merger.
- 4 ~~5.~~ 6. Articles of merger must be prepared which contain:
- 5 a. The plan of merger;
- 6 b. The number of outstanding ownership interests of each class and series of
7 the subsidiary that is a constituent organization in the merger and the number
8 of ownership interests of each class and series owned by the parent directly,
9 or indirectly through related constituent organizations;
- 10 c. The date a copy of the plan of merger was mailed to owners, other than the
11 parent or a subsidiary, of each subsidiary that is a constituent organization in
12 the merger; and
- 13 d. A statement that the plan of merger is approved by the parent under this
14 section.
- 15 ~~6.~~ 7. Within thirty days after a copy of the plan of merger is mailed to owners of each
16 subsidiary that is a constituent organization to the merger or upon waiver of the
17 mailing by the owners of all outstanding ownership interests of each subsidiary that
18 is a constituent organization to the merger, the articles of merger must be signed
19 on behalf of the parent and filed with the secretary of state, with the fees provided
20 in section 10-19.1-147.
- 21 ~~7.~~ 8. The secretary of state shall issue a certificate of merger to the surviving constituent
22 organization or the surviving constituent organization's legal representative. The
23 certificate must contain the effective date of the merger.
- 24 ~~8.~~ 9. If all of the ownership interests of one or more domestic subsidiaries that is a
25 constituent organization to a merger under this section are not owned by the
26 parent directly, or indirectly through related constituent organizations, immediately
27 before the merger, the owners of each domestic subsidiary have dissenter's rights
28 under section 10-19.1-87 or 10-32-54, without regard to subsection 3 of section
29 10-19.1-87 or subsection 2 of section 10-32-54, and under section 10-19.1-88 or
30 10-32-55. If the parent is a constituent organization but is not the surviving
31 organization in the merger, the articles of incorporation or articles of organization

of the surviving organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54, and the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, that owner of the parent has dissenter's rights as provided under section 10-19.1-87 or 10-32-54. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this section.

- 9- 10. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-19.1-97 through 10-19.1-99 instead of this section, in which case this section does not apply.

SECTION 13. AMENDMENT. Subsection 2 of section 10-31-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. With respect to a professional organization in the form of a limited liability company:
 - a. Each limited liability company organized under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter 10-32 giving the name and residence address of all managers, governors, and members of the organization ~~as of the thirtieth day of June next preceding~~ at the time of filing of the annual report.
 - b. The report must include a statement that all governors and members holding voting membership interests who practice in this state are licensed to render the same specific professional services as those for which the limited liability company was organized. This report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) Signed by the president or vice president of the limited liability company; and
 - (3) Accompanied by the filing fee prescribed in section 10-32-180.

- 1 c. A copy of the report must be filed at the same time with the regulatory board
2 that licenses the members described in the report. No filing fee may be
3 charged by the regulatory board.
- 4 d. A regulatory board issuing a license under section 10-31-01 shall issue a
5 certificate required in section 10-31-02. The certificate must be on a form
6 prescribed and furnished by the secretary of state. The regulatory board may
7 charge and collect a fee not to exceed twenty dollars per individual certified to
8 be licensed by the regulatory board.

9 **SECTION 14. AMENDMENT.** Subsection 8 of section 10-31-13.1 of the 1999
10 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 11 8. a. The provisions of chapter 45-22 applicable to foreign limited liability
12 partnerships apply to a foreign professional organization rendering
13 professional services in this state in the form of a foreign limited liability
14 partnership. Such a foreign professional organization enjoys the powers and
15 privileges and is subject to the duties, restrictions, and liabilities of other
16 foreign limited liability partnerships doing business in this state, except where
17 inconsistent with the letter and purpose of the provisions of this chapter
18 applicable to foreign professional organizations.
- 19 b. A foreign professional organization rendering professional services in this
20 state in the form of a foreign limited liability partnership shall include in its
21 registration ~~or renewal registration~~ under section 45-22-03 the following
22 information:
- 23 (1) The profession to be practiced by the foreign limited liability
24 partnership;
- 25 (2) The names and residence addresses of all partners of the limited
26 liability partnership who practice the profession in this state; and
- 27 (3) In a registration, a certificate from the regulating board of the profession
28 involved that all partners who practice the profession in this state are
29 licensed in this state to render the same professional service as those
30 for which the limited liability partnership was formed; ~~and in a renewal~~
31 ~~registration, a statement that all partners who practice the profession in~~

~~this state are licensed in this state to render the same professional
service as those for which the limited liability partnership was formed.~~

SECTION 15. AMENDMENT. Subsections 9, 15, and 29 of section 10-32-02 of the
1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

9. "Constituent organization" means a limited liability company or a domestic or
foreign corporation that ~~is a party to a merger or an exchange~~:

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

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

15. "Domestic corporation" means a corporation, other than a foreign corporation,
organized for profit and incorporated under or governed by chapter 10-19.1.

29. "Member" means a person, with or without voting rights, reflected in the required
records of a limited liability company as the owner of a membership interest in the
limited liability company.

