

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

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ROLL NUMBER

DESCRIPTION

1362

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Deanna Halliwell
Operator's Signature

10/3/03
Date

2003 HOUSE JUDICIARY

HB 1362

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Deanna Halliwell
Operator's Signature

10/3/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1362

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-10-03

Tape Number	Side A	Side B	Meter #
1	xx		0-end
1		xx	0-9.3
Committee Clerk Signature <i>D. Penion</i>			

Minutes: 13 members present.

Chairman DeKrey: We will open the hearing on HB 1362.

Al Jaeger, Secretary of State: Introduced the bill.

William L. Guy, III, Chairman, ND Business Entity Drafting Task Force: Support (see attached testimony, tape 1, side a, # 4.6-43).

Rep. Klemin: In a number of places, there are references to registered mail, I understand that to mean either registered or certified mail. Registered mail has a dollar value, certified mail - you get a receipt to show that it's been mailed.

Mr. Jaeger: We attempted to get that changed, but there was a lot of opposition. So it was left the same, but registered mail means certified mail.

Rep. Klemin: On pg. 142, service on the Secretary of State by registered mail or personal delivery, but then the Secretary of State shall forward by certified mail to the limited partnership

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D. Penion
Operator's Signature

10/3/03
Date

Page 2
House Judiciary Committee
Bill/Resolution Number HB 1362
Hearing Date 2-10-03

a copy of the process. How come it doesn't say that the Secretary of State is going to send by registered mail.

Mr. Jaeger: I will defer to Clara Jenkins.

Clara Jenkins: Actually the change was asked by the Attorney General.

Rep. Klemin: I have a question in regard to exempt records vs. confidential records. There are references to the Secretary of State deleting the social security numbers and tax ID numbers. Has this been dealt with in another bills, the records being confidential rather than exempt.

Mr. Jaeger: I guess I am not sure of the other places where it might be, but I know the bills are working through in our office.

Rep. Klemin: On page 125, section 106, regarding the fees to the attorney general, he is entitled to not only attorney's fees but also to investigation fees, costs, and expenses of any investigation and action brought by the attorney general, but the other side is only entitled to attorney's fees. They have costs just like the attorney general, why are they not entitled to recover the same costs. Why is it much more broader for the attorney general than the other side.

Mr. Guy: Court may grant equitable relief, which could include the costs as talked about by the attorney general as well. There is a disparity in the language.

Rep. Klemin: I know that the terms of costs and disbursements are specifically defined in other sections and chapter relating to costs and disbursements.

Mr. Guy: No, but it does say that the court may award such other costs.

Rep. Klemin: It seems to me that investigation fees and expenses of any investigation could be substantial. It is appropriate to include fees on line 10 or take out on line 11. I don't remember

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Page 3
House Judiciary Committee
Bill/Resolution Number HB 1362
Hearing Date 2-10-03

any other place where it talks about civil action, where parties can't be awarded investigation fees. Is this an expansion.

Mr. Guy: It does appear to me to be an expansion as well. I don't know if it would be better to add it to all parties or to delete it for the attorney general.

Mr. Jaeger: We could certainly follow up with the attorney general's office.

Rep. Grande: I'm not real familiar with the non-profit corporate act, you talk about changing the term hearing, and going from doing business to conducting activities, and I can't find a definition of activities. Is this defined somewhere?

Mr. Guy: We alternately referred to transacting business or conducting activities. Conducting activities on page 103 is definition of activities. Activities is equivalent of business.

Rep. Kretschmar: Are the substantive provisions of the bill based on the laws of some other states.

Mr. Guy: The changes that we have made parallel to identical changes in the statutes in the state of North Dakota, and they in turn are largely based on model acts, but are generally more comprehensive.

Rep. Kretschmar: Will any provisions in the bill require a currently operating corporation to LLC, etc. to force them to do something under the new laws, require them to do something they don't want to.

Mr. Guy: Corporations don't have to do anything, but if want to do business with remote communications, for example, they will have to adopt the changes in their by-laws.

Chairman DeKrey: Thank you.

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Page 4
House Judiciary Committee
Bill/Resolution Number HB 1362
Hearing Date 2-10-03

Clara Jenkins, Business Division Director, Secretary of State's office: (see testimony and proposed amendments) Support.

Rep. Onstad: Regarding the fees, were they based on time that is required to process.

Ms. Jenkins: The fees have been in place for many years, part of it was relative to time, research required to maintain permanent records and also in comparison to fees charged by other states.

Rep. Grande: My question for Mr. Guy was for a definition of activities, and now you just deleted that. So where are we going to bring new life to that.

Ms. Jenkins: If a term in the statute is not defined, it goes by the definition found in the dictionary. There was an issue raised with our definition of activities, because they felt that someone might misconstrue that to mean that the non-profit corporation can do anything that a business corporation can do. That is not the impression we wanted to leave.

Rep. Krestchmar: I am a member of the board of a non-profit corporation, a hospital; we engage in business just like the for-profits. Will this prevent a non-profit corporation from engaging in business activities which are normal to their operation.

Ms. Jenkins: There is a section in the non-profit act, that gives them the powers they need.

Chairman DeKrey: Thank you. Any further testimony in support.

Christine Hogan, Exec. Dir., State Bar Association of ND: Support this bill and we want to thank Mr. Guy for all his hard work.

Chairman DeKrey: Thank you. Any further testimony in support of HB 1362, opposition? We will close the hearing.

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Deanna Hall Smith
Operator's Signature

10/3/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1362

House Judiciary Committee

☐ Conference Committee

Hearing Date 2-11-03

Tape Number	Side A	Side B	Meter #
3	xx		37.9-43.6
Committee Clerk Signature <i>Al Penrose</i>			

Minutes: 13 members present.

Chairman DeKrey: What are the committee's wishes in regard to HB 1362.

Rep. Grande: I move the Secretary of State's amendments.

Rep. Delmore: Seconded.

Voice vote: Carried.

Rep. Klemin: I move the Klemin's amendments.

Rep. Wrangham: Seconded.

Voice vote: Carried.

Rep. Maragos: I move a Do Pass as amended.

Rep. De'more: Seconded.

13 YES 0 NO 0 ABSENT DO PASS AS AMENDED CARRIER: Rep. DeKrey

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Deanna Hall
Operator's Signature

10/3/03
Date

38272.0101
Title.0200

Adopted by the Judiciary Committee
February 11, 2003

VK
2/13/03
1063

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 1, line 14, after the first comma insert "subsection 10 of section 10-31-01,"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 2, line 27, after the first comma insert "professional corporations,"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 34, line 5, replace "of" with "or"

Page 34, after line 10, insert:

"SECTION 23. AMENDMENT. Subsection 10 of section 10-31-01 of the North Dakota Century Code is amended and reenacted as follows:

10. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which ~~before the passage of this chapter could not be performed by a corporation, limited liability company, or a limited liability partnership~~ requires as a condition of licensure an undergraduate or advanced college degree in the specific field.

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 103, line 7, remove "Activity" or "activities" means, in a corporation organized under this chapter, the

Page 103, remove lines 8 and 9

Page 103, line 10, remove "2."

Page 103, line 15, remove the overstrike over "2." and remove "3."

Page 103, line 26, remove the overstrike over "3." and remove "4."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 104, line 4, replace "5." with "4."

Page 104, line 5, replace "6." with "5."

Page 104, line 6, replace "7." with "6."

Page 104, line 8, replace "8." with "7."

Page 104, line 10, replace "9." with "8."

Page 104, line 11, replace "10." with "9."

Page 104, line 13, replace "11." with "10."

Page 104, line 15, replace "12." with "11."

Page No. 1

38272.0101

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Operator's Signature

10/3/03
Date

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03
Page 104, line 21, replace "13." with "12."

Page 104, line 23, replace "14." with "13."

Page 104, line 26, replace "15." with "14."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 105, line 12, replace "16." with "15."

Page 105, line 15, replace "17." with "16."

Page 105, line 18, replace "18." with "17."

Page 105, line 19, replace "19." with "18."

Page 105, line 28, replace "20." with "19."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 106, line 1, replace "21." with "20."

Page 106, line 4, replace "22." with "21."

Page 106, line 8, replace "23." with "22."

Page 106, line 10, replace "24." with "23."

Page 106, line 12, replace "25." with "24."

Page 106, line 16, replace "26." with "25."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 107, line 31, replace "27." with "26."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 108, line 4, replace "28." with "27."

Page 108, line 9, replace "29." with "28."

Page 108, line 14, replace "30." with "29."

Page 108, line 16, replace "31." with "30."

Page 108, line 18, replace "32." with "31."

Page 108, line 28, replace "33." with "32."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03

Page 109, line 1, replace "34." with "33."

Page 109, line 19, replace "35." with "34."

Page 109, line 28, replace "36." with "35."

Page 109, line 30, replace "37." with "36."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03 3083
Page 109, line 31, replace "38." with "37."

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03
Page 126, line 4, replace "26" with "25"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03
Page 131, line 15, replace "34" with "33"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03
Page 141, line 9, after "corporation" insert "or limited liability company" and overstrike "corporate"

Page 141, line 12, after "incorporation" insert ", articles of organization,"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03
Page 145, line 24, replace "dissolution" with "termination"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03
Page 147, line 8, replace "All" with "Except for annual reports, all"
Page 147, line 25, replace "managing" with "general"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03
Page 149, line 16, replace the second "of" with "or"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03
Page 150, line 10, remove "liability"

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2/13/03
Page 162, line 24, after "notice" insert "to"
Renumber accordingly

Date: 2/11/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1362

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38272.0101 . 0200

Action Taken Do Pass As Amended

Motion Made By Rep. Maragos Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	✓		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. DeKrey

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

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Dennis Hall
Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
February 13, 2003 11:11 a.m.

Module No: HR-28-2564
Carrier: DeKrey
Insert LC: 38272.0101 Title: .0200

REPORT OF STANDING COMMITTEE

HB 1362: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1362 was placed on the Sixth order on the calendar.

Page 1, line 14, after the first comma insert "subsection 10 of section 10-31-01,"

Page 2, line 27, after the first comma insert "professional corporations,"

Page 34, line 5, replace "of" with "or"

Page 34, after line 10, Insert:

"SECTION 23. AMENDMENT. Subsection 10 of section 10-31-01 of the North Dakota Century Code is amended and reenacted as follows:

10. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which ~~before the passage of this chapter could not be performed by a corporation, limited liability company, or a limited liability partnership~~ requires as a condition of licensure an undergraduate or advanced college degree in the specific field."

Page 103, line 7, remove "Activity" or "activities" means. In a corporation organized under this chapter, the"

Page 103, remove lines 8 and 9

Page 103, line 10, remove "2."

Page 103, line 15, remove the overstrike over "2." and remove "3."

Page 103, line 26, remove the overstrike over "3." and remove "4."

Page 104, line 4, replace "5." with "4."

Page 104, line 5, replace "6." with "5."

Page 104, line 6, replace "7." with "6."

Page 104, line 8, replace "8." with "7."

Page 104, line 10, replace "9." with "8."

Page 104, line 11, replace "10." with "9."

Page 104, line 13, replace "11." with "10."

Page 104, line 15, replace "12." with "11."

Page 104, line 21, replace "13." with "12."

Page 104, line 23, replace "14." with "13."

Page 104, line 26, replace "15." with "14."

REPORT OF STANDING COMMITTEE (410)
February 13, 2003 11:11 a.m.

Module No: HR-28-2564
Carrier: DeKrey
Insert LC: 38272.0101 Title: .0200

Page 105, line 12, replace "16." with "15."
Page 105, line 15, replace "17." with "16."
Page 105, line 18, replace "18." with "17."
Page 105, line 19, replace "19." with "18."
Page 105, line 28, replace "20." with "19."
Page 106, line 1, replace "21." with "20."
Page 106, line 4, replace "22." with "21."
Page 106, line 8, replace "23." with "22."
Page 106, line 10, replace "24." with "23."
Page 106, line 12, replace "25." with "24."
Page 106, line 16, replace "26." with "25."
Page 107, line 31, replace "27." with "26."
Page 108, line 4, replace "28." with "27."
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Page 108, line 14, replace "30." with "29."
Page 108, line 16, replace "31." with "30."
Page 108, line 18, replace "32." with "31."
Page 108, line 28, replace "33." with "32."
Page 109, line 1, replace "34." with "33."
Page 109, line 19, replace "35." with "34."
Page 109, line 28, replace "36." with "35."
Page 109, line 30, replace "37." with "36."
Page 109, line 31, replace "38." with "37."
Page 126, line 4, replace "26." with "25."
Page 131, line 15, replace "34." with "33."
Page 141, line 9, after "corporation" Insert "or limited liability company" and overstrike
"corporate"
Page 141, line 12, after "Incorporation" Insert ", articles of organization."
Page 145, line 24, replace "dissolution" with "termination"

(2) DESK, (3) COMM

Page No. 2

HR-28-2564

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Donna M. Hall
Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
February 13, 2003 11:11 a.m.

Module No: HR-28-2564
Carrier: DeKrey
Insert LC: 38272.0101 Title: .0200

Page 147, line 8, replace "All" with "Except for annual reports, all"

Page 147, line 25, replace "managing" with "general"

Page 149, line 16, replace the second "of" with "or"

Page 150, line 10, remove "liability"

Page 162, line 24, after "notice" insert "to"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 3

HR-28-2564

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Operator's Signature

10/3/03
Date

38272.0102
Title.0300

Adopted by the Judiciary Committee
February 11, 2003

VR
2/17/03
1083

HOUSE AMENDMENTS TO HOUSE BILL NO. 1362 JUD 2-17-03

Page 1, line 14, after the first comma insert "subsection 10 of section 10-31-01,"

HOUSE AMENDMENTS TO HB 1362 JUD 2-17-03

Page 2, line 27, after the first comma insert "professional corporations,"

HOUSE AMENDMENTS TO HB 1362 JUD 2-17-03

Page 34, line 5, replace "of" with "or"

Page 34, after line 10, insert:

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HOUSE AMENDMENTS TO HB 1362 JUD 2-17-03

Page 103, line 7, remove "Activity" or "activities" means, in a corporation organized under this chapter, the"

Page 103, remove lines 8 and 9

Page 103, line 10, remove "2."

Page 103, line 15, remove the overstrike over "2." and remove "3."

Page 103, line 26, remove the overstrike over "3." and remove "4."

HOUSE AMENDMENTS TO HB1362 JUD 2-17-03

Page 104, line 4, replace "5." with "4."

Page 104, line 5, replace "6." with "5."

Page 104, line 6, replace "7." with "6."

Page 104, line 8, replace "8." with "7."

Page 104, line 10, replace "9." with "8."

