

CORPORATIONS

CHAPTER 82

SENATE BILL NO. 2084

(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

SECURITIES LAW REVISIONS

AN ACT to amend and reenact sections 10-04-02 and 10-04-03, subsections 3, 5, and 12 of section 10-04-05, section 10-04-06, subsection 3 of section 10-04-07, subsections 2 and 3 of section 10-04-07.1, sections 10-04-08 and 10-04-10, subsection 4 of section 10-04-10.3, subsection 1 of section 10-04-11, sections 10-04-14 and 10-04-16, subsection 1 of section 10-04-16.1, subsection 3 of section 10-04-17, and subsection 1 of section 10-04-18 of the North Dakota Century Code, relating to definitions under the Securities Act, the authority of the securities commissioner and the securities department, securities exemptions, exempt transactions, registration of securities, registration of dealers, agents, investment advisors and investment advisor representatives, post-registration requirements, consent to service of process, orders and injunctions, investigations by the securities department, rescission, and penalties; to repeal section 10-04-10.2 of the North Dakota Century Code, relating to eligibility to be registered under the Securities Act; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-04-02 of the North Dakota Century Code is amended and reenacted as follows:

10-04-02. Definitions. When used in this chapter, unless the context or subject matter otherwise requires:

1. "Agent" means any individual, other than a dealer, who represents a dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in effecting transactions in a covered security as described in section 18(b)(3) and 18(b)(4) of the Securities Act of 1933 or a dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the Securities Act of 1934.
2. "Commissioner" means the securities commissioner of this state.
3. "Dealer" means a person, other than an agent, engaged in the business of effecting transactions in securities issued by another person or by such person for the account of others or for the person's own account. The term does not include a bank or savings institution if its activities as a dealer are limited to those specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if limited to unsolicited

transactions; 3(a)(5)(B) and 3(a)(5)(C) of the Securities Act of 1934 or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Act of 1934.

4. "Department" means the state securities department.
5. "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.
- ~~5.~~ 6. "Federal covered security" means any security that is a covered security pursuant to section 18(b) of the Securities Act of 1933 or rules or regulations adopted under that Act.
- ~~6.~~ 7. "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:
 - a. An investment adviser representative.
 - b. A bank, savings institution, or trust company.
 - c. A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the person's profession.
 - d. A broker or dealer or its agent whose performance of these services is solely incidental to the conduct of business as a broker or dealer and who receives no special compensation for them.
 - e. A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.
 - f. A federal covered adviser.
 - g. A person who is exempted from the federal definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.
 - h. Such other persons not within the intent of this subsection as the commissioner may by rule or order designate.
- ~~7.~~ 8. "Investment adviser representative" means:

- a. With respect to an investment adviser, any partner, officer, director of an investment adviser, or a person occupying a similar status or performing similar functions, or other individual who is either employed by or associated with an investment adviser who is registered or required to be registered under this chapter who:
 - (1) Makes any recommendations or otherwise renders advice regarding securities directly to advisory clients;
 - (2) Manages the accounts or portfolios of clients;
 - (3) Determines which recommendations or advice regarding securities should be given;
 - (4) Solicits, offers, or negotiates for the sale of or sells investment advisory services; or
 - (5) Immediately supervises employees in the performance of any of the foregoing.
 - b. With respect to a federal covered adviser, any person who is an "investment adviser representative" who has a "place of business" in this state, as those terms are defined by the securities and exchange commission pursuant to section 203A of the Investment Advisers Act of 1940.
 - c. "Investment adviser representative" does not include clerical or ministerial personnel.
- 8- 9. "Issuer" means every person who issues or proposes to issue any security, except that:
- a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, certificates of interest, or shares in an unincorporated investment trust, whether or not of the fixed, restricted management, or unit type, issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.
 - b. With respect to equipment trust certificates or like securities, issuer means the person by whom the equipment or property is or is to be used.
 - c. With respect to fractional interests in oil, gas, or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, which are created for the purpose of sale.
 - d. With respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical settlement contract that is not fractionalized or pooled means the person effecting the transactions with the investors in such contracts.

- 9- 10. "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, must be deemed an offer to sell the security to be acquired by subscription or conversion. The offer or grant of an option to purchase securities may not be deemed an offer to sell the securities to be purchased if:
- a. The offer or grant is an offer or grant limited to directors, officers, or employees of the issuer or a parent or subsidiary of the issuer;
 - b. No money or other tangible property is given for the option; and
 - c. The option, by its terms or by the terms of a supplemental agreement, is nontransferable except by will or the laws of descent and distribution.
- 40- 11. "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, or any other unincorporated organization.
- 44- 12. "Registered agent" means an agent registered under this chapter.
- 42- 13. "Registered dealer" means a dealer registered under this chapter.
- 43- 14. "Sale" or "sell" means every sale or other disposition of a security or interest in a security for value, and every contract to make any such sale or disposition. Any security given or delivered with, or as a bonus on account of any purchase of securities or any other thing, must be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.
- 44- ~~"Securities Act of 1933" means the Act of Congress known as the Securities Act of 1933, as now or hereafter amended.~~
15. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement contract or a fractionalized or pooled interest therein; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor when the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; foreign currency commodity contract, as used in chapter 51-23; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary

or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

16. "Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement contract" does not include:
- a. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by the viator to the viatical settlement provider pursuant to chapter 26.1-33.2;
 - b. The assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or
 - c. The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the insurance laws of this state.

SECTION 2. AMENDMENT. Section 10-04-03 of the North Dakota Century Code is amended and reenacted as follows:

10-04-03. Administration of chapter.

1. The state securities department is under the supervision of a chief officer designated as the securities commissioner. The securities commissioner must be appointed by the governor and confirmed by the senate and shall hold office for a term of four years, beginning on the first day of July following a national presidential election and continuing until a successor has been appointed, confirmed by the senate, and has qualified, unless removed as herein provided. If the senate is not in session, the governor may make an interim appointment, and the interim appointee shall hold office until the senate confirms or rejects the appointment. The commissioner must be skilled in securities and may not be an incumbent of any other public office in the state. The commissioner may not own or control any security required to be registered under this chapter and may not be an officer, director, or employee of any dealer, salesman, investment adviser, or investment adviser representative required to be registered under this chapter. The governor may remove from office any commissioner who fails to discharge faithfully the duties of office or who becomes disqualified under the provisions of this section.

It is the prime duty of the commissioner to administer the provisions of this chapter. The commissioner shall receive a salary within the amount appropriated for salaries by the legislative assembly. The commissioner shall use a seal with the words "securities commissioner, North Dakota" and such design as the commissioner may prescribe engraved thereon by which seal the commissioner may authenticate documents used in the administration of this chapter. The commissioner may employ such employees as are necessary for the administration of this chapter. In the absence or disability of the

commissioner, the deputy or designee of the commissioner shall administer the provisions of this chapter as acting commissioner.

2. The commissioner shall have authority to administer oaths in, and to prescribe forms for, all matters arising under this chapter. The commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary under this chapter, including rules and forms governing registration statements, applications and reports, and defining any terms, whether or not used in this chapter, if the definitions are consistent with this chapter. The commissioner shall cooperate with the administrators of the securities laws of other states and of the United States with a view toward achieving maximum uniformity in the interpretation of like provisions of the laws administered by them and in the forms which are required to be filed under such law.
3. In addition to their regular compensation, the commissioner and the commissioner's employees shall be paid travel expenses necessary and actually incurred in the performance of their duties.
4. A special fund is established in the state treasury and designated as the investor education and technology fund. The commissioner may deposit the following moneys into the investor education and technology fund:
 - a. Payments for tuition or other costs associated with educational services or materials provided by the department.
 - b. Grants or donations for the purpose of investor education received by the commissioner from any public or private source.
 - c. Civil penalties assessed by the commissioner under the Securities Act of 1951, if the commissioner finds that:
 - (1) The violations or alleged violations underlying the assessment of civil penalties involve repeat violations, involve numerous investors, or appear to have been perpetrated on a systematic basis; and
 - (2) The violations or alleged violations underlying the assessment of civil penalties could have been prevented or significantly curtailed had the individual investors involved in the matter been more knowledgeable about financial concepts in general, or about any specific laws, practices, or procedures relating to the securities industry.

The commissioner shall maintain and administer the investor education and technology fund. The moneys in the fund are appropriated to provide education services to the public relating to any of the financial services industries, including the securities industry, and to provide for the technology needs of the department, including the purchase or rental of equipment or software, servicing of the equipment or software, and training the commissioner's staff in the use of the equipment or software.

5. All fees, civil penalties, or other moneys collected under this chapter must be deposited in the general fund of the state treasury, except funds

permitted to be deposited into the investor education and technology fund under subsection 4 or civil penalties collected from enforcement actions for the purpose of distribution to aggrieved investors, which may be deposited in an the investor restitution fund; and all other civil penalties and moneys collected pursuant to an administrative action, court order or judgment, including investigation costs and attorney's fees in a securities action brought by the commissioner, must be deposited in the general fund. Funds in the investor restitution fund are appropriated to the securities commissioner on a continuing basis for distribution to aggrieved investors.

- 5- 6. The commissioner may honor requests from interested persons for the issuance of a statement or opinion concerning the applicability of this chapter or the rules adopted under this chapter to any transaction or proposed transaction which may be subject to this chapter. Any such request must be accompanied by a nonrefundable fee of one hundred fifty dollars.

SECTION 3. AMENDMENT. Subsections 3, 5, and 12 of section 10-04-05 of the North Dakota Century Code are amended and reenacted as follows:

3. Securities issued by a building and loan association subject to supervision by an agency of the state of North Dakota, or policy contracts, including variable or ~~fixed~~ annuity contracts, of an insurance company subject to supervision by an agency of the state of North Dakota.
5. Any security issued by any person organized and operated not for private profit but exclusively for religious, educational, benevolent, fraternal, charitable, social, or reformatory purposes; provided that prior to any offer of such security each person must meet the following conditions:
 - a. Apply for and obtain the written approval of the commissioner.
 - b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars, which document and fee must accompany the application.
 - c. File a notice identifying the basis of its qualification under this exemption with such additional information as the commissioner may require.
 - d. ~~Must not pay a commission or other remuneration, directly or indirectly, except to a dealer and agent registered in this state in connection with the offer or sale of the security to a resident of this state.~~
 - e. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.

The approval is effective for a period of one year from the date of approval. At least thirty days prior to the expiration date, there must be filed an application, offering disclosure document, and a nonrefundable fee of one hundred dollars for the renewal of the filing for additional periods of one year.

12. ~~Securities~~ Any security issued by a venture capital corporation or limited liability company organized under and operating in compliance with chapter 10-30.1; provided that prior to any offer of such security, the issuer must meet the following conditions:
- a. Apply for and obtain written approval by the commissioner.
 - b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars. The document and fee must accompany the application.
 - c. File such additional information as the commissioner requires by rule or order or may subsequently request.
 - d. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.
 - e. Not use public advertising matter or general solicitation, except tombstone advertisements approved by the commissioner, in connection with any offer or sale.
 - f. File a report of all offers and sales made in this state within thirty days after the completion of the offering.

The approval is effective for a period of one year from the date of approval. There must be filed, at least thirty days prior to the expiration date, an application, disclosure document, and a nonrefundable fee of one hundred dollars for the renewal of the filing for additional periods of one year.

³⁹ **SECTION 4. AMENDMENT.** Section 10-04-06 of the North Dakota Century Code is amended and reenacted as follows:

10-04-06. Exempt transactions. Except as hereinafter in this section expressly provided, sections 10-04-04, 10-04-07, 10-04-07.1, 10-04-08, 10-04-08.4, and 10-04-10 do not apply to any of the following transactions:

1. Any judicial, executor's, administrator's, guardian's, or conservator's sale or any sale by a receiver or trustee in insolvency or bankruptcy.
2. The sale in good faith and not for the purpose of avoiding the provisions of this chapter by a pledgee of securities pledged for a bona fide debt.
3. Any isolated sale of any security made by or on behalf of a bona fide owner for the owner's account, such owner not being an issuer, underwriter, dealer, or agent and such sale not being made in the course of repeated and successive transactions of a like character. This subsection shall not exempt any dealer or agent participating in an isolated sale from registering in accordance with section 10-04-10, nor shall this exemption be available in connection with any sale not made

³⁹ Section 10-04-06 was also amended by section 1 of House Bill No. 1276, chapter 83.

in good faith but rather for the purpose of evading the registration requirements imposed under chapter 10-04.

4. Securities dividends or other distributions by a corporation, limited partnership, limited liability limited partnership, or a limited liability company out of its earnings or surplus, or the sale or distribution of additional capital stock of a corporation, interest of a partnership, or membership interest of a limited liability company to or among its own stockholders, partners, or members, including persons who at the time of the transaction are holders of nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, when no commission or other remuneration is paid or given directly or indirectly for soliciting or effecting such sale or distribution to stockholders or members in this state.
5. Any offer or sale of securities to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or similar benefit plan, or other financial institution, or qualified institutional buyer, or to a dealer, or any government or political subdivision or instrumentality thereof, whether the purchaser is acting for itself or in a fiduciary capacity.
6. Any transaction incident to a vote by stockholders, partners, or members pursuant to the articles of incorporation, bylaws, partnership agreement, articles of organization, member-control agreement, or the applicable corporation, partnership, or limited liability company statute on a merger, consolidation, reclassification of securities, or sale of corporate, partnership, or limited liability company assets in consideration of the issuance of securities of another corporation, partnership, or limited liability company, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.
7. The issuance and delivery of any securities in exchange for any other securities of the same issuer pursuant to a right of conversion entitling the holder of the securities surrendered to make such conversion; provided, that the securities surrendered were not offered for sale or sold in violation of section 10-04-04.
8. The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that:
 - a. Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics.
 - b. Such securities do not constitute an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer, its officers, or directors or by or through an underwriter.

- c. A balance sheet of the issuer as of a date within eighteen months prior to the date of such sale and an income statement for either the fiscal year preceding that date or the most recent year of operations are contained in a securities manual.
 - d. Such securities are listed in Standard and Poor's, Mergent's industrial manual, Mergent's bank and finance manual, Mergent's transportation manual, Mergent's public utility manual, or Fitch's individual stock bulletin.
 - e. Such securities are limited to issuers organized under the laws of any state, territory, or insular possession of the United States.
 - f. Provided, however, that even though the foregoing conditions might all be met, the exemption would not apply to the securities of open-end management companies, mutual funds, unit investment trusts, contractual plans, and face amount certificate companies.
9. a. Any transaction pursuant to an offer directed by the offeror to not more than thirty-five persons, other than those designated in subsection 5, in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:
- (1) The seller reasonably believes that all the buyers in this state, other than those designated in subsection 5, are purchasing for investment.
 - (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state, other than those designated in subsection 5, except to a dealer and agent registered in this state in connection with the offer or sale of the security to a resident of this state.
 - (3) The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a nonrefundable filing fee of one hundred fifty dollars, which fee must accompany the application for approval.
- The commissioner may, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the condition in paragraph 1.
- b. Any offer or sale in this state of common stock, preferred stock, limited liability company membership interests, or limited partnership interests of an issuer during any period of twelve consecutive months if all of the following conditions are met:
- (1) The issuer reasonably believes that all the buyers in this state, other than those designated in subsection 5, are purchasing for investment.
 - (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in

this state, other than those designated in subsection 5, except reasonable and customary commissions paid by the issuer to a dealer and agent registered in this state in connection with the offer or sale of the security to a resident of this state.

- (3) The issuer is both organized under the laws of this state and has its principal place of business in this state.
- (4) No public advertising matter or general solicitation, except tombstone advertisements approved by the commissioner, is used in connection with any offers or sales.
- (5) An offering disclosure document in the form approved by the commissioner must be delivered to each offeree ~~no less than seventy-two hours~~ prior to the sale of the security.
- (6) The gross proceeds of the offering may not exceed five million dollars.
- (7) The issuer must apply for and obtain the written approval of the commissioner prior to making any offer or sale in this state by filing an application prescribed by the commissioner, a copy of the offering disclosure document, and any other information or documents the commissioner may require, together with a nonrefundable filing fee of one hundred fifty dollars.
- (8) All funds raised in the offering are placed in an escrow account until the total offering amount has been sold.

The commissioner may withdraw or further condition this exemption or waive the conditions in paragraphs 5 and 6.

- c. The issuer must file a report of all offers and sales made in this state pursuant to subdivision a or b on a form prescribed by the commissioner within thirty days after the completion of the offering or expiration of the twelve-month approval period, whichever occurs first.
- d. The exemptions provided under subdivisions a and b may not be combined.
- e. An exemption under this subsection is not available for the securities of any issuer if the issuer or any promoter, officer, director, manager, partner, or underwriter of the issuer:
 - (1) Has filed a registration statement that is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the application required under this exemption.
 - (2) Has been convicted within five years prior to the filing of the application required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit,

including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

- (3) Is currently subject to any state administrative enforcement order or judgment entered by any state securities administrator or the securities and exchange commission within five years prior to the filing of the application required under this exemption or is subject to any federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts, was found and the order of judgment was entered within five years prior to the filing of the application required under this exemption.
 - (4) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.
 - (5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such part from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security or involving the making of any false filing with any state or with the securities and exchange commission entered within five years prior to the filing of the application required under this exemption.
 - (6) Has been or is the subject of any order issued by the United States postal service that was entered within five years prior to reliance on this exemption and alleged any fraudulent or unlawful conduct.
- f. Subdivision e does not apply if the commissioner determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption should not be denied.
10. The sale of capital stock of a corporation or membership interests of a limited liability company if the corporation or limited liability company is organized under the statutes of this state or the sale of memberships, including dues, in a nonprofit corporation incorporated in North Dakota if the corporation or limited liability company is organized and operated for the primary purpose of promoting community development.
11. Any security issued in connection with an employees' stock purchase, savings, pension, profit-sharing, a self-employed person's retirement plan, or similar benefit plan.
12. The sale of a security issued by the United States, or the state of North Dakota, or any political subdivision or instrumentality of the state of North Dakota; provided, that the offer for sale and sale are made by an official or employee of the issuer or of the Bank of North Dakota acting in an official capacity and not for personal pecuniary profit, or by a bank or similar financial association or institution or an official or employee

thereof solely as an accommodation to customers of such association or institution and without asking or receiving a commission or remuneration other than an accommodation fee not to exceed fifty one hundred dollars in connection with the transaction.

13. ~~The sale of capital stock or membership interests of a venture capital corporation or limited liability company organized under chapter 10-30.1.~~
44. Any offer or sale of shares of capital stock issued by a professional corporation or professional limited liability company which is organized and operated pursuant to chapter 10-31.
45. 14. The offer or sale of a security issued by the North Dakota education association dues credit trust to members of the North Dakota education association.
46. 15. a. An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus or similar disclosure document for the security if all of the following conditions are satisfied:
- (1) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada; is engaged in or proposes to engage in a business other than petroleum exploration or production, mining, or other extractive industries; and is not a blind pool offering or other offering for which the specific business or properties cannot now be described.
 - (2) The issuer may solicit indications of interest in a project or business only within a period of twelve months after receiving approval from the commissioner and does not pay a commission or fee to any person for soliciting a potential investor or prospective purchaser in this state unless the person who receives the commission or fee is registered as a dealer or agent in this state.
 - (3) The issuer intends to register securities in this state, rely upon subsection 8 of section 10-04-05 for the issuance of a security, or receive approval for an exemption under subsection 5 of section 10-04-05 or subsection 9 of this section.
 - (4) The issuer files a solicitation of interest form and copies of any advertising or marketing materials, including scripts for use in telephone, television, electronic, or computer publications, for approval by the commissioner at least ten business days before the issuer begins soliciting indications of interest from potential purchasers and at least ten business days before publishing or distributing any materials or information to any person.
 - (5) The issuer obtains approval of the commissioner for any amendments or changes in filed forms, marketing materials,

or advertisements at least ten business days before distributing the amended marketing materials or amended advertising information to any person.