SECTION 16. AMENDMENT. Subsection 2 of section 10-32-07 of the 1999
Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The following provisions govern a limited liability company unless modified in the
articles of organization or a member-control agreement under section 10-32-50:

a. A limited liability company has general business purposes as provided in
section 10-32-04;

b. A limited liability company has certain powers as provided in section
10-32-23;

c. The power to adopt, amend, or repeal the bylaws is vested in the board of
governors as provided in section 10-32-68;

d. A limited liability company must allow cumulative voting for governors as
provided in section 10-32-76;

e. The affirmative vote of the greater of a majority of governors present or a
majority of the minimum number of governors constituting a quorum is
required for an action of the board of governors as provided in section
10-32-83;

- 1 f. A written action by the board of governors taken without a meeting must be
- 2 signed by all governors as provided in section 10-32-84;
- 3 g. The board may accept contributions, make contribution agreements, and
- 4 make contribution allowance agreements as provided in subsection 1 of
- 5 section 10-32-56 and sections 10-32-58 and 10-32-59;
- 6 h. All membership interests are ordinary membership interests entitled to vote
- 7 and are of one class with no series as provided in subdivisions a and b of
- 8 subsection 5 of section 10-32-56;
- 9 i. All membership interests have equal rights and preferences in all matters not
- 10 otherwise provided for by the board of governors as provided in subdivision b
- 11 of subsection 5 of section 10-32-56;
- 12 j. The value of previous contributions must be restated when a new contribution
- 13 is accepted as provided in subsections 3 and 4 of section 10-32-57;
- 14 k. A member has certain preemptive rights, unless otherwise provided by the
- 15 board of governors as provided in section 10-32-37;
- 16 l. The affirmative vote of the greater of the owners of a majority of the voting
- 17 power of the membership interests present and entitled to vote at a duly held
- 18 meeting or a majority of the voting power of the membership interests with
- 19 voting rights constituting the minimum voting power needed for a quorum for
- 20 the transaction of business is required for an action of the members, except if
- 21 this chapter requires the affirmative vote of a majority of the voting power of
- 22 all membership interests entitled, to vote as provided in subsection 1 of
- 23 section 10-32-42;
- 24 m. The voting power of each membership interest is in proportion to the value
- 25 reflected in the required records of the contributions of the members as
- 26 provided in section 10-32-40.1;
- 27 n. Members share in distributions in proportion to the value reflected in the
- 28 required records of the contributions of members as provided in section
- 29 10-32-60;

- o. Members share profits and losses in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-36;
- p. A written action by the members taken without a meeting must be signed by all members as provided in section 10-32-43;
- q. Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind as provided in section 10-32-62;
- r. A member is not subject to expulsion as provided in subsection 2 of section 10-32-30;
- s. Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32;
- t. ~~Unanimous~~ For a limited liability company whose existence begins before July 1, 1999, unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109;
- u. The termination of a person's membership interest has specified consequences as provided in section 10-32-30; and
- v. Restrictions apply to the assignment of governance rights as provided in section 10-32-32.

SECTION 17. AMENDMENT. Subsection 1 of section 10-32-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles of organization. The articles may not limit the powers stated in subsection 3. A member-control agreement may limit the powers stated in subsections 4 through 24.

SECTION 18. AMENDMENT. Subsection 4 of section 10-32-30 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. If for any reason the continued membership of a member is terminated ~~and~~, then subject to the articles of organization and any member-control agreement:

- 1 a. If the termination does not result in the dissolution of the limited liability
2 company, ~~subject to the articles of organization and any member control~~
3 ~~agreement~~, the member whose membership has terminated loses all
4 governance rights and will be considered merely an assignee of the financial
5 rights owned before the termination of membership; or
6 b. If the termination does result in the dissolution of the limited liability company,
7 ~~subject to the articles of organization and any member control agreement~~, the
8 member whose continued membership has terminated retains all governance
9 rights and financial rights owned before the termination of the membership
10 and may exercise those rights through the winding up and termination of the
11 limited liability company.

12 **SECTION 19. AMENDMENT.** Subsection 7 of section 10-32-32 of the 1999
13 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 14 7. Subject to subsection 6, a member may grant a security interest in a complete
15 membership interest or governance rights without obtaining the consent required
16 by ~~this~~ subsection 2. However, a secured party may not take or assign ownership
17 of governance rights without first obtaining the consent required by ~~this~~
18 subsection 2. If a secured party has a security interest in a member's financial
19 rights and governance rights, including a security interest in a complete
20 membership interest, this subsection's requirement that the secured party obtain
21 ~~consent~~ the consents required by subsection 2 applies only to taking or assigning
22 ownership of the governance rights and does not apply to taking or assigning
23 ownership of the financial rights.

24 **SECTION 20. AMENDMENT.** Subsection 2 of section 10-32-35 of the 1999
25 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 26 2. If an event referred to in subsection 1 causes the termination of a member's
27 membership interest and the termination does not result in dissolution, then
28 subject to the articles of organization and any member-control agreement:
29 a. As provided in subsection 3 of section 10-32-30, the terminated member's
30 interest will be considered to be merely that of an assignee of the financial
31 rights owned before the termination of membership; and

- b. The rights to be exercised by the legal representative of the terminated member will be limited accordingly.

SECTION 21. AMENDMENT. Subsection 2 of section 10-32-42 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, a member-control agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests as is required pursuant to subsection 1, unless the articles of organization or a member-control agreement requires a larger proportion. Unless otherwise stated in the articles, a member-control agreement or the bylaws in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 10-32-44.

SECTION 22. AMENDMENT. Subsection 1 of section 10-32-43 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed by all of the members entitled to vote on that action. If provided by the articles or a member-control agreement ~~so provides~~, any action may be taken by written action signed by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.