Page 104, line 11, replace "10." with "9."

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Page No. 1

38272.0102

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Deanna Hall
Operator's Signature

10/3/03
Date

HOUSE AMENDMENTS TO HB1362 JUD 2-17-03 2063

Page 104, line 21, replace "13." with "12."

Page 104, line 23, replace "14." with "13."

Page 104, line 28, replace "15." with "14."

HOUSE AMENDMENTS TO HB 1362 JUD 2-17-03

Page 105, line 12, replace "16." with "15."

Page 105, line 15, replace "17." with "16."

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HOUSE AMENDMENTS TO HB 1362 JUD 2-17-03

Page 106, line 1, replace "21." with "20."

Page 106, line 4, replace "22." with "21."

Page 106, line 8, replace "23." with "22."

Page 106, line 10, replace "24." with "23."

Page 106, line 12, replace "25." with "24."

Page 106, line 16, replace "26." with "25."

HOUSE AMENDMENTS TO HB 1362 JUD 2-17-03

Page 107, line 31, replace "27." with "26."

HOUSE AMENDMENTS TO HB 1362 JUD 2-17-03

Page 108, line 4, replace "28." with "27."

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HOUSE AMENDMENTS TO HB 1362 2-17-03

Page 109, line 1, replace "34." with "33."

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Page No. 2

38272.0102

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Operator's Signature

10/3/03
Date

HOUSE AMENDMENTS TO HB 1362 2-17-03 JUD 2-17-03 303
Page 109, line 31, replace "38," with "37."

HOUSE AMENDMENTS TO HB 1362 2-17-03 JUD
Page 125, line 10, replace ", and the attorney general is entitled to an award of" with ". The court may award the attorney general"

HOUSE AMENDMENTS TO HB 1362 2-17-03 JUD
Page 126, line 4, replace "26" with "25"

HOUSE AMENDMENTS TO HB 1362 2-17-03 JUD
Page 131, line 15, replace "34" with "33"

HOUSE AMENDMENTS TO HB 1362 JUD 2-17-03
Page 141, line 9, after "corporation" insert "or limited liability company" and overstrike "corporate"

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HOUSE AMENDMENTS TO HB 1362 JUD 2-17-03
Page 145, line 24, replace "dissolution" with "termination"

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Page 147, line 8, replace "All" with "Except for annual reports, all"
Page 147, line 25, replace "managing" with "general"

HOUSE AMENDMENTS TO HB 1362 JUD 2-17-03
Page 149, line 16, replace the second "of" with "or"

HOUSE AMENDMENTS TO HB 1362 JUD 2-17-03
Page 150, line 10, remove "liability"

HOUSE AMENDMENTS TO HB1362 JUD 2-17-03
Page 162, line 24, after "notice" insert "to"
Renumber accordingly

Date: 2/11/03
Roll Call Vote #: 1

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1362

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38272.0102 .0300

Action Taken DP as Am

Motion Made By Marag Seconded By Del

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Rep. Delmore	✓	
Vice Chairman Maragos	✓		Rep. Eckre	✓	
Rep. Bernstein	✓		Rep. Onstad	✓	
Rep. Boehning	✓				
Rep. Galvin	✓				
Rep. Grande	✓				
Rep. Kingsbury	✓				
Rep. Klemin	✓				
Rep. Kretschmar	✓				
Rep. Wrangham	✓				

Total (Yes) 13 No 0

Absent 0

Floor Assignment DeKrey

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

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Deanna Hallmark
Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
February 17, 2003 3:29 p.m.

Module No: HR-30-2968
Carrier: DeKrey
Insert LC: 38272.0102 Title: .0300

REPORT OF STANDING COMMITTEE

HB 1362: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1362 was placed on the Sixth order on the calendar.

Page 1, line 14, after the first comma insert "subsection 10 of section 10-31-01,"

Page 2, line 27, after the first comma insert "professional corporations,"

Page 34, line 5, replace "of" with "or"

Page 34, after line 10, insert:

"SECTION 23. AMENDMENT. Subsection 10 of section 10-31-01 of the North Dakota Century Code is amended and reenacted as follows:

10. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which ~~before the passage of this chapter could not be performed by a corporation, limited liability company, or a limited liability partnership~~ requires as a condition of licensure an undergraduate or advanced college degree in the specific field."

Page 103, line 7, remove "Activity" or "activities" means, in a corporation organized under this chapter, the

Page 103, remove lines 8 and 9

Page 103, line 10, remove "2."

Page 103, line 15, remove the overstrike over "2." and remove "3."

Page 103, line 26, remove the overstrike over "3." and remove "4."

Page 104, line 4, replace "5." with "4."

Page 104, line 5, replace "6." with "5."

Page 104, line 6, replace "7." with "6."

Page 104, line 8, replace "8." with "7."

Page 104, line 10, replace "9." with "8."

Page 104, line 11, replace "10." with "9."

Page 104, line 13, replace "11." with "10."

Page 104, line 15, replace "12." with "11."

Page 104, line 21, replace "13." with "12."

Page 104, line 23, replace "14." with "13."

Page 104, line 26, replace "15." with "14."

(2) DESK, (3) COMM

Page No. 1

HR-30-2968

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Donna Hall
Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
February 17, 2003 3:29 p.m.

Module No: HR-30-2968
Carrier: DeKrey
Insert LC: 38272.0102 Title: .0300

Page 105, line 12, replace "16." with "15."
Page 105, line 15, replace "17." with "16."
Page 105, line 18, replace "18." with "17."
Page 105, line 19, replace "19." with "18."
Page 105, line 28, replace "20." with "19."
Page 106, line 1, replace "21." with "20."
Page 106, line 4, replace "22." with "21."
Page 106, line 8, replace "23." with "22."
Page 106, line 10, replace "24." with "23."
Page 106, line 12, replace "25." with "24."
Page 106, line 16, replace "26." with "25."
Page 107, line 31, replace "27." with "26."
Page 108, line 4, replace "28." with "27."
Page 108, line 9, replace "29." with "28."
Page 108, line 14, replace "30." with "29."
Page 108, line 16, replace "31." with "30."
Page 108, line 18, replace "32." with "31."
Page 108, line 28, replace "33." with "32."
Page 109, line 1, replace "34." with "33."
Page 109, line 19, replace "35." with "34."
Page 109, line 28, replace "36." with "35."
Page 109, line 30, replace "37." with "36."
Page 109, line 31, replace "38." with "37."
Page 125, line 10, replace ", and the attorney general is entitled to an award of" with ". The court may award the attorney general"
Page 126, line 4, replace "26" with "25"
Page 131, line 15, replace "34" with "33"
Page 141, line 9, after "corporation" Insert "or limited liability company" and overstrike "corporate"
Page 141, line 12, after "incorporation" Insert ", articles of organization."

(2) DESK, (3) COMM

Page No. 2

HR-30-2968

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Deanna Hallworth
Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
February 17, 2003 3:29 p.m.

Module No: HR-30-2968
Carrier: DeKrey
Insert LC: 38272.0102 Title: .0300

- Page 145, line 24, replace "dissolution" with "termination"
Page 147, line 8, replace "All" with "Except for annual reports, all"
Page 147, line 25, replace "managing" with "general"
Page 149, line 16, replace the second "of" with "or"
Page 150, line 10, remove "liability"
Page 162, line 24, after "notice" insert "to"
Renumber accordingly

(2) DESK, (3) COMM

Page No. 3

HR-30-2968

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Deanna Hall Smith
Operator's Signature

10/3/03
Date

2003 SENATE JUDICIARY

HB 1362

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Operator's Signature

10/3/03
Date

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1362

Senate Judiciary Committee

☐ Conference Committee

Hearing Date 03/10/03

Tape Number	Side A	Side B	Meter #
1	X		0.0 - 43.9
Committee Clerk Signature <i>Maria L Solberg</i>			

Minutes: **Senator John T. Traynor, Chairman**, called the meeting to order. Roll call was taken and all committee members present. Sen. Traynor requested meeting starts with testimony on the bill:

Testimony Support of HB 1362

William L. Guy III, Chairman ND Business Entity Drafting Task Force undertaking the drafting of housekeeping and technical legislation (meter 0.3) Read Testimony - Attachment #1

Senator John T. Traynor, Chairman asked (meter 31.4) when using the word "remote" communications what are they referring to? They are referring to electronic devices communication done simultaneously; i.e. conference call, Internet, Interactive TV

Discussion of increasing or decreasing outstanding shares with out shareholder approval is this a new concept on page 5 of your testimony, this is in regards to section 5. This pertains to open end management companies. I believe that these are mutual funds, this would not apply to general corporation. You allow share holders to cast a vote by authenticated electronic

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Operator's Signature

10/3/03
Date

Page 2
Senate Judiciary Committee
Bill/Resolution Number HB 1362
Hearing Date 03/10/03

communications discussion of proxy. discussion (meter 34.4) of safeguards. Sen. Traynor also discussed CEO (Chief Executive Officer) to PEO (Principle Executive Officer) change.

Sen. Trenbeath questioned section 134. 45-10.1-71 Audit requirement. Why is this here and why is it specifically limited to limited partnerships receiving those subsidies? (meter 34) This provision is in each of the other chapters of business corporation, LLC all have this similar positions and this was left out of this part. We are now including it.

Senator Carolyn Nelson discussed in detail how online proxy voting works (meter 36.9)

Clara Jenkins, Director, Business Division, on behalf of Al Jaeger, Secretary of State (meter 38)

Submitted Amendments - Attachment #2.

Christine Hoegan - State Bar Association (meter 41) We are in Support of this bill

Testimony in opposition of HB 1362

None

Testimony Neutral to HB 1362

Dana Brandberg - Against antitrust Corporation (meter 42) Discussed his own personnel situation.

Motion Made to DO PASS Amendment on HB 1362 Senator Carolyn Nelson and seconded by Senator Dennis Bercier.

Roll Call Vote: 6 Yes. 0 No. 0 Absent

Motion Passed

Motion Made to DO PASS HB 1362 as Amendment by Senator Carolyn Nelson and seconded by Senator Stanley W. Lyson, Vice Chairman.

Roll Call Vote: 6 Yes. 0 No. 0 Absent

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Dennis Bercier
Operator's Signature

10/3/03
Date

Page 3
Senate Judiciary Committee
Bill/Resolution Number HB 1362
Hearing Date 03/10/03

Floor Assignment: Senator Carolyn Nelson

Senator John T. Traynor, Chairman closed the hearing

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Deanna Halliwell
Operator's Signature

10/3/03
Date

38272.0301
Title.0400

Adopted by the Judiciary Committee
March 10, 2003

903
3-12-03
1043

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1362

Page 1, line 2, after the fifth comma insert "45-10.1-01.2"

Page 33, line 8, remove the underscored colon

Page 33, line 9, remove "(1) An" and overstrike "original and two" and insert immediately thereafter ":

(1) Three"

Page 34, line 11, replace "Exempt" with "Confidential" and replace "of" with "or"

Page 34, line 13, replace "an exempt record as defined by subsection 5 of section" with "confidential"

Page 34, line 14, remove "44-04-17.1" and remove "take reasonable precautions to"

Page 34, line 15, remove "the secretary of state determines to"

Page 34, line 16, remove "be a closed record"

Page 102, line 22, remove the underscored colon

Page 102, line 23, remove "(1) An" and overstrike "original and two" and insert immediately thereafter ":

(1) Three"

Page 103, line 13, replace "Exempt" with "Confidential"

Page 103, line 15, replace "an exempt record as defined by subsection 5 of section" with "confidential"

Page 103, line 16, remove "44-04-17.1" and remove "take reasonable precautions to"

Page 103, line 17, remove "the secretary of state determines to"

Page 103, line 18, remove "be a closed record"

Page 130, line 15, remove the underscored colon

Page 130, line 16, remove "(1) An" and overstrike "original and two" and insert immediately thereafter ":

(1) Three"

Page No. 1

38272.0301

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Deanna Hall
Operator's Signature

10/3/03
Date

2 of 3

Page 132, line 5, replace "Exempt" with "Confidential"

Page 132, line 7, replace "an exempt record as defined by subsection 5 of section" with "confidential"

Page 132, line 8, remove "44-04-17.1" and remove "take reasonable precautions to"

Page 132, line 9, remove "the secretary of state determines to"

Page 132, line 10, remove "be a closed record"

Page 138, after line 10, insert:

"SECTION 119. Section 45-10.1-01.2 of the North Dakota Century Code is created and enacted as follows:

45-10.1-01.2. Applicability of chapters 45-12 through 45-21.

1. In any case not provided for in this chapter, chapters 45-12 through 45-21 govern.
2. If applying chapters 45-12 through 45-21 to a limited partnership, all references in chapters 45-12 through 45-21 to a "partnership" refer to a "limited partnership".
3. If any provision of this chapter conflicts with chapters 45-12 through 45-21, the provision of this chapter takes precedence."

Page 142, line 31, replace "An original and two" with "Three"

Page 150, line 6, replace "Exempt" with "Confidential"

Page 150, line 8, replace "an exempt record as defined by subsection 5 of section" with "confidential"

Page 150, line 9, remove "44-04-17.1" and remove "take reasonable precautions to"

Page 150, line 10, remove "the secretary of state determines to"

Page 150, line 11, remove "be a closed record"

Page 175, line 7, remove the underscored colon

Page 175, line 8, remove "(1) An" and overstrike "original and two" and insert immediately thereafter ":

(1) Three"

3 of 3

Page 182, line 1, replace "Exempt" with "Confidential"

Page 182, line 3, replace "an exempt record as defined by subsection 5 of section" with "confidential"

Page 182, line 4, remove "44-04-17.1" and remove "take reasonable precautions to"

Page 182, line 5, remove "the secretary of state determines to"

Page 182, line 6, remove "be a closed record"

Renumber accordingly

Page No. 3

38272.0301

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Dennis Halliwell
Operator's Signature

10/3/03
Date

Date: March 10, 2003
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1362

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38272.3010

Action Taken DO PASS AMENDMENT

Motion Made By Sen. Nelson Seconded By Sen. Bercier

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) SIX (6) No ZERO (0)

Absent ZERO (0)

Floor Assignment _____

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

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Dennis Bercier
Operator's Signature

10/3/03
Date

Date: March 10, 2003
Roll Call Vote #: 2

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1362

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 38272.3010

Action Taken DO PASS Engrossed Bill as Amended

Motion Made By Sen. Nelson Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	X	
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) SIX (6) No ZERO (0)

Absent ZERO (0)

Floor Assignment Sen. Nelson

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

The micrographic images on this film are accurate reproductions of records delivered to Modern Information Systems for microfilming and were filmed in the regular course of business. The photographic process meets standards of the American National Standards Institute (ANSI) for archival microfilm. NOTICE: If the filmed image above is less legible than this Notice, it is due to the quality of the document being filmed.