- (6) The issuer does not use any solicitation of interest form, script, advertisement, or other material which the issuer has been notified by the commissioner not to distribute, to solicit indications of interest.
- (7) Except for scripted broadcasts and published notices, the issuer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current solicitation of interest form at or before the time of the communication or within five days from the communication.
- (8) The issuer stops all communications with prospective investors made in reliance on this exemption immediately after filing an application to register or qualify the securities with the commissioner or with the securities and exchange commission.
- (9) The issuer does not accept money or sign completed contracts for sales of securities with any person while soliciting indications of interest and does not complete any sales of securities until at least ten business days after completing a securities registration or approval to offer and sell securities in this state.
- (10) The issuer does not make a sale until three days after delivery to the purchaser of a prospectus or similar disclosure document.
- (11) The issuer does not know, and in the exercise of reasonable care could not know, that the issuer or any officer, director, manager, ten percent shareholder, promoter, partner, or agent of the issuer:
 - (a) Has been the subject of or filed a registration statement that is the subject of a stop order, administrative enforcement order, judgment, injunction, or restraining order issued by any federal or state securities agency, any court of competent jurisdiction, or the United States postal service and which prohibits, denies, or revokes the registration or use of any exemption from registration in connection with the offer, sale, or purchase of a security, franchise, commodity, or other financial transaction or which involves fraud, deceit, misstatements of material facts, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or similar deceptive acts within five years prior to the filing of the solicitation of interest form; or
 - (b) Has been convicted of any felony or misdemeanor involving the offer, purchase, or sale of a security,

franchise, commodity, or financial transaction, or any felony or misdemeanor involving fraud, deceit, forgery, embezzlement, conspiracy to defraud, or a similar financial crime.

The prohibitions listed above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the dealer employing such party is licensed or registered in this state and the form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. A person disqualified under this subsection may not act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this section is automatically waived if the agency, which created the basis for disqualification, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

- b. The issuer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of section 10-04-04, but is a violation of this chapter, is actionable by the commissioner under section 10-04-16, and constitutes grounds for denying or revoking the exemption as to a specific security or transaction.
 - (1) Any published notice must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:
 - (a) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;
 - (b) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A PROSPECTUS OR SIMILAR DISCLOSURE DOCUMENT THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;
 - (c) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and
 - (d) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION AND IS REGISTERED OR APPROVED IN THIS STATE.
 - (2) Any script for broadcast must contain at least the identity of the chief executive of the issuer, a brief description of its

business and products, its address and telephone number, and the following legends:

- (a) THIS IS FOR AN INDICATION OF INTEREST ONLY AND INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND UPON A PROSPECTIVE INVESTOR;
- (b) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED; and
- (c) THIS OFFER IS MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER FEDERAL AND STATE SECURITIES LAWS.

- c. Offers made on reliance of this exemption will not result in a violation of section 10-04-04 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

~~47.~~ 16. An offer or sale of common stock, limited liability company membership interests, or limited partnership interests by a person to a person or other subscribers, not exceeding ten in number, for the sole purpose of organization in this state, if the securities are not acquired for the purpose of resale to others for a period of twelve months, advertising has not been published or circulated in connection with the offer or sale, and all sales are consummated within ten days after the date of organization.

~~48.~~ 17. Any offer or sale of a security by an issuer in a transaction provided all of the following conditions are met:

- a. Sales of securities may be made only to persons who are, or the issuer reasonably believes are, accredited investors as defined in 17 CFR 230.501(a) promulgated by the securities and exchange commission.
- b. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
- c. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to, or for, sale in connection with a distribution of the security. Any resale of a security sold in reliance of this exemption within twelve months of sale must be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under section 10-04-04 or to an accredited investor pursuant to an exemption available under subsection 5.
- d. (1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity

securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:

- (a) Within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the securities and exchange commission;
 - (b) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
 - (c) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
 - (d) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.
- (2) Paragraph 1 does not apply if:
 - (a) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
 - (b) Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or
 - (c) The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subdivision.
- e.
 - (1) A general announcement of the proposed offering may be made by any means.
 - (2) The general announcement must include only the following information, unless additional information is specifically permitted by the commissioner:
 - (a) The name, address, and telephone number of the issuer of the securities;

- (b) The name, a brief description, and price, if known, of any security to be issued;
- (c) A brief description of the business of the issuer in twenty-five words or less;
- (d) The type, number, and aggregate amount of securities being offered;
- (e) The name, address, and telephone number of the person to contact for additional information; and
- (f) A statement that:
 - [1] Sales will only be made to accredited investors;
 - [2] No money or other consideration is being solicited or will be accepted by way of this general announcement; and
 - [3] The securities have not been registered with or approved by any state securities agency or the securities and exchange commission and are being offered and sold pursuant to an exemption from registration.

- f. The issuer, in connection with an offer, may provide information in addition to the general announcement under subdivision e, if such information:
 - (1) Is delivered through an electronic data base that is restricted to persons who have been prequalified as accredited investors; or
 - (2) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.
- g. Telephone solicitation is not permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.
- h. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption.
- i. The issuer shall file with the ~~commissioner~~ department a notice of transaction, a consent to service of process, a copy of the general announcement, and a nonrefundable filing fee of one hundred dollars within fifteen days after the first sale in this state.

~~49.~~ 18. The offer or sale of a security issued by an organization organized under and operated in compliance with chapter 10-06.1.

~~20.~~ 19. Any offer or sale of an agricultural-related cooperative security by or on behalf of an agricultural producer, as defined by section 32-44-01, to a person for the purpose of producing and selling agricultural products, as

defined by section 32-44-01, to the cooperative. Commissions or other remuneration may not be paid or given directly or indirectly for soliciting any prospective buyer in this state, except to a dealer or agent registered in this state, to an agent of a bank or a commercial trust department, to a licensed real estate agent, or to a licensed auctioneer if the sale is made at a bona fide public auction.

SECTION 5. AMENDMENT. Subsection 3 of section 10-04-07 of the North Dakota Century Code is amended and reenacted as follows:

3. Securities entitled to registration by description shall be registered by filing with the ~~commissioner~~ department by the issuer or by a registered dealer ~~of~~:
 - a. A registration statement in a form prescribed by the commissioner, signed by the person filing such statement and containing the following information:
 - (1) Name and address of person filing statement.
 - (2) Name and business address of issuer, and address of issuer's principal office in this state, if any.
 - (3) Title of securities being registered and total amount of securities to be offered.
 - (4) Amount of securities to be offered in this state, price at which securities are to be offered for sale to the public, and amount of registration fee, computed as hereinafter provided in subsection 5.
 - (5) A brief statement of the facts which show that the securities are entitled to be registered by description.
 - b. Payment of the required registration fee.
 - c. If the person who is registering the securities is not domiciled in this state and is not a corporation or limited liability company organized or authorized to transact business under the laws of this state, a consent to service of process conforming to the requirements of section 10-04-14. Such filing with the ~~commissioner, which may be made either by delivery in the office of the commissioner or by posting by registered or certified mail properly addressed to the commissioner,~~ department shall constitute the registration of securities by description and such registration shall become effective as of the time of such filing. Upon such registration by description, securities may be sold in this state by the registered dealer.

SECTION 6. AMENDMENT. Subsections 2 and 3 of section 10-04-07.1 of the North Dakota Century Code are amended and reenacted as follows:

2. Securities entitled to registration by announcement may be registered only by a dealer registered ~~in~~ with the ~~office of the commissioner~~ department as provided for in section 10-04-10 by filing ~~in~~ with the ~~office~~

~~of the commissioner~~ department a written announcement of intention to trade in the securities containing the following:

- a. Name of issuer and location of the headquarters or principal office.
 - b. A brief description of the security, including price and current earnings.
 - c. A statement that the securities have been outstanding and in the hands of the public not less than one year as aforesaid.
 - d. A balance sheet not more than twelve months old.
 - e. A statement that the security has been registered in North Dakota or by the securities and exchange commission.
3. The filing of such announcement ~~in the office of~~ with the commissioner department constitutes the registration of the security, unless advised to the contrary within forty-eight hours or advised to furnish additional information, and such dealer shall pay to the commissioner a filing fee of twenty-five dollars. Upon registration, such securities may be sold in this state for a period of one year from date of registration by registered dealers at a price or prices reasonably related to the current market price of such security at the time of sale, subject, however, to any and all rights and authority granted the commissioner and to any person or purchaser under chapter 10-04, in respect of securities registered ~~in the office of~~ by the commissioner by description or qualification. No security registered under this section shall be sold directly or indirectly for the benefit of the issuer, or an underwriter of such securities, or for the promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter; provided, that no security, the registration of which has been revoked by the commissioner, or application for registration of which has been denied by the commissioner, or withdrawn by the applicant, shall be registered under this section.

SECTION 7. AMENDMENT. Section 10-04-08 of the North Dakota Century Code is amended and reenacted as follows:

10-04-08. Registration by qualification. Securities required to be registered by qualification under this chapter before they may be sold in this state must be registered as provided in this section. Application for registration of securities by qualification must be made by the issuer of the securities or by a registered dealer by filing ~~in~~ with the ~~office of the commissioner~~ department:

1. An application for registration, which must be made in writing or on forms prescribed by the commissioner ~~and which~~, must contain the following information and be accompanied by the following documents:
 - a. With respect to the applicant or issuer and any significant subsidiary: its name, address, and form of organization; the state of foreign jurisdiction and date of its organization; the general character and location of its business; a general description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

- b. With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: the person's name, address, and principal occupation for the past five years; the amount of securities of the issuer held by the person as of a specified date within thirty days of the filing of the application for registration; the amount of the securities covered by the application for registration to which the person has indicated an intention to subscribe; and a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected.
- c. With respect to persons covered by subdivision b: the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer to all those persons in the aggregate.
- d. With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision b other than the person's occupation.
- e. With respect to every promoter if the issuer was organized within the past three years: the information specified in subdivision b, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for any such payment.
- f. With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the application for registration; a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected; and a statement of the person's reasons for making the offering.
- g. The title, kind, classes, and amount of securities to be offered in this state; the proposed offering price to the public or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges and a statement as to what person, corporation, or limited liability company shall be responsible for payment of the same; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement

pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

- h. The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition.
- i. A description of each and every stock option or other security option outstanding, or to be created in connection with the offering, including the price at which such options may be exercised together with the amount of any such options held or to be held by every person.
- j. The capitalization and long-term debt of the issuer and any subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.
- k. The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the application for registration or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which affects its business or assets.
- l. A detailed statement showing the items of cash, property, services, patents, goodwill, and any other consideration for which any securities of the issuer have been within two years or are to be issued in payment.
- m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering.
- n. A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.
- o. A balance sheet of the issuer as of a date within four months prior to the filing of the application for registration; a profit and loss

statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if the business were the registrant.

- p. Other states in which it is proposed to offer the securities for sale to the public; other states in which the securities are eligible for sale to the public; states which have refused, by order or otherwise, to render the securities eligible for sale to the public or have revoked or suspended the right to sell the securities, or in which an application for registration has been withdrawn; and, if application has been made to register the securities under the federal Securities Act of 1933, the date upon which the application to register the securities was first filed, and a statement as to whether registration under that Act is effective, and if so, the effective date.
 - q. Such additional information as the commissioner requires by rule or order or may subsequently request.
2. Payment of a filing fee for each security or class of security to be registered as follows:
- a. One-tenth of one percent of the first seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.
 - b. One-twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.
 - c. In no event may such filing fee be less than one hundred dollars for each security or class of security to be registered. ~~If the application for filing is denied, such filing fee less the actual cost to the state of processing and investigating as determined by the commissioner must be returned to the applicant.~~
 - d. Provided, further, that any applicant may increase the aggregate amount of securities under this subdivision before the expiration of one year from the date of the certificate of effectiveness at the same reduced fee, which must be computed as provided in subdivisions a and b as a separate fee for each additional amount registered, as if the additional securities had been included in the other registration of that year, registration year and not calendar year.
 - e. For the renewal of the registration of securities for additional periods of one year, there must be paid a renewal fee of one hundred dollars.
3. If the applicant is not domiciled in this state and is not a corporation or limited liability company organized or authorized to transact business

under the laws of this state, a consent to service of process conforming to the requirements of section 10-04-14.

4. The commissioner may by rule or order require as a part of the application for registration under this section that a prospectus containing any designated part of the information specified in subsection 1 be submitted to the commissioner and the same prospectus must be sent or given to each person to whom a sale or an offer to sell is made. The commissioner may by rule or otherwise permit the omission of any item of information or document from any application for registration. In all cases in which an application is filed to register securities and a registration statement covering the same securities has been filed with the federal securities and exchange commission, a copy of the registration statement so filed must be accepted by the commissioner in lieu of the information specified in subdivisions a through q of subsection 1, except that it must be accompanied by a statement of the amount of such securities to be offered in this state. All of the statements, exhibits, or documents of every kind required under this section must be certified by the applicant or the issuer or any person having knowledge of the facts. An applicant may, with the consent of the commissioner, amend or withdraw an application and any or all statements, exhibits, or documents filed therewith under this section at any time prior to the registration or prior to any offering and sale of the securities sought to be registered or the entry of an order denying the registration of such securities, but in no event may the fee be returned.

Registration under this section is effective for a period of one year.

SECTION 8. AMENDMENT. Section 10-04-10 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10. Registration of dealers, agents, investment advisers, and investment adviser representatives - Notice filings by federal covered advisers. A dealer or agent may not offer for sale or sell any securities within or from this state, except in transactions exempt under section 10-04-06, unless registered as a dealer or agent pursuant to the provisions of this section.

1. **Dealers.** Application for registration as a dealer may be made by any person eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed ~~in~~ with the ~~office of the commissioner~~ department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner may also require such additional information relating to the applicant and as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees as the commissioner deems necessary to establish whether or not the applicant should be registered as a dealer under the provisions of this law.

There must be filed with such application a written consent to the service of process upon the commissioner in actions against such dealer, conforming to the requirements of section 10-04-14.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as a dealer unless the commissioner finds that the applicant is not of good business reputation, or is not solvent, or the applicant's ~~designees~~ principals and compliance or sales supervisor do not appear qualified by training, examination, or experience to act on behalf of a dealer in securities.

Except as prohibited by the Securities Exchange Act of 1934, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the dealer and the dealer's agents with all the provisions of this law and for the faithful performance and payment of all obligations of the dealer and the dealer's agents.

The bond must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect purchasers. Any such bond must have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a dealer, the commissioner shall notify the applicant of such registration.

2. Agent. Application for registration as an agent may be made by any individual eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant and by the registered dealer or issuer employing or proposing to employ such applicant, duly verified by oath, must be filed ~~in with the office of the commissioner~~ department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner shall require as a condition of registration that the applicant pass a written examination as evidence of knowledge of the securities business; provided, that not more than two officers or managers of an issuer may be registered as an agent for a particular original offering of the issuer's securities without being required to pass such written examination; and provided, further, that no such officer or manager may again register within three years as such agent for this or any other issuer without passing the written examination.

The commissioner may also require such additional information as to the applicant's previous business experience as the commissioner deems necessary to determine whether or not the applicant should be registered as an agent under the provisions of this law. If an agent proposes to be self-employed, the agent shall specifically state the particular security or securities the agent proposes to sell in this state in the application, and if said security or securities are exempt under section 10-04-05 or 10-04-06, or have been registered by description under section 10-04-07, or have been registered by announcement under section 10-04-07.1, or have been registered by qualification under section 10-04-08, then the commissioner may require that said self-employed agent file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed agent with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond must be in a form approved and in the amount required by the commissioner.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an agent unless the commissioner finds that such applicant is not of good business reputation, or that the dealer named on the application is not a registered dealer. When the commissioner has registered an applicant as an agent, the commissioner shall immediately notify the dealer of such registration.

Every registered dealer or issuer shall promptly notify the ~~commissioner~~ department of the termination of the employment by the dealer or issuer of a registered agent.

3. Investment advisers.

a. It is unlawful for any person to transact business in this state as an investment adviser unless:

- (1) The person is registered under this chapter;
- (2) The person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered advisers, dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner; or
- (3) Such person is registered either under the laws of the state where its principal place of business is located or with the securities and exchange commission, if the investment adviser has no place of business in this state and during the preceding twelve-month period has had not more than six clients, other than those specified in paragraph 2, who are residents of this state.

b. Application for registration as an investment adviser may be made by any person eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed ~~in~~ with the ~~office of the commissioner~~ department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner may also require such additional information relating to the applicant and as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees, as the commissioner deems necessary to establish whether or not the applicant should be registered as an investment adviser under the provisions of this chapter.

Except as prohibited by the Investment Advisers Act of 1940, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the investment adviser and the investment adviser's representatives with all the provisions of this law and for the faithful performance and payment of all obligations of the investment adviser and the investment adviser's representatives. The bond must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect persons in this state. Any such bond must have as surety thereon a surety company authorized to do business in this state.

The commissioner may by rule or order provide for an examination to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make the person an investment adviser.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an investment adviser unless the commissioner finds that the applicant is not of good business reputation or is not solvent.

A registrant as investment adviser shall notify the ~~commissioner~~ department of any change of address.

4. Federal covered adviser. Except with respect to a federal covered adviser whose clients are those described in paragraph 2 of subdivision a of subsection 3 or who meets the criteria of paragraph 3 of subdivision a of subsection 3, it shall be unlawful for a person to transact business in this state as a federal covered adviser unless such person has made a notice filing with the ~~commissioner~~ department, in writing or electronically, consisting of a copy of those documents that have been filed with the securities and exchange commission as the commissioner may require by rule or otherwise and the prescribed notice filing fee.

A notice filing is effective from receipt until the following December thirty-first. It may be renewed by filing with the ~~commissioner~~ department, prior to expiration, those documents filed with the securities and exchange commission as the commissioner may require by rule or otherwise, with the notice filing renewal fee.

If the information contained in any document filed with the ~~commissioner~~ department is or becomes inaccurate or incomplete in any material respect, the federal covered adviser shall file an amendment with the ~~commissioner~~ department whenever such amendment is filed with the securities and exchange commission.

A notice filing may be terminated by a federal covered adviser by filing a notice of termination with the ~~commissioner~~ department.

5. Investment adviser representatives. Application for registration as an investment adviser representative may be made by any person eighteen years of age or older. The application for registration must be submitted in writing or electronically in a form prescribed by the commissioner, be

signed by the applicant and if applicable, by the investment adviser employing or proposing to employ the applicant, be duly verified by oath, be filed ~~in~~ with the office of the commissioner department, and contain information the commissioner determines to be necessary concerning the applicant.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register the applicant as an investment adviser representative unless the commissioner finds that the applicant is not of good business reputation; that the investment adviser named in the application is not a registered investment adviser; or the federal covered adviser named in the application has not made a notice filing with the commissioner. When the commissioner has registered an applicant as an investment adviser representative, the commissioner shall immediately notify the investment adviser or the federal covered adviser, as applicable, of such registration.

Every registered investment adviser shall promptly notify the ~~commissioner~~ department of the termination of the employment by the adviser of a registered investment adviser representative. Every registered investment adviser representative employed by a federal covered adviser or the federal covered adviser shall promptly notify the ~~commissioner~~ department of the termination of such employment. The registration of the investment adviser representative is automatically suspended from the time of termination of employment until such time as the representative is registered by the commissioner as a representative of another investment adviser or federal covered adviser.

The commissioner ~~may by rule or order provide for an examination to be taken by the applicant~~ shall require as a condition of registration that the applicant pass a written examination as evidence of knowledge of the securities business. At the discretion of the commissioner, certain professional designations may be accepted in lieu of an examination.

6. Refusal of registration. If the commissioner has reason to believe there are grounds to refuse the approval of any application under this section, the commissioner may, by order, summarily postpone the approval of any application made under this section. If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-04-12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, the commissioner shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order must be mailed to the applicant at the applicant's business address, and if the application is for registration as an agent, to the registered dealer or issuer or if the application is for registration as an investment adviser representative to the investment adviser or federal covered adviser who proposed to employ such applicant. If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a dealer's, agent's, investment adviser's, or investment adviser representative's registration under section 10-04-11, such act or omission may constitute a sufficient ground for a finding by the commissioner that such applicant is not of good business reputation.