SECTION 23. AMENDMENT. Section 10-32-44 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-44. Quorum of members.

1. A quorum for a meeting of members is the owners of a majority of the voting power of the membership interests entitled to vote at the meeting, unless a different proportion is provided in the articles of organization, a member-control agreement, or the bylaws.

2. Except as provided in subdivision b, a quorum is necessary for the transaction of business at a meeting of members.

a. If a quorum is not present, a meeting may be adjourned from time to time for that reason.

b. If a quorum has been present at a meeting and members have withdrawn from the meeting so that less than a quorum remains, the members still present may continue to transact business until adjournment.

SECTION 24. AMENDMENT. Section 10-32-50 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-50. Member-control agreements.

1. A member-control agreement relating to any phase or aspect of the business and affairs of a limited liability company is valid as provided in subsection 2 and enforceable as provided in subsection 3.

a. A member-control agreement valid under subsection 2 may relate to, without limitation, the:

- (1) Management of the limited liability company's business;
- (2) Declaration and payment of distributions;
- (3) Sharing of profits and losses;
- (4) Election of governors or managers;
- (5) Employment of members and others by the limited liability company;
- (6) Relations among members and persons who have signed contribution agreements, including the termination of continued membership;
- (7) Dissolution, termination, and liquidation of the limited liability company, including the continuation of the limited liability company's business through a successor organization or individual; and
- (8) Arbitration of disputes.

b. If this chapter provides that a particular result may or must be obtained through a provision in the articles of organization, other than a provision required by subsection 1 of section 10-32-07 to be contained in the articles; in the bylaws; or by an act of the board, the same result may be accomplished through a member-control agreement valid under this section or through a

1 procedure established by a member-control agreement valid under this
2 section.

3 c. A member-control agreement may:

- 4 (1) Allocate to the members authority ordinarily exercised by the board of
5 governors;
6 (2) Allocate to the board of governors authority ordinarily exercised by the
7 members; or
8 (3) Structure the governance of the limited liability company in any agreed
9 fashion and may waive, in whole or in part, a member's dissenting
10 rights under sections 10-32-54 and 10-32-55.

11 2. With respect to the validity of a member-control agreement:

12 a. A member-control agreement described in subsection 1 is valid if the
13 agreement is in writing and is signed by the persons who, on the date the
14 agreement first becomes effective, comprise:

- 15 (1) All members of the limited liability company, regardless of voting power;
16 and
17 (2) All persons who are parties to contribution agreements that on that date
18 have not yet been fully performed, regardless of whether those parties
19 will, when members, have voting power.

20 b. A member-control agreement may also include as parties persons who are
21 neither members nor parties to a contribution agreement.

22 c. A member-control agreement may provide for amendment of the
23 member-control agreement through nonunanimous means.

24 3. A member-control agreement valid under subsections 1 and 2 is enforceable by
25 and against persons who are parties to the member-control agreement and is also
26 binding upon and enforceable against persons who acquire an interest in a
27 membership interest or in a contribution agreement having knowledge of the
28 existence of the member-control agreement.

29 a. A signed original of the member-control agreement must be filed with the
30 limited liability company.

~~a.~~ b. The limited liability company shall note in the limited liability company's required records that the members' interests are governed by a member-control agreement entered into under this section.

~~b.~~ c. A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member-control agreement from the limited liability company at the company's expense.

~~5. A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member-control agreement from the limited liability company at the company's expense.~~

~~6.~~ If a member-control agreement authorized under this section takes away from any person any of the authority and responsibility that the person would otherwise possess under this chapter, the effect of the member-control agreement is also to relieve that person of liability imposed by law for acts and omissions in the possession or exercise of that authority and responsibility and to impose that liability on the person or persons possessing the authority and responsibility under the agreement.

~~7.~~ 6. This section does not apply to, limit, or restrict agreements otherwise valid, and the procedure set forth in this section is not the exclusive method of agreement among members or between the members and the limited liability company with respect to any of the matters described.

SECTION 25. AMENDMENT. Subsection 1 of section 10-32-54 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Subject to a member-control agreement under section 10-32-50, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:

a. An amendment of the articles of organization, but not an amendment to a member-control agreement, which materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:

(1) Alters or abolishes a preferential right of the membership interests;

- (2) Creates, alters, or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests;
 - (3) Alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;
 - (4) Excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;
 - (5) Changes a member's right to resign or retire; or
 - (6) Establishes or changes the conditions for or consequences of expulsion;
- b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company, but not including a transaction permitted without member approval under section 10-32-108, a disposition in dissolution described in subsection 4 of section 10-32-113, a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with ~~their~~ the member's respective membership interests within one year after the date of disposition;
- c. A plan of merger to which the limited liability company is a ~~party~~ constituent organization;
- d. A plan of exchange to which the limited liability company is a ~~party~~ constituent organization as the organization whose ownership interests will be acquired by the acquiring organization, if the membership interests being acquired are entitled to be voted on the plan; or
- e. Any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, a member-control agreement, the bylaws, or a resolution approved by the board of governors

directs that dissenting members may obtain payment for the dissenting members' membership interests.