Dennis Bercier
Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
March 12, 2003 1:27 p.m.

Module No: SR-44-4572
Carrier: Nelson
Insert LC: 38272.0301 Title: .0400

REPORT OF STANDING COMMITTEE

HB 1362, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1362 was placed on the Sixth order on the calendar.

Page 1, line 2, after the fifth comma insert "45-10.1-01.2"

Page 33, line 8, remove the underscored colon

Page 33, line 9, remove "(1) An" and overstrike "original and two" and insert immediately thereafter ":

(1) Three"

Page 34, line 11, replace "Exempt" with "Confidential" and replace "of" with "or"

Page 34, line 13, replace "an exempt record as defined by subsection 5 of section" with "confidential"

Page 34, line 14, remove "44-04-17.1" and remove "take reasonable precautions to"

Page 34, line 15, remove "the secretary of state determines to"

Page 34, line 16, remove "be a closed record"

Page 102, line 22, remove the underscored colon

Page 102, line 23, remove "(1) An" and overstrike "original and two" and insert immediately thereafter ":

(1) Three"

Page 103, line 13, replace "Exempt" with "Confidential"

Page 103, line 15, replace "an exempt record as defined by subsection 5 of section" with "confidential"

Page 103, line 16, remove "44-04-17.1" and remove "take reasonable precautions to"

Page 103, line 17, remove "the secretary of state determines to"

Page 103, line 18, remove "be a closed record"

Page 130, line 15, remove the underscored colon

Page 130, line 16, remove "(1) An" and overstrike "original and two" and insert immediately thereafter ":

(1) Three"

Page 132, line 5, replace "Exempt" with "Confidential"

Page 132, line 7, replace "an exempt record as defined by subsection 5 of section" with "confidential"

Page 132, line 8, remove "44-04-17.1" and remove "take reasonable precautions to"

(2) DESK, (3) COMM

Page No. 1

SR-44-4572

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Operator's Signature

10/3/03
Date

REPORT OF STANDING COMMITTEE (410)
March 12, 2003 1:27 p.m.

Module No: SR-44-4572
Carrier: Nelson
Insert LC: 38272.0301 Title: .0400

Page 132, line 9, remove "the secretary of state determines to"

Page 132, line 10, remove "be a closed record"

Page 138, after line 10, insert:

"**SECTION 119.** Section 45-10.1-01.2 of the North Dakota Century Code is created and enacted as follows:

45-10.1-01.2. Applicability of chapters 45-12 through 45-21.

1. In any case not provided for in this chapter, chapters 45-12 through 45-21 govern.
2. If applying chapters 45-12 through 45-21 to a limited partnership, all references in chapters 45-12 through 45-21 to a "partnership" refer to a "limited partnership".
3. If any provision of this chapter conflicts with chapters 45-12 through 45-21, the provision of this chapter takes precedence.

Page 142, line 31, replace "An original and two" with "Three"

Page 150, line 6, replace "Exempt" with "Confidential"

Page 150, line 8, replace "an exempt record as defined by subsection 5 of section" with "confidential"

Page 150, line 9, remove "44-04-17.1" and remove "take reasonable precautions to"

Page 150, line 10, remove "the secretary of state determines to"

Page 150, line 11, remove "be a closed record"

Page 175, line 7, remove the underscored colon

Page 175, line 8, remove "(1) An" and overstrike "original and two" and insert immediately thereafter ":

(1) Three"

Page 182, line 1, replace "Exempt" with "Confidential"

Page 182, line 3, replace "an exempt record as defined by subsection 5 of section" with "confidential"

Page 182, line 4, remove "44-04-17.1" and remove "take reasonable precautions to"

Page 182, line 5, remove "the secretary of state determines to"

Page 182, line 6, remove "be a closed record"

Renumber accordingly

2003 TESTIMONY

HB 1362

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Operator's Signature

10/3/03
Date

ALVIN A. JAEGER
SECRETARY OF STATE

HOME PAGE www.state.nd.us/aec



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

PHONE (701) 328-2900
FAX (701) 328-2992

E-MAIL soa@state.nd.us

February 10, 2003

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

FR: Clara Jenkins, Director, Business Division on behalf of Al Jaeger, Secretary of State

RE: HB 1362 - Amendments

Since its introduction, the Secretary of State's office has become aware of amendments that need to be made to the bill and which are attached.

There are two substantive changes.

Pages 1, 2, and 34: A new Section 23 is being added to the bill. The new section clarifies the definition of "Professional service" so that the many varied and licensed professions have the opportunity to organize under Chapter 10-31, the Professional Organization Act (first adopted in 1963).

Page 103: The definition of "Activity" or "activities" is eliminated from the chapter pertaining to nonprofit corporations so that it is clear that nonprofit corporations may not engage in business in the same manner as a for profit business corporation.

The remaining amendments are related to technical corrections, typographical errors, consistency issues, and the clarification of references.

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Deanna Hallmark
Operator's Signature

10/3/03
Date

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1362

Page 1, line 14, after "10-19.1-146," insert "subsection 10 of section 10-31-02,"

Page 2, line 27, after the first "corporations," insert "professional corporations"

Page 34, line 5, replace the second "of" with "or"

Page 34, after line 10, insert:

SECTION 23. AMENDMENT. Subsection 10 of section 10-31-02 of the North Dakota Century Code is amended and reenacted as follows:

10. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which ~~before the passage of this chapter could not be performed by a corporation, limited liability company, or a limited liability partnership~~ requires as a condition of licensure an undergraduate or advanced college degree in the specific field.

Page 103, line 7, remove "Activity" or "activities" means, in a corporation organized under this chapter, the"

Page 103, remove lines 8 and 9

Page 103, line 10 remove "2"

Page 126, line 4, replace "26" with "25"

Page 131, line 15, replace "34" with "33"

Page 141, line 9, after "corporation" insert "or a limited liability company"

Page 141, line 9, overstrike "corporate"

Page 141, line 12, after "incorporation" insert ", articles of organization,"

Page 145, line 24, replace "dissolution" with "termination"

Page 147, line 8, replace "All" with "Except for annual reports, all"

Page 147, line 25, replace "managing" with "general"

Page 149, line 16, replace the second "of" with "or"

Page 150, line 10, remove "liability"

Page 162, line 24, after "notice" insert "to"

Renumber accordingly.

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Deanna Hall
Operator's Signature

10/3/03
Date

2

Rep. Klemin
February 10, 2003

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1362

Page 125, line 10, insert a period after the word "members", remove and the attorney general is entitled to an award of, and insert "The court in its discretion may award the attorney general"

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Deanna Hall
Operator's Signature

10/3/03
Date

ALVIN A. JAEGER
SECRETARY OF STATE

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SECRETARY OF STATE
STATE OF NORTH DAKOTA
600 EAST BOULEVARD AVENUE DEPT 108
BISMARCK ND 58505-0600

February 10, 2003

HB 1362

June 30, 1995 June 30, 2002

ND for-profit corporations	10,734	12,114	+ 12.9%
ND Professional corporations	552	721	+ 30.6%
Foreign for-profit corporations	7,307	10,634	+ 45.5%
Limited Liability Companies (all)	441	3,092	+ 601.1%
Limited Liability partnerships (all)	13	1,331	+ 10,138.5%
Limited Partnerships (all)	864	1,566	+ 81.5%
Limited Liability Limited Partnerships	0	223	+ 223.0%
Partnership Fictitious Names	1,362	1,584	+ 16.3%
ND non-profit corporations *	0	6,993	+ %
Foreign non-profit corporations *	0	1,056	+ %

America needs you. VOTE! - Luke Boyer - 2000-2002 Get Out the Vote Slogan Winner - Carrington Jr. High School

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Operator's Signature

10/3/03
Date

TESTIMONY OF WILLIAM L. GUY III, CHAIRMAN
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE
IN SUPPORT OF
HOUSE BILL NO. 1362

Mr. Chairman and members of the Committee, I am here on behalf of a task force which, as in the past, has undertaken the drafting of housekeeping and technical legislation with respect to the various business entity statutes in the North Dakota Century Code. Accordingly, the task force has prepared the legislation that you have before you as House Bill No. 1362. This legislation updates certain sections of the chapters governing Business Corporations (Chapter 10-19.1), Limited Liability Companies (Chapter 10-32), Nonprofit Corporations (Chapter 10-33), Limited Partnerships (Chapter 45-10.1), General Partnerships (Chapters 45-13 through 45-21), Limited Liability Partnerships (Chapter 45-22) and Limited Liability Limited Partnerships (Chapter 45-23).

The task force consists of Clara Jenkins, Director of Corporations in the Office of the Secretary of State, and Greg Hammes, Mike Wagner and me, on behalf of the State Bar Association of North Dakota.

This legislation mostly consists of updating, technical clarifications and grammatical changes, some of which were initially enacted as part of the Minnesota counterpart for that particular chapter. In addition, some of the changes set forth in this legislation have been requested by the office of the Secretary of State and by the office of the Attorney General.

Finally, we have presented to the chair of your committee certain amendments which will be discussed by Clara Jenkins.

As has been the case in years past, our objective is to make each of these chapters as "user friendly" as possible to the general public by keeping the format and as many defined terms as possible either identical to or parallel in each of the state's principal business entities such as business corporations, nonprofit corporations, limited liability companies (LLC's), limited partnerships (LP's), limited liability partnerships (LLP's), limited liability limited partnerships (LLLP's) and general partnerships (GP's).

If you wish, I will now cover some of the highlights in the Bill on a section-by-section basis. All "section references" are to sections in the Bill and not to the legislation being amended.

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For ease in reviewing this testimony the modifications in each section will be identified as either being a "grammatical change", a "technical clarification", or a "substantive change". All "substantive changes" have been highlighted in bold type.

Sections 1 through 22 (page 3 through 34) pertain to the North Dakota Business Corporation Act (Chapter 10-19.1).

Section 1 (beginning on page 3) is the definition section for the Business Corporation Act (Chapter 10-19.1):

Subsections 5, 18, 19, 20, 21, 40 and 43 are new defined terms and represent substantive changes which introduce the Business Corporation Act to the concepts of electronic filing with the Secretary of State, authenticated electronic communications to and from the corporation and participation in corporate meetings by remote communication.

"Authenticated electronic communication" (Subsection 5 on page 3) is electronic communication delivered to an officer or agent of the corporation from which the corporation can reasonably conclude that the communication was sent by the purported sender.

"Electronic" (Subsection 18 on page 5) refers to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic communication" (Subsection 19 on page 5) refers to any form of communication not involving the physical transmission of paper that creates a record that can be retained, retrieved and reviewed by the recipient and which may be

directly reproduced to paper by the recipient through an automated process.

• "Electronic record" (Subsection 20 on page 5) refers to a record which is transmitted, received or stored by electronic means.

• "Electronic signature" (Subsection 21 on page 5) refers to an electronic sound, symbol or process attached to an electronic record which is executed or adopted by the sender with the intent to sign the record.

• "Record" (Subsection 40 on page 9) refers to information inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

• "Remote communication" (Subsection 43 on page 10) refers to communication by electronic means, conference telephone, video conference, the Internet or other such means by which individuals not physically present in the same location may communicate with each other on a substantially simultaneous basis.

• Subsections 22, 32, 40, and 48 are technical clarifications of previous definitions resulting from the adoption of the provisions authorizing electronic communication and electronic filing.

• Subsection 22 (beginning on page 5) provides for electronic filing with the Secretary of State if the method or medium is a form that is acceptable to the Secretary of State.

Subsection 32 (beginning on page 7) authorizes *notice* in electronic form to corporations by shareholders and to shareholders by corporations.

Subsection 48 (beginning on page 10) makes clear:

That *for all purposes* a signature may be facsimile affixed, engraved, printed stamped with indelible ink, transmitted electronically or in any manner reproduced on the document; and,

That signatures and documents which are communicated to the Secretary of State must be sent by a method or medium of communication acceptable to the Secretary of State.

Subsection 34 (beginning on page 9) is substantive change to the definition of the term "organization" to exclude nonprofit corporations from the definition of that term (which is otherwise all inclusive of various legal entities such as corporations, limited liability companies, general partnerships, limited partnerships, limited liability partnerships and limited liability limited partnerships among others).

Subsections, 17, 25, 33, 38, 39 and 50 are routine **technical clarifications** . . . some as the result of the inclusion of the provisions authorizing remote communications and electronic filings and some as the result of general updating.

Section 2 (on page 12) is a new section representing a substantive change authorizing *for all purposes* the legal recognition of electronic records and electronic signatures.

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Section 3 (beginning on page 12) is a technical clarification which makes clear that after a merger the surviving organization must comply with all of the statutory requirements regarding a corporate name (in the past the Secretary of State's office advises that some corporations which were the surviving entities in a merger attempted to use inappropriate suffixes as a part of their new name, (i.e. for instance, some corporations have attempted to use "LLC" as a part of a corporate name simply because it had been a part of the name of one of the constituent entities in the merger)).

Section 4 (on page 13) is a technical clarification that deletes language which has been made obsolete by the new provisions allowing for electronic filing with the Secretary of State.

Section 5 (beginning on page 13) is a substantive change allowing corporations which are open end management investment companies to increase or decrease their outstanding shares without shareholder approval.

Section 6 (beginning on page 15) is a substantive change which removes certain limitations on the authority of the board to modify the By-Laws of the corporation (assuming that the shareholders have not reserved the power to adopt, amend or repeal the By-Laws to themselves). This modification brings this aspect of the North Dakota Business Corporation Act in line with the Model Business Corporation Act and with other modern corporate statutes (such as Delaware).

Section 7 (beginning on page 16) is a substantive change:

Which allows meetings of the board to be held by remote communication; and,

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Which makes clear that participation in a meeting by means of remote communication constitutes personal presence.

Section 8 (on page 17) is a substantive change which allows directors to consent to board action by an authenticated electronic communication.

Section 9 (beginning on page 17) is a substantive change allowing corporations to receive any consideration for the issuance of its shares.

The previous provision prohibited promissory notes or future services as consideration for shares.

This modification brings the North Dakota Business Corporation Act in line with other modern corporate statutes.

Sections 10 and 11 (beginning on page 18) are substantive changes authorizing meetings of shareholders by remote communication (to the extent authorized by the board and permitted by the articles or By-laws).

Section 12 (beginning on page 19) is a substantive change providing that shareholder action taken without a meeting may be consented to by an authenticated electronic communication.

Section 13 (beginning on page 20) is a substantive change which expands the previous provisions allowing participation in shareholder meetings by electronic communication to now include participation by all forms of remote communication to the extent that such participation is authorized by the board and provided for in the articles or By-Laws.