7. Record and renewal of registrations. The names and addresses of all persons who have been registered as dealers, agents, investment advisers, or investment adviser representatives, and all orders with respect thereto, and the names and addresses of all federal covered advisers who have made a notice filing must be recorded in a register of dealers, agents, investment advisers, federal covered advisers, and investment adviser representatives in the office of the commissioner. Every registration ~~and notice filing~~ under this section expires on ~~May first of each year, except for the registration of an investment adviser and investment adviser representative which will expire on~~ December thirty-first of each year, unless renewed. The commissioner may by order provide for expirations and renewals, including dates, forms, and procedures, adjust registration and notice filing fees to correspond with expiration dates, and do any other thing which may be necessary or convenient in order to participate in a central registration depository or any similar arrangement designed to promote uniformity, to ease regulatory burdens, or to encourage cooperation with other states, the securities and exchange commission, or any registered national securities association or exchange.
8. Fees. The fee, which must accompany the application, for registration, transfer, or notice filing, and for each annual renewal thereof is:
 - a. For each dealer \$200.00
 - b. For each agent \$60.00
 - c. For each investment adviser or federal covered adviser \$100.00
 - d. For each investment adviser representative \$50.00

An application to register as a dealer, agent, investment adviser, or investment adviser representative may, with the consent of the commissioner, be withdrawn upon written application, but in no event may any registration fees be returned.

SECTION 9. AMENDMENT. Subsection 4 of section 10-04-10.3 of the North Dakota Century Code is amended and reenacted as follows:

4. All the records ~~referred to in subsection 4~~ of any registered person are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or outside this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, if deemed practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or any other jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business, and in so cooperating may share any information obtained as a result of any investigation or examination.

SECTION 10. AMENDMENT. Subsection 1 of section 10-04-11 of the North Dakota Century Code is amended and reenacted as follows:

1. The commissioner may censure, place limitations on the activities of, suspend for a period not exceeding twelve months, or revoke the registration of any dealer, agent, investment adviser, or investment

adviser representative or any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer or investment adviser if, after a hearing or opportunity for hearing as provided in section 10-04-12, the commissioner finds that such registered dealer, agent, investment adviser, or investment adviser representative:

- a. Has violated or failed to comply with any provisions of this chapter or any order or rule of the commissioner under this chapter;
- b. Is, in the case of a dealer or investment adviser, insolvent;
- c. Has engaged in dishonest, fraudulent, or unethical practices in the securities business;
- d. Conducts business in purchasing or selling securities at such variations from current market prices as, in light of all the circumstances, are unconscionable or unfair to the purchasing public, or if such variance, including commissions on sales, unreasonably exceeds the price quoted by a recognized national quotation list as prescribed by the commissioner;
- e. Has failed to file with the ~~commissioner~~ department any financial record required pursuant to section 10-04-10.3, or has refused to permit or has otherwise impeded an examination into the person's affairs as provided by section 10-04-10.3 and subsection 3;
- f. Has filed an application for registration which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;
- g. Has been convicted of an offense determined by the commissioner to have a direct bearing upon a person's ability to serve the public as a dealer, agent, investment adviser, or investment adviser representative, or the commissioner finds that a person, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1;
- h. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;
- i. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a dealer, agent, investment adviser, or investment adviser representative;
- j. Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a dealer, agent, investment adviser, or investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order suspending or expelling membership in or association with a member of a self-regulatory organization registered under the Securities Exchange Act of 1934, the

Commodity Exchange Act, or the Investment Advisers Act of 1940; or is the subject of a United States post-office fraud order;

- k. Has, in connection with the offer, sale, or purchase of any security, directly or indirectly, effected a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase or sale of the security;
- l. Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business;
- m. Has failed reasonably to supervise the person's agents if the person is a dealer or the person's employees or investment adviser representatives if the person is an investment adviser; or
- n. Is the subject of an order entered by the insurance administrator of any state denying or revoking registration as an insurance producer, consultant, or the substantial equivalent of those terms as defined in section 26.1-26-02.

SECTION 11. AMENDMENT. Section 10-04-14 of the North Dakota Century Code is amended and reenacted as follows:

10-04-14. Service of process.

1. Every applicant for registration under this chapter, every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense, and every person making a notice filing under subsection 2 of section 10-04-08.4 shall file with the ~~commissioner~~ department, in such form as the commissioner prescribes, an irrevocable consent appointing the commissioner or the commissioner's successor in office to be the applicant's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process ~~in with the office of the commissioner~~ department, but it is not effective unless the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last-known address on file with the ~~commissioner~~ department, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.
2. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and the person has not filed a consent to service of process under subsection 1 and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the commissioner

or the commissioner's successor in office to be the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor, executor, or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on the person personally. Service may be made by leaving a copy of the process ~~in~~ with the ~~office of the commissioner~~ department, and it is not effective unless the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last-known address or takes other steps which are reasonably calculated to give actual notice, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

3. When process is served under this section, the court, or the commissioner in a proceeding before the commissioner, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

SECTION 12. AMENDMENT. Section 10-04-16 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Issue any order including cease and desist, rescission, stop, and suspension orders, which the commissioner deems necessary or appropriate in the public interest or for the protection of investors. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty against any person found in an administrative action to have violated any provision of this chapter, or any rule or order adopted or issued under this chapter, in an amount not to exceed ten thousand dollars for each violation. The commissioner may bring actions to recover penalties pursuant to this section in district court. A person aggrieved by an order issued pursuant to this subsection may request a hearing before the commissioner if a written request is made within ~~ten~~ fifteen days after receipt of the order. If a request for hearing is made under this subsection, the commissioner shall schedule a hearing within a reasonable time. Subsections 2, 3, and 4 of section 10-04-12 apply to any hearing conducted under this subsection. If, after a hearing, the commissioner sustains an order previously issued, the sustaining order is subject to appeal to the district court of Burleigh County by serving on the commissioner within twenty days after the date of entry of the sustaining order a written notice of appeal signed by the appellant stating:
 - a. The order of the commissioner from which the appeal is taken.

- b. The grounds upon which a reversal or modification of the order is sought.
 - c. A demand for a certified transcript of the record of the order.
2. Apply to the district court of any county in this state for an injunction restraining the person and the person's agents, employees, partners, officers, and directors from continuing the act, practice, or transaction or engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts warrant. In any proceeding for an injunction, the commissioner may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, or directors, and the production of the documents, books, and records necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant the injunction as the facts warrant, and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court ~~may~~ shall not require the commissioner to post a bond.
3. Refer any evidence available concerning the act, practice, or transaction to the appropriate criminal prosecutor who may, with or without the reference, institute the necessary criminal proceedings. The prosecutor may apply for and on due showing be issued the court's subpoena requiring the appearance forthwith of any defendant and the defendant's agents, employees, partners, officers, and directors, and the production of any documents, books, and records necessary for the prosecution of the criminal proceedings.

SECTION 13. AMENDMENT. Subsection 1 of section 10-04-16.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The ~~commissioner~~ department may:
 - a. Make such public or private investigations within or outside of this state as ~~the commissioner deems~~ deemed necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. For the purposes of this section, an investigation may include an examination of the books and records of any person registered under the provisions of this chapter. In the discretion of the commissioner, the expense reasonably attributed to an investigation under this section must be paid by the dealer, agent, investment adviser, or investment adviser representative whose affairs are investigated.
 - b. Require or permit any person to file a statement in writing, under oath or otherwise ~~as the commissioner determines~~, as to all the facts and circumstances concerning the matter to be investigated.
 - c. Publish information concerning any violation of this chapter or any rule or order hereunder and may keep confidential the information or documents obtained or prepared in the course of any investigation conducted under this section but only during an active and ongoing investigation. If an investigation under this section

extends beyond six months, the commissioner shall, upon a request by any party, state in writing that the need for confidentiality still exists, the general reason why the need exists, and the date, as can best be determined at the time, when the need for confidentiality will cease.

SECTION 14. AMENDMENT. Subsection 3 of section 10-04-17 of the North Dakota Century Code is amended and reenacted as follows:

3. The provisions of this section do not apply to a violation of subsection 1 or 3 of section 10-04-08.4.

SECTION 15. AMENDMENT. Subsection 1 of section 10-04-18 of the North Dakota Century Code is amended and reenacted as follows:

1. Any person who willfully violates any provision of this chapter, except subsection 1 or 3 of section 10-04-08.4 or subsection 4 of section 10-04-10, or any rule or order of the commissioner made pursuant to the provisions of this chapter, or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful shall be guilty of a class B felony.

SECTION 16. REPEAL. Section 10-04-10.2 of the North Dakota Century Code is repealed.

SECTION 17. EMERGENCY. Section 8 of this Act is declared to be an emergency measure.

Approved March 21, 2003
Filed March 21, 2003

CHAPTER 83

HOUSE BILL NO. 1276

(Representatives Maragos, N. Johnson)
(Senator Klein)

SECURITIES EXEMPT FROM REGISTRATION

AN ACT to amend and reenact subdivision d of subsection 8 of section 10-04-06 of the North Dakota Century Code, relating to securities exempt from registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁴⁰ **SECTION 1. AMENDMENT.** Subdivision d of subsection 8 of section 10-04-06 of the North Dakota Century Code is amended and reenacted as follows:

- d. Such securities are listed in Standard and Poor's, Mergent's industrial manual, Mergent's bank and finance manual, Mergent's transportation manual, Mergent's public utility manual, or Fitch's individual stock bulletin or are filed under section 13 or 15(d) of the federal Securities and Exchange Act of 1934 [ch. 404, title I, sec. 1; 48 Stat. 881; 15 U.S.C. 78 et seq.].

Approved March 20, 2003

Filed March 20, 2003

⁴⁰ Section 10-04-06 was also amended by section 4 of Senate Bill No. 2084, chapter 82.

CHAPTER 84

HOUSE BILL NO. 1106

(Finance and Taxation Committee)
(At the request of the Tax Commissioner)

PROPERTY ASSESSMENT VALUATION

AN ACT to create and enact a new subdivision to subsection 2 of section 10-06.1-10 and a new section to chapter 65-02 of the North Dakota Century Code, relating to valuation of certain farmland or ranchland acquired by certain nonprofit organizations and valuation of property of the workers compensation bureau; and to amend and reenact subsection 3 of section 57-02-08.1 and sections 57-12-09 and 57-14-07 of the North Dakota Century Code, relating to homestead tax credit forms, notice of increased assessment to real estate owners, and taxes on escaped real property.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subdivision to subsection 2 of section 10-06.1-10 of the North Dakota Century Code is created and enacted as follows:

All property subject to valuation must be assessed for the purpose of making the payments under subdivision e in the same manner as other real property in this state is assessed for tax purposes. Before June thirtieth of each year the county auditor of any county in which property subject to valuation is located shall give written notice to the nonprofit organization and the tax commissioner of the value placed by the county board of equalization upon each parcel of property subject to valuation in the county.

SECTION 2. AMENDMENT. Subsection 3 of section 57-02-08.1 of the North Dakota Century Code is amended and reenacted as follows:

3. All forms necessary to effectuate this section must be prescribed ~~and, designed, and made available~~ by the tax commissioner ~~who shall distribute annually an adequate supply of them to each county director of tax equalization~~. The county directors of tax equalization shall make these forms available upon request.

SECTION 3. AMENDMENT. Section 57-12-09 of the North Dakota Century Code is amended and reenacted as follows:

57-12-09. Written notice of increased assessment to real estate owner.

When any assessor has increased the assessed valuation of any lot or tract of land together with any improvements thereon by fifteen percent or more of the last assessment, written notice of the amount of increase over the last assessment and the amount of the last assessment must be delivered by such assessor to the property owner or mailed to the property owner at the property owner's last-known address except that no such notice need be delivered or mailed if the ~~assessment~~ assessed valuation is increased by less than one thousand five hundred dollars. The tax commissioner shall prescribe suitable forms for this notice and such notice must also show the true and full value as defined by law of the property, including such improvements, that the assessor used in making the assessment for the current

year and for the year in which the last assessment was made and must also show the date prescribed by law for the meeting of the local equalization board of the assessment district in which the property is located and the meeting date of the county equalization board. Such notice must be mailed or delivered to the property owner at least ten days in advance of the meeting date of the local equalization board and must be mailed or delivered at the expense of the assessment district for which the assessor is employed.

SECTION 4. AMENDMENT. Section 57-14-07 of the North Dakota Century Code is amended and reenacted as follows:

57-14-07. Entry on delinquent lists. After review by the board of county commissioners, the taxes against escaped property for prior years must be entered upon the tax list. In the case of personal property, such taxes must be entered upon the most recent delinquent personal property tax list. If such list, at the time, is in the hands of the treasurer, the auditor shall certify such taxes to the treasurer, and the treasurer shall enter them upon such delinquent tax list. If the most recent delinquent personal property tax list, at the time, is in the hands of the sheriff, the auditor shall certify such taxes to the sheriff, and the sheriff shall enter them upon such tax list. In the case of escaped real property, such taxes, if entered between the first day of July and the ~~date of the first publication day of the tax sale list~~ November, must be entered upon the most recent delinquent real property tax list. If entered ~~between that date~~ between November first and July first following, such taxes must be entered upon the current real property tax list. In either case, such real property taxes must be certified to the treasurer by the auditor and entered in the tax list by the treasurer. Taxes upon escaped property for prior years, whether upon real or personal property, are subject to the same penalties as other taxes, and such taxes must be enforced and apportioned as other taxes upon the lists upon which they are entered are enforced and apportioned.

SECTION 5. A new section to chapter 65-02 of the North Dakota Century Code is created and enacted as follows:

Assessment of property - Notice to bureau. All property subject to valuation must be assessed for the purpose of making the payments under section 65-02-31 in the same manner as other real property in this state is assessed for tax purposes. Before June thirtieth of each year, the county auditor of any county in which property subject to valuation is located shall give written notice to the workers compensation bureau and the tax commissioner of the value placed by the county board of equalization upon each parcel of property subject to valuation in that county.

Approved March 26, 2003
Filed March 26, 2003

CHAPTER 85

HOUSE BILL NO. 1362

(Representatives DeKrey, Delmore)

(Senators Nelson, Traynor)

CORPORATION AND LLC LAW REVISIONS

AN ACT to create and enact sections 10-19.1-01.1, 10-19.1-100.1, 10-19.1-149.1, 10-32-02.1, 10-32-153.1, 10-33-01.1, 10-33-142.1, 45-10.1-01.1, 45-10.1-01.2, 45-10.1-63, 45-10.1-64, 45-10.1-65, 45-10.1-66, 45-10.1-67, 45-10.1-68, 45-10.1-69, 45-10.1-70, 45-10.1-71, 45-10.1-72, 45-13-01.1, 45-16-07, 45-16-08, 45-22-01.1, 45-23-01.1, and 45-23-07 of the North Dakota Century Code, relating to business corporations, limited liability companies, nonprofit corporations, limited partnerships, partnerships, limited liability partnerships, and limited liability limited partnerships; to amend and reenact section 10-19.1-01, subsection 4 of section 10-19.1-13, sections 10-19.1-14 and 10-19.1-19, subsection 2 of section 10-19.1-31, subsections 1 and 2 of section 10-19.1-43, subsections 1 and 2 of section 10-19.1-47, subsection 1 of section 10-19.1-63, subsection 3 of section 10-19.1-71, subsection 3 of section 10-19.1-72, sections 10-19.1-75 and 10-19.1-75.2, subsection 1 of section 10-19.1-76.2, subsection 1 of section 10-19.1-87, section 10-19.1-100, subsection 1 of section 10-19.1-110, subsections 2 and 3 of section 10-19.1-113.1, subsection 3 of section 10-19.1-129, subsection 2 of section 10-19.1-146, subsection 10 of section 10-31-01, section 10-32-02, subsections 2, 3, and 4 of section 10-32-07, subsection 5 of section 10-32-10, section 10-32-11, subsection 1 of section 10-32-13, section 10-32-15, subsection 6 of section 10-32-17, subsection 1 of section 10-32-22, subsection 17 of section 10-32-23, sections 10-32-36 and 10-32-37, subsections 2 and 3 of section 10-32-38, subsections 2 and 3 of section 10-32-39, subsection 3 of section 10-32-40, sections 10-32-40.1, 10-32-43, and 10-32-43.2, subsection 1 of section 10-32-48, subsection 1 of section 10-32-50, section 10-32-51, subsection 1 of section 10-32-54, subsection 4 of section 10-32-55, section 10-32-56, subsection 2 of section 10-32-57, subsection 3 of section 10-32-58, subsection 1 of section 10-32-59, sections 10-32-60 and 10-32-61, subsection 1 of section 10-32-64, section 10-32-67, subsections 2 and 3 of section 10-32-68, sections 10-32-69, 10-32-70, 10-32-73, and 10-32-74, subsection 2 of section 10-32-76, subsection 2 of section 10-32-77, subsections 2 and 3 of section 10-32-78, subsection 2 of section 10-32-78.1, subsection 1 of section 10-32-79, sections 10-32-80, 10-32-81, and 10-32-83, subsections 1 and 2 of section 10-32-84, subsections 1 and 3 of section 10-32-85, subsections 2 and 4 of section 10-32-86, subsections 1 and 2 of section 10-32-87, sections 10-32-88, 10-32-89, and 10-32-92, subsection 3 of section 10-32-94, section 10-32-95, subsection 1 of section 10-32-97, sections 10-32-99 and 10-32-104, subsections 1 and 2 of section 10-32-108, subsection 2 of section 10-32-112, subsection 3 of section 10-32-113, subsection 1 of section 10-32-114, subsections 2 and 3 of section 10-32-117, subsection 1 of section 10-32-119, subsection 2 of section 10-32-130.1, subsection 3 of section 10-32-132, subsection 2 of section 10-32-149, sections 10-33-01, 10-33-10, 10-33-11, and 10-33-21, subsection 3 of section 10-33-23, subsection 2 of section 10-33-25, subsection 1 of section 10-33-27, subsections 1 and 2 of section 10-33-39, subsections 1 and 2 of section

10-33-43, subsection 1 of section 10-33-44, subsection 1 of section 10-33-50, subsection 3 of section 10-33-65, subsection 3 of section 10-33-66, sections 10-33-73 and 10-33-75, subsection 1 of section 10-33-77, sections 10-33-81 and 10-33-93, subsection 1 of section 10-33-101, subsections 2 and 3 of section 10-33-103, subsection 4 of section 10-33-104, subsection 1 of section 10-33-107, subsections 1, 2, and 3 of section 10-33-108, subsection 3 of section 10-33-120, subsection 1 of section 10-33-128, subsection 2 of section 10-33-139, section 45-10.1-01, subsection 6 of section 45-10.1-02, sections 45-10.1-03 and 45-10.1-07.1, subsections 7 and 8 of section 45-10.1-09, sections 45-10.1-13, 45-10.1-55, 45-10.1-56, and 45-13-01, subsections 5 and 6 of section 45-13-04.1, section 45-13-04.2, subsections 6 and 7 of section 45-13-05, subsection 1 of section 45-13-06, subsection 1 of section 45-15-03, subsection 1 of section 45-15-03.1, subsection 2 of section 45-15-03.2, section 45-15-04, subsection 1 of section 45-19-04, subsections 1 and 2 of section 45-21-05, subsection 2 of section 45-21-06, subsections 1 and 2 of section 45-21-07, section 45-22-01, subsection 3 of section 45-22-03, subsection 5 of section 45-22-04, section 45-22-05, subsection 2 of section 45-22-17, subsection 2 of section 45-22-21.1, section 45-23-01, and subsection 5 of section 45-23-03 of the North Dakota Century Code, relating to business corporations, professional corporations, limited liability companies, nonprofit corporations, limited partnerships, partnerships, limited liability partnerships, and limited liability limited partnerships; and to repeal sections 45-10.1-14, 45-10.1-15, and 45-10.1-16 of the North Dakota Century Code, relating to limited partnerships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Acquiring organization" means the corporation, foreign corporation, or domestic or foreign limited liability company acquiring in an exchange the shares of a corporation or foreign corporation or the membership interests of a domestic or foreign limited liability company.
3. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including a zip code₁ of the actual office location, which may not be only a post-office box; and
 - b. In any other case, the mailing address, including a zip code.
4. "Articles" means:
 - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval

of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, and articles of dissolution.