SECTION 26. AMENDMENT. Subsection 1 of section 10-32-59 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Subject to any restrictions in the articles of organization or a member-control agreement, a limited liability company may enter into contribution allowance agreements under the terms, provisions, and conditions fixed by the board of governors or by a manager pursuant to board authorization.

SECTION 27. AMENDMENT. Section 10-32-62 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-62. Distribution in kind. Except as provided in the articles of organization or a member-control agreement, ~~a~~:

1. A member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. ~~Except as provided in the articles of organization, a~~
2. A member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent the percentage of the asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

SECTION 28. AMENDMENT. Subsection 1 of section 10-32-68 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company may have bylaws, which may be known as an operating agreement. The bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the limited liability company not inconsistent with section 10-32-69 or any other provision of law or the articles of organization. An act of the board under subsection 2 and of the members under subsection 3 will be considered part of the bylaws only if the act expressly states that it is intended to constitute or revise the bylaws.

SECTION 29. AMENDMENT. Subsection 1 of section 10-32-69 of the North Dakota Century Code is amended and reenacted as follows:

- 1 1. The business and affairs of a limited liability company are to be managed by or
- 2 under the direction of a board of governors, subject to the provisions of
- 3 subsection 2 and section 10-32-50. The first board of governors may be named in
- 4 the articles of organization or in a member-control agreement or may be elected by
- 5 the organizers pursuant to section 10-32-67 or by the members.

6 **SECTION 30. AMENDMENT.** Section 10-32-70 of the 1999 Supplement to the North
7 Dakota Century Code is amended and reenacted as follows:

8 **10-32-70. Number.** The board of governors consists of one or more governors. The
9 number of governors must be fixed by or in the manner provided in the articles of organization,
10 a member-control agreement, or the bylaws. The number of governors may be increased or,
11 subject to section 10-32-78, decreased at any time by amendment to or in the manner provided
12 in the articles, a member-control agreement, or the bylaws.

13 **SECTION 31. AMENDMENT.** Subsection 1 of section 10-32-76 of the 1999
14 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 15 1. Unless the articles of organization or a member-control agreement provides that
- 16 there is no cumulative voting, each member entitled to vote for governors has the
- 17 right to cumulate voting power in the election of governors by giving written notice
- 18 of intent to cumulate voting power to any manager of the limited liability company
- 19 before the meeting; or to the presiding manager at the meeting at which the
- 20 election is to occur at any time before the election of governors at the meeting, in
- 21 which case:
 - 22 a. The presiding manager at the meeting shall announce, before the election of
 - 23 governors, that members shall cumulate their voting power; and
 - 24 b. Each member shall cumulate that member's voting power either by casting for
 - 25 one candidate the amount of voting power equal to the number of governors
 - 26 to be elected multiplied by the voting power represented by the membership
 - 27 interests owned by that member, or by distributing all of that voting power on
 - 28 the same principle among any number of candidates.

29 **SECTION 32. AMENDMENT.** Subsection 3 of section 10-32-78 of the 1999
30 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Any one or all of the governors may be removed at any time, with or without cause, by the affirmative vote of the owners of ~~the proportion~~ a majority of the voting power of ~~the all~~ membership interests ~~of the classes or series the governor represents sufficient to elect them~~ entitled to vote at an election of governors.

a. If less than the entire board of governors is to be removed, no one of the governors may be removed if the votes cast against the governor's removal which, if then cumulatively voted at the election of the entire board of governors, or if there be classes of governors at an election of the class of governors of which the governor is a part, would be sufficient to elect the governor. ~~Whenever the members of any class are entitled to elect one or more governors by the provisions of the articles of the organization, the provisions of this section apply, in respect to the removal of a governor or governors so elected, to the vote of the members of that class and not to the vote of the members as a whole.~~

b. If a governor has been elected solely by the holders of a class or series of membership interests as stated in the articles, any member-control agreement, or the bylaws, then that governor may be removed only by the affirmative vote of the holders of a majority of the voting power of all membership interests of that class or series entitled to vote at an election of that governor.

SECTION 33. AMENDMENT. Subsection 4 of section 10-32-80 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. If the date, time, and place of a board of governors meeting are provided in the articles, a member-control agreement, or the bylaws, or announced at a previous meeting of the board of governors, notice is not required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

SECTION 34. AMENDMENT. Section 10-32-82 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-82. Quorum of governors. A majority, or a larger or smaller proportion or number provided in the articles of organization, a member-control agreement, or the bylaws, of

1 the governors currently holding office is a quorum for the transaction of business. In the
2 absence of a quorum, a majority of the governors present may adjourn a meeting from time to
3 time until a quorum is present. If a quorum is present when a duly called or held meeting is
4 convened, the governors present may continue to transact business until adjournment, even
5 though the withdrawal of a number of governors originally present leaves less than the
6 proportion or number otherwise required for a quorum.

7 **SECTION 35. AMENDMENT.** Subsection 5 of section 10-32-86 of the 1999
8 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 9 5. A governor's personal liability to the limited liability company or its members for
10 monetary damages for breach of fiduciary duty as a governor may be eliminated or
11 limited in the articles of organization or a member-control agreement. Neither the
12 articles nor a member-control agreement may eliminate or limit the liability of a
13 governor:
- 14 a. For any breach of the governor's duty of loyalty to the limited liability company
15 or its members;
 - 16 b. For acts or omissions not in good faith or that involve intentional misconduct
17 or a knowing violation of law;
 - 18 c. Under section 10-32-66;
 - 19 d. For any transaction from which the governor derived an improper personal
20 benefit; or
 - 21 e. For any act or omission occurring before the date when the provision in the
22 articles of organization or a member-control agreement eliminating or limiting
23 liability becomes effective.