Section 14 (beginning on page 23) is a substantive change allowing shareholders to cast votes by authenticated electronic communication and by telephonic transmission.

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Section 15 (beginning on page 24) is a technical clarification pertaining to mergers undertaken to effect a holding company reorganization.

Section 16 (beginning on page 25) is a technical clarification pertaining to the merger of a subsidiary corporation into a parent corporation.

Section 17 (beginning on page 28) is a new section which represents a substantive change designed to simplify a merger in which the parent corporation (which is itself a wholly owned subsidiary of a holding company) merges into a wholly owned subsidiary of the parent corporation (with the subsidiary corporation then becoming the subsidiary of the holding company upon the completion of the merger).

Section 18 (beginning on page 31) is a technical clarification resulting from the renumbering of the subsections in the definition section of this chapter, due to the inclusion of new definitions).

Section 19 (beginning on page 32) is a substantive change which allows a corporation to establish a specific date for its dissolution on a date which is within thirty (30) days of the filing of the articles of dissolution with the Secretary of State.

Section 20 (beginning on page 32) is a technical clarification making clear that service of process on the Secretary of State (on behalf of a domestic or foreign corporation) shall be by registered mail or personal delivery and not by electronic communication.

Section 21 (beginning on page 33) is a very minor technical clarification resulting from the renumbering of the subsections in the definition section of this chapter (due to the inclusion of new definitions).

Section 22 (beginning on page 34) is a new section representing a substantive change directing the Secretary of State to delete or obscure Social Security numbers or tax identification numbers before disclosing a copy of a document to the public.

Sections 23 through 88 (pages 34 through 103) pertain to the North Dakota Limited Liability Company Act (Chapter 10-32).

Section 23 (beginning on page 34) is the definition section for the Limited Liability Company Act (Chapter 10-32):

Subsections 4, 19, 20, 21, 22, 46 and 49 are new defined terms and represent substantive changes which introduce the Limited Liability Company Act to the concepts of electronic filing with the Secretary of State, authenticated electronic communications to and from the company and participation in company meetings by remote communication. The terms which follow are conceptually identical to their counterparts in the Business Corporation Act (Chapter 10-19.1).

"Authenticated electronic communication" (Subsection 4 on page 35) is electronic communication delivered to an officer or agent of the company from which the company can reasonably conclude that the communication was sent by the purported sender.

"Electronic" (Subsection 19 on page 37) refers to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic communication" (Subsection 20 on page 37) refers to any form of communication not involving the physical

transmission of paper that creates a record that can be retained, retrieved and reviewed by the recipient and which may be directly reproduced to paper by the recipient through an automated process.

• "Electronic record" (Subsection 21 on page 37) refers to a record which is transmitted, received or stored by electronic means.

• "Electronic signature" (Subsection 22 on page 37) refers to an electronic sound, symbol or process attached to an electronic record which is executed or adopted by the sender with the intent to sign the record.

• "Record" (Subsection 46 on page 43) refers to information inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

• "Remote communication" (Subsection 49 on page 43) refers to communication by electronic means, conference telephone, video conference, the Internet or other such means by which individuals not physically present in the same location may communicate with each other on a substantially simultaneous basis.

• Subsections 23, 39 and 53 are technical clarifications of previous definitions resulting from the adoption of the provisions authorizing electronic communication and electronic filing:

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Subsection 23 (beginning on page 37) provides for electronic filing with the Secretary of State if the method or medium is a form that is acceptable to the Secretary of State.

Subsection 39 (beginning on page 40) authorizes *notice* in electronic form to limited liability companies by members and to members by limited liability companies.

Subsection 53 (beginning on page 43) makes clear:

That for all purposes a signature may be facsimile affixed, engraved, printed, stamped with indelible ink, transmitted electronically or in any manner reproduced on the document; and,

That signatures and documents which are communicated to the Secretary of State be sent by a method or medium of communication acceptable to the Secretary of State.

Subsection 11 (beginning on page 36) is a new subsection which is a **technical clarification** of the term "contribution" which makes clear that a contribution to a limited liability company can be anything of value which is acceptable to the company (much as is the case with corporations and partnerships).

Subsection 40 (beginning on page 41) is a substantive change to the definition of the term "organization" to exclude nonprofit corporations from the definition of that term (which is otherwise all inclusive of various legal entities such as corporations, limited liability companies, general partnerships, limited partnerships, limited liability partnerships and limited liability limited partnerships among others).

Subsections 7, 18, 27, 31, 36, 38, 43, 51, 57 and 60 are routine **technical clarifications** . . . some as the result of the inclusion of the provisions authorizing remote communications and electronic filings and some as the result of general updating.

Section 24 (beginning on page 45) is a new section representing a substantive change authorizing for all purposes legal recognition of electronic records and electronic signatures.

Section 25 (beginning on page 46) contains a **grammatical change** in which the term "the board of governors" is shortened to "the board" (this grammatical change will occur numerous times throughout the amendments to Chapter 10-32).

Section 26 (on page 51) is a **technical clarification** which makes clear that after a merger the surviving organization must comply with all of the statutory requirements regarding a limited liability company name (and is parallel to its counterparts in the other chapters amended by this bill).

Section 27 (beginning on page 51) is a **technical clarification** that deletes language which has been made obsolete by the new provisions allowing for electronic filing with the Secretary of State.

Sections 28, 29, 30, 31, 32, 33 and 34 (beginning on page 52) involve the previously described **grammatical change** (i.e. "board of directors" shortened to "board").

Sections 35 and 36 (beginning on page 57) contain the previously described grammatical change and substantive changes authorizing meetings of the members of a limited liability company by remote communication (to the extent authorized by the board and permitted by the articles, By-Laws or a member control agreement).

Sections 37 and 38 (beginning on page 59) contain the previously described grammatical change.

Section 39 (on page 61) is a substantive change providing that member action taken without a meeting may be consented to by an authenticated electronic communication.

Section 40 (beginning on page 61) is a substantive change which expands the previous provisions allowing participation in member meetings by electronic communications to now include participation by all forms of remote communication to the extent that such participation is authorized by the board and provided for in the articles, By-Laws or a member control agreement.

Section 41 (beginning on page 64) is a substantive change allowing members to cast votes by authenticated electronic communication and by telephonic transmission.

Sections 42, 43, 44 and 45 (beginning on page 66) contain the previously described grammatical change.

Section 46 (beginning on page 72) contains the previously described grammatical change and a technical clarification making clear that any contribution made to a limited liability company by one of its members must be approved by the board prior to the transfer of the contribution to the limited liability company.

Sections 47, 48, 49, 50, 51 and 52 (beginning on page 74) contain the previously described grammatical change.

Section 54 (beginning on page 77) is a substantive change which removes certain limitations on the authority of the board to modify the By-Laws of the limited liability company (assuming that the members have not reserved the power to adopt, amend or repeal the By-Laws to themselves). This

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modification brings this aspect of the North Dakota Limited Liability Company Act in line with other modern limited liability company statutes and is parallel to the change made in Section 6 (on page 15 of this Act).

Sections 55, 56, 57, 58, 59, 60, 61, 62 and 63 (beginning on page 78) contain the previously described **grammatical change**.

Section 64 (beginning on page 81) is a substantive change:

- Which allows meetings of the board to be held by remote communication; and,

- Which makes clear that participation in a meeting by means of remote communication constitutes personal presence.

Sections 65 and 66 (beginning on page 82) contain the previously described **grammatical change**.

Section 67 (beginning on page 83) is a substantive change which allows the directors to consent to board action by an authenticated electronic communication.

Sections 68, 69, 70, 71, 72, 73, 74, 75, 76 and 77 (beginning on page 83) contain the previously described **grammatical change**.

Section 78 (beginning on page 94) is a **technical clarification** pertaining to the merger of a subsidiary limited liability company into a parent limited liability company.

Sections 79, 80 and 81 (beginning on page 97) contain the previously described **grammatical change**.

Section 82 (beginning on page 99) is a technical clarification resulting from the renumbering of the subsections in the definition section of this chapter, due to the inclusion of new definitions).

Section 83 (beginning on page 99) is a substantive change which allows a limited liability company to establish a specific date for its termination on a date which is within thirty (30) days of the filing of the articles of termination with the Secretary of State.

Sections 84 and 85 (beginning on page 100) contain the previously described grammatical change.

Section 86 (beginning on page 101) is a technical clarification making clear that service of process on the Secretary of State (on behalf of a foreign limited liability company) shall be by registered mail or personal delivery and not by electronic communication.

Section 87 (on page 102) is a technical clarification resulting from the renumbering of the subsections in the definition section of this chapter, due to the inclusion of new definitions).

Section 88 (beginning on page 102) is a new section representing a substantive change directing the Secretary of State to delete or obscure Social Security numbers or tax identification numbers before disclosing a copy of a document to the public.

Sections 89 through 116 (pages 103 through 131) pertain to the North Dakota Nonprofit Corporation Act (Chapter 10-33). Again, many of the changes in Chapter 10-33 are parallel to the changes made in the Business Corporation Act (Chapter 10-19.1) and the Limited Liability Company Act (Chapter 10-32).

Section 89 (beginning on page 103) is the definition section for the Nonprofit Corporation Act (Chapter 10-33):

Subsections 4, 11, 12, 13, 14, 30 and 33 are new defined terms and represent substantive changes which introduce the Nonprofit

Corporation Act to the concepts of electronic filing with the Secretary of State, authenticated communications to and from the corporation and participation in corporate meetings by remote communication.

• "Authenticated electronic communication" (Subsection 4 beginning on page 103) is electronic communication delivered to an officer or agent of the corporation from which the corporation can reasonably conclude that the communication was sent by the purported sender.

• "Electronic" (Subsection 11 on page 104) refers to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

• "Electronic communication" (Subsection 12 on page 104) refers to any form of communication not involving the physical transmission of paper that creates a record that can be retained, retrieved and reviewed by the recipient and which may be directly reproduced to paper by the recipient through an automated process.

• "Electronic record" (Subsection 13 on page 104) refers to a record which is transmitted, received or stored by electronic means.

• "Electronic signature" (Subsection 14 on page 5) refers to an electronic sound, symbol or process attached to an electronic record which is executed or adopted by the sender with the intent to sign the record.

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"Record" (Subsection 30 on page 108) refers to information inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

"Remote communication" (Subsection 33 on page 108) refers to communication by electronic means, conference telephone, video conference, the Internet or other such means by which individuals not physically present in the same location may communicate with each other on a substantially simultaneous basis.

Subsections 15 (pertaining to filing with the Secretary of State), 26 (pertaining to notice) and 34 (pertaining to signatures) are **technical clarifications** of previous definitions resulting from the adoption of the provisions authorizing electronic communication and electronic filing.

Subsection 15 (beginning on page 104) provides for electronic filing with the Secretary of State if the method or medium is in a form that is acceptable to the Secretary of State.

Subsection 26 (beginning on page 106) authorizes *notice* in electronic form to nonprofit corporations by members and to members by nonprofit corporations.

Subsection 34 (beginning on page 109) makes clear:

That *for all purposes* a signature may be facsimile affixed, engraved, printed stamped with indelible ink, transmitted electronically or in any manner reproduced on the document; and,

That signatures and documents which are communicated to the Secretary of State must be sent by a method or medium of communication acceptable to the Secretary of State.

As will be stated by Clara Jenkins in her description of the proposed amendments Subsection 1 pertaining to the definition of *activity* will be deleted by amendment as being unnecessary.

Subsections 10, 17, 28 and 35 are routine **technical clarifications** . . . some as the result of the inclusion of the provisions authorizing remote communication and electronic filing and some as the result of general updating.

Section 90 (on page 110) is a new section representing a substantive change authorizing *for all purposes* the legal recognition of electronic records and electronic signatures.

Section 91 (beginning on page 110) is a **technical clarification** which makes clear that after a merger the surviving organization must comply with all statutory requirements regarding a nonprofit corporate name (this provision is parallel to similar provisions in the Business Corporation Act and Limited Liability Company Act).

Section 92 (beginning on page 113) is a **technical clarification** that deletes language which has been made obsolete by the new provisions allowing for electronic filing with the Secretary of State.

Section 93 (beginning on page 114) contains a **grammatical change** which will appear repeatedly in the modifications to the Nonprofit Corporation Act which deletes all reference to a nonprofit corporation "*transacting business*" and

substitutes "*carrying on activities*" (Section 93 contains the first such examples of this grammatical change).

Sections 94, 95 and 96 (beginning on page 117) consist of the previously described grammatical change.

Section 97 (beginning on page 118) is a substantive change:

- Which allows meetings of the board to be held by remote communication; and,

- Which makes clear that participation in the meeting by means of remote communication constitutes personal presence.

Section 98 (on page 119) is a substantive change which allows directors to consent to board action by an authenticated electronic communication.

Sections 99 and 100 (beginning on page 119) contain the previously described grammatical change.

Sections 101 and 102 (on page 120) are substantive changes authorizing meetings of members by remote communication (to the extent authorized by the board and permitted by the articles or By-Laws).

Section 103 (on page 121) is a substantive change providing that member action taken without a meeting may be consented to by an authenticated electronic communication.

Section 104 (beginning on page 121) is a substantive change which expands the previous provisions allowing participation in member meetings by electronic communications to now include participation by all forms of remote communication to the extent that such participation is authorized by the board and permitted by the articles and By-Laws.

Section 105 (beginning on page 124) is a substantive change allowing members to cast votes by authenticated electronic communication and by telephonic transmission.

Section 106 (on page 125) is a substantive change requested by the Attorney General authorizing the award of reasonable attorney's fees, investigation fees, costs and expenses of any investigation and action brought by the Attorney General under this chapter.

Section 107 (on page 125) contains the previously described **grammatical change**.

Section 108 (beginning on page 125) is a **technical clarification** resulting from the renumbering of the subsections in the definitions section of this chapter (due to the inclusion of additional definitions).

Section 109 (on page 126) is a substantive change which allows a nonprofit corporation to establish a specific date for its dissolution on a date which is within thirty (30) days of the filing of the articles of dissolution with the Secretary of State.

Sections 110, 111 and 112 (beginning on page 126) contain the previously described **grammatical change**.

Section 113 (beginning on page 129) is a **technical clarification** making clear that service of process on the Secretary of State (on behalf of a foreign nonprofit corporation) shall be by registered mail or personal delivery and not by electronic communication.

Section 114 (beginning on page 130) contains the previously described **grammatical change**.

Section 115 (on page 131) contains a technical clarification resulting from the renumbering of the subsections in the definitions section of this chapter (due to the inclusion of additional definitions).