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

5. "Authenticated electronic communication" means:

a. That the electronic communication is delivered:

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

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

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

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

~~6.~~ 7. "Board member" means:

- a. An individual serving on the board of directors in the case of a corporation; and
- b. An individual serving on the board of ~~governors~~ in the case of a limited liability company.

~~7.~~ 8. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.

~~8.~~ 9. "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.

~~9.~~ 10. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.

~~10.~~ 11. "Constituent corporation" means a corporation or a foreign corporation that:

- a. In a merger, is either the surviving corporation or a corporation that is merged into the surviving organization; or
- b. In an exchange, is either the acquiring corporation or a corporation whose shares are acquired by the acquiring organization.

- 44- 12. "Constituent organization" means a corporation, foreign corporation, limited liability company, or foreign limited liability company that:
- a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
 - b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.
- 42- 13. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
- 43- 14. "Director" means a member of the board.
- 44- 15. "Distribution" means a direct or indirect transfer of money or other property, other than a corporation's own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of the corporation's shareholders in respect of the corporation's shares, and may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of the corporation's shares, or otherwise.
- 45- 16. "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.
- 46- 17. "Domestic organization" means an organization created under the laws of this state.
18. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
19. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that:
- a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. May be directly reproduced in paper form by the recipient through an automated process.
20. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
21. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
22. "Filed with the secretary of state" means, except as otherwise permitted by law or rule, a signed original or a legible facsimile telecommunication of a signed original of a request for reserved name or a signed original of all other documents;

- a. That a document meeting the applicable requirements of this chapter, together with the fees provided in section 10-19.1-147, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law. The
 - b. That the secretary of state shall endorse on the original the word "filed" and the month, day, and year, then:
 - (1) Record the actual date on which the document is filed, and if different the effective date of filing; and record
 - (2) Record the document in the office of the secretary of state.
- ~~17.~~ 23. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.
- ~~18.~~ 24. "Foreign limited liability company" means a limited liability company organized for profit which is organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.
- ~~19.~~ 25. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
- 26. "Good faith" means honesty in fact in the conduct of an act or transaction.
- ~~20.~~ 27. "Intentionally" means that the person referred to has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if:
 - a. If the person intentionally does the act or causes the result prohibited by the statute; or if
 - b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
- ~~21.~~ 28. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
- ~~22.~~ 29. "Legal representative" means a person empowered to act for another person, including an agent, a manager, an officer, a partner, or an associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.
- ~~23.~~ 30. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.

24. 31. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.
25. 32. "Notice" is:
- a. Is given by a shareholder of a corporation to the corporation or an officer of the corporation when:
 - (1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation-
 - a. ~~In all other cases, "notice" is;~~ or
 - (2) When given by a form of electronic communication consented to by the corporation to which the notice is given if by:
 - (a) Facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.
 - (b) Electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.
 - (c) Posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice.
 - (d) Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
 - b. Is given by a publicly held corporation to a shareholder if the notice is addressed to the shareholder or group of shareholders in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, as amended, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.
 - c. Is given to a person, in all other cases:
 - (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
 - (2) When handed to the person; or
 - (3) When left at the office of the person with a clerk or other person in charge of the office; or;

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

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

- (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice.
- (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
- (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice.
- (d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person.

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

~~e. e.~~ Notice is ~~Is~~ deemed received when it is given.

~~26.~~ 33. "Officer" means an individual who is eighteen years of age or more who is ~~elected~~:

- a. Elected, appointed, or otherwise designated as an officer by the board; ~~or deemed~~
- b. Deemed elected as an officer pursuant to section 10-19.1-56.

~~27.~~ 34. "Organization" means, ~~whether~~:

- a. Whether domestic or foreign, a corporation ~~incorporated in or authorized to do business in this state under this or another chapter of this code~~, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; but

- ~~28.~~ 35. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.
- ~~29.~~ 36. "Owners" means:
- a. Shareholders in the case of a corporation; and
 - b. Members in the case of a limited liability company or a nonprofit corporation.
- ~~30.~~ 37. "Ownership interests" means:
- a. Shares in the case of a corporation;
 - b. Membership interests in the case of a nonprofit corporation or limited liability company; and
 - c. Similar interests in other organizations.
- ~~31.~~ 38. "Parent" of a specified corporation means a corporation or limited liability company that directly, or indirectly through related ~~corporations or limited liability companies~~ organizations, owns more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.
- ~~32.~~ 39. "Principal executive office" means:
- a. If the corporation has an elected or appointed president, an office where the elected or appointed president of a corporation has an office; or if
 - b. If the corporation has no elected or appointed president, then the registered office of the corporation.
- ~~33.~~ 40. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
41. "Registered office" means the place in this state designated in the articles as the registered office of the corporation.
- ~~34.~~ 42. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;
 - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or

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

~~35-~~ 43. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

44. "Security" has the meaning given in section 10-04-02.

~~36-~~ 45. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to a corporation's articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

~~37-~~ 46. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.

~~38-~~ 47. "Shareholder" means a person registered on the books or records of a corporation or the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation.

~~39-~~ 48. "Signed" means ~~that~~:

a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document, is placed on a document, as provided in subsection 39 of under section 41-01-11, 41-01-09; and:

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

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

~~b-~~ With respect to a document not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document.

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

~~40-~~ 49. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~41-~~ 50. "Subsidiary" of a specified corporation means:

- a. A corporation having more than fifty percent of the voting power of the corporation's shares entitled to vote for directors owned directly, or indirectly through related ~~corporations or limited liability companies~~ organizations, by the specified corporation; or
- b. A limited liability company having more than fifty percent of the voting power of the limited liability company's membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company.

~~42.~~ 51. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.

~~43.~~ 52. "Surviving organization" means the corporation or foreign corporation or domestic or foreign limited liability company resulting from a merger.

~~44.~~ 53. "Vote" includes authorization by written action.

~~45.~~ 54. "Written action" means a:

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

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

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

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

SECTION 2. Section 10-19.1-01.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-01.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 3. AMENDMENT. Subsection 4 of section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

4. A corporation that is ~~merged~~ merged the surviving organization in a merger with another domestic one or foreign organization, or that is incorporated by

~~the reorganization of one or more domestic or foreign other organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic~~ an organization all or substantially all of the assets of another domestic or foreign organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:

- a. Was incorporated, organized, formed, or registered under the laws of this state;
- b. Is authorized to transact business or conduct activities in this state;
- c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
- e. Holds a trade name registered in the manner provided in chapter 47-25.

SECTION 4. AMENDMENT. Section 10-19.1-14 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-14. Reserved name.

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-19.1-13 may be reserved by any person.
2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in section 10-19.1-147:
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in section 10-19.1-147.
4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, together with the fees provided in section 10-19.1-147.
5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for reserved name.~~

- 6- The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 5. AMENDMENT. Section 10-19.1-19 of the North Dakota Century Code is amended and reenacted as follows:

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

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

- (2) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.
5. An amendment that merely restates the existing articles, as amended, may be authorized by a resolution approved by the board and may be submitted to and approved by the shareholders as provided in subsections 2, 3, and 4.
6. Notwithstanding any contrary provision of this chapter, the board of a corporation that is registered as an open-end management investment company under the Investment Company Act of 1940, as amended, may, without shareholder approval, increase or decrease, but not below the then outstanding shares, the aggregate number of shares the corporation has authority to issue, including shares of any class or series, unless a provision has been included in the corporation's articles prohibiting the board from increasing or decreasing the aggregate number of shares, or any class or series of shares, as applicable, that the corporation has authority to issue.

SECTION 6. AMENDMENT. Subsection 2 of section 10-19.1-31 of the North Dakota Century Code is amended and reenacted as follows:

2. Initial bylaws may be adopted by the first board or by the incorporators, pursuant to section 10-19.1-30. Unless reserved by the articles to the shareholders, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. ~~After the adoption of the initial bylaws, the board may not adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors.~~

SECTION 7. AMENDMENT. Subsections 1 and 2 of section 10-19.1-43 of the North Dakota Century Code are amended and reenacted as follows:

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2.
 - a. If the articles, bylaws, or board fail to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.
 - b. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.
 - c. Any participation in a meeting by either of the means set forth in subsection 2 constitutes presence at the meeting.
2. ~~A board~~ Any meeting may be conducted by:

- a. ~~A conference among directors using any means of~~ Solely by one or more means of remote communication through which all of the directors may simultaneously hear participate with each other during the conference, if meeting:
 - (1) ~~If the same notice required by subsection 3 is given of for the conference as would be required by subsection 3 for a meeting;~~ and if
 - (2) ~~If the number of directors participating in the conference meeting is a quorum at a meeting. Participation in a meeting by this means is personal presence at the meeting; or~~
- b. ~~Any~~ By means of conference telephone or, if authorized by the board, by one or more other means of remote communication, in each case, through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear participate with each other during the meeting. ~~Participation in a meeting by this means is personal presence at the meeting.~~

SECTION 8. AMENDMENT. Subsections 1 and 2 of section 10-19.1-47 of the North Dakota Century Code are amended and reenacted as follows:

1. An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of directors that would be required to take written action, signed by all of the directors, if the articles so provide, the same action at a meeting of the board at which all directors were present.
2. The written action is effective when signed by, or consented to by authenticated electronic communication, the required number of directors, unless a different effective time is provided in the written action.

SECTION 9. AMENDMENT. Subsection 1 of section 10-19.1-63 of the North Dakota Century Code is amended and reenacted as follows:

1. Subject to any restrictions in the articles:
 - a. ~~The consideration for the issuance of shares may be paid, in whole or in part, in money; in other property, tangible or intangible; or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued is received by the corporation, the shares are considered fully paid and nonassessable. Neither promissory notes nor future services constitute payment or part payment for shares of a corporation. Shares may be issued for any consideration, including, without limitation:~~
 - (1) Money or other tangible or intangible property received by the corporation or to be received by the corporation under a written agreement, or services rendered to the corporation or

to be rendered to the corporation, as authorized by resolution approved by the affirmative vote of the directors required by section 10-19.1-46; or

(2) If provided for in the articles, approved by the affirmative vote of the shareholders required by section 10-19.1-74, establishing a price in money or other consideration, or a minimum price, or a general formula or method by which the price will be determined.

- b. Without any new or additional consideration, a corporation may issue the corporation's own shares in exchange for or in conversion of the corporation's outstanding shares, or may, subject to authorization of share dividends, divisions, and combinations according to section 10-19.1-61.1, issue the corporation's own shares pro rata to the corporation's shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. Shares of a class or series, shares of which are then outstanding, may not be issued to the holders of shares of another class or series, except in exchange for or in conversion of outstanding shares of the other class or series, unless the issuance is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

SECTION 10. AMENDMENT. Subsection 3 of section 10-19.1-71 of the North Dakota Century Code is amended and reenacted as follows:

3. A regular meeting, if any, must be held on the date and at the time and place fixed by, or in a manner authorized by, the articles or bylaws, except that a meeting called by or at the demand of a shareholder pursuant to subsection 2 must be held in the county where the principal executive office of the corporation is located. To the extent authorized by the articles or bylaws, the board may determine that a regular meeting of the shareholders shall be held solely by means of remote communication in accordance with subsection 3 of section 10-19.1-75.2.

SECTION 11. AMENDMENT. Subsection 3 of section 10-19.1-72 of the North Dakota Century Code is amended and reenacted as follows:

3. Special meetings must be held on the date and at the time and place fixed by the president, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to subsection 2 must be held in the county where the principal executive office is located. To the extent authorized by the articles or bylaws, the board may determine that a special meeting of the shareholders shall be held solely by means of remote communication in accordance with subsection 3 of section 10-19.1-75.2.

SECTION 12. AMENDMENT. Section 10-19.1-75 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-75. Action without a meeting. An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the shareholders entitled to vote on that action.

1. If the articles so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the shareholders who own voting power equal to the voting power that would be required to take the same action at a meeting of the shareholders at which all shareholders were present.
 - a. When written action is permitted to be taken by less than all shareholders, all shareholders must be notified immediately of its text and effective date.
 - b. Failure to provide the notice does not invalidate the written action.
 - c. A shareholder who does not sign or consent to the written action has no liability for the action or actions taken by the written actions.
2. The written action is effective when it has been signed, or consented to by authenticated electronic communication, by the required shareholders, unless a different effective time is provided in the written action.
3. ~~When written action is permitted to be taken by less than all shareholders, all shareholders must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A shareholder who does not sign or consent to the written action has no liability for the action or actions taken by the written actions.~~
4. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the officers signing the certificate must so indicate if the action was taken under this section.

SECTION 13. AMENDMENT. Section 10-19.1-75.2 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-75.2. Electronic Remote communications for shareholder meetings.

1. This section shall be construed and applied to:
 - a. Facilitate remote communication consistent with other applicable law; and
 - b. Be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.
2. To the extent authorized in the articles or the bylaws and determined by the board:
 - a. A ~~conference among meeting~~ of the shareholders may be held solely by any combination of means of remote communication

through which the participants may ~~simultaneously hear each other during~~ participate in the conference constitutes a regular or special meeting of shareholders:

- a. (1) ~~If the same~~ notice of the meeting is given of the conference to every holder of shares entitled to vote as would be required by this chapter for a meeting; and
 - b. (2) ~~If the~~ number of shares held by the shareholders participating in the conference meeting would be sufficient to constitute a quorum at a meeting.
2. ~~Participation in a conference meeting the requirements of subsection 4 constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-19.1-76.2 are met.~~
3. b. ~~A shareholder may participate in~~ not physically present in person or by proxy at a regular or special meeting of shareholders ~~not described in subsection 4~~ may by any means of remote communication through which the shareholder, other participants, and all persons physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-19.1-76.2 are met, participate in a meeting of shareholders held at a designated place.
4. 3. In any meeting of shareholders held solely by means of remote communication under subdivision a of subsection 2 or in any meeting of shareholders held at a designated place in which one or more shareholders participate by means of remote communication under subdivision b of subsection 2:
- a. The corporation shall implement reasonable measures to:
 - (1) Verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a shareholder; and
 - (2) Provide each shareholder participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:
 - (a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;
 - (b) If allowed by the procedures governing the meeting, have the shareholder's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and
 - (c) If otherwise entitled, vote on matters submitted to the shareholders.

- b. Participation in a meeting by this means constitutes presence at the meeting in person or by proxy if all of the requirements of section 10-19.1-76.2 are met.
- 4. With respect to notice to shareholders:
 - a. Any notice to shareholders given by the corporation under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the shareholder to whom the notice is given is effective when given. The notice is deemed given:
 - (1) If by facsimile communication, when directed to a telephone number at which the shareholder has consented to receive notice;
 - (2) If by electronic mail, when directed to an electronic mail address at which the shareholder has consented to receive notice;
 - (3) If by a posting on an electronic network on which the shareholder has consented to receive notice, together with separate notice to the shareholder of the specific posting, upon the later of:
 - (a) The posting; or
 - (b) The giving of the separate notice.
 - (4) If by any other form of electronic communication by which the shareholder has consented to receive notice, when directed to the shareholder.
 - b. An affidavit of the secretary, other authorized officer, or authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.
 - c. Consent by a shareholder to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the shareholder. However, no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.
- 5. Any ballot, vote, authorization, or consent submitted by electronic communication under this chapter may be revoked by the shareholder submitting the ballot, vote, authorization, or consent so long as the revocation is received by an officer of the corporation at or before the meeting or before an action without a meeting is effective according to section 10-19.1-75.
- 6. Waiver of notice by a shareholder of a meeting by means of authenticated electronic communication described in subsection 4 or 3 may be given in the manner provided in subsection 4 of section 10-19.1-73. Participation in a meeting by means of ~~communications~~

remote communication described in subdivisions a and b of subsection 4 ~~or 3~~ 2 is a waiver of notice of that meeting, except when the shareholder objects:

- a. At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or
- b. Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 14. AMENDMENT. Subsection 1 of section 10-19.1-76.2 of the North Dakota Century Code is amended and reenacted as follows:

1. At or before the meeting for which the appointment is to be effective, a shareholder may cast or authorize the casting of a vote ~~by:~~
 - a. By filing with an officer authorized to tabulate votes a written appointment of a proxy which is signed by the shareholder, with.
 - b. By telephonic transmission or authenticated electronic communication to an officer authorized to tabulate votes, whether or not accompanied by written instructions of the shareholder, of an appointment of a proxy.
- a. ~~Before the meeting, a shareholder may cast or authorize the casting of a vote by a proxy by transmitting to the corporation or the corporation's duly authorized agent an appointment of a proxy by means of telegram, cablegram, or any other form of electronic transmission, including telephonic transmission, whether or not accompanied by written instructions of the shareholders. An electronic~~
 - (1) The telephonic transmission or authenticated electronic communication must set forth or be submitted with information indicating from which it can be determined that the appointment is authorized by the shareholder. If it is determined a telegram, cablegram, or other electronic reasonably concluded that the telephonic transmission or authenticated electronic communication is valid, the inspectors of election or, if there are no inspectors, the other persons making that determination of validity shall specify the information upon which they relied to make that determination.
 - (2) A proxy so appointed may vote on behalf of the shareholder, or otherwise participate, in a meeting by remote communication according to section 10-19.1-75.2 to the extent the shareholder appointing the proxy would have been entitled to participate by remote communication according to section 10-19.1-75.2 if the shareholder did not appoint the proxy.
- ~~b.~~ c. A copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the

original writing or transmission could be used if the copy, facsimile, telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

- ✶ d. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed or consented to by authenticated electronic communication by any one of the shareholders, unless the corporation receives from any of those shareholders written notice or authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.

SECTION 15. AMENDMENT. Subsection 1 of section 10-19.1-87 of the North Dakota Century Code is amended and reenacted as follows:

1. A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:
 - a. An amendment of the articles that materially and adversely affects the rights or preferences of the shares of a dissenting shareholder in that it:
 - (1) Alters or abolishes a preferential right of the shares;
 - (2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of shares;
 - (3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares; or
 - (4) Excludes or limits the right of a shareholder to vote on a matter, or to accumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights;
 - b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation, but not including a transaction permitted without shareholder approval in subsection 1 of section 10-19.1-104, or a disposition in dissolution described in subsection 2 of section 10-19.1-109 or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;
 - c. A plan of merger to which the corporation is a party constituent organization, except as provided in subsection 3 and except for a plan of merger adopted under section 10-19.1-100.1;
 - d. A plan of exchange, whether under this chapter or under chapter 10-32, to which the corporation is a constituent organization as the

corporation whose shares will be acquired by the acquiring corporation, except as provided in subsection 3; or

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

SECTION 16. AMENDMENT. Section 10-19.1-100 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A parent owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary directly, or indirectly through related ~~corporations or limited liability companies~~ may organizations other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger:
 - a. May merge the subsidiary into the parent or into any other subsidiary at least ninety percent of the outstanding ownership interests of each class and series of which is owned by the parent directly, or indirectly through related ~~corporations or limited liability companies~~ organizations other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, without a vote of the owners of the parent or any subsidiary; or ~~may~~
 - b. May merge the parent, or the parent and one or more subsidiaries into one of the subsidiaries under this section.
2. A resolution approved by the present directors of the parent as required by section 10-19.1-46 or of the present governors of the parent required by section 10-32-83 must set forth a plan of merger that contains:
 - a. The name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving constituent organization;
 - b. The manner and basis of converting the ownership interests of the subsidiary or subsidiaries or the parent into securities of the parent, subsidiary, or of another organization; or, in whole or in part, into money or other property;
 - c. If the parent is a constituent organization but is not the surviving constituent organization in the merger, a provision for the pro rata issuance of ownership interests of the surviving constituent organization to the owners of ownership interests of the parent on surrender of any ownership interests of the parent; and
 - d. If the surviving constituent organization is a subsidiary, a statement of any amendments to the articles of the surviving constituent organization that will be part of the merger.
3. If the parent is a constituent organization and is the surviving organization in the merger, it may change its corporate name, without a vote of its owners, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by

the affirmative vote of a majority of the board members of the parent present. Upon the effective date of the merger, the name of the parent must be changed.