24 **SECTION 36. AMENDMENT.** Subsection 2 of section 10-32-87 of the 1999
25 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 26 2. The contract or transaction described in subsection 1 is not void or voidable if:
- 27 a. The contract or transaction was, and the person asserting the validity of the
28 contract or transaction sustains the burden of establishing that the contract or
29 transaction was, fair and reasonable as to the limited liability company at the
30 time it was authorized, approved, or ratified;

- 1 b. The material facts as to the contract or transaction and as to the governor's
2 interest are fully disclosed or known to the members, whether or not entitled
3 to vote, and the contract or transaction is approved in good faith by:
- 4 (1) The owners of two-thirds of the voting power of membership interests
5 entitled to vote which are owned by persons other than the interested
6 governor; or
- 7 (2) The unanimous affirmative vote of all members, whether or not entitled
8 to vote;
- 9 c. The material facts as to the contract or transaction and as to the governor's
10 interest are fully disclosed or known to the board of governors or a committee,
11 and the board of governors or committee authorizes, approves, or ratifies the
12 contract or transaction in good faith by a majority of the board of governors or
13 committee, but the interested governor is not counted in determining the
14 presence of a quorum and may not vote; or
- 15 d. The contract or transaction is a distribution described in subsection 1 of
16 section 10-32-64 or a merger or exchange described in subsection 1 or 2 of
17 section 10-32-100.

18 **SECTION 37. AMENDMENT.** Subsection 1 of section 10-32-89 of the 1999
19 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 20 1. The president shall:
- 21 a. Have general active management for the business of the limited liability
22 company;
- 23 b. When present, preside at all meetings of the board of governors and of the
24 members;
- 25 c. See that all orders and resolutions of the board of governors are carried into
26 effect;
- 27 d. Sign and deliver in the name of the limited liability company any deeds,
28 mortgages, bonds, contracts, or other instruments pertaining to the business
29 of the limited liability company, except if the authority to sign and deliver is
30 required by law to be exercised by another person or is expressly delegated

- 1 by the articles, a member-control agreement, the bylaws, or the board of
2 governors to some other manager or agent of the limited liability company;
3 e. Maintain records of and, whenever necessary, certify all proceedings of the
4 board of governors and members; and
5 f. Perform other duties prescribed by the board of governors.

6 **SECTION 38. AMENDMENT.** Subsection 7 of section 10-32-99 of the 1999
7 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 8 7. All indemnification determinations must be made:
9 a. By the board of governors by a majority of a quorum. Governors who are, at
10 the time, parties to the proceeding are not counted for determining either a
11 majority or the presence of a quorum;
12 b. If a quorum under subdivision a cannot be obtained, by a majority of a
13 committee of the board of governors, consisting solely of two or more
14 governors not at the time parties to the proceeding, duly designated to act in
15 the matter by a majority of the full board of governors including governors
16 who are parties;
17 c. If a determination is not made under subdivision a or b, by special legal
18 counsel, selected either by a majority of the board of governors or a
19 committee by vote pursuant to subdivision a or b or, if the requisite quorum of
20 the full board of governors cannot be obtained and the committee cannot be
21 established, by a majority of the full board of governors including governors
22 who are parties;
23 d. If a determination is not made under subdivisions a through c, by the
24 affirmative vote of the members required by section 10-32-42, other than the
25 members who are a party to the proceeding; or
26 e. If an adverse determination is made under subdivisions a through d or under
27 subsection 8, or if no determination is made under subdivisions a through d or
28 under subsection 8 within sixty days after the later to occur of the termination
29 of a proceeding; or a written request for indemnification to the limited liability
30 company; or a written request for an advance of expenses, as the case may
31 be, by a court in this state, which may be the same court in which the

proceeding involving the person's liability took place, upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

SECTION 39. AMENDMENT. Subsections 1, 2, and 3 of section 10-32-102 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A resolution containing the plan of merger or exchange must be approved by the governing board as required by section 10-19.1-46 or 10-32-83 of each constituent organization and must then be submitted at a regular or special meeting to the owners of each constituent organization in the case of a plan of merger; and the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of an exchange. The plan of merger or exchange may require that it be submitted to the owners whether or not the governing board determines at any time after the governing board's initial approval of the plan that the plan is no longer advisable and recommends that the owners reject it. If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange pursuant to this subsection, written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders in the case of a domestic corporation and in the manner provided in section 10-32-40 for notice of meetings of members in the case of a limited liability company. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.
2. At the meeting a vote of the owners must be taken on the proposed plan. The plan of merger is adopted when approved by the affirmative vote of the owners as required by section 10-19.1-74 or 10-32-42. Except as provided in subsection 3 or a member-control agreement, a class or series of ownership interests of the

constituent organization is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles of organization or a member-control agreement, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series solely because the plan of merger or exchange effects a cancellation or exchange of the ownership interests of the class or series if the plan of merger or exchange effects a cancellation or exchange of all ownership interests of the constituent organization of all classes and series that are existing immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section 10-19.1-87 or 10-32-55, as the case may be, in the event of the merger or exchange.