Section 116 (on page 131) is a new section representing a substantive change directing the Secretary of State to delete or obscure Social Security numbers or tax identification numbers before disclosing a copy of the document to the public.

Sections 117 through 135 (pages 131 through 150) pertain to the North Dakota Limited Partnership Act (Chapter 45-10.1).

Section 117 (beginning on page 131) is the definition section for the Limited Partnership Act (Chapter 45-10.1):

Subsections 2, 8, 9 and 28 are new defined terms and represent substantive changes which introduce the Limited Partnership Act to the concepts of electronic filing with the Secretary of State and authenticated communications to and from the limited partnership.

"Authenticated communication" (Subsection 2 on page 132) is electronic communication delivered to an officer or agent of the limited partnership from which the limited partnership can reasonably conclude that the communication was sent by the purported sender.

"Electronic" (Subsection 8 on page 132) refers to technology having an electrical, digital, magnetic, wireless, optical or electromagnetic or similar capabilities.

"Electronic communication" (Subsection 9 beginning on page 132) refers to any form of communication not involving the

physical transmission of paper that creates a record that can be retained, retrieved and reviewed by the recipient and which may be directly reproduced to paper by the recipient through an automated process.

“Electronic record” (Subsection 10 on page 133) refers to a record which is transmitted, received or stored by electronic means.

“Electronic signature” (Subsection 11 on page 133) refers to an electronic sound, symbol or process attached to an electronic record which is executed or adopted by the sender with the intent to sign the record.

“Record” (Subsection 28 on page 136) refers to information inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

Subsections 13 (pertaining to filings with the Secretary of State), 22 (pertaining to *notice*) and 29 (pertaining to signatures) are **technical clarifications** of previous definitions resulting from the adoption of the provisions authorizing electronic filings.

Subsection 13 (on page 133) provides for electronic filing with the Secretary of State if the method or medium is a form that is acceptable to the Secretary of State.

Subsection 22 (beginning on page 134) authorizes *notice* in electronic form to limited partnerships by partners and to partners by limited partnerships.

Subsection 29 (beginning on page 136) makes clear:

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That for all purposes a signature may be facsimile affixed, engraved, printed stamped with indelible ink, transmitted electronically or in any manner reproduced on the document; and,

That signatures and documents which are communicated to the Secretary of State must be sent by a method or medium of communication acceptable to the Secretary of State.

Subsection 23 (on page 136) is a substantive change to the definition of the term "organization" to exclude nonprofit corporations from the definition of that term (and is parallel to similar modifications in the Business Corporation Act and Limited Liability Company Act.

Subsections 7, 15, 18 and 19 are routine technical clarifications . . . some as the result of the inclusion of the provisions authorizing electronic filings and some as the result of general updating.

Section 118 (on page 137) is a new section representing a substantive change authorizing for all purposes the legal recognition of electronic records and electronic signatures.

Section 119 (beginning on page 137) is a technical clarification which makes clear that after a merger the surviving organization must comply with all of the statutory requirements regarding a limited partnership name (and is parallel to the provisions for the previously described entities).

Section 120 (beginning on page 139) is a technical clarification that deletes language which has been made obsolete by the new provisions allowing for electronic filing with the Secretary of State.

Section 121 (on page 139) is a **technical clarification** which makes clear that a limited liability limited partnership is among the entities which must register separately with the Secretary of State if that entity is serving as the general partner in a limited partnership.

Section 122 (beginning on page 139) is a **technical clarification** requested by the Secretary of State making clear that a limited partnership which changes its name and is the general partner in a limited liability limited partnership or is the managing partner of a limited liability partnership must simultaneously change its name in each of these registrations when filing its change of name.

Section 123 (on page 140) are routine **grammatical changes**.

Sections 124 and 125 (beginning on page 140) are **technical clarifications** requested by the Secretary of State pertaining to the registration of foreign limited partnerships with that office.

Sections 126 (beginning on page 141) is a substantive change only in that it is a newly enacted section which allows the Secretary of State to receive service of process on behalf of foreign limited partnerships.

This section is parallel to similar sections in each of the other business entity chapters.

This provision was never included in the original enactment of Chapter 45-10.1.

Sections 127, 128 and 129 (beginning on page 143) are three existing sections which are being moved to the end of Chapter 45-10.1 (from their current location in the middle chapter). In each of the other business entity chapters, the Secretary of State provisions are located at the end of the chapter and should be more easily found in their new location.

Sections 130, 131, 132 and 133 are new sections pertaining to the operations of the Secretary of State and are substantive changes only in that these sections had not previously been included in Chapter 45-10.1. However, each of them are parallel to similar provisions in each of the other business entity chapters.

Section 134 and 135 (beginning on page 150) are new sections pertaining to the audit of limited partnerships receiving state subsidies for the production of alcohol for a combination with gasoline and pertaining to foreign trade zones.

Both sections are substantive changes only in that neither has previously been included in Chapter 45-10.1.

However, both sections are parallel to their counterparts in each of the other business entities.

Sections 136 through 151 (pages 151 through 165) pertain to general partnerships (Chapters 45-13 through 45-21).

Section 136 (beginning on page 151) is the definition section for Chapters 45-13 through 45-21:

Subsections 2, 7, 8, 9, 10 and 24 are new defined terms and represent substantive changes which introduce these chapters to the concepts of electronic filing with the Secretary of State and authenticated electronic communication to and from the partnership.

"Authenticated electronic communication" (Subsection 2 on page 151) is electronic communication delivered to a partner or agent of the partnership from which the partnership can

reasonably conclude that the communication was sent by the purported sender.

"Electronic" (Subsection 7 on page 152) refers to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic communication" (Subsection 8 on page 152) refers to any form of communication not having the physical transmission of paper that creates a record that can be retained, retrieved and reviewed by the recipient and which may be directly reproduced to paper by the recipient through an automated process.

"Electronic record" (Subsection 9) refers to a record which is transmitted, received or stored by electronic means.

"Electronic signature" (Subsection 10 on page 152) refers to an electronic sound, symbol or process attached to an electronic record which is executed or adopted by the sender with the intent to sign the record.

"Record" (Subsection 24 on page 155) refers to information inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

Subsections 11 (pertaining to filings with the Secretary of State), 16 (pertaining to *notice*) and 25 (pertaining to signatures) are **technical clarifications** of previous definitions resulting from the adoption of the provisions authorizing remote communication and electronic filings.

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Subsection 11 (beginning on page 152) provides for electronic filing with the Secretary of State if the method or medium is a form acceptable to the Secretary of State.

Subsection 16 (beginning on page 153) authorizes *notice* in electronic form to partnerships by partners and to partners by partnerships.

Subsection 25 (beginning on page 155) makes clear:

That for all purposes a signature may be facsimile affixed, engraved, printed stamped with indelible ink, transmitted electronically or in any manner reproduced on the document; and,

That signatures and documents which are communicated to the Secretary of State must be sent by a method or medium of communication acceptable to the Secretary of State.

Subsection 17 (on page 155) is a substantive change to the definition of the term "organization" to exclude nonprofit corporations from the definition of that term (and is parallel to its counterparts in the previous chapters).

Subsections 1, 6, 13, 15, 22 and 27 are routine **technical clarifications** ... some as the result of the inclusion of the provisions authorizing remote communications and electronic filings and some as the result of general updating.

Section 137 (beginning on page 156) is a substantive change authorizing for all purposes the legal recognition of electronic records and electronic signatures.

- Section 138 (beginning on page 157) is a **technical clarification** which makes clear that after a merger the surviving organization must comply with all of the statutory requirements regarding a partnership name (and is parallel to similar provisions which have been previously discussed).
- Section 139 (on page 158) is a **technical clarification** that deletes language which has been made obsolete by the new provisions allowing for electronic filing with the Secretary of State.
- Section 140 (beginning on page 158) contains a **grammatical change** by which the term "chief executive office" is converted to "principal executive office" so as to be parallel to the terminology for corporations and limited liability companies. This **grammatical change** will appear several times in the amendments to Chapters 45-13 through 45-21.
- Section 141 (on page 159) contains the previously described **grammatical change**.
- Section 142 (beginning on page 159) contains the previously described **grammatical change** and a **technical clarification** making clear that partnership "filings" are with the Secretary of State and must include the required fees.
- Sections 143 and 144 (on page 160) contain the previously described **grammatical change**.
- Section 145 (on page 160) contains the previously described **technical clarification** with regard to filings with the Secretary of State.
- **Section 146 is a new section which represents a substantive change to permit partners to take partnership action without a meeting and is parallel to its counterparts in the Business Corporation Act, Limited Liability Company Act and Nonprofit Corporation Act.**

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Section 147 (beginning on page 161) is a new section which provides for remote communication at partner meetings and is parallel to its counterparts in the Business Corporation Act, Limited Liability Company Act and Nonprofit Corporation Act.

Section 148 (on page 164) contains the previously described **technical clarification** with regard to filings with the Secretary of State.

Sections 149, 150 and 151 contain routine **technical clarifications** and **grammatical changes** regarding the plan of merger for partnerships which are merging with other entities.

Sections 152 through 158 (pages 165 through 175) pertain to the North Dakota Limited Liability Limited Partnership Act (Chapter 45-22).

Section 152 (beginning on page 165) is the definition section for the Limited Liability Limited Partnership (LLP) Act (Chapter 45-22):

Subsections 2, 5, 6, 7, 8 and 20 are new defined terms and represent substantive changes which introduce the limited liability limited partnership (LLLLP Act) to the concepts of electronic filing with the Secretary of State and authenticated electronic communications to and from the partnership.

"Authenticated electronic communication" (Subsection 2 on page 166) is electronic communication delivered to a partner or agent of the partnership from which the partnership can reasonably conclude that the communication was sent by the purported sender.

"Electronic" (Subsection 5 on page 166) refers to technology having the electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic communication" (Subsection 6 on page 166) refers to any form of communications not involving the physical transmission of papers that creates a record that can be retained, retrieved and reviewed by the recipient and which may be directly reproduced to paper by the recipient through an automated process.

"Electronic record" (Subsection 7 on page 166) refers to an electronic sound, symbol or process attached to an electronic record which is executed or adopted by the sender with the intent to sign the record.

"Record" (Subsection 20 on page 170) refers to information inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

Subsections 9 (pertaining to filings with the Secretary of State), 15 (pertaining to *notice*) and 24 (pertaining to signatures) are **technical clarifications** of previous definitions resulting from the adoption of the provisions authorizing electronic communication and electronic filing.

Subsection 9 (beginning on page 166) provides for electronic filing with the Secretary of State if the method or medium is a form that is acceptable to the Secretary of State.

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Subsection 15 (beginning on page 167) authorizes *notice* in electronic form to limited liability partnerships by partners and to partners by limited liability partnerships.

Subsection 24 (beginning on page 170) makes clear:

That *for all purposes* a signature may be facsimile affixed, engraved, printed stamped with indelible ink, transmitted electronically or in any manner reproduced on the document; and,

That signatures and documents which are communicated to the Secretary of State must be sent by a method or medium of communication acceptable to the Secretary of State.

Subsection 16 (on page 169) is a substantive change to the definition of the term "organization" to exclude nonprofit corporations from the definition of that term (and is parallel to its counterparts in the previously discussed chapters).

Subsections 4, 11 and 14 are routine **technical clarifications** . . . some as the result of the inclusion of the provisions authorizing electronic communication and electronic filing and some as the result of general updating.

Section 153 (on page 171) is a substantive change authorizing *for all purposes* the legal recognition of electronic records and electronic signatures.

Section 154 (beginning on page 171) is a **technical clarification** which makes clear that the limited liability limited partnership registration with the Secretary of State must be signed by a managing partner.

- Section 155 (beginning on page 172) is a **technical clarification** which makes clear that after a merger the surviving organization must comply with all of the statutory requirements regarding a limited liability partnership name (and is parallel to its counterparts in the previously discussed chapters).
- Section 156 (beginning on page 173) is a **technical clarification** that deletes language which has been made obsolete by the new provisions allowing for electronic filing with the Secretary of State.
- Section 157 (beginning on page 174) is a **technical clarification** making clear that service of process on the Secretary of State (on behalf of a foreign limited liability limited partnership) shall be by registered mail or personal delivery and not by electronic communication.
- Section 158 (on page 175) is a **technical clarification** resulting from the renumbering of the subsections in the definitions section of this chapter (due to the inclusion of new definitions).

Sections 159 through 162 (pages 175 through 181) pertain to the Limited Liability Limited Partnership Act (Chapter 45-23).

- Section 159 (beginning on page 175) is the definitions section for the limited Liability Limited Partnership Act (Chapter 45-23):

- Subsections 2, 5, 6, 7, 8, 19 and 21 are new defined terms and represent substantive changes which introduce the Limited Liability Limited Partnership (LLLP) Act to the concepts of electronic filing with the Secretary of State, authenticated electronic communications to and from the partnership and the participation in partnership meetings by remote communication.

• "Authenticated electronic communications" (Subsection 2 on page 175) are electronic communications delivered to a partner or agent of the partnership from which the partnership can reasonably conclude that the communication was sent by the purported sender.

• "Electronic" (Subsection 5 on page 176) refers to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

• "Electronic communication" (Subsection 6 on page 176) refers to any form of communication not having the physical transmission of paper that creates a record that can be retained, retrieved and reviewed by the recipient and which may be directly reproduced to paper by the recipient through an automated process.

• "Electronic record" (Subsection 7 on page 176) refers to a record which is transmitted, received or stored by electronic means.

• "Electronic signatures" (Subsection 8 on page 176) refers to an electronic sound, symbol or process attached to an electronic record which is executed or adopted by the sender with the intent to sign the record.

• "Record" (Subsection 19 on page 179) refers to information inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

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"Remote communication" (Subsection 21 on page 179) refers to communication by electronic means, conference telephone, video conference, the Internet or other such means by which individuals not physically present in the same location may communicate with each other on a substantially simultaneous basis.

Subsections 9 (pertaining to filings with the Secretary of State), 16 (pertaining to *notice*), 22 (pertaining to signatures) are **technical clarifications** of previous definitions resulting from the adoption of the provisions authorizing remote communications, electronic communication and electronic filing.

Subsection 9 (on page 176) provides for electronic filing with the Secretary of State if the method or medium is a form that is acceptable to the Secretary of State.

Subsection 16 (beginning on page 177) authorizes *notice* in electronic form to limited liability limited partnerships by partners and to partners by limited liability limited partnerships.

Subsection 22 (beginning on page 179) makes clear:

That for all purposes a signature may be facsimile affixed, engraved, printed stamped with indelible ink, transmitted electronically or in any manner reproduced on the document; and,

That signatures and documents which are communicated to the Secretary of State must be sent by a method or medium of communication acceptable to the Secretary of State.