4. If the parent is a constituent organization but is not the surviving constituent organization in a merger, the resolution is not effective unless the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98 if the parent is a domestic corporation, section 10-32-102 if the parent is a limited liability company, or in accordance with the laws of the jurisdiction under which the parent is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.
5. A Notice of the action, including a copy of the plan of merger must be mailed given to each owner, other than the parent and any subsidiary, of each subsidiary that is a constituent organization in the merger before, or within ten days after, the effective date of the merger.
6. Articles of merger must be prepared which contain:
 - a. The plan of merger;
 - b. The number of outstanding ownership interests of each class and series of the subsidiary that is a constituent organization in the merger, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, and the number of ownership interests of each class and series owned, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, by the parent directly, or indirectly through related constituent organizations; and
 - c. ~~The date a copy of the plan of merger was mailed to owners, other than the parent or a subsidiary, of each subsidiary that is a constituent organization in the merger; and~~
 - d. A statement that the plan of merger is approved by the parent under this section.
7. ~~Within thirty days after a copy of the plan of merger is mailed to owners of each subsidiary that is a constituent organization to the merger or upon waiver of the mailing by the owners of all outstanding ownership interests of each subsidiary that is a constituent organization to the merger, the~~ The articles of merger must be signed on behalf of the parent and filed with the secretary of state, with the fees provided in section 10-19.1-147.
8. The secretary of state shall issue a certificate of merger to the surviving constituent organization or the surviving constituent organization's legal representative. The certificate must contain the effective date of the merger.
9. If all of the ownership interests of one or more domestic subsidiaries that is a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent

organizations, immediately before the merger, the owners of each domestic subsidiary have dissenter's rights under section 10-19.1-87 or 10-32-54, without regard to subsection 3 of section 10-19.1-87 or subsection 2 of section 10-32-54, and under section 10-19.1-88 or 10-32-55. If the parent is a constituent organization but is not the surviving organization in the merger, the articles of incorporation or articles of organization of the surviving organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54, and the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, that owner of the parent has dissenter's rights as provided under section 10-19.1-87 or 10-32-54. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this section.

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

SECTION 17. Section 10-19.1-100.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-100.1. Merger to effect a holding company reorganization.

1. For purposes of this section:

- a. "Holding company" means the corporation that is or becomes the direct parent of the surviving corporation of a merger accomplished under this section.
- b. "Parent constituent corporation" means the parent that merges with or into the subsidiary constituent corporation.
- c. "Subsidiary constituent corporation" means the subsidiary that the parent constituent corporation merges with or into in the merger.

2. Unless its articles expressly provide otherwise, and subject to subdivision 3, a parent constituent corporation may merge with or into a subsidiary constituent corporation without a vote of the shareholders of the parent constituent corporation.

3. A merger may be accomplished under this section only if each of the following requirements is met:

- a. The holding company and the constituent corporations to the merger are each organized under this chapter;
- b. At all times following the issuance of shares until the consummation of a merger under this section, the holding company was a direct wholly owned subsidiary of the parent constituent corporation;

- c. Immediately before the consummation of a merger under this section, the subsidiary constituent corporation is an indirect wholly owned subsidiary of the parent constituent corporation and a direct wholly owned subsidiary of the holding company;
- d. The parent constituent corporation and the subsidiary constituent corporation are the only constituent corporations to the merger;
- e. Immediately after the merger becomes effective, the surviving corporation becomes or remains a direct wholly owned subsidiary of the holding company;
- f. Each share or fraction of a share of the parent constituent corporation outstanding immediately before the effective time of the merger is converted in the merger into a share or equal fraction of a share of the holding company having the same designation and relative rights and preferences, and the same restrictions thereon, as the share or fraction of a share of the parent constituent corporation being converted in the merger;
- g. The articles and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles and bylaws of the parent constituent corporation immediately before the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board, and the initial subscribers for shares and the provisions contained in any amendment to the articles of the parent constituent corporation that were necessary to effect an exchange, reclassification, or cancellation of shares if the exchange, reclassification, or cancellation has become effective;
- h. The articles and bylaws of the surviving corporation immediately following the effective time of the merger are identical to the articles and bylaws of the parent constituent corporation immediately before the effective time of the merger, other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board, and the initial subscribers for shares and the provisions contained in any amendment to the articles of the parent constituent corporation that were necessary to effect an exchange, reclassification, or cancellation of shares if the exchange, reclassification, or cancellation has become effective, except that:
 - (1) The articles of the surviving corporation shall be amended in the merger to contain a provision requiring that any act or transaction by or involving the surviving corporation, other than the election or removal of directors of the surviving corporation, that requires for its adoption under this chapter or its articles the approval of the shareholders of the surviving corporation shall, by specific reference to this section, require, in addition, the approval of the shareholders of the holding company, or any successor by merger, by the same vote as is required by this chapter or the articles of the surviving corporation; and

- (2) The articles of the surviving corporation may be amended in the merger to reduce the number of classes, series, and shares that the surviving corporation is authorized to issue;
 - i. The directors of the parent constituent corporation become or remain the directors of the holding company immediately after the merger becomes effective;
 - j. The board of the parent constituent corporation determines that the shareholders of the parent constituent corporation will not recognize gain or loss for United States federal income tax purposes; and
 - k. A resolution approved by the affirmative vote of a majority of the directors of the parent constituent corporation present sets forth a plan of merger that contains provisions addressing the requirements of subdivisions a through j.
- 4. Neither paragraph 1 of subdivision h of subsection 3, nor any provisions of the surviving corporation's articles required by that item may be construed to require approval of the shareholders of the holding company to elect or remove directors of the surviving corporation.
- 5. If the name of the holding company at the time the merger takes effect is the same as the name of the parent constituent corporation immediately before that time, the shares of the holding company into which the shares of the parent constituent corporations are converted in the merger must, unless new certificates are issued, be represented by the share certificates that previously represented shares of the parent constituent corporation.
- 6. Articles of merger must be:
 - a. Prepared that contain:
 - (1) The plan of merger; and
 - (2) A statement that the plan of merger was adopted under this section.
 - b. Signed on behalf of the parent constituent corporation and filed with the secretary of state.
- 7. The secretary of state shall issue a certificate of merger to the surviving corporation or its legal representative.
- 8. A merger between a parent and a subsidiary may be accomplished under sections 10-19.1-97, 10-19.1-98, 10-19.1-99, and 10-19.1-100 instead of this section, in which case this section does not apply.

SECTION 18. AMENDMENT. Subsection 1 of section 10-19.1-110 of the North Dakota Century Code is amended and reenacted as follows:

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

- a. Publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located; and
- b. Giving written notice to known creditors and claimants pursuant to subsection ~~23~~ 32 of section 10-19.1-01.

SECTION 19. AMENDMENT. Subsections 2 and 3 of section 10-19.1-113.1 of the North Dakota Century Code are amended and reenacted as follows:

2. When the certificate of dissolution has been issued by the secretary of state, or on a later date within thirty days after filing if the articles of dissolution so provide, the corporation is dissolved.
3. The secretary of state shall issue to the ~~dissolved~~ corporation, or its legal representative, a certificate of dissolution that contains:
 - a. The name of the corporation;
 - b. The date the ~~articles of dissolution were filed with the secretary of state~~ is effective; and
 - c. A statement that the corporation was dissolved on the effective date of the dissolution.

SECTION 20. AMENDMENT. Subsection 3 of section 10-19.1-129 of the North Dakota Century Code is amended and reenacted as follows:

3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The Service on the secretary of state:
 - a. Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
 - b. Shall include the return of the sheriff, or the affidavit of a person who is not a party, verifying that ~~ne~~ neither the registered agent ~~enor~~ an officer can be found at the registered office ~~must be provided to the secretary of state~~. Service on the secretary of state of any process, notice, or demand is; and
 - c. Is deemed personal service upon the corporation and must be made by filing with the secretary of state ~~an original and two~~;
 - (1) Three copies of the process, notice, or demand, ~~with the~~ and
 - (2) The fees provided in section 10-19.1-147. The secretary of state shall immediately forward, by registered mail, addressed to the corporation at the registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days

notwithstanding a shorter period specified in the process, notice, or demand.

⁴¹ **SECTION 21. AMENDMENT.** Subsection 2 of section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report except as to the information required by ~~subdivisions~~ subdivision g, i, and j of subsection 1 which must be given as of the close of business on December thirty-first next preceding the date herein provided for the filing of the report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. The annual report must be signed as prescribed in subsection ~~39~~ 48 of section 10-19.1-01, or the articles or the bylaws or a resolution approved by the affirmative vote of the required proportion or number of the directors or holders of shares entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years. The secretary of state, or any employee or legal representative of the secretary of state, may not disclose the information reported under ~~subdivisions~~ subdivision g, i, and j of subsection 1 to any person, except a person who is verified to be a shareholder of the corporation or foreign corporation, a legal representative of the shareholder for which information is requested, or to the tax commissioner or any employee or legal representative of the tax commissioner, who may not disclose the information and may use the information only for the administration of the tax laws.

SECTION 22. Section 10-19.1-149.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-149.1. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any document is released to the public.

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.

⁴¹ Section 10-19.1-146 was also amended by section 4 of Senate Bill No. 2046, chapter 48.

SECTION 24. AMENDMENT. Section 10-32-02 of the North Dakota Century Code is amended and reenacted as follows:

10-32-02. Definitions. For purposes of this chapter, unless the context otherwise requires:

1. "Acquiring organization" means the foreign or domestic limited liability company or foreign or domestic corporation that acquires in an exchange the shares of a domestic or foreign corporation or the membership interests of a limited liability company.
2. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including a zip code, of the actual office location which may not be only a post-office box; and
 - b. In all other cases, the mailing address, including a zip code.
3. "Articles" or "articles of organization" means:
 - a. In the case of a limited liability company organized under this chapter, articles of organization, articles of amendment, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of abandonment, and articles of termination.
 - b. In the case of a foreign limited liability company, the term includes all documents serving a similar function required to be filed with the secretary of state or other state office of the limited liability company's state of organization.
4. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:
 - (1) To the principal place of business of the limited liability company; or
 - (2) To a manager or agent of the limited liability company authorized by the limited liability company to receive the electronic communication; and
 - b. That the electronic communication sets forth information from which the limited liability company can reasonably conclude that the electronic communication was sent by the purported sender.
5. "Board" or "board of governors" means the board of governors of a limited liability company.
- ~~5.~~ 6. "Board member" means:
 - a. An individual serving on the board of governors in the case of a limited liability company; and

- b. An individual serving on the board of directors in the case of a corporation.
- ~~6-~~ 7. "Bylaws" means any rule, resolution, or other provision, regardless how designated, that:
- a. Relates to the management of the business or the regulation of the affairs of the limited liability company; and
 - b. Was expressly part of the bylaws by the action, taken from time to time under section 10-32-68, by the board of ~~governors~~ or the members.
- ~~7-~~ 8. "Class", when used with reference to membership interests, means a category of membership interests which differs in one or more rights or preferences from another category of membership interests of the limited liability company.
- ~~8-~~ 9. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.
- ~~9-~~ 10. "Constituent organization" means a limited liability company or a domestic or foreign corporation that:
- a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
 - b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.
- ~~10-~~ 11. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in the capacity of that member as a member.
12. "Contribution agreement" means an agreement between a person and a limited liability company under which:
- a. The person agrees to make a contribution in the future; and
 - b. The limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.
- ~~11-~~ 13. "Contribution allowance agreement" means an agreement between a person and a limited liability company under which:
- a. The person has the right, but not the obligation, to make a contribution in the future; and
 - b. The limited liability company agrees that, if the person makes the specified contribution at the time specified in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.

- ~~42.~~ 14. "Dissolution" means that the limited liability company incurred an event under subsection 1 of section 10-32-109, subject only to sections 10-32-116 and 10-32-124, that obligates the limited liability company to wind up the limited liability company's affairs and to terminate the limited liability company's existence as a legal entity.
- ~~43.~~ 15. "Dissolution avoidance consent" means the consent of all remaining members:
- a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after the occurrence of any event that terminates the continued membership of a member in the limited liability company; and
 - b. That the limited liability company must be continued as a legal entity without dissolution.
- ~~44.~~ 16. "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a limited liability company to any of the limited liability company's members in respect of membership interests. A distribution may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.
- ~~45.~~ 17. "Domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by chapter 10-19.1.
- ~~46.~~ 18. "Domestic organization" means an organization created under the laws of this state.
19. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
20. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
- a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. That may be directly reproduced in paper form by the recipient through an automated process.
21. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
22. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
23. "Filed with the secretary of state" means except as otherwise permitted by law or rule:

a. That ~~either of the following~~ a document meeting the applicable requirements of this chapter, together with the fees provided in section 10-32-150, has been delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state, and has been determined by the secretary of state to conform to law:

- (1) ~~A signed original or a legible facsimile telecommunication of a signed original of a request for reserved name; or~~
- (2) ~~A signed original of all other documents, meeting the applicable requirements of this chapter, together with the fees provided in section 10-32-150.~~

b. That the secretary of state shall then:

- (1) ~~Endorse on the original Record the word "filed" and the month, day, and year actual date on which the document is filed, and if different, the effective date of filing; and~~
- (2) Record the document in the office of the secretary of state.

~~47.~~ 24. "Financial rights" means a member's rights:

- a. To share in profits and losses as provided in section 10-32-36;
- b. To share in distributions as provided in section 10-32-60;
- c. To receive interim distributions as provided in section 10-32-61; and
- d. To receive termination distributions as provided in subdivision c of subsection 1 of section 10-32-131.

~~48.~~ 25. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under chapter 10-19.1.

~~49.~~ 26. "Foreign limited liability company" means a limited liability company organized for profit which is organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under this chapter.

~~20.~~ 27. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.

28. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

~~24.~~ 29. "Governance rights" means all of a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.

~~22.~~ 30. "Governing board" means:

- a. The board of governors in the case of a limited liability company; and
- b. The board of directors in the case of a corporation.

~~23.~~ 31. "Governor" means an individual serving on the board of governors.

~~24.~~ 32. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute:

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

~~25.~~ 33. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.

~~26.~~ 34. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.

~~27.~~ 35. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under this chapter.

~~28.~~ 36. "Manager" means:

- a. An individual who is eighteen years of age or more and who is elected, appointed, or otherwise designated as a manager by the board of governors; and
- b. An individual considered elected as a manager pursuant to section 10-32-92.

~~29.~~ 37. "Member" means a person, with or without voting rights, reflected in the required records of a limited liability company as the owner of a membership interest in the limited liability company.

~~30.~~ 38. "Membership interest" means one of the units, however designated, into which a member's proprietary interest in a limited liability company is divided consisting of:

- a. A member's financial rights;
- b. A member's right to assign financial rights as provided in section 10-32-31;
- c. A member's governance rights, if any; and

- d. A member's right to assign any governance rights owned as provided in section 10-32-32.

~~34.~~ 39. "Notice" is:

a. Is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company ~~when~~:

(1) When in writing and mailed or delivered to the limited liability company or the manager at the registered office or principal executive office of the limited liability company.

(2) When given by a form of electronic communication consented to by the limited liability company or a manager to which the notice is given:

(a) If by facsimile communication, when directed to a telephone number at which the limited liability company or a manager has consented to receive notice;

(b) If by electronic mail, when directed to an electronic mail address at which the limited liability company or a manager has consented to receive notice;

(c) If by posting on an electronic network on which the limited liability company or a manager has consented to receive notice, together with separate notice to the limited liability company or a manager of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice; or

(d) If by any other form of electronic communication by which the limited liability company or a manager has consented to receive notice, when directed to the limited liability company or a manager.

~~a.~~ b. ~~In all other cases, notice is~~ Is given to a person, in all other cases:

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

(2) When handed to the person; ~~or~~

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

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

(b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual

place of abode of the person with some person of suitable age and discretion who is residing there; or

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice.

(d) If by any other form of electronic communication by which the person has consented to receive notice when directed to the person.

b. c. ~~Notice by mail is~~ Is given by mail when deposited in the United States mail with sufficient postage affixed.

e. d. ~~Notice is considered~~ Is deemed received when it is given.

32. 40. "Organization" means, ~~whether~~

a. ~~Whether~~ domestic or foreign, a limited liability company, corporation, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; but

b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

33. 41. "Owners" means:

a. Members in the case of a limited liability company or a nonprofit corporation; and

b. Shareholders in the case of a corporation.

34. 42. "Ownership interests" means:

a. Membership interests in the case of a limited liability company or a nonprofit corporation; and

b. Shares in the case of a corporation.

~~35.~~ 43. "Parent" of a specified limited liability company means a limited liability company or corporation that directly or indirectly, through related organizations, owns more than fifty percent of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.

~~36.~~ 44. "Pertains" means a contribution "pertains":

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

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

~~37.~~ 45. "Principal executive office" means:

- a. If the limited liability company has an elected or appointed president, an office where the elected or appointed president of the limited liability company has an office; or
- b. If the limited liability company has no elected or appointed president, the registered office of the limited liability company.

~~38.~~ 46. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

47. "Registered office" means the place in this state designated in the articles as the registered office of the limited liability company.

~~39.~~ 48. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:

- a. Owns, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;
- b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
- c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.

~~40.~~ 49. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same

location may communicate with each other on a substantially simultaneous basis.

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

~~41.~~ 51. "Security" has the meaning given ~~it~~ in ~~subsection 13~~ of section 10-04-02.

~~42.~~ 52. "Series" means a category of membership interests, within a class of membership interests, that has some of the same rights and preferences as other membership interests within the same class, but that differ in one or more rights and preferences from another category of membership interests within that class.

~~43.~~ 53. "Signed" means:

a. ~~That the signature of a person has been, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document, is placed on a document, as provided in subsection 39 of under section 41-01-11, and, with 41-01-09.~~

b. With respect to a document:

~~a.~~ Required required by this chapter to be filed with the secretary of state, ~~means the that:~~

(1) The document has been signed by a person authorized to do so by this chapter, the articles of organization, a member-control agreement, or the bylaws or a resolution approved by the governors as required by section 10-32-83 or the members as required by section 10-32-42; and

~~b.~~ ~~Not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document.~~

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

~~44.~~ 54. "Subsidiary" of a specified limited liability company means:

a. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly through related organizations by the specified limited liability company; or

b. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly through related organizations by the specified limited liability company.

- 45- 55. "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under subsection 6 of section 10-32-119, continues the business of the dissolved and terminated limited liability company.
- 46- 56. "Surviving organization" means the foreign or domestic limited liability company or domestic or foreign corporation resulting from a merger.
- 47- 57. "Termination" means the end of a limited liability company's existence as a legal entity and occurs when a notice of termination is:
- a. Filed with the secretary of state under section 10-32-117 together with the fees provided in section 10-32-150; or
 - b. ~~Is considered~~ Considered filed with the secretary of state under subdivision c of subsection 2 of section 10-32-106 together with the fees provided in section 10-32-150.
- 48- 58. "Vote" includes authorization by written action.
- 49- 59. "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on business, except to the extent necessary for concluding affairs, and disposing of assets under section 10-32-131.
- 50- 60. "Written action" means a:
- a. A written document signed by every person required to take the action described; ~~and the~~
 - b. The counterparts of a written document signed by any person taking the action described.
 - (1) Each counterpart constitutes the action of the persons signing it; ~~and all~~
 - (2) All the counterparts, taken together, constitute one written action by all of the persons signing them.