SECTION 40. AMENDMENT. Section 10-32-104 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-104. Merger of subsidiary into parent.

1. A parent owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary directly, or indirectly through related corporations or limited liability companies:
 - a. May merge the subsidiary into the parent; or may merge the subsidiary into any other subsidiary at least ninety percent of the outstanding ownership interest of each class and series of which is owned by the parent directly, or indirectly through related corporations or limited liability companies, without a vote of the owners of the parent or any subsidiary; or
 - b. May merge the parent, or the parent and one or more subsidiaries, into one of the subsidiaries under this section.
2. A resolution approved by the directors of the parent as required by section 10-19.1-46 or by the governors of the parent present as required by section 10-32-83 must set forth a plan of merger which contains:

- 1 a. The name of the subsidiary or subsidiaries, the name of the parent, and the
- 2 name of the surviving constituent organization;
- 3 b. The manner and basis of converting the ownership interests of the subsidiary
- 4 into ownership interests of the parent or of another organization or, in whole
- 5 or in part, into money or other property;
- 6 c. If the parent is a constituent organization but is not the surviving constituent
- 7 organization in the merger, a provision for the pro rata issuance of ownership
- 8 interests of the surviving constituent organization to the owners of ownership
- 9 interests of the parent on surrender of any ownership interests of the parent;
- 10 and
- 11 d. If the surviving constituent organization is a subsidiary, a statement of any
- 12 amendments to the articles of the surviving constituent organization that will
- 13 be part of the merger.
- 14 3. If the parent is a constituent organization and is the surviving organization in the
- 15 merger, it may change its limited liability company name, without a vote of its
- 16 owners, by the inclusion of a provision to that effect in the resolution of merger
- 17 setting forth the plan of merger that is approved by the affirmative vote of the board
- 18 members of the parent present. Upon the effective date of the merger, the name
- 19 of the parent must be changed.
- 20 4. If the parent is a constituent organization but is not the surviving constituent
- 21 organization in a merger, the resolution is not effective unless the resolution is also
- 22 approved by the affirmative vote of the holders of a majority of the voting power of
- 23 all ownership interests of the parent entitled to vote at a regular or special meeting
- 24 held in accordance with section 10-19.1-98 if the parent is a corporation, section
- 25 10-32-102 if the parent is a limited liability company, or in accordance with the laws
- 26 of the jurisdiction under which the parent is incorporated or organized if the parent
- 27 is a foreign corporation or foreign limited liability company.
- 28 ~~4.~~ 5. A copy of the plan of merger must be mailed to each owner, other than the parent,
- 29 of each subsidiary that is a constituent organization to the merger.
- 30 ~~5.~~ 6. Articles of merger must be prepared which contain:
- 31 a. The plan of merger;

- 1 b. The number of outstanding ownership interests of each class and series of
2 the subsidiary that is a constituent organization and the number of ownership
3 interests of each class and series owned by the parent directly or indirectly,
4 through related constituent organizations;
- 5 c. The date a copy of the plan of merger was mailed to the owners, other than
6 the parent, of each subsidiary that is a constituent organization in the merger;
7 and
- 8 d. A statement that the plan of merger has been approved by the parent under
9 this section.

10 ~~6.~~ 7. Within thirty days after a copy of the plan of merger is mailed to the owners of each
11 subsidiary that is a constituent organization to the merger, or upon waiver of the
12 mailing by the owners of all outstanding ownership interests of each subsidiary that
13 is a constituent organization to the merger, the articles of merger must be signed
14 on behalf of the parent and filed with the secretary of state, together with the fees
15 provided in section 10-32-150.

16 ~~7.~~ 8. The secretary of state shall issue a certificate of merger to the surviving constituent
17 organization in the merger or the surviving constituent organization's legal
18 representative. The certificate must contain the effective date of merger.

19 ~~8.~~ 9. If all of the ownership interests of one or more domestic subsidiaries that are a
20 constituent organization to a merger under this section are not owned by the
21 parent directly, or indirectly through related constituent organizations, immediately
22 before the merger, the owners of each domestic subsidiary have dissenter's rights
23 under section 10-19.1-87 or under section 10-32-54, without regard to
24 subsection 3 of section 10-19.1-88 or to subsection 2 of section 10-32-54, and
25 under section 10-19.1-88 or 10-32-55. If the parent is a constituent organization
26 but is not the surviving constituent organization in the merger, and the articles of
27 incorporation or articles of organization of the surviving constituent organization
28 immediately after the merger differ from the articles of incorporation or articles of
29 organization of the parent immediately before the merger in a manner that would
30 entitle an owner of the parent to dissenter's rights under subsection 1 of section
31 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54 if the articles

of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, that owner of the parent has dissenter's rights as provided under section 10-19.1-87 or under section 10-32-54. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this section.

- 9- 10. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-32-101 through 10-32-103 instead of this section, in which case this section does not apply.

SECTION 41. AMENDMENT. Section 10-32-109 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-109. Methods of dissolution.