Subsection 17 (on page 179) is a substantive change to the definition of the term "organization" to exclude nonprofit corporations from the definition of that term (and is parallel to its counterparts in the previously discussed chapters).

Subsections 4 and 12 are routine **technical clarifications** as the result of general updating.

Section 160 (on page 180) is a substantive change authorizing for all purposes the legal recognition of electronic records and electronic signatures.

Section 161 (beginning on page 180) is a **technical clarification** which makes clear that after a merger the surviving organization must comply with all statutory requirements regarding a limited liability partnership name (and is parallel to its counterparts in the previously discussed chapters).

Section 162 (on page 181) is a new section representing a substantive change directing the Secretary of State to delete or obscure Social Security numbers or tax identification numbers before disclosing a copy of the document to the public.

Section 163 repeals three sections of Chapter 45-10.1 (these sections were restated in a different area of that chapter).

As you can see the legislation embodied in this Bill serves to introduce and refine the concepts of electronic communication, remote communication and electronic filing and to further integrate and refine other key elements of our existing business and nonprofit entity statutes with each other. Thank you for the opportunity to address your committee. If you have any questions, I would be happy to answer them.

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HH # 1

TESTIMONY OF WILLIAM L. GUY III, CHAIRMAN
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE
IN SUPPORT OF
HOUSE BILL NO. 1362

Mr. Chairman and members of the Committee, I am here on behalf of a task force which, as in the past, has undertaken the drafting of housekeeping and technical legislation with respect to the various business entity statutes in the North Dakota Century Code. Accordingly, the task force has prepared the legislation that you have before you as House Bill No. 1362. This legislation updates certain sections of the chapters governing Business Corporations (Chapter 10-19.1), Limited Liability Companies (Chapter 10-32), Nonprofit Corporations (Chapter 10-33), Limited Partnerships (Chapter 45-10.1), General Partnerships (Chapters 45-13 through 45-21), Limited Liability Partnerships (Chapter 45-22) and Limited Liability Limited Partnerships (Chapter 45-23).

The task force consists of Clara Jenkins, Director of Corporations in the Office of the Secretary of State, and Greg Hammes, Mike Wagner and me, on behalf of the State Bar Association of North Dakota.

This legislation mostly consists of updating, technical clarifications and grammatical changes, some of which were initially enacted as part of the Minnesota counterpart for that particular chapter. In addition, some of the changes set forth in this legislation have been requested by the office of the Secretary of State and by the office of the Attorney General.

Finally, we have presented to the chair of your committee certain amendments which will be discussed by Clara Jenkins.

As has been the case in years past, our objective is to make each of these chapters as "user friendly" as possible to the general public by keeping the format and as many defined terms as possible either identical to or parallel in each of the state's principal business entities such as business corporations, nonprofit corporations, limited liability companies (LLC's), limited partnerships (LP's), limited liability partnerships (LLP's), limited liability limited partnerships (LLLP's) and general partnerships (GP's).

If you wish, I will now cover some of the highlights in the Bill on a section by section basis. All "section references" are to sections in the Bill and not to the legislation being amended.

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For ease in reviewing this testimony the modifications in each section will be identified as either being a "grammatical change", a "technical clarification", or a "substantive change". All "substantive changes" have been highlighted in **bold type**.

Sections 1 through 22 (page 3 through 34) pertain to the North Dakota Business Corporation Act (Chapter 10-19.1).

Section 1 (beginning on page 3) is the definition section for the Business Corporation Act (Chapter 10-19.1):

Subsections 5, 18, 19, 20, 21, 40 and 43 are new defined terms and represent substantive changes which introduce the Business Corporation Act to the concepts of electronic filing with the Secretary of State, authenticated electronic communications to and from the corporation and participation in corporate meetings by remote communication.

"Authenticated electronic communication" (Subsection 5 on page 3) is electronic communication delivered to an officer or agent of the corporation from which the corporation can reasonably conclude that the communication was sent by the purported sender.

"Electronic" (Subsection 18 on page 5) refers to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic communication" (Subsection 19 on page 5) refers to any form of communication not involving the physical transmission of paper that creates a record that can be retained, retrieved and reviewed by the recipient and which may be

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directly reproduced to paper by the recipient through an automated process.

"Electronic record" (Subsection 20 on page 5) refers to a record which is transmitted, received or stored by electronic means.

"Electronic signature" (Subsection 21 on page 5) refers to an electronic sound, symbol or process attached to an electronic record which is executed or adopted by the sender with the intent to sign the record.

"Record" (Subsection 40 on page 9) refers to information inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

"Remote communication" (Subsection 43 on page 10) refers to communication by electronic means, conference telephone, video conference, the Internet or other such means by which individuals not physically present in the same location may communicate with each other on a substantially simultaneous basis.

Subsections 22, 32, 40, and 48 are technical clarifications of previous definitions resulting from the adoption of the provisions authorizing electronic communication and electronic filing.

Subsection 22 (beginning on page 5) provides for electronic filing with the Secretary of State if the method or medium is a form that is acceptable to the Secretary of State.

Subsection 32 (beginning on page 7) authorizes *notice* in electronic form to corporations by shareholders and to shareholders by corporations.

Subsection 48 (beginning on page 10) makes clear:

That *for all purposes* a signature may be facsimile affixed, engraved, printed, stamped with indelible ink, transmitted electronically or in any manner reproduced on the document; and,

That signatures and documents which are communicated to the Secretary of State must be sent by a method or medium of communication acceptable to the Secretary of State.

Subsection 34 (beginning on page 9) is substantive change to the definition of the term "organization" to exclude nonprofit corporations from the definition of that term (which is otherwise all inclusive of various legal entities such as corporations, limited liability companies, general partnerships, limited partnerships, limited liability partnerships and limited liability limited partnerships among others).

Subsections, 17, 25, 33, 38, 39 and 50 are routine **technical clarifications**. . . some as the result of the inclusion of the provisions authorizing remote communications and electronic filings and some as the result of general updating.

Section 2 (on page 12) is a new section representing a substantive change authorizing *for all purposes* the legal recognition of electronic records and electronic signatures.

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Section 3 (beginning on page 12) is a **technical clarification** which makes clear that after a merger the surviving organization must comply with all of the statutory requirements regarding a corporate name (In the past the Secretary of State's office advises that some corporations which were the surviving entities in a merger attempted to use inappropriate suffixes as a part of their new name, (i.e. for instance, some corporations have attempted to use "LLC" as a part of a corporate name simply because it had been a part of the name of one of the constituent entities in the merger)).

Section 4 (on page 13) is a **technical clarification** that deletes language which has been made obsolete by the new provisions allowing for electronic filing with the Secretary of State.

Section 5 (beginning on page 14) is a **substantive change** allowing corporations which are open end management investment companies to increase or decrease their outstanding shares without shareholder approval.

Section 6 (beginning on page 15) is a **substantive change** which removes certain limitations on the authority of the board to modify the By-Laws of the corporation (assuming that the shareholders have not reserved the power to adopt, amend or repeal the By-Laws to themselves). This modification brings this aspect of the North Dakota Business Corporation Act in line with the Model Business Corporation Act and with other modern corporate statutes (such as Delaware).

Section 7 (beginning on page 16) is a **substantive change**:

Which allows meetings of the board to be held by remote communication; and,

Which makes clear that participation in a meeting by means of remote communication constitutes personal presence.

Section 8 (on page 17) is a substantive change which allows directors to consent to board action by an authenticated electronic communication.

Section 9 (beginning on page 17) is a substantive change allowing corporations to receive any consideration for the issuance of its shares.

The previous provision prohibited promissory notes or future services as consideration for shares.

This modification brings the North Dakota Business Corporation Act in line with other modern corporate statutes.

Sections 10 and 11 (beginning on page 18) are substantive changes authorizing meetings of shareholders by remote communication (to the extent authorized by the board and permitted by the articles or By-laws).

Section 12 (beginning on page 19) is a substantive change providing that shareholder action taken without a meeting may be consented to by an authenticated electronic communication.

Section 13 (beginning on page 20) is a substantive changes which expands the previous provisions allowing participation in shareholder meetings by electronic communication to now include participation by all forms of remote communication to the extent that such participation is authorized by the board and provided for in the articles or By-Laws.

Section 14 (beginning on page 23) is a substantive change allowing shareholders to cast votes by authenticated electronic communication and by telephonic transmission.

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Section 15 (beginning on page 24) is a **technical clarification** pertaining to mergers undertaken to effect a holding company reorganization.

Section 16 (beginning on page 25) is a **technical clarification** pertaining to the merger of a subsidiary corporation into a parent corporation.

Section 17 (beginning on page 28) is a new section which represents a **substantive change** designed to simplify a merger in which the parent corporation (which is itself a wholly owned subsidiary of a holding company) merges into a wholly owned subsidiary of the parent corporation (with the subsidiary corporation then becoming the subsidiary of the holding company upon the completion of the merger).

Section 18 (on page 32) is a **technical clarification** resulting from the renumbering of the subsections in the definition section of this chapter (due to the inclusion of new definitions).

Section 19 (on page 32) is a **substantive change** which allows a corporation to establish a specific date for its dissolution on a date which is within thirty (30) days of the filing of the articles of dissolution with the Secretary of State.

Section 20 (beginning on page 32) is a **technical clarification** making clear that service of process on the Secretary of State (on behalf of a domestic or foreign corporation) shall be by registered mail or personal delivery and not by electronic communication.

Section 21 (beginning on page 33) is a very minor **technical clarification** resulting from the renumbering of the subsections in the definition section of this chapter (due to the inclusion of new definitions).

Section 22 (on page 34) is a new section representing a **substantive change** directing the Secretary of State to delete or obscure Social Security numbers

or tax identification numbers before disclosing a copy of a document to the public.

Sections 23 through 88 (pages 34 through 103) pertain to the North Dakota Limited Liability Company Act (Chapter 10-32).

Section 23 (beginning on page 34) is the definition section for the Limited Liability Company Act (Chapter 10-32):

Subsections 4, 19, 20, 21, 22, 46 and 49 are new defined terms and represent substantive changes which introduce the Limited Liability Company Act to the concepts of electronic filing with the Secretary of State, authenticated electronic communications to and from the company and participation in company meetings by remote communication. The terms which follow are conceptually identical to their counterparts in the Business Corporation Act (Chapter 10-19.1).

"Authenticated electronic communication" (Subsection 4 on page 35) is electronic communication delivered to an officer or agent of the company from which the company can reasonably conclude that the communication was sent by the purported sender.

"Electronic" (Subsection 19 on page 37) refers to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic communication" (Subsection 20 on page 37) refers to any form of communication not involving the physical transmission of paper that creates a record that can be retained, retrieved and reviewed by the recipient and which may be

directly reproduced to paper by the recipient through an automated process.

"Electronic record" (Subsection 21 on page 37) refers to a record which is transmitted, received or stored by electronic means.

"Electronic signature" (Subsection 22 on page 38) refers to an electronic sound, symbol or process attached to an electronic record which is executed or adopted by the sender with the intent to sign the record.

"Record" (Subsection 46 on page 43) refers to information inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

"Remote communication" (Subsection 49 on page 43) refers to communication by electronic means, conference telephone, video conference, the Internet or other such means by which individuals not physically present in the same location may communicate with each other on a substantially simultaneous basis.

Subsections 23, 39 and 53 are technical clarifications of previous definitions resulting from the adoption of the provisions authorizing electronic communication and electronic filing:

Subsection 23 (beginning on page 38) provides for electronic filing with the Secretary of State if the method or medium is a form that is acceptable to the Secretary of State.

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Subsection 39 (beginning on page 40) authorizes *notice* in electronic form to limited liability companies by members and to members by limited liability companies.

Subsection 53 (on page 44) makes clear:

That *for all purposes* a signature may be facsimile affixed, engraved, printed, stamped with indelible ink, transmitted electronically or in any manner reproduced on the document; and,

That signatures and documents which are communicated to the Secretary of State be sent by a method or medium of communication acceptable to the Secretary of State.

Subsection 11 (on page 36) is a new subsection which is a **technical clarification** of the term "contribution" which makes clear that a contribution to a limited liability company can be anything of value which is acceptable to the company (much as is the case with corporations and partnerships).

Subsection 40 (on page 41) is a substantive change to the definition of the term "organization" to exclude nonprofit corporations from the definition of that term (which is otherwise all inclusive of various legal entities such as corporations, limited liability companies, general partnerships, limited partnerships, limited liability partnerships and limited liability limited partnerships among others).

Subsections 7, 18, 27, 31, 36, 38, 43, 51, 57 and 60 are routine **technical clarifications** . . . some as the result of the inclusion of the provisions authorizing remote communications and electronic filings and some as the result of general updating.

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Section 24 (beginning on page 45) is a new section representing a substantive change authorizing for all purposes legal recognition of electronic records and electronic signatures.

Section 25 (beginning on page 46) contains a grammatical change in which the term "the board of governors" is shortened to "the board" (this grammatical change will occur numerous times throughout the amendments to Chapter 10-32).

Section 26 (beginning on page 51) is a technical clarification which makes clear that after a merger the surviving organization must comply with all of the statutory requirements regarding a limited liability company name (and is parallel to its counterparts in the other chapters amended by this bill).

Section 27 (on page 51) is a technical clarification that deletes language which has been made obsolete by the new provisions allowing for electronic filing with the Secretary of State.

Sections 28, 29, 30, 31, 32, 33 and 34 (beginning on page 52) involve the previously described grammatical change (i.e. "board of directors" shortened to "board").

Sections 35 and 36 (beginning on page 57) contain the previously described grammatical change and substantive changes authorizing meetings of the members of a limited liability company by remote communication (to the extent authorized by the board and permitted by the articles, By-Laws or a member control agreement).

Sections 37 and 38 (beginning on page 59) contain the previously described grammatical change.

Section 39 (beginning on page 61) is a substantive change providing that member action taken without a meeting may be consented to by an authenticated electronic communication.

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Section 40 (beginning on page 62) is a substantive change which expands the previous provisions allowing participation in member meetings by electronic communications to now include participation by all forms of remote communication to the extent that such participation is authorized by the board and provided for in the articles, By-Laws or a member control agreement.

Section 41 (beginning on page 65) is a substantive change allowing members to cast votes by authenticated electronic communication and by telephonic transmission.

Sections 42, 43, 44 and 45 (beginning on page 66) contain the previously described grammatical change.

Section 46 (beginning on page 72) contains the previously described grammatical change and a technical clarification making clear that any contribution made to a limited liability company by one of its members must be approved by the board prior to the transfer of the contribution to the limited liability company.

Sections 47, 48, 49, 50, 51, 52 and 53 (beginning on page 75) contain the previously described grammatical change.