SECTION 25. Section 10-32-02.1 of the North Dakota Century Code is created and enacted as follows:

10-32-02.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 26. AMENDMENT. Subsections 2, 3, and 4 of section 10-32-07 of the North Dakota Century Code are amended and reenacted as follows:

2. The following provisions govern a limited liability company unless modified in the articles of organization or a member-control agreement under section 10-32-50:
 - a. A limited liability company has general business purposes as provided in section 10-32-04;
 - b. A limited liability company has certain powers as provided in section 10-32-23;
 - c. The power to adopt, amend, or repeal the bylaws is vested in the board of ~~governors~~ as provided in section 10-32-68;
 - d. A limited liability company must allow cumulative voting for governors as provided in section 10-32-76;
 - e. The affirmative vote of the greater of a majority of governors present or a majority of the minimum number of governors constituting a quorum is required for an action of the board of ~~governors~~ as provided in section 10-32-83;
 - f. A written action by the board of ~~governors~~ taken without a meeting must be signed by all governors as provided in section 10-32-84;
 - g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements as provided in subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59;
 - h. All membership interests are ordinary membership interests entitled to vote and are of one class with no series as provided in subdivisions a and b of subsection 5 of section 10-32-56;
 - i. All membership interests have equal rights and preferences in all matters not otherwise provided for by the board of ~~governors~~ as provided in subdivision b of subsection 5 of section 10-32-56;
 - j. The value of previous contributions must be restated when a new contribution is accepted as provided in subsections 3 and 4 of section 10-32-57;
 - k. A member has certain preemptive rights, unless otherwise provided by the board of ~~governors~~ as provided in section 10-32-37;
 - l. The affirmative vote of the greater of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting or a majority of the voting power of the membership interests with voting rights constituting the minimum voting power needed for a quorum for the transaction of business is required for an action of the members, except if this chapter requires the affirmative vote of a majority of the voting power of all

- membership interests entitled, to vote as provided in subsection 1 of section 10-32-42;
- m. The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members as provided in section 10-32-40.1;
 - n. Members share in distributions in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-60;
 - o. Members share profits and losses in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-36;
 - p. A written action by the members taken without a meeting must be signed by all members as provided in section 10-32-43;
 - q. Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind as provided in section 10-32-62;
 - r. A member is not subject to expulsion as provided in subsection 2 of section 10-32-30;
 - s. Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32;
 - t. For a limited liability company whose existence begins before July 1, 1999, unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109;
 - u. The termination of a person's membership interest has specified consequences as provided in section 10-32-30; and
 - v. Restrictions apply to the assignment of governance rights as provided in section 10-32-32.
3. The following provisions govern a limited liability company unless modified in the articles of organization, a member-control agreement under section 10-32-50, or in the bylaws:
- a. Governors serve for an indefinite term that expires at the next regular meeting of members as provided in section 10-32-72;
 - b. The compensation of governors is fixed by the board of governors as provided in section 10-32-74;
 - c. A certain method must be used for removal of governors as provided in section 10-32-78;
 - d. A certain method must be used for filling board of governors vacancies as provided in section 10-32-79;

- e. If the board of ~~governors~~ fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-32-80;
- f. The notice of a board of ~~governors~~ meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-32-80;
- g. A majority of the board of ~~governors~~ is a quorum for a board meeting as provided in section 10-32-82;
- h. A committee consists of one or more individuals, who need not be governors, appointed by affirmative vote of a majority of the governors present as provided in subsection 2 of section 10-32-85;
- i. The board may establish a special litigation committee as provided in section 10-32-85;
- j. The president and treasurer have specified duties, until the board of ~~governors~~ determines otherwise as provided in section 10-32-89;
- k. Managers may delegate some or all of their duties and powers, if not prohibited by the board of ~~governors~~ from doing so as provided in section 10-32-95;
- l. Regular meetings of members need not be held, unless demanded by a member under certain conditions as provided in section 10-32-38;
- m. In all instances when a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members as provided in subsection 2 of section 10-32-40;
- n. For a quorum at a members' meeting, there is required a majority of the voting power of the membership interests entitled to vote at the meeting as provided in section 10-32-44;
- o. The board of ~~governors~~ may fix a date up to fifty days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-32-40.1;
- p. Indemnification of certain persons is required as provided in section 10-32-99;
- q. The board of ~~governors~~ may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-32-64; and
- r. Members have no right to interim distributions except as provided through the bylaws or an act of the board of ~~governors~~ as provided in section 10-32-61.

4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of organization or a member-control agreement under section 10-32-50. The provisions in subdivisions b through f, h, i, j, k, l, m, n, and q may be included in the articles of organization, in a member-control agreement under section 10-32-50, or, in the bylaws:
 - a. The persons to serve as the first board ~~of governors~~ may be named in the articles of organization as provided in subsection 1 of section 10-32-69;
 - b. A manner for increasing or decreasing the number of governors may be provided as provided in section 10-32-70;
 - c. Additional qualifications for governors may be imposed as provided in section 10-32-71;
 - d. Governors may be classified as provided in section 10-32-75;
 - e. The date, time, and place of board ~~of governors~~ meetings may be fixed as provided in subsection 1 of section 10-32-80;
 - f. Absent governors may be permitted to give written consent or opposition to a proposal as provided in section 10-32-81;
 - g. A larger than majority vote may be required for board ~~of governors~~ action as provided in section 10-32-83;
 - h. Authority to sign and deliver certain documents may be delegated to a manager or agent of the limited liability company other than the president as provided in section 10-32-89;
 - i. Additional managers may be designated as provided in section 10-32-88;
 - j. Additional powers, rights, duties, and responsibilities may be given to managers as provided in section 10-32-89;
 - k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-32-94;
 - l. The date, time, and place of regular member meetings may be fixed as provided in subsection 3 of section 10-32-38;
 - m. Certain persons may be authorized to call special meetings of members as provided in subsection 1 of section 10-32-39;
 - n. Notices of member meetings may be required to contain certain information as provided in subsection 3 of section 10-32-40;
 - o. A larger than majority vote may be required for member action as provided in section 10-32-42;
 - p. Voting rights may be granted in or pursuant to the articles of organization to persons who are not members as provided in subsection 3 of section 10-32-40.1;

- q. Limited liability company actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-32-55; and
- r. A governor's personal liability to the limited liability company or the limited liability company's members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles as provided in subsection 4 of section 10-32-86.

SECTION 27. AMENDMENT. Subsection 5 of section 10-32-10 of the North Dakota Century Code is amended and reenacted as follows:

- 5. A limited liability company that is ~~merged~~ the surviving organization in a merger with another limited liability company or domestic or foreign corporation, or that is organized by the reorganization of one or more limited liability companies or domestic or foreign corporations other organizations, or that acquires by sale, lease, or other disposition to or exchange with a ~~limited liability company~~ an organization all or substantially all of the assets of another ~~limited liability company or domestic or foreign corporation~~ organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other ~~limited liability companies or domestic or foreign corporations~~ organizations, if the ~~other limited liability company or domestic or foreign corporation~~ organization whose name is sought to be used:
 - a. Was organized ~~or~~, incorporated, formed or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.

SECTION 28. AMENDMENT. Section 10-32-11 of the North Dakota Century Code is amended and reenacted as follows:

10-32-11. Reserved name.

- 1. The exclusive right to the use of a limited liability company name otherwise permitted by section 10-32-10 may be reserved by any person.
- 2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 10-32-150.
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.

- b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 10-32-150.
4. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation together with the fees provided in section 10-32-150.
5. ~~The secretary of state may accept for filing a legible facsimile telecommunication of the signed original of any request for reserved name.~~
6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 29. AMENDMENT. Subsection 1 of section 10-32-13 of the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company may change its registered office, change its registered agent, or state a change in the name of its registered agent, by filing with the secretary of state, along with the fees provided in section 10-32-150, a statement containing:
 - a. The name of the limited liability company;
 - b. If the address of its registered office is to be changed, the new address of its registered office;
 - c. If its registered agent is to be designated or changed, the name of its new registered agent;
 - d. If the name of its registered agent is to be changed, the name of its registered agent as changed;
 - e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
 - f. A statement that the change of registered office or registered agent was authorized by resolution approved by the board ~~of governors~~.

SECTION 30. AMENDMENT. Section 10-32-15 of the North Dakota Century Code is amended and reenacted as follows:

10-32-15. Procedure for amendment before contribution. Before any contribution is reflected in the required records of a limited liability company, the articles of organization may be amended pursuant to section 10-32-67 by the organizers or by the board ~~of governors~~. The articles of organization may also be

amended by the board ~~of governors~~ to change or cancel a statement pursuant to subsection 6 of section 10-32-56 establishing or fixing the rights and preferences of a class or series of membership interests before any contribution pertaining to that class or series is reflected in the required records of the limited liability company by filing articles of amendment or a statement of cancellation, as appropriate, with the secretary of state.

SECTION 31. AMENDMENT. Subsection 6 of section 10-32-17 of the North Dakota Century Code is amended and reenacted as follows:

6. Divide the membership interests of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the membership interests of each series or authorize the board ~~of governors~~ to do so;

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

1. Whenever a plan of reorganization of a limited liability company has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the limited liability company, pursuant to the provisions of any applicable statute of the United States relating to reorganization of limited liability companies, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and to put it into effect, so long as the articles as amended contain only provisions which might be lawfully contained in original articles of organization at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended to:
 - a. Change the limited liability company name, period of duration, or organizational purposes of the limited liability company.
 - b. Repeal, alter, or amend the bylaws of the limited liability company.
 - c. Change the preferences, limitations, relative rights in respect of all or any part of the membership interests of the limited liability company, and classify, reclassify, or cancel all or any part thereof.
 - d. Authorize the issuance of bonds, debentures, or other obligations of the limited liability company, whether convertible into membership interests of any class or bearing warrants or other evidence of optional rights to purchase or subscribe for membership interests of any class, and fix the terms and conditions thereof.
 - e. Constitute or reconstitute and classify or reclassify the board ~~of governors~~ and appoint governors and managers in place of or in addition to all or any of the governors or managers then in office.

SECTION 33. AMENDMENT. Subsection 17 of section 10-32-23 of the North Dakota Century Code is amended and reenacted as follows:

17. A limited liability company may establish committees of the board ~~of governors~~, elect or appoint persons to the committees, and define their duties as provided in section 10-32-85 and fix their compensation.

SECTION 34. AMENDMENT. Section 10-32-36 of the North Dakota Century Code is amended and reenacted as follows:

10-32-36. Sharing of profits and losses. Unless otherwise provided in the articles of organization, in a member-control agreement, or by the board of ~~governors~~ under subsections 5 and 6 of section 10-32-56, the profits and losses of a limited liability company must be allocated among the members, and among classes and series of members, in proportion to the value of the contributions of the members reflected in the required records.

SECTION 35. AMENDMENT. Section 10-32-37 of the North Dakota Century Code is amended and reenacted as follows:

10-32-37. Preemptive rights.

1. To the extent allowed by section 9 of article XII of the Constitution of North Dakota, a member of a limited liability company has the preemptive rights provided in this section, unless denied or limited in the articles of organization, in a member-control agreement, or by the board of ~~governors~~ pursuant to subdivision b of subsection 5 of section 10-32-56.
2. A preemptive right is the right of a member to make contributions of a certain amount or to make a contribution allowance agreement specifying future contributions of a certain amount before the limited liability company may accept new contributions from other persons or to make contribution allowance agreements with other persons.
3. A member has a preemptive right whenever the limited liability company proposes to accept contributions from other persons, or to make contribution allowance agreements with other persons, pertaining to membership interests of the same series or class as the series or class owned by the member.
4. Unless otherwise provided in the articles of organization or a member-control agreement, no preemptive rights pursuant to this section arise as to contributions to be accepted from others or as to contribution allowance agreements to be made with others when the contribution is:
 - a. To be made in a form other than money;
 - b. To be made or reflected pursuant to a plan of merger;
 - c. To be made or reflected pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote;
 - d. To be made pursuant to a previously made contribution allowance agreement; or
 - e. To be made or reflected pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.

5. The extent to which each member may make a new contribution, or obtain the right to make a new contribution under a contribution allowance agreement, by exercise of a preemptive right as to any class or series is the ratio that the value of that member's contributions, as reflected in the required records as pertaining to that class or series before the contribution, bears to the total value of all members' contributions reflected in the required records as pertaining to that class or series before the new contribution.
6. A member may waive a preemptive right in writing. The waiver is binding upon the member whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed contribution or contribution allowance agreement described in the waiver.
7. When proposing to accept new contributions, or to make contribution allowance agreements, with respect to which members have preemptive rights under this section, the board ~~of governors~~ shall cause notice to be given to each member entitled to preemptive rights. The notice must be given at least ten days before the date by which the member must exercise a preemptive right and must contain:
 - a. The extent of the member's preemptive right, being:
 - (1) In the case of a preemptive right to make a contribution, the amount of the contribution to be made; and
 - (2) In the case of a preemptive right to make a contribution allowance agreement, the amount of the contribution to be allowed under that contribution allowance agreement;
 - b. The method used to determine the extent of the member's preemptive right;
 - c. The terms and conditions upon which the member may make a contribution or make a contribution allowance agreement; and
 - d. The time within which and the method by which the member must exercise the right.
8. If a member does not exercise preemptive rights to make a contribution or to make a contribution allowance agreement, then for a period not exceeding one year after the date fixed by the board ~~of governors~~ for the exercise of those preemptive rights and to the extent of the preemptive rights not exercised, the board ~~of governors~~ may accept contributions or make contribution allowance agreements on terms no less favorable to the limited liability company than those offered to the member.
9. If the members of a limited liability company are entitled to cumulative voting in the election of governors, no amendment to the articles of organization or a member-control agreement which has the effect of denying, limiting, or modifying the preemptive rights provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board ~~of governors~~ under cumulative voting are cast against the amendment.

10. A denial or limitation of preemptive rights otherwise provided in this section does not limit the power of a limited liability company to grant first refusal rights, contribution allowance rights, or other rights to make contributions to the limited liability company, to members, to persons who have entered into contribution agreements, or to other persons before accepting contributions or before making allowance agreements with any other person.

SECTION 36. AMENDMENT. Subsections 2 and 3 of section 10-32-38 of the North Dakota Century Code are amended and reenacted as follows:

2. If a regular meeting of members has not been held within the earlier of six months after the fiscal yearend of the corporation or fifteen months after its last meeting:
 - a. A member or members owning five percent or more of the voting power of all members entitled to vote may demand a regular meeting of members by written notice of demand given to the president or the secretary of the limited liability company.
 - b. Within thirty days after receipt of the demand by one of those managers, the board of ~~governors~~ shall cause a regular meeting of members to be called and held on notice no later than ninety days after receipt of the demand.
 - c. If the board of ~~governors~~ fails to cause a regular meeting to be called and held as required by this subsection, the member or members making the demand may call the regular meeting by giving notice as required by section 10-32-40.
 - d. All necessary expenses of the notice and the meeting must be paid by the limited liability company.
3. A regular meeting, if any, must be held on the date and at the time and place fixed by, or in a manner authorized by the articles, a member-control agreement, or the bylaws, except a meeting called by or at the demand of a member pursuant to subsection 2 must be held in the county where the principal executive office of the limited liability company is located. To the extent authorized in the articles, a member-control agreement, or the bylaws, the board may determine that a regular meeting of the members shall be held solely by means of remote communication in accordance with subdivision a of subsection 2 of section 10-32-43.2.

SECTION 37. AMENDMENT. Subsections 2 and 3 of section 10-32-39 of the North Dakota Century Code are amended and reenacted as follows:

2. A member or members owning ten percent or more of the voting power of all membership interests entitled to vote may demand a special meeting of members by written notice of demand given to the president or secretary of the limited liability company and containing the purposes of the meeting.
 - a. Within thirty days after receipt of the demand by one of those managers, the board of ~~governors~~ shall cause a special meeting of members to be called and held on notice no later than ninety days

after receipt of the demand, all at the expense of the limited liability company.

- b. If the board of ~~governors~~ fails to cause a special meeting to be called and held as required by this subsection, the member or members making the demand may call the meeting by giving notice as required by section 10-32-40.
 - c. All necessary expenses of the notice and the meeting must be paid by the limited liability company.
3. Special meetings must be held on the date and at the time and place fixed by the president, the board of ~~governors~~, or a person authorized by the articles, a member-control agreement, or the bylaws to call a meeting, except a special meeting called by or at the demand of a member or members pursuant to subsection 2 must be held in the county where the principal executive office is located. To the extent authorized in the articles, a member-control agreement, or the bylaws, the board may determine that a special meeting of the members shall be held solely by means of remote communication in accordance with subdivision a of subsection 2 of section 10-32-43.2.

SECTION 38. AMENDMENT. Subsection 3 of section 10-32-40 of the North Dakota Century Code is amended and reenacted as follows:

3. The notice:
 - a. In all instances when a specific minimum notice period has not otherwise been fixed by law, must be given at least ten days before the date of the meeting, or a shorter time provided in the articles of organization, a member-control agreement, or the bylaws, and not more than fifty days before the date of the meeting;
 - b. Must contain the date, time, and place of the meeting;
 - c. Must contain the information with respect to dissenters' rights required by subsection 2 of section 10-32-55, if applicable;
 - d. Must inform members if proxies are permitted at the meeting and, if so, state the procedure for appointing proxies;
 - e. Must contain a statement of the purpose of the meeting, in the case of a special meeting;
 - f. Must contain any other information:
 - (1) Required by the articles of organization, any member-control agreement, the bylaws, or this chapter; or
 - (2) Considered necessary or desirable by the board of ~~governors~~; and
 - g. May contain any other information considered necessary or desirable by the person or persons calling the meeting.

SECTION 39. AMENDMENT. Section 10-32-40.1 of the North Dakota Century Code is amended and reenacted as follows:

10-32-40.1. Voting rights.

1. The board of ~~governors~~ may fix or authorize a manager to fix a date not more than fifty days, or a shorter time period provided in the articles of organization, a member-control agreement, or the bylaws, before the date of a meeting of members as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members.
2. A determination of the owners of membership interests entitled to notice and to vote at a meeting of members is effective for an adjournment of the meeting unless the board of ~~governors~~ fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than fifty days after the record date for determining members entitled to notice of the original meeting.
3. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting:
 - a. It must provide the original record date for notice and voting continues in effect; or
 - b. It may fix a new record date for notice and voting.
4. A resolution approved by the affirmative vote of a majority of the governors present may establish a procedure whereby a member may certify in writing to the limited liability company that all or a portion of the membership interest registered in the name of the member are held for the account of one or more beneficial owners. Upon receipt by the limited liability company of the writing, the persons specified as beneficial owners, rather than the actual member, are deemed the members for the purposes specified in the writing.
5. Unless otherwise provided in the articles, in a member-control agreement, or by the board of ~~governors~~ under subsections 5 and 6 of section 10-32-56, members have voting power in proportion to the value of the contributions of the members as reflected in the required records.
6. The articles of organization or a member-control agreement may give or prescribe the manner of giving a creditor, securityholder, or other person a right to vote under this section.
7. Membership interests owned by two or more members may be voted by any one of them unless the limited liability company receives written notice from any one of them denying the authority of that person to vote those membership interests.
8. Except as provided in subsection 7, an owner of a membership interest entitled to vote may vote any portion of the membership interest in any way the member chooses. If a member votes without designating the proportion voted in a particular way, the member is considered to have voted all of the membership interest in that way.

SECTION 40. AMENDMENT. Section 10-32-43 of the North Dakota Century Code is amended and reenacted as follows:

10-32-43. Action without a meeting.

4. An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the members entitled to vote on that action.
1. If ~~provided by~~ the articles or a member-control agreement so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.
2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required members, unless a different effective time is provided in the written action.
- ~~3.~~
 - a. When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date.
 - b. Failure to provide the notice does not invalidate the written action.
 - c. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.
4.
 3. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the managers signing the certificate must so indicate that if the action was taken under this section.

SECTION 41. AMENDMENT. Section 10-32-43.2 of the North Dakota Century Code is amended and reenacted as follows:

10-32-43.2. ~~Electronic~~ Remote communications for member meetings.

1. This section shall be construed and applied to:
 - a. Facilitate remote communication consistent with other applicable law; and
 - b. Be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.
2. To the extent authorized in the articles, a member-control agreement or the bylaws, and determined by the board:
 - a. A ~~conference among~~ meeting of the members may be held solely by any combination of means of remote communication through which the participants may ~~simultaneously hear each other during~~

participate in the conference constitutes a regular or special meeting of members if the same:

- (1) If notice of the meeting is given of the conference to every owner of membership interests entitled to vote as would be required by this chapter for a meeting; and
- (2) If the membership interests held by the members participating in the conference meeting would be sufficient to constitute a quorum at a meeting. Participation in a conference by this means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-32-48 are met.

2. b. A member may participate in not physically present in person or by proxy at a regular or special meeting of members not described in subsection 4 may by any means of remote communication through which the member, other participants, and all participants physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-32-48 are met, participate in a meeting of members held at a designated place.