1. A limited liability company dissolves upon the occurrence of any of the following events:
 - a. When the period, if any, fixed in the articles of organization for the duration of the limited liability company expires;
 - b. By order of a court pursuant to sections 10-32-119 and 10-32-122;
 - c. By action of the organizers pursuant to section 10-32-110;
 - d. By action of the members pursuant to section 10-32-111;
 - e. For a limited liability company with articles of organization filed with the secretary of state:
 - (1) Before July 1, 1999, ~~except as provided in subsection 2 and~~ except as otherwise provided in the articles of organization or a member-control agreement, upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, including but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member:
 - (a) ~~Death of any~~ If there is at least one remaining member and the existence and business of the limited liability company is continued by the consent of all the remaining members obtained

- 1 no later than ninety days after the termination of the continued
2 membership; or
- 3 (b) ~~Retirement of any~~ If the membership of the last or sole member;
4 (c) ~~Resignation of any member;~~
5 (d) ~~Redemption of a member's complete membership interest;~~
6 (e) ~~Assignment of a member's governance rights under section~~
7 ~~10-32-32 which leaves the assignor with no governance rights;~~
8 (f) ~~A buyout of a member's membership interest under section~~
9 ~~10-32-119 which leaves that member with no governance rights;~~
10 (g) ~~Expulsion of any member;~~
11 (h) ~~Bankruptcy of any member;~~
12 (i) ~~Dissolution of any member; or~~
13 (j) ~~The occurrence of any other event that terminates the continued~~
14 ~~membership of a member in the limited liability company; or~~
15 terminates and the legal representative of that last or sole
16 member causes the limited liability company to admit at least one
17 member.
- 18 (2) After June 30, 1999, upon the occurrence of an event terminating the
19 continued membership of a member in the limited liability company:
- 20 (a) If the articles of organization or a member-control agreement
21 specifically provide that the termination causes dissolution and in
22 that event only as provided in the articles or member-control
23 agreement; or
- 24 (b) If the membership of the last or sole member terminates and the
25 legal representative of that last or sole member does not cause
26 the limited liability company to admit at least one member within
27 one hundred eighty days after the termination;
- 28 f. A merger in which the limited liability company is not the surviving
29 organization; or
- 30 g. When terminated by the secretary of state pursuant to section 10-32-149.

- 1 2. ~~For a limited liability company with articles of organization filed with the secretary~~
2 ~~of state before July 1, 1999, the limited liability company is not dissolved and is not~~
3 ~~required to be wound up by reason of any event terminating the continued~~
4 ~~membership of a member:~~
- 5 a. ~~If there is at least one remaining member and the existence and business of~~
6 ~~the limited liability company is continued by the consent of every remaining~~
7 ~~member obtained no later than ninety days after the termination of the~~
8 ~~continued membership, or under a separate right to continue stated in the~~
9 ~~articles of organization or a member control agreement; or~~
- 10 b. ~~If the membership of the last or sole member terminates and the legal~~
11 ~~representative of that last or sole member causes the limited liability company~~
12 ~~to admit at least one member within one hundred eighty days after the~~
13 ~~termination.~~
- 14 3. A limited liability company dissolved by one of the dissolution events specified in
15 subsection 1 must be wound up and terminated under the following dissolution
16 provisions:
- 17 a. When a limited liability company is dissolved under subdivision a of
18 subsection 1 by reason of the expiration of the limited liability company's
19 limited period of duration, the limited liability company must be wound up and
20 terminated under sections 10-32-112 through 10-32-115 and sections
21 10-32-117, 10-32-118, and 10-32-131;
- 22 b. When a limited liability company is dissolved under subdivision b of
23 subsection 1 by reason of a court order, the limited liability company must be
24 wound up and terminated under sections 10-32-119 through 10-32-126;
- 25 c. When a limited liability company is dissolved under subdivision c of
26 subsection 1 by its organizers, the limited liability company must be wound up
27 and terminated under section 10-32-110 and sections 10-32-112 through
28 10-32-118;
- 29 d. When a limited liability company is dissolved under subdivision d of
30 subsection 1 by its members, the limited liability company must be wound up

and terminated under sections 10-32-111 through 10-32-118 and section 10-32-131; and

- e. When a limited liability company is dissolved under subdivision e of subsection 1 by reason of a termination of the continued membership of a member, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131.

- ~~4.~~ 3. Notwithstanding any provision of law, articles of organization, member-control agreement, bylaws, other agreement, resolution, or action to the contrary, a limited liability company is not dissolved and is not required to be wound up upon the granting of a security interest in a member's membership interest, governance rights, or financial rights, or upon the foreclosure or other enforcement of a security interest in a member's financial rights or upon the secured party's assignment, acceptance, or retention of a member's financial rights in accordance with title 41.

SECTION 42. AMENDMENT. Subsections 2 and 3 of section 10-32-119 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. ~~In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the financial condition of the limited liability company but may not refuse to order any particular form of relief solely on the grounds that the limited liability company has accumulated or current operating profits. In an action under subdivision b of subsection 1 in which one or more of the circumstances described in that subdivision is established, a court, upon motion of a limited liability company or a member, may order the sale by a plaintiff or a defendant of all membership interests of the limited liability company held by the plaintiff or defendant to the limited liability company or the moving members, whichever is specified in the motion, if the court determines in the court's discretion that an order is fair and equitable to all parties under all of the circumstances of the case.~~
- a. The purchase price of any membership interest sold under this subsection is the fair value of the membership interest as of the date of the commencement of the action or as of another date found equitable by the court. If the articles

1 of organization, a member-control agreement, or another agreement state a
2 price for the redemption or buyout of membership interests, the court shall
3 order the sale for the price and on the terms set forth, unless the court
4 determines that the price or terms are unreasonable under all the
5 circumstances of the case.