Section 54 (beginning on page 77) is a substantive change which removes certain limitations on the authority of the board to modify the By-Laws of the limited liability company (assuming that the members have not reserved the power to adopt, amend or repeal the By-Laws to themselves). This modification brings this aspect of the North Dakota Limited Liability Company Act in line with other modern limited liability company statutes and is parallel to the change made in Section 6 (beginning on page 15 of this Act).

Sections 55, 56, 57, 58, 59, 60, 61, 62 and 63 (beginning on page 78) contain the previously described grammatical change.

Section 64 (beginning on page 81) is a substantive change:

Which allows meetings of the board to be held by remote communication; and,

Which makes clear that participation in a meeting by means of remote communication constitutes personal presence.

Sections 65 and 66 (on page 83) contain the previously described grammatical change.

Section 67 (beginning on page 83) is a substantive change which allows the directors to consent to board action by an authenticated electronic communication.

Sections 68, 69, 70, 71, 72, 73, 74, 75, 76 and 77 (beginning on page 84) contain the previously described grammatical change.

Section 78 (beginning on page 95) is a technical clarification pertaining to the merger of a subsidiary limited liability company into a parent limited liability company.

Sections 79, 80 and 81 (beginning on page 98) contain the previously described grammatical change.

Section 82 (on page 100) is a technical clarification resulting from the renumbering of the subsections in the definition section of this chapter, due to the inclusion of new definitions).

Section 83 (on page 100) is a substantive change which allows a limited liability company to establish a specific date for its termination on a date which is within thirty (30) days of the filing of the articles of termination with the Secretary of State.

- Sections 84 and 85 (beginning on page 100) contain the previously described **grammatical change.**
- Section 86 (on page 102) is a **technical clarification** making clear that service of process on the Secretary of State (on behalf of a domestic foreign limited liability company) shall be by registered mail or personal delivery and not by electronic communication.
- Section 87 (beginning on page 102) is a **technical clarification** resulting from the renumbering of the subsections in the definition section of this chapter (due to the inclusion of new definitions).
- Section 88 (on page 103) is a new section representing a substantive change **directing the Secretary of State to delete or obscure Social Security numbers or tax identification numbers before disclosing a copy of a document to the public.**
- Sections 89 through 116 (pages 103 through 132) pertain to the North Dakota Nonprofit Corporation Act(Chapter 10-33). Again, many of the changes in Chapter 10-33 are parallel to the changes made in the Business Corporation Act (Chapter 10-19.1) and the Limited Liability Company Act (Chapter 10-32).
- Section 89 (beginning on page 103) is the definition section for the Nonprofit Corporation Act(Chapter 10-33):
 - Subsections 4, 11, 12, 13, 14, 30 and 33 are new defined terms and represent substantive changes which introduce the Nonprofit Corporation Act to the concepts of electronic filing with the Secretary of State, authenticated communications to and from the corporation and participation in corporate meetings by remote communication.

“Authenticated electronic communication” (Subsection 4 on page 104) is electronic communication delivered to an officer or agent of the corporation from which the corporation can reasonably conclude that the communication was sent by the purported sender.

“Electronic” (Subsection 11 on page 104) refers to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

“Electronic communication” (Subsection 12 beginning on page 104) refers to any form of communication not involving the physical transmission of paper that creates a record that can be retained, retrieved and reviewed by the recipient and which may be directly reproduced to paper by the recipient through an automated process.

“Electronic record” (Subsection 13 on page 105) refers to a record which is transmitted, received or stored by electronic means.

“Electronic signature” (Subsection 14 on page 105) refers to an electronic sound, symbol or process attached to an electronic record which is executed or adopted by the sender with the intent to sign the record.

“Record” (Subsection 30 on page 108) refers to information inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

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"Remote communication" (Subsection 33 on page 109) refers to communication by electronic means, conference telephone, video conference, the Internet or other such means by which individuals not physically present in the same location may communicate with each other on a substantially simultaneous basis.

Subsections 15 (pertaining to filing with the Secretary of State), 26 (pertaining to notice) and 34 (pertaining to signatures) are **technical clarifications** of previous definitions resulting from the adoption of the provisions authorizing electronic communication and electronic filing.

Subsection 15 (on page 105) provides for electronic filing with the Secretary of State if the method or medium is in a form that is acceptable to the Secretary of State.

Subsection 26 (beginning on page 106) authorizes *notice* in electronic form to nonprofit corporations by members and to members by nonprofit corporations.

Subsection 34 (beginning on page 109) makes clear:

That *for all purposes* a signature may be facsimile affixed, engraved, printed, stamped with indelible ink, transmitted electronically or in any manner reproduced on the document; and,

That signatures and documents which are communicated to the Secretary of State must be sent by a method or medium of communication acceptable to the Secretary of State.

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Subsections 10, 17, 28 and 35 are routine **technical clarifications** . . . some as the result of the inclusion of the provisions authorizing remote communication and electronic filing and some as the result of general updating.

Section 90 (beginning on page 110) is a new section representing a **substantive change authorizing for all purposes the legal recognition of electronic records and electronic signatures.**

Section 91 (beginning on page 111) is a **technical clarification** which makes clear that after a merger the surviving organization must comply with all statutory requirements regarding a nonprofit corporate name (this provision is parallel to similar provisions in the Business Corporation Act and Limited Liability Company Act).

Section 92 (beginning on page 113) is a **technical clarification** that deletes language which has been made obsolete by the new provisions allowing for electronic filing with the Secretary of State.

Section 93 (beginning on page 114) contains a **grammatical change** which will appear repeatedly in the modifications to the Nonprofit Corporation Act which deletes all reference to a nonprofit corporation "*transacting business*" and substitutes "*carrying on activities*" (Section 93 contains the first such examples of this **grammatical change**).

Sections 94, 95 and 96 (beginning on page 117) consist of the previously described **grammatical change**.

Section 97 (beginning on page 118) is a **substantive change**:

Which allows meetings of the board to be held by remote communication; and,

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Which makes clear that participation in the meeting by means of remote communication constitutes personal presence.

Section 98 (on page 119) is a substantive change which allows directors to consent to board action by an authenticated electronic communication.

Sections 99 and 100 (on page 119) contain the previously described grammatical change.

Sections 101 and 102 (beginning on page 120) are substantive changes authorizing meetings of members by remote communication (to the extent authorized by the board and permitted by the articles or By-Laws).

Section 103 (on page 121) is a substantive change providing that member action taken without a meeting may be consented to by an authenticated electronic communication.

Section 104 (on page 122) is a substantive change which expands the previous provisions allowing participation in member meetings by electronic communications to now include participation by all forms of remote communication to the extent that such participation is authorized by the board and permitted by the articles and By-Laws.

Section 105 (on page 125) is a substantive change allowing members to cast votes by authenticated electronic communication and by telephonic transmission.

Section 106 (on page 125) is a substantive change requested by the Attorney General authorizing the award of reasonable attorney's fees, investigation fees, costs and expenses of any investigation and action brought by the Attorney General under this chapter.

- Section 107 (beginning on page 125) contains the previously described **grammatical change**.
- Section 108 (on page 126) is a **technical clarification** resulting from the renumbering of the subsections in the definitions section of this chapter (due to the inclusion of additional definitions).
- **Section 109 (on page 126) is a substantive change which allows a nonprofit corporation to establish a specific date for its dissolution on a date which is within thirty (30) days of the filing of the articles of dissolution with the Secretary of State.**
- Sections 110, 111 and 112 (beginning on page 126) contain the previously described **grammatical change**.
- Section 113 (on page 130) is a **technical clarification** making clear that service of process on the Secretary of State (on behalf of a domestic or foreign nonprofit corporation) shall be by registered mail or personal delivery and not by electronic communication.
- Section 114 (beginning on page 130) contains the previously described **grammatical change**.
- Section 115 (beginning on page 131) contains a **technical clarification** resulting from the renumbering of the subsections in the definitions section of this chapter (due to the inclusion of additional definitions).
- **Section 116 (on page 132) is a new section representing a substantive change directing the Secretary of State to delete or obscure Social Security numbers or tax identification numbers before disclosing a copy of the document to the public.**

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Sections 117 through 135 (pages 132 through 151) pertain to the North Dakota Limited Partnership Act (Chapter 45-10.1).

Section 117 (beginning on page 132) is the definition section for the Limited Partnership Act (Chapter 45-10.1):

Subsections 2, 8, 9 and 28 are new defined terms and represent substantive changes which introduce the Limited Partnership Act to the concepts of electronic filing with the Secretary of State and authenticated communications to and from the limited partnership.

"Authenticated electronic communication" (Subsection 2 on page 132) is electronic communication delivered to an officer or agent of the limited partnership from which the limited partnership can reasonably conclude that the communication was sent by the purported sender.

"Electronic" (Subsection 8 on page 133) refers to technology having an electrical, digital, magnetic, wireless, optical or electromagnetic or similar capabilities.

"Electronic communication" (Subsection 9 on page 133) refers to any form of communication not involving the physical transmission of paper that creates a record that can be retained, retrieved and reviewed by the recipient and which may be directly reproduced to paper by the recipient through an automated process.

"Electronic record" (Subsection 10 on page 133) refers to a record which is transmitted, received or stored by electronic means.

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"Electronic signature" (Subsection 11 on page 133) refers to an electronic sound, symbol or process attached to an electronic record which is executed or adopted by the sender with the intent to sign the record.

"Record" (Subsection 28 on page 137) refers to information inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

Subsections 13 (pertaining to filings with the Secretary of State), 22, (pertaining to *notice*) and 29 (pertaining to signatures) are **technical clarifications** of previous definitions resulting from the adoption of the provisions authorizing electronic filings.

Subsection 13 (beginning on page 133) provides for electronic filing with the Secretary of State if the method or medium is a form that is acceptable to the Secretary of State.

Subsection 22 (beginning on page 134) authorizes *notice* in electronic form to limited partnerships by partners and to partners by limited partnerships.

Subsection 29 (on page 137) makes clear:

That *for all purposes* a signature may be facsimile affixed, engraved, printed, stamped with indelible ink, transmitted electronically or in any manner reproduced on the document; and,

That signatures and documents which are communicated to the Secretary of State must be sent by a method or medium of communication acceptable to the Secretary of State.

Subsection 23 (on page 136) is a substantive change to the definition of the term "organization" to exclude nonprofit corporations from the definition of that term (and is parallel to similar modifications in the Business Corporation Act and Limited Liability Company Act.

Subsections 7, 15, 18 and 19 are routine technical clarifications . . . some as the result of the inclusion of the provisions authorizing electronic filings and some as the result of general updating.

Section 118 (beginning on page 137) is a new section representing a substantive change authorizing *for all purposes* the legal recognition of electronic records and electronic signatures.

Section 119 (on page 138) is a technical clarification which makes clear that after a merger the surviving organization must comply with all of the statutory requirements regarding a limited partnership name (and is parallel to the provisions for the previously described entities).

Section 120 (beginning on page 138) is a technical clarification that deletes language which has been made obsolete by the new provisions allowing for electronic filing with the Secretary of State.

Section 121 (beginning on page 139) is a technical clarification which makes clear that a limited liability limited partnership is among the entities which must register separately with the Secretary of State if that entity is serving as the general partner in a limited partnership.

Section 122 (on page 140) is a technical clarification requested by the Secretary of State making clear that a limited partnership which changes its name and is the general partner in a limited liability limited partnership or is the managing partner of

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a limited liability partnership must simultaneously change its name in each of these registrations when filing its change of name.

Section 123 (beginning on page 140) are routine **grammatical changes**.

Sections 124 and 125 (beginning on page 141) are **technical clarifications** requested by the Secretary of State pertaining to the registration of foreign limited partnerships with that office.

Sections 126 (beginning on page 142) is a substantive change only in that it is a newly enacted section which allows the Secretary of State to receive service of process on behalf of domestic or foreign limited partnerships.

This section is parallel to similar sections in each of the other business entity chapters.

This provision was never included in the original enactment of Chapter 45-10.1.

Sections 127, 128 and 129 (beginning on page 143) are three existing sections which are being moved to the end of Chapter 45-10.1 (from their current location in the middle chapter). In each of the other business entity chapters, the Secretary of State provisions are located at the end of the chapter and should be more easily found in their new location.

Sections 130, 131, 132 and 133 are new sections pertaining to the operations of the Secretary of State and are substantive changes only in that these sections had not previously been included in Chapter 45-10.1. However, each of them are parallel to similar provisions in each of the other business entity chapters.

Section 134 and 135 (beginning on page 150) are new sections pertaining to the audit of limited partnerships receiving state subsidies for the production

of alcohol for a combination with gasoline and pertaining to foreign trade zones.

- Both sections are substantive changes only in that neither has previously been included in Chapter 45-10.1.
- However, both sections are parallel to their counterparts in each of the other business entities.

Sections 136 through 151 (pages 151 through 166) pertain to general partnerships (Chapters 45-13 through 45-21).

Section 136 (beginning on page 151) is the definition section for Chapters 45-13 through 45-21:

- Subsections 2, 7, 8, 9, 10 and 24 are new defined terms and represent substantive changes which introduce these chapters to the concepts of electronic filing with the Secretary of State and authenticated electronic communication to and from the partnership.

- "Authenticated electronic communication" (Subsection 2 on page 152) is electronic communication delivered to a partner or agent of the partnership from which the partnership can reasonably conclude that the communication was sent by the purported sender.

- "Electronic" (Subsection 7 on page 152) refers to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

- "Electronic communication" (Subsection 8 on page 152) refers to any form of communication not having the physical transmission of paper that creates a record that can be retained,

retrieved and reviewed by the recipient and which may be directly reproduced to paper by the recipient through an automated process.

• "Electronic record" (Subsection 9 on page 152) refers to a record which is transmitted, received or stored by electronic means.

• "Electronic signature" (Subsection 10 on page 153) refers to an electronic sound, symbol or process attached to an electronic record which is executed or adopted by the sender with the intent to sign the record.

• "Record" (Subsection 24 on page 156) refers to information inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

• Subsections 11 (pertaining to filings with the Secretary of State), 16 (pertaining to *notice*) and 25 (pertaining to signatures) are **technical clarifications** of previous definitions resulting from the adoption of the provisions authorizing remote communication and electronic filings.

• Subsection 11 (on page 153) provides for electronic filing with the Secretary of State if the method or medium is a form acceptable to the Secretary of State.

• Subsection 16 (beginning on page 156) authorizes *notice* in electronic form to partnerships by partners and to partners by partnerships.

• Subsection 25 (beginning on page 156) makes clear:

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That for all purposes a signature may be facsimile affixed, engraved, printed, stamped with indelible ink, transmitted electronically or in any manner reproduced on the document; and,

That signatures and documents which are communicated to the Secretary of State must be sent by a method or medium of communication acceptable to the Secretary of State.