3. In any meeting of members held solely by means of remote communication under subdivision a of subsection 2 or in any meeting of members held at a designated place in which one or more members participate by means of remote communication under subdivision b of subsection 2:

a. The limited liability company shall implement reasonable measures:

- (1) To verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a member; and
- (2) To provide each member participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:
 - (a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;
 - (b) If allowed by the procedures governing the meeting, have the member's remarks heard or read by other participants in the meeting opportunity to; and
 - (c) If otherwise entitled, vote on matters submitted to the members.

b. Participation in a meeting by this means constitutes presence at the meeting in person or by proxy of all if all of the other requirements of section 10-32-48 are met.

4. With respect to notice to members:

- a. Any notice to members given by the limited liability company under any provision of this chapter, the articles, a member-control agreement, or the bylaws by a form of electronic communication consent to by the member to whom the notice is given is effective when given. The notice is deemed given:
 - (1) If by facsimile communication, when directed to a telephone number at which the member has consented to receive notice;
 - (2) If by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice;
 - (3) If by a posting on an electronic network on which the member has consented to receive notice, together with separate notice to the member of the specific posting, upon the later of:
 - (a) The posting; or
 - (b) The giving of the separate notice; and
 - (4) If by any other form of electronic communication by which the member has consented to receive notice, when directed to the member.
 - b. An affidavit of the secretary, other authorized manager, or authorized agent of the limited liability company, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.
 - c. Consent by a member to notice given by electronic communication may be given in writing or by authenticated electronic communication. The limited liability company is entitled to rely on any consent so given until revoked by the member, provided that no revocation affects the validity of any notice given before receipt by the limited liability company of revocation of the consent.
5. Any ballot, vote authorization, or consent submitted by electronic communication under this chapter may be revoked by the member submitting the ballot, vote, authorization, or consent so long as the revocation is received by a manager of the limited liability company at or before the meeting or before an action without a meeting is effective according to section 10-32-43.
6. Waiver of notice by a member of a meeting by means of authenticated electronic communication ~~described in subsections 4 and 2~~ may be given in the manner provided in subsection 4 of section 10-32-40. Participation in a meeting by means of remote communication described in ~~subsections 4 and subdivisions a and b of subsection 2~~ is a waiver of notice of that meeting, except when the member objects at:

- a. At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or ~~objects before~~
- b. Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 42. AMENDMENT. Subsection 1 of section 10-32-48 of the North Dakota Century Code is amended and reenacted as follows:

1. A At or before the meeting at which the appointment is to be effective, a member may cast or authorize the casting of a vote by:
 - a. By filing with a manager authorized to tabulate votes a written appointment of a proxy with a manager of the limited liability company at or before the meeting at which the appointment is to be effective which is signed by the member.
 - a- A written appointment of a proxy may be signed by the member or authorized by the member by transmission of a telegram, cablegram, or other means of electronic transmission, provided the limited liability company has no reason to believe that the telegram, cablegram, or other electronic transmission was not authorized by the member.
 - b. By telephonic transmission or authenticated electronic communication to a manager authorized to tabulate votes, whether or not accompanied by written instructions of the member, of an appointment of a proxy.
 - (1) The telephonic transmission or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the appointment is authorized by the member. If it is reasonably concluded that the telephonic transmission or authenticated electronic communication is valid, the inspectors of election or, if there are not inspectors, the other persons making that determination of validity shall specify the information upon which they relied to make that determination.
 - (2) A proxy so appointed may vote on behalf of the member, or otherwise participate, in a meeting by remote communication according to section 10-32-43.2, to the extent the member appointing the proxy would have been entitled to participate by remote communication according to section 10-32-43.2 if the member did not appoint the proxy.
 - c. Any copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

6. d. An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or ~~otherwise authorized~~ consented to by authenticated electronic communication by any one of ~~them~~ the members, unless the limited liability company receives from any one of those members written notice or an authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.

SECTION 43. AMENDMENT. Subsection 1 of section 10-32-50 of the North Dakota Century Code is amended and reenacted as follows:

1. A member-control agreement relating to any phase or aspect of the business and affairs of a limited liability company is valid as provided in subsection 2 and enforceable as provided in subsection 3.
 - a. A member-control agreement valid under subsection 2 may relate to, without limitation, the:
 - (1) Management of the limited liability company's business;
 - (2) Declaration and payment of distributions;
 - (3) Sharing of profits and losses;
 - (4) Election of governors or managers;
 - (5) Employment of members and others by the limited liability company;
 - (6) Relations among members and persons who have signed contribution agreements, including the termination of continued membership;
 - (7) Dissolution, termination, and liquidation of the limited liability company, including the continuation of the limited liability company's business through a successor organization or individual; and
 - (8) Arbitration of disputes.
 - b. If this chapter provides that a particular result may or must be obtained through a provision in the articles of organization, other than a provision required by subsection 1 of section 10-32-07 to be contained in the articles; in the bylaws; or by an act of the board, the same result may be accomplished through a member-control agreement valid under this section or through a procedure established by a member-control agreement valid under this section.
 - c. A member-control agreement may:
 - (1) Allocate to the members authority ordinarily exercised by the board of ~~governors~~;

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

SECTION 44. AMENDMENT. Section 10-32-51 of the North Dakota Century Code is amended and reenacted as follows:

10-32-51. Required records and information.

1. A limited liability company shall keep at its principal executive office, or at another place or places within the United States determined by the board ~~of governors~~:
 - a. A current list of the full name and last-known business, residence, or mailing address of each member, each governor, and the president;
 - b. A current list of the full name and last-known business, residence, or mailing address of each assignee of financial rights other than a secured party and a description of the rights assigned;
 - c. A copy of the articles of organization and all amendments to the articles;
 - d. Copies of any currently effective written bylaws;
 - e. Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years;
 - f. Financial statements required by section 10-32-52;
 - g. Records of all proceedings of members for the last three years;
 - h. Records of all proceedings of the board ~~of governors~~ for the last three years;
 - i. Reports made to members generally within the last three years;
 - j. Member-control agreements described in section 10-32-50;
 - k. A statement of all contributions accepted under subsection 3 of section 10-32-56 including for each contribution:
 - (1) The identity of the member to whom the contribution relates;
 - (2) The class or series to which the contribution pertains;
 - (3) The amount of cash accepted by the limited liability company or promised to be paid to the limited liability company;

- (4) A description of any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company; and
 - (5) The value accorded under subsection 4 of section 10-32-56 to:
 - (a) Any other property transferred or promised to be transferred to the limited liability company; and
 - (b) Any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company;
 - l. A statement of all contribution agreements made under section 10-32-58, including for each contribution agreement:
 - (1) The identity of the would-be contributor;
 - (2) The class or series to which the future contribution pertains; and
 - (3) As to each future contribution to be made, the same information as subdivision k requires for contributions already accepted;
 - m. A statement of all contribution allowance agreements made under section 10-32-59, including for each contribution allowance agreement:
 - (1) The identity of the would-be contributor;
 - (2) The class or series to which the future contribution would pertain; and
 - (3) As to each future contribution allowed to be made, the same information as subdivision k requires for contributions already accepted;
 - n. An explanation of any restatement of value made under section 10-32-57;
 - o. Any written consents obtained from members under this chapter; and
 - p. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsections 6 through 8 of section 10-32-56.
2. A member of a limited liability company has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the limited liability company shall make available within ten days after receipt by a manager of the limited liability company of the written demand, all documents referred to in subsection 1.

3. A member of a limited liability company who has been a member for at least six months immediately preceding the member's demand or who is the holder of record of at least five percent of all membership interests of the limited liability company has a right, upon written demand, to examine and copy, in person or by a legal representative, other limited liability company records at any reasonable time only if the member demonstrates a proper purpose for the examination. A "proper purpose" is one reasonably related to the person's interest as a member of a limited liability company.
4. On application of the limited liability company, a court in this state may issue a protective order permitting the limited liability company to withhold portions of the records of proceedings of the board of ~~governors~~ for a reasonable period of time, not to exceed twelve months, in order to prevent premature disclosure of confidential information that would be likely to cause competitive injury to the limited liability company. A protective order may be renewed for successive reasonable periods of time, each not to exceed twelve months and in total not to exceed thirty-six months, for good cause shown. In the event a protective order is issued, the statute of limitations for any action that the member might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the limited liability company, it shall award reasonable expenses, including attorney's fees and disbursements, to the member. This subsection does not limit the right of a court to grant other protective orders or impose other reasonable restrictions on the nature of the limited liability company records that may be copied or examined under subsections 2 and 3 or the use or distribution of the records by the demanding member.
5. A member who has gained access under this section to any limited liability company record may not use or furnish to another for use the limited liability company record or a portion of the contents for any purpose other than a proper purpose. Upon application of the limited liability company, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subsection.
6. Copies of the information referred to in subsection 1 must be furnished at the expense of the limited liability company. In all other cases, the limited liability company may charge the requesting party a reasonable fee to cover the expenses of providing the copy.
7. The records maintained by a limited liability company may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or microimages, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A limited liability company shall convert any of the records referred to in subsections 2 and 3 upon the request of a person entitled to inspect them, and the expense of the conversion must be borne by the person who bears the expense of copying pursuant to subsection 6. A copy of the conversion is admissible in evidence, and is acceptable for all other purposes, to

the same extent as the existing or original records would be if they were legible visually.

SECTION 45. AMENDMENT. Subsection 1 of section 10-32-54 of the North Dakota Century Code is amended and reenacted as follows:

1. Subject to a member-control agreement under section 10-32-50, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:
 - a. An amendment of the articles of organization, but not an amendment to a member-control agreement, which materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:
 - (1) Alters or abolishes a preferential right of the membership interests;
 - (2) Creates, alters, or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests;
 - (3) Alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;
 - (4) Excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;
 - (5) Changes a member's right to resign or retire; or
 - (6) Establishes or changes the conditions for or consequences of expulsion;
 - b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company, but not including a transaction permitted without member approval under section 10-32-108, a disposition in dissolution described in subsection 4 of section 10-32-113, a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with the member's respective membership interests within one year after the date of disposition;
 - c. A plan of merger to which the limited liability company is a constituent organization;
 - d. A plan of exchange to which the limited liability company is a constituent organization as the organization whose ownership interests will be acquired by the acquiring organization, if the membership interests being acquired are entitled to be voted on the plan; or

- e. Any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, a member-control agreement, the bylaws, or a resolution approved by the board of ~~governors~~ directs that dissenting members may obtain payment for the dissenting members' membership interests.

SECTION 46. AMENDMENT. Subsection 4 of section 10-32-55 of the North Dakota Century Code is amended and reenacted as follows:

4. After the proposed action is approved by the board of ~~governors~~ and, if necessary, the members, the limited liability company shall send to all members who complied with subsection 3 and to all members entitled to dissent if no member vote was required, a notice that contains:
 - a. The address to which a demand for payment must be sent in order to obtain payment and the date by which the demand must be received;
 - b. A form to be used to certify the date on which the member acquired the membership interests and to demand payment; and
 - c. A copy of section 10-32-54 and this section.

SECTION 47. AMENDMENT. Section 10-32-56 of the North Dakota Century Code is amended and reenacted as follows:

10-32-56. Authorization, form, and acceptance of contributions.

1. Subject to any restrictions in the articles of organization or a member-control agreement and only when authorized by the board of ~~governors~~ or pursuant to a member-control agreement, a limited liability company may accept contributions under subsections 2 and 3, make contribution agreements under section 10-32-58, and make contribution allowance agreements under section 10-32-59.
2. ~~A person may make a contribution to a limited liability company by paying money or transferring the ownership of an interest in property to the limited liability company for rendering services to or for the benefit of the~~ Subject to subsection 3, a person may make a contribution to a limited liability company.
3. No purported contribution is to be treated or considered as a contribution, unless:
 - a. The board of ~~governors~~ accepts the contribution on behalf of the limited liability company and in that acceptance describes the contribution and states the value being accorded to the contribution; and
 - b. The fact of contribution and the contribution's accorded value are both reflected in the required records of the limited liability company.
4. The determinations of the board of ~~governors~~ as to the amount or fair value or the fairness to the limited liability company of the contribution accepted or to be accepted by the limited liability company or the terms

of payment or performance, including under a contribution agreement in section 10-32-58, and a contribution allowance agreement in section 10-32-59, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Governors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the limited liability company, or overvalue property or services received or to be received by the limited liability company as a contribution, are jointly and severally liable to the limited liability company for the benefit of the then members who did not consent to and are damaged by the action, to the extent of the damages of those members. A governor against whom a claim is asserted pursuant to this subsection, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other governors who are liable under this subsection.

5. All the membership interests of a limited liability company must:
 - a. Be of one class, without series, unless a member-control agreement or the articles of organization establish, or authorize the board of ~~governors~~ to establish, more than one class or series within classes;
 - b. Be ordinary membership interests entitled to vote as provided in section 10-32-40.1, and have equal rights and preferences in all matters not otherwise provided for by the board of ~~governors~~ unless and to the extent the articles of organization or a member-control agreement fixes the relative rights and preferences of different classes and series; and
 - c. Share profits and losses as provided in section 10-32-36 and be entitled to distributions as provided in sections 10-32-60 and 10-32-61 and subdivision c of subsection 1 of section 10-32-131.
6. Subject to any restrictions in the articles of organization or a member-control agreement, the power granted in subsection 5 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series established in the articles of organization, in a member-control agreement, or by resolution of the board of ~~governors~~.
7. A statement signed by a manager setting forth the name of the limited liability company and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed with the secretary of state together with the fees provided in section 10-32-150 before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles of organization or a member-control agreement. The resolution is effective when the statement has been filed with the secretary of state unless the statement specifies a later effective date within thirty days of filing the statement with the secretary of state.

8. Without limiting the authority granted in this section, a limited liability company may have membership interests of a class or series:
 - a. Subject to the right of the limited liability company to redeem any of those membership interests at the price fixed for their redemption by the articles of organization or by the board of ~~governors~~;
 - b. Entitling the members to cumulative, partially cumulative, or noncumulative distributions;
 - c. Having preference over any class or series of membership interests for the payment of distributions of any or all kinds;
 - d. Convertible into membership interests of any other class or any series of the same or another class; or
 - e. Having full, partial, or no voting rights, except as provided in section 10-32-17.

SECTION 48. AMENDMENT. Subsection 2 of section 10-32-57 of the North Dakota Century Code is amended and reenacted as follows:

2. Whenever a limited liability company accepts a new contribution, the board of ~~governors~~ shall restate, as required by this section, the value of all old contributions.

SECTION 49. AMENDMENT. Subsection 3 of section 10-32-58 of the North Dakota Century Code is amended and reenacted as follows:

3. A contribution agreement, whether made before or after the formation of a limited liability company, must be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times determined by the board of ~~governors~~, but a call made by the board of ~~governors~~ for payment or performance on contributions must be uniform for all membership interests of the same class or for all membership interests of the same series.

SECTION 50. AMENDMENT. Subsection 1 of section 10-32-59 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 51. AMENDMENT. Section 10-32-60 of the North Dakota Century Code is amended and reenacted as follows:

10-32-60. Sharing of distributions. Unless otherwise provided in the articles of organization, in a member-control agreement, or by the board of ~~governors~~ under subsections 5 through 7 of section 10-32-56, distributions of cash or other assets of a limited liability company, including distributions on termination of the

limited liability company, must be allocated in proportion to the value of the contributions of the members reflected in the required records.

SECTION 52. AMENDMENT. Section 10-32-61 of the North Dakota Century Code is amended and reenacted as follows:

10-32-61. Interim distributions. Except as provided in the articles of organization or a member-control agreement, a member is entitled to receive distributions before the limited liability company's termination only as specified in the bylaws or by the act of the board of ~~governors~~.

SECTION 53. AMENDMENT. Subsection 1 of section 10-32-64 of the North Dakota Century Code is amended and reenacted as follows:

1. The board of ~~governors~~ may authorize and cause the limited liability company to make a distribution only if the board of ~~governors~~ determines, in accordance with subsection 2, that the limited liability company will be able to pay its debts in the ordinary course of business after making the distribution and the board of ~~governors~~ does not know before the distribution is made that the determination was or has become erroneous.
 - a. The limited liability company may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.
 - b. The effect of a distribution on the ability of the limited liability company to pay its debts in the ordinary course of business after making the distribution must be measured in accordance with subsection 3.
 - c. The right of the board of ~~governors~~ to authorize, and the limited liability company to make, distributions may be, prohibited, limited, or restricted by the articles of organization, a member-control agreement, the bylaws, or an agreement.

SECTION 54. AMENDMENT. Section 10-32-67 of the North Dakota Century Code is amended and reenacted as follows:

10-32-67. Organization.

1. If the first board of ~~governors~~ is not named in the articles of organization, the organizers may elect the first board of ~~governors~~ or may act as governors with all of the powers, rights, duties, and liabilities of governors, until governors are elected or until a contribution is accepted, whichever occurs first.
2. After the issuance of the certificate of organization, the organizers or the governors named in the articles of organization shall hold an organizational meeting at the call of a majority of the organizers or of the governors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the limited liability company, including, without limitation, amending the articles, electing governors, adopting the bylaws, electing managers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of

suitable space, furniture, furnishings, supplies, and materials, approving a limited liability company seal, adopting a fiscal year for the limited liability company, contracting to receive and accept contributions, and making any appropriate tax elections.

- a. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each organizer or governor named, stating the date, time, and place of the meeting.
- b. Organizers and governors may waive notice of an organizational meeting in the same manner a governor may waive notice of meetings of the board of ~~governors~~ under subsection 5 of section 10-32-80.

SECTION 55. AMENDMENT. Subsections 2 and 3 of section 10-32-68 of the North Dakota Century Code are amended and reenacted as follows:

2. Initial bylaws may be adopted pursuant to section 10-32-67 by the organizers or by the first board of ~~governors~~. Unless reserved by the articles of organization or a member-control agreement to the members, the power to adopt, amend, or repeal the bylaws is vested in the board of ~~governors~~. The power of the board of ~~governors~~ is subject to the power of the members, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal the bylaws adopted, amended, or repealed by the board of ~~governors~~. ~~After the adoption of the initial bylaws, the board of governors may not adopt, amend, or repeal a bylaw provision fixing a quorum for meetings of members, prescribing procedures for removing governors or filling vacancies in the board of governors, or fixing the number of governors or the governors' classifications, qualifications, or terms of office, but may adopt or amend a bylaw provision to increase the number of governors.~~
3. Unless the articles or bylaws provide otherwise, members owning five percent or more of the voting power of the members entitled to vote may propose a resolution for action by the members to adopt, amend, or repeal the bylaws adopted, amended, or repealed by the board of ~~governors~~ and the resolution must set forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2 through 4 of section 10-32-16, for amendment of the articles of organization. The articles or bylaws may impose different or additional requirements for the members to adopt, amend, or repeal the bylaws.

SECTION 56. AMENDMENT. Section 10-32-69 of the North Dakota Century Code is amended and reenacted as follows:

10-32-69. Board of ~~governors~~.

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

2. The owners of the membership interests entitled to vote for governors of the limited liability company may, by unanimous affirmative vote, take any action that this chapter requires or permits the board of ~~governors~~ to take. As to an action taken by the members in that manner:
 - a. The governors have no duties, liabilities, or responsibilities as governors under this chapter with respect to or arising from the action;
 - b. The members collectively and individually have all of the duties, liabilities, and responsibilities of governors under this chapter with respect to and arising from the action;
 - c. If the action relates to a matter required or permitted by this chapter or by any other law to be approved or adopted by the board of ~~governors~~, either with or without approval or adoption by the members, the action is considered to have been approved or adopted by the board of ~~governors~~; and
 - d. A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board of ~~governors~~ is satisfied by a statement that the members have taken the action under this subsection.

SECTION 57. AMENDMENT. Section 10-32-70 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 58. AMENDMENT. Section 10-32-73 of the North Dakota Century Code is amended and reenacted as follows:

10-32-73. Acts not void or voidable. The expiration of a governor's term with or without the election of a qualified successor does not make prior or subsequent acts of the governors or the board of ~~governors~~ void or voidable.

SECTION 59. AMENDMENT. Section 10-32-74 of the North Dakota Century Code is amended and reenacted as follows:

10-32-74. Compensation. Subject to any limitations in the articles, a member-control agreement, or the bylaws, the board of ~~governors~~ may fix the compensation of governors.