6 b. Within five days after entry of the order, the limited liability company shall
7 provide each selling member with the information the limited liability company
8 is required to provide under subsection 6 of section 10-32-55.

9 c. If the parties are unable to agree on fair value within forty days of entry of the
10 order, the court shall determine the fair value of the membership interests
11 under the provisions of subsection 9 of section 10-32-55, may allow interest
12 or costs as provided in subsections 1 and 10 of section 10-32-55, and may
13 allocate payment among the member whose membership interest is being
14 sold and any assignees of the financial rights of that member.

15 d. The purchase price must be paid in one or more installments as agreed on by
16 the parties or, if no agreement can be reached within forty days of entry of the
17 order, as ordered by the court upon entry of an order for the sale of a
18 membership interest under this subsection and provided the limited liability
19 company or the moving members post a bond in adequate amount with
20 sufficient sureties or otherwise satisfy the court that any full purchase price of
21 the membership interest, plus the additional costs, expenses, and fees
22 awarded by the court, will be paid when due and payable, the selling member
23 no longer has any rights or status as a member, manager, or governor,
24 except the right to receive the fair value of the membership interest plus other
25 amounts as might be awarded.

26 3. ~~In an action under subdivision b of subsection 1 in which one or more of the~~
27 ~~circumstances described in that subdivision is established, a court, upon motion of~~
28 ~~a limited liability company or a member, may order the sale by a plaintiff or a~~
29 ~~defendant of all membership interests of the limited liability company held by the~~
30 ~~plaintiff or defendant to the limited liability company or the moving members,~~
31 ~~whichever is specified in the motion, if the court determines in the court's discretion~~

1 ~~that an order is fair and equitable to all parties under all of the circumstances of the~~
2 ~~case.~~

3 ~~a. The purchase price of any membership interest sold under this subsection is~~
4 ~~the fair value of the membership interest as of the date of the commencement~~
5 ~~of the action or as of another date found equitable by the court. If the articles~~
6 ~~of organization, a member control agreement, or another agreement state a~~
7 ~~price for the redemption or buyout of membership interests, the court shall~~
8 ~~order the sale for the price and on the terms set forth, unless the court~~
9 ~~determines that the price or terms are unreasonable under all the~~
10 ~~circumstances of the case.~~

11 ~~b. Within five days after entry of the order, the limited liability company shall~~
12 ~~provide each selling member with the information the limited liability company~~
13 ~~is required to provide under subsection 6 of section 10-32-55.~~

14 ~~c. If the parties are unable to agree on fair value within forty days of entry of the~~
15 ~~order, the court shall determine the fair value of the membership interests~~
16 ~~under the provisions of subsection 9 of section 10-32-55, may allow interest~~
17 ~~or costs as provided in subsections 1 and 10 of section 10-32-55, and may~~
18 ~~allocate payment among the member whose membership interest is being~~
19 ~~sold and any assignees of the financial rights of that member.~~

20 ~~d. The purchase price must be paid in one or more installments as agreed on by~~
21 ~~the parties or, if no agreement can be reached within forty days of entry of the~~
22 ~~order, as ordered by the court upon entry of an order for the sale of a~~
23 ~~membership interest under this subsection and provided the limited liability~~
24 ~~company or the moving members post a bond in adequate amount with~~
25 ~~sufficient sureties or otherwise satisfy the court that any full purchase price of~~
26 ~~the membership interest, plus the additional costs, expenses, and fees~~
27 ~~awarded by the court, will be paid when due and payable, the selling member~~
28 ~~no longer has any rights or status as a member, manager, or governor,~~
29 ~~except the right to receive the fair value of the membership interest plus other~~
30 ~~amounts as might be awarded. In determining whether to order relief under~~
31 ~~this section and in determining what particular relief to order, the court shall~~

1 take into consideration the financial condition of the limited liability company
2 but may not refuse to order any particular form of relief solely on the grounds
3 that the limited liability company has accumulated or current operating profits.

4 **SECTION 43. AMENDMENT.** Subsection 1 of section 10-32-131 of the 1999
5 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 6 1. Subject to subsection 2, except when the dissolved limited liability company is
7 being wound up and terminated under subsection 3 of section 10-32-112, the
8 assets of the dissolved limited liability company must be disposed of to satisfy
9 liabilities according to the following priorities:
- 10 a. To creditors, including members who are creditors, to the extent otherwise
11 permitted by law, in satisfaction of liabilities of the limited liability company
12 other than liabilities for interim distributions to members under section
13 10-32-61 or termination distributions under section 10-32-60;
- 14 b. Unless otherwise provided in the articles of organization or a member-control
15 agreement, to members and former members of the limited liability company
16 in satisfaction of liabilities for distributions under section 10-32-60 or
17 10-32-61; and
- 18 c. Unless otherwise provided in the articles of organization or a member-control
19 agreement, to members first for a return of their contributions, as restated
20 from time to time under section 10-32-57, and secondly respecting the
21 member's membership interests in the proportions in which the members
22 share in distributions.

23 **SECTION 44. AMENDMENT.** Subdivision t of subsection 1 of section 10-32-150 of the
24 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 25 t. Filing a certificate of fact stating a merger of a foreign limited liability company
26 holding a certificate of authority to transact business in this state, ~~twenty~~ fifty
27 dollars.