Subsection 17 (on page 155) is a substantive change to the definition of the term "organization" to exclude nonprofit corporations from the definition of that term (and is parallel to its counterparts in the previous chapters).

Subsections 1, 6, 13, 15, 22 and 27 are routine **technical clarifications** . . . some as the result of the inclusion of the provisions authorizing remote communications and electronic filings and some as the result of general updating.

Section 137 (on page 157) is a substantive change authorizing for all purposes the legal recognition of electronic records and electronic signatures.

Section 138 (beginning on page 157) is a **technical clarification** which makes clear that after a merger the surviving organization must comply with all of the statutory requirements regarding a partnership name (and is parallel to similar provisions which have been previously discussed).

Section 139 (beginning on page 158) is a **technical clarification** that deletes language which has been made obsolete by the new provisions allowing for electronic filing with the Secretary of State.

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Section 140 (beginning on page 159) contains a **grammatical change** by which the term "chief executive office" is converted to "principal executive office" so as to be parallel to the terminology for corporations and limited liability companies. This **grammatical change** will appear several times in the amendments to Chapters 45-13 through 45-21.

Section 141 (on page 160) contains the previously described **grammatical change**.

Section 142 (on page 160) contains the previously described **grammatical change** and a **technical clarification** making clear that partnership "filings" are with the Secretary of State and must include the required fees.

Sections 143 and 144 (beginning on page 160) contain the previously described **grammatical change**.

Section 145 (on page 161) contains the previously described **technical clarification** with regard to filings with the Secretary of State.

Section 146 (beginning on page 161) is a new section which represents a substantive change to permit partners to take partnership action without a meeting and is parallel to its counterparts in the Business Corporation Act, Limited Liability Company Act and Nonprofit Corporation Act.

Section 147 (beginning on page 162) is a new section which provides for remote communication at partner meetings and is parallel to its counterparts in the Business Corporation Act, Limited Liability Company Act and Nonprofit Corporation Act.

Section 148 (on page 164) contains the previously described **technical clarification** with regard to filings with the Secretary of State.

Sections 149, 150 and 151 contain routine technical clarifications and grammatical changes regarding the plan of merger for partnerships which are merging with other entities.

Sections 152 through 158 (pages 166 through 175) pertain to the North Dakota Limited Liability Partnership Act (Chapter 45-22).

Section 152 (beginning on page 166) is the definition section for the Limited Liability Partnership (LLP) Act (Chapter 45-22):

Subsections 2, 5, 6, 7, 8 and 20 are new defined terms and represent substantive changes which introduce the liability limited partnership (LLP Act) to the concepts of electronic filing with the Secretary of State and authenticated electronic communications to and from the partnership.

"Authenticated electronic communication" (Subsection 2 on page 166) is electronic communication delivered to a partner or agent of the partnership from which the partnership can reasonably conclude that the communication was sent by the purported sender.

"Electronic" (Subsection 5 on page 167) refers to technology having the electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Electronic communication" (Subsection 6 on page 167) refers to any form of communications not involving the physical transmission of papers that creates a record that can be retained, retrieved and reviewed by the recipient and which may

be directly reproduced to paper by the recipient through an automated process.

"Electronic record" (Subsection 7 on page 167) refers to an electronic sound, symbol or process attached to an electronic record which is executed or adopted by the sender with the intent to sign the record.

"Record" (Subsection 20 on page 170) refers to information inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

Subsections 9 (pertaining to filings with the Secretary of State), 15 (pertaining to *notice*) and 24 (pertaining to signatures) are **technical clarifications** of previous definitions resulting from the adoption of the provisions authorizing electronic communication and electronic filing.

Subsection 9 (beginning on page 167) provides for electronic filing with the Secretary of State if the method or medium is a form that is acceptable to the Secretary of State.

Subsection 15 (beginning on page 168) authorizes *notice* in electronic form to limited liability partnerships by partners and to partners by limited liability partnerships.

Subsection 24 (on page 171) makes clear:

That for all purposes a signature may be facsimile affixed, engraved, printed, stamped with indelible ink, transmitted electronically or in any manner reproduced on the document; and,

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That signatures and documents which are communicated to the Secretary of State must be sent by a method or medium of communication acceptable to the Secretary of State.

Subsection 16 (on page 170) is a substantive change to the definition of the term "organization" to exclude nonprofit corporations from the definition of that term (and is parallel to its counterparts in the previously discussed chapters).

Subsections 4, 11 and 14 are routine technical clarifications . . . some as the result of the inclusion of the provisions authorizing electronic communication and electronic filing and some as the result of general updating.

Section 153 (beginning on page 171) is a substantive change authorizing for all purposes the legal recognition of electronic records and electronic signatures.

Section 154 (beginning on page 172) is a technical clarification which makes clear that the limited liability partnership registration with the Secretary of State must be signed by a managing partner.

Section 155 (beginning on page 173) is a technical clarification which makes clear that after a merger the surviving organization must comply with all of the statutory requirements regarding a limited liability partnership name (and is parallel to its counterparts in the previously discussed chapters).

Section 156 (beginning on page 173) is a technical clarification that deletes language which has been made obsolete by the new provisions allowing for electronic filing with the Secretary of State.

Section 157 (beginning on page 174) is a technical clarification making clear that service of process on the Secretary of State (on behalf of a domestic or foreign limited liability partnership) shall be by registered mail or personal delivery and not by electronic communication.

Section 158 (on page 175) is a technical clarification resulting from the renumbering of the subsections in the definitions section of this chapter (due to the inclusion of new definitions).

Sections 159 through 162 (pages 175 through 182) pertain to the Limited Liability Limited Partnership Act (Chapter 45-23).

Section 159 (beginning on page 175) is the definitions section for the Limited Liability Limited Partnership Act (Chapter 45-23):

Subsections 2, 5, 6, 7, 8, 19 and 21 are new defined terms and represent substantive changes which introduce the Limited Liability Limited Partnership (LLLLP) Act to the concepts of electronic filing with the Secretary of State, authenticated electronic communications to and from the partnership and the participation in partnership meetings by remote communication.

"Authenticated electronic communications" (Subsection 2 on page 176) are electronic communications delivered to a partner or agent of the partnership from which the partnership can reasonably conclude that the communication was sent by the purported sender.

"Electronic" (Subsection 5 on page 176) refers to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

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"Electronic communication" (Subsection 6 on page 176) refers to any form of communication not having the physical transmission of paper that creates a record that can be retained, retrieved and reviewed by the recipient and which may be directly reproduced to paper by the recipient through an automated process.

"Electronic record" (Subsection 7 on page 176) refers to a record which is transmitted, received or stored by electronic means.

"Electronic signatures" (Subsection 8 on page 176) refers to an electronic sound, symbol or process attached to an electronic record which is executed or adopted by the sender with the intent to sign the record.

"Record" (Subsection 19 on page 180) refers to information inscribed on a tangible medium or that is stored in an electronic medium and is retrievable in perceivable form.

"Remote communication" (Subsection 21 on page 180) refers to communication by electronic means, conference telephone, video conference, the Internet or other such means by which individuals not physically present in the same location may communicate with each other on a substantially simultaneous basis.

Subsections 9 (pertaining to filings with the Secretary of State), 16 (pertaining to *notice*), 22 (pertaining to signatures) are technical clarifications of previous definitions resulting from the adoption of the

provisions authorizing remote communications, electronic communication and electronic filing.

- Subsection 9 (on page 177) provides for electronic filing with the Secretary of State if the method or medium is a form that is acceptable to the Secretary of State.

- Subsection 16 (beginning on page 178) authorizes *notice* in electronic form to limited liability limited partnerships by partners and to partners by limited liability limited partnerships.

- Subsection 22 (on page 180) makes clear:

- That *for all purposes* a signature may be facsimile affixed, engraved, printed, stamped with indelible ink, transmitted electronically or in any manner reproduced on the document; and,

- That signatures and documents which are communicated to the Secretary of State must be sent by a method or medium of communication acceptable to the Secretary of State.

- Subsection 17 (on page 179) is a substantive change to the definition of the term "organization" to exclude nonprofit corporations from the definition of that term (and is parallel to its counterparts in the previously discussed chapters).

- Subsections 4 and 12 are routine technical clarifications as the result of general updating.

- Section 160 (on page 181) is a substantive change authorizing *for all purposes* the legal recognition of electronic records and electronic signatures.

Section 161 (on page 181) is a **technical clarification** which makes clear that after a merger the surviving organization must comply with all statutory requirements regarding a limited liability limited partnership name (and is parallel to its counterparts in the previously discussed chapters).

Section 162 (beginning on page 181) is a new section representing a **substantive change directing the Secretary of State to delete or obscure Social Security numbers or tax identification numbers before disclosing a copy of the document to the public.**

Section 163 repeals three sections of Chapter 45-10.1 (these sections were restated in a different area of that chapter).

As you can see the legislation embodied in this Bill serves to introduce and refine the concepts of electronic communication, remote communication and electronic filing and to further integrate and refine other key elements of our existing business and nonprofit entity statutes with each other. Thank you for the opportunity to address your committee. If you have any questions, I would be happy to answer them.

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FAX (701) 328-2992

March 10, 2003

TO: Senator Traynor, Chairman, and Members of the Senate Judiciary Committee

FR: Clara Jenkins, Director, Business Division, on behalf of Al Jaeger, Secretary of State

RE: HB 1362 - Amendments

Since its passage by the House, the Secretary of State's office has become aware of required additional amendments to the bill, which are attached.

- In sections 20, 86, 113, 126, and 157, the amendments change the document requirements for service of process on the Secretary of State. Currently, one original document and two copies must be provided to the Secretary of State. The amendment would allow three copies of the document rather than an original and two copies to be provided. These amendments will make the service of process provisions of this bill consistent with a similar amendment to SB 2072, which was approved this past Friday by the House Government and Veterans Affairs Committee.
- In sections 22, 88, 116, 132, and 162, the amendments change references from "exempt records" to "confidential records" as it relates to social security and federal identification numbers. These amendments will make the text in these sections more consistent with the provisions in HB 1092. The Attorney General introduced HB 1092 and it relates to the confidentiality of social security numbers.
- Create a new section 119 to the bill creating section 45-10.1-01.2 to clearly indicate that the provisions of chapters 45-12 through 45-21 apply to limited partnerships.

There is also attached a summary sheet as to the numbers of business entities that have been created as the result of the various business bills that the Legislative Assembly has adopted beginning with the 1993 session.

If you want to choose your own future - VOTE. - Tuesday Zwetow - 2000-2002 Get Out the Vote Slogan Winner - Bismarck Vo Tech

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Dorinda Hallmark
Operator's Signature

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March 10, 2003

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Statistical information as to the numbers of business entities that have been created as the result of the various business bills that the Legislative Assembly has adopted beginning with the 1993 session.

June 30, 1995 Feb 24, 2003

ND for-profit corporations	10,734	11,924	+ 11%
ND Professional corporations	552	744	+ 35%
Foreign for-profit corporations	7,307	11,091	+ 52%
Limited Liability Companies (all)	441	3,646	+ 727%
Limited Liability partnerships (all)	13	1,535	+ 11,808%
Limited Partnerships (all)	864	1,598	+ 85%
Limited Liability Limited Partnerships	0	285	+ 285%
Partnership Fictitious Names	1,362	1,538	+ 13%
ND non-profit corporations *	0	6,922	+ %
Foreign non-profit corporations *	0	1,084	+ %

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Deanna Hall Smith
Operator's Signature

10/3/03
Date

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1362

- Page 1, line 2, after 45-10.1-01.1, insert immediately thereafter "45-10.1-01.2"
- Page 33, line 9, remove "An original and two" and insert immediately thereafter "Three"
- Page 34, line 11, remove "Exempt" and insert immediately thereafter "Confidential"
- Page 34, line 13, remove "an exempt" and insert immediately thereafter "a confidential"
- Page 34, line 13, remove "subsection 5 of"
- Page 34, line 14, remove "take reasonable precautions to"
- Page 34, line 15, remove "the secretary of state determines to"
- Page 34, line 16, remove "be a closed record"
- Page 102, line 23, remove "An original and two" and insert immediately thereafter "Three"
- Page 103, line 13, remove "Exempt" and insert immediately thereafter "Confidential"
- Page 103, line 15, remove "an exempt" and insert immediately thereafter "a confidential"
- Page 103, line 15, remove "subsection 5 of"
- Page 103, line 16, remove "take reasonable precautions to"
- Page 103, line 17, remove "the secretary of state determines to"
- Page 103, line 18, remove "be a closed record"
- Page 130, line 16, remove "An original and two" and insert immediately thereafter "Three"
- Page 132, line 5, remove "Exempt" and insert immediately thereafter "Confidential"
- Page 132, line 7, remove "an exempt" and insert immediately thereafter "a confidential"
- Page 132, line 7, remove "subsection 5 of"
- Page 132, line 8, remove "take reasonable precautions to"
- Page 132, line 9, remove "the secretary of state determines to"
- Page 132, line 10, remove "be a closed record"
- Page 138, after line 10, insert:

Section 119. Section 45-10.1-01.2 of the North Dakota Century Code is created and enacted as follows:

Deanna Hall
Operator's Signature

10/3/03
Date

45-10.1-01.2. Applicability of chapters 45-12 through 45-21.

1. In any case not provided for in this chapter, chapters 45-12 through 45-21 govern.
2. If applying chapters 45-12 through 45-21 to a limited partnership, all references in chapters 45-12 through 45-21 "partnership" refer to "limited partnership".
3. If any provision of this chapter conflicts with chapters 45-12 through 45-21, that provision of this chapter takes precedence.

Page 142, line 31, remove "An original and two" and insert immediately thereafter "Three"

Page 150, line 6, remove "Exempt" and insert immediately thereafter "Confidential"

Page 150, line 8, remove "an exempt" and insert immediately thereafter "a confidential"

Page 150, line 8, remove "subsection 5 of"

Page 150, line 9, remove "take reasonable precautions to"

Page 150, line 10, remove "the secretary of state determines to"

Page 150, line 11, remove "be a closed record"

Page 175, line 8, remove "An original and two" and insert immediately thereafter "Three"

Page 182, line 1, remove "Exempt" and insert immediately thereafter "Confidential"

Page 182, line 3, remove "an exempt" and insert immediately thereafter "a confidential"

Page 182, line 3, remove "subsection 5 of"

Page 182, line 4, remove "take reasonable precautions to"

Page 182, line 5, remove "the secretary of state determines to"

Page 182, line 6, remove "be a closed record"

Renumber accordingly