SECTION 60. AMENDMENT. Subsection 2 of section 10-32-76 of the North Dakota Century Code is amended and reenacted as follows:

2. An amendment to the articles, a member-control agreement, or the bylaws which has the effect of denying, limiting, or modifying the right to cumulative voting for members provided in this section may not be adopted if the votes of a proportion of the voting power sufficient to elect

a governor at an election of the entire board of ~~governors~~ under cumulative voting are cast against the amendment.

SECTION 61. AMENDMENT. Subsection 2 of section 10-32-77 of the North Dakota Century Code is amended and reenacted as follows:

2. If a resignation is made effective at a later time, the board may fill the pending vacancy before the effective time if the board of ~~governors~~ provides that the successor does not take office until the effective time.

SECTION 62. AMENDMENT. Subsections 2 and 3 of section 10-32-78 of the North Dakota Century Code are amended and reenacted as follows:

2. A governor may be removed at any time, with or without cause, if:
 - a. The governor was named by the board of ~~governors~~ to fill a vacancy;
 - b. The members have not elected governors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and
 - c. A majority of the remaining governors present affirmatively votes to remove the governor.
3. Any one or all of the governors may be removed at any time, with or without cause, by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote at an election of governors.
 - a. If less than the entire board of ~~governors~~ is to be removed, no one of the governors may be removed if the votes cast against the governor's removal which, if then cumulatively voted at the election of the entire board of ~~governors~~, or if there be classes of governors at an election of the class of governors of which the governor is a part, would be sufficient to elect the governor.
 - b. If a governor has been elected solely by the holders of a class or series of membership interests as stated in the articles, any member-control agreement, or the bylaws, then that governor may be removed only by the affirmative vote of the holders of a majority of the voting power of all membership interests of that class or series entitled to vote at an election of that governor.

SECTION 63. AMENDMENT. Subsection 2 of section 10-32-78.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The court that removes a governor may bar the governor from serving on the board of ~~governors~~ for a period prescribed by the court.

SECTION 64. AMENDMENT. Subsection 1 of section 10-32-79 of the North Dakota Century Code is amended and reenacted as follows:

1. Unless different rules for filling vacancies are provided for in the articles, a member-control agreement, or the bylaws:

- a. Vacancies on the board ~~of governors~~ resulting from the death, resignation, removal, or disqualification of a governor may be filled by the affirmative vote of a majority of the remaining governors, even though less than a quorum; and
- b. Vacancies on the board ~~of governors~~ resulting from newly created governorships may be filled by the affirmative vote of a majority of the governors serving at the time of the increase.

SECTION 65. AMENDMENT. Section 10-32-80 of the North Dakota Century Code is amended and reenacted as follows:

10-32-80. Board ~~of governors~~ meetings.

1. Meetings of the board ~~of governors~~ may be held from time to time as provided in the articles of organization, a member-control agreement, or the bylaws at any place within or without the state that the board ~~of governors~~ may select or by any means described in subsection 2.
 - a. If the articles, bylaws, or board ~~of governors~~ fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles, a member-control agreement, or the bylaws provide otherwise.
 - b. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.
 - c. Participation in a meeting by either of the means set forth in subdivision 2 constitutes personal presence at the meeting.
2. ~~A board of governors~~ Any meeting among governors may be conducted by:
 - a. ~~A conference among governors using~~ Solely by any one or more means of remote communication through which all of the governors may simultaneously hear participate with each other during the conference constitutes a board of governors meeting, if:
 - (1) If the same notice is given of the conference meeting as would be required by subsection 3 for a meeting; and if
 - (2) If the number of governors participating in the conference meeting is a quorum at a meeting. Participation in a meeting by this means constitutes personal presence at the meeting; or
 - b. ~~By any means of~~ conference telephone or, if authorized by the board, by such other means of remote communication, in each case, through which the governor, other governors so participating, and all governors physically present at the meeting may simultaneously hear participate with each other during the meeting. Participation in a meeting by this means constitutes personal presence at the meeting.
3. Unless the articles of organization, a member-control agreement, or the bylaws provide for a different time period, a governor may call a board

meeting by giving at least ten days' notice or, in the case of organizational meetings under subsection 2 of section 10-32-67, at least three days' notice to all governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles, a member-control agreement, or the bylaws otherwise require.

4. If the date, time, and place of a board ~~of governors~~ meeting are provided in the articles, a member-control agreement, or the bylaws, or announced at a previous meeting of the board ~~of governors~~, notice is not required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.
5. A governor may waive notice of a meeting of the board ~~of governors~~. A waiver of notice by a governor entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a governor at a meeting is a waiver of notice of that meeting, except when the governor objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

SECTION 66. AMENDMENT. Section 10-32-81 of the North Dakota Century Code is amended and reenacted as follows:

10-32-81. Absent governors. If the articles of organization, a member-control agreement, or the bylaws so provide, a governor may give advance written consent or opposition to a proposal to be acted on at a board ~~of governors~~ meeting. If the governor is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as the vote of a governor present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the governor has consented or objected.

SECTION 67. AMENDMENT. Section 10-32-83 of the North Dakota Century Code is amended and reenacted as follows:

10-32-83. Act of the board ~~of governors~~. The board ~~of governors~~ shall take action by the affirmative vote of the greater of a majority of governors present at a duly held meeting at the time the action is taken or a majority of the minimum proportion or number of governors that would constitute a quorum for the transaction of business at a meeting, except if this chapter, a member-control agreement, or the articles require the affirmative vote of a larger proportion or number. If a member-control agreement or the articles require a larger proportion or number than is required by this chapter for a particular action, the member-control agreement or the articles control.

SECTION 68. AMENDMENT. Subsections 1 and 2 of section 10-32-84 of the North Dakota Century Code are amended and reenacted as follows:

1. An action required or permitted to be taken at a board ~~of governors~~ meeting may be taken by written action signed, or consented to by authenticated electronic communication, by all of the governors. If the articles or a member-control agreement so provide, any action, other

than an action requiring member approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of governors which would be required to take the same action at a meeting of the board ~~of governors~~ at which all governors were present.

2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required number of governors, unless a different effective time is provided in the written action.

SECTION 69. AMENDMENT. Subsections 1 and 3 of section 10-32-85 of the North Dakota Century Code are amended and reenacted as follows:

1. A resolution approved by the affirmative vote of a majority of the board ~~of governors~~ may establish committees having the authority of the board in the management of the business of the limited liability company only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent governors or other independent persons to consider legal rights or remedies of the limited liability company and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board ~~of governors~~.
3. Sections 10-32-80 through 10-32-84 apply to committees and members of committees to the same extent as those sections apply to the board ~~of governors~~ and governors.

SECTION 70. AMENDMENT. Subsections 2 and 4 of section 10-32-86 of the North Dakota Century Code are amended and reenacted as follows:

2. A governor is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
 - a. One or more managers or employees of the limited liability company whom the governor reasonably believes to be reliable and competent in the matters presented;
 - b. Counsel, public accountants, or other persons as to matters that the governor reasonably believes are within the person's professional or expert competence; or
 - c. A committee of the board ~~of governors~~ upon which the governor does not serve, duly established in accordance with section 10-32-85, as to matters within its designated authority, if the governor reasonably believes the committee to merit confidence.
4. A governor who is present at a meeting of the board ~~of governors~~ when an action is approved by the affirmative vote of a majority of the governors present is presumed to have assented to the action approved, unless the governor:
 - a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened

and does not participate in the meeting after the objection, in which case the governor is not considered to be present at the meeting for any purpose of this chapter;

- b. Votes against the action at the meeting; or
- c. Is prohibited from voting on the action by the articles; by the bylaws; as the result of the decision to approve, ratify, or authorize a transaction pursuant to section 10-32-87; or by a conflict of interest policy adopted by the board.

SECTION 71. AMENDMENT. Subsections 1 and 2 of section 10-32-87 of the North Dakota Century Code are amended and reenacted as follows:

1. A contract or other transaction between a limited liability company and one or more of its governors or a member of the family of the governor; a director of a related organization or a member of the family of a director of a related organization; or an organization in or of which the limited liability company's governor or a member of the family of the governor is a governor, director, manager, officer, or legal representative or has a material financial interest is not void or voidable because the governor or the other organization is a party or because the governor is present at the meeting of the members or the board ~~of governors~~ or a committee at which the contract or transaction is authorized, approved, or ratified, if at least one of the requirements of subsection 2 is satisfied.
2. The contract or transaction described in subsection 1 is not void or voidable if:
 - a. The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the limited liability company at the time it was authorized, approved, or ratified;
 - b. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the members, whether ~~or not~~ entitled to vote, and the contract or transaction is approved in good faith by:
 - (1) The owners of two-thirds of the voting power of membership interests entitled to vote which are owned by persons other than the interested governor; or
 - (2) The unanimous affirmative vote of all members, whether ~~or not~~ entitled to vote;
 - c. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the board ~~of governors~~ or a committee, and the board ~~of governors~~ or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board ~~of governors~~ or committee, but the interested governor is not counted in determining the presence of a quorum and may not vote; or

- d. The contract or transaction is a distribution described in subsection 1 of section 10-32-64 or a merger or exchange described in subsection 1 or 2 of section 10-32-100.

SECTION 72. AMENDMENT. Section 10-32-88 of the North Dakota Century Code is amended and reenacted as follows:

10-32-88. Managers. A limited liability company must consist of one or more individuals eighteen years of age or more, exercising the functions of the offices, however designated, of president and treasurer and may have one or more vice presidents and a secretary, as may be provided in the bylaws. Any other managers, assistant managers, and agents, as necessary, may be elected or appointed by the board of ~~governors~~ or chosen in such other manner as may be provided in the bylaws.

SECTION 73. AMENDMENT. Section 10-32-89 of the North Dakota Century Code is amended and reenacted as follows:

10-32-89. Duties of managers and agents. Unless otherwise provided by the articles of organization, a member-control agreement, the bylaws, or a resolution adopted by the board of ~~governors~~ which is not inconsistent with the articles, a member-control agreement, or the bylaws, the managers have the following duties:

1. The president shall:
 - a. Have general active management for the business of the limited liability company;
 - b. When present, preside at all meetings of the board of ~~governors~~ and of the members;
 - c. See that all orders and resolutions of the board of ~~governors~~ are carried into effect;
 - d. Sign and deliver in the name of the limited liability company any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the limited liability company, except if the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles, a member-control agreement, the bylaws, or the board of ~~governors~~ to some other manager or agent of the limited liability company;
 - e. Maintain records of and, whenever necessary, certify all proceedings of the board of ~~governors~~ and members; and
 - f. Perform other duties prescribed by the board of ~~governors~~.
2. The vice president, if any, or if there is more than one, the vice presidents in the order determined by the board of ~~governors~~ shall:
 - a. In the absence or disability of the president, perform the duties and exercise the powers of the president; and
 - b. Perform other duties and have other powers as the board of ~~governors~~ may from time to time prescribe.

3. The treasurer shall:
 - a. Keep accurate financial records for the limited liability company;
 - b. Deposit all money, drafts, and checks in the name of and to the credit of the limited liability company in the banks and depositories designated by the board of ~~governors~~;
 - c. Endorse for deposit all notes, checks, and drafts received by the limited liability company as ordered by the board of ~~governors~~, making proper vouchers for them;
 - d. Disburse limited liability company funds and issue checks and drafts in the name of the limited liability company, as ordered by the board of ~~governors~~;
 - e. Give to the president and the board of ~~governors~~, whenever requested, an account of all transactions by the treasurer and of the financial condition of the limited liability company; and
 - f. Perform other duties prescribed by the board of ~~governors~~ or by the president.
4. The secretary, if any, shall:
 - a. Attend all meetings of the board of ~~governors~~, all meetings of the members, and, when required, all meetings of standing committees;
 - b. Record all proceedings of the meetings;
 - c. Give, or cause to be given, notice of all meetings of the members and meetings of the board of ~~governors~~; and
 - d. Perform other duties prescribed by the board of ~~governors~~.
5. Any other managers and agents of the limited liability company, as between the managers and agents and the limited liability company, shall perform the duties in the management of the limited liability company as may be provided in the articles, a member-control agreement, or the bylaws, or as may be determined by resolution of the board not inconsistent with the articles, a member-control agreement, or the bylaws.

SECTION 74. AMENDMENT. Section 10-32-92 of the North Dakota Century Code is amended and reenacted as follows:

10-32-92. Managers deemed elected. In the absence of an election or appointment of managers by the board of ~~governors~~, the individual or individuals exercising the functions of the principal managers of the limited liability company are deemed to have been elected to those offices.

SECTION 75. AMENDMENT. Subsection 3 of section 10-32-94 of the North Dakota Century Code is amended and reenacted as follows:

3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause, may, or in the case of the president or treasurer, must be filled for the unexpired portion of the term in the manner provided in the articles, a member-control agreement, or the bylaws; in the manner determined by the board of ~~governors~~; or pursuant to section 10-32-92.

SECTION 76. AMENDMENT. Section 10-32-95 of the North Dakota Century Code is amended and reenacted as follows:

10-32-95. Delegation. Unless prohibited by the articles, a member-control agreement, the bylaws, or by a resolution adopted by the board of ~~governors~~, a manager elected or appointed by the board of ~~governors~~ may, without the approval of the board, delegate some or all of the duties and powers of an office to other individuals. A manager who delegates the duties or powers of an office remains subject to the standard of conduct for a manager with respect to the discharge of all duties and powers so delegated.

SECTION 77. AMENDMENT. Subsection 1 of section 10-32-97 of the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the governors present and:
 - a. Is in the usual and regular course of business of the limited liability company;
 - b. Is with, or for the benefit of, a related organization, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has a relationship in the usual and regular course of its business, or an organization to which the limited liability company has the power to make donations any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the limited liability company;
 - c. Is with, or for the benefit of, a member who provides services to the limited liability company, or a manager or other employee of the limited liability company or a subsidiary, including a member, manager, or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of ~~governors~~, to benefit the limited liability company; or
 - d. Whether or not separate consideration has been promised to the limited liability company, has been approved by the owners of two-thirds of the voting power of persons other than the interested person or persons.

SECTION 78. AMENDMENT. Section 10-32-99 of the North Dakota Century Code is amended and reenacted as follows:

10-32-99. Indemnification.

1. For purposes of this section:

- a. "Limited liability company" includes a domestic or foreign limited liability company that was the predecessor of the limited liability company referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
- b. "Official capacity" means:
 - (1) With respect to a governor, the position of governor in a limited liability company;
 - (2) With respect to a person other than a governor, the elective or appointive office or position held by a manager, member of a committee of the board of ~~governors~~, the employment relationship undertaken by an employee, agent of the limited liability company, or the scope of the services provided by members of the limited liability company who provide services to the limited liability company; and
 - (3) With respect to a governor, manager, member, employee, or agent of the limited liability company who, while a governor, manager, member, or employee of the limited liability company, is or was serving at the request of the limited liability company or whose duties in that position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.
- c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the limited liability company.
- d. "Special legal counsel" means counsel who has not represented the limited liability company or a related organization, or a governor, manager, member of a committee of the board of ~~governors~~, employee, or agent whose indemnification is in issue.

2. Subject to the provisions of subsection 5, a limited liability company shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

- a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;
 - b. Acted in good faith;
 - c. Received no improper personal benefit and section 10-32-87, if applicable, has been satisfied;
 - d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
 - e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the limited liability company, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the limited liability company. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the limited liability company if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.
3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in subsection 2.
4. Subject to the provisions of subsection 5, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the limited liability company, to payment or reimbursement by the limited liability company of reasonable expenses, including attorney's fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:
 - a. Upon receipt by the limited liability company of a written affirmation by the person of a good-faith belief that the criteria for indemnification set forth in subsection 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the limited liability company, if it is ultimately determined that the criteria for indemnification have not been satisfied; and
 - b. After a determination that the facts then known to those making the determination would not preclude indemnification under this section.

The written undertaking required by subdivision a is an unlimited general obligation of the person making it, but need not be secured and must be accepted without reference to financial ability to make the repayment.

5. The articles of organization, a member-control agreement, or the bylaws may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2 through 4 including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring before the effective date of a provision in the articles of organization, or a member-control agreement, or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.
6. This section does not require, or limit the ability of, a limited liability company to reimburse expenses, including attorney's fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.
7. All indemnification determinations must be made:
 - a. By the board of ~~governors~~ by a majority of a quorum. Governors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum;
 - b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board of ~~governors~~, consisting solely of two or more governors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board of ~~governors~~, including governors who are parties;
 - c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board of ~~governors~~ or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board of ~~governors~~ cannot be obtained and the committee cannot be established, by a majority of the full board of ~~governors~~, including governors who are parties;
 - d. If a determination is not made under subdivisions a through c, by the affirmative vote of the members required by section 10-32-42, other than the members who are a party to the proceeding; or
 - e. If an adverse determination is made under subdivisions a through d or under subsection 8, or if no determination is made under subdivisions a through d or under subsection 8 within sixty days after the later to occur of the termination of a proceeding; or a written request for indemnification to the limited liability company; or a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon

application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

8. With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a governor, manager, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the limited liability company, the determination whether indemnification of this person is required because the criteria set forth in subsections 2 and 3 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 may be made by an annually appointed committee of the board ~~of governors~~, having at least one member who is a governor. The committee shall report at least annually to the board ~~of governors~~ concerning its actions.
9. A limited liability company may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the limited liability company would have been required to indemnify the person against the liability under the provisions of this section.
10. A limited liability company that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the limited liability company shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members as part of the annual financial statements furnished to members pursuant to section 10-32-52 covering the period when the indemnification or advance was paid or accrued under the accounting method of the limited liability company reflected in the financial statements.
11. This section does not limit the power of the limited liability company to indemnify persons other than a governor, a manager, a member, an employee, or a member of a committee of the board, by contract or otherwise.

SECTION 79. AMENDMENT. Section 10-32-104 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A parent owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary directly, or indirectly through related ~~corporations or limited liability companies~~ organizations other than classes or series that absent this section would otherwise not be entitled to vote on the merger:
 - a. May merge the subsidiary into the parent; or may merge the subsidiary into any other subsidiary at least ninety percent of the outstanding ownership interest of each class and series of which is

owned by the parent directly, or indirectly through related ~~corporations or limited liability companies~~ organizations other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, without a vote of the owners of the parent or any subsidiary; or

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

- a. The plan of merger;
 - b. The number of outstanding ownership interests of each class and series of the subsidiary that is a constituent organization in the merger, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, and the number of ownership interests of each class and series of the subsidiary or subsidiaries, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, owned by the parent directly or indirectly, through related constituent organizations; and
 - c. ~~The date a copy of the plan of merger was mailed to the owners, other than the parent, of each subsidiary that is a constituent organization in the merger; and~~
 - d. A statement that the plan of merger has been approved by the parent under this section.
7. ~~Within thirty days after a copy of the plan of merger is mailed to the owners of each subsidiary that is a constituent organization to the merger, or upon waiver of the mailing by the owners of all outstanding ownership interests of each subsidiary that is a constituent organization to the merger, the~~ The articles of merger must be signed on behalf of the parent and filed with the secretary of state, together with the fees provided in section 10-32-150.
 8. The secretary of state shall issue a certificate of merger to the surviving constituent organization in the merger or the surviving constituent organization's legal representative. The certificate must contain the effective date of merger.
 9. If all of the ownership interests of one or more domestic subsidiaries that are a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent organizations, immediately before the merger, the owners of each domestic subsidiary have dissenter's rights under section 10-19.1-87 or under section 10-32-54, without regard to subsection 3 of section 10-19.1-88 or to subsection 2 of section 10-32-54, and under section 10-19.1-88 or 10-32-55. If the parent is a constituent organization but is not the surviving constituent organization in the merger, and the articles of incorporation or articles of organization of the surviving constituent organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenter's rights under subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54 if the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, that owner of the parent has dissenter's rights as provided under section 10-19.1-87 or under section 10-32-54. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this section.
 10. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections

10-32-101 through 10-32-103 instead of this section, in which case this section does not apply.

SECTION 80. AMENDMENT. Subsections 1 and 2 of section 10-32-108 of the North Dakota Century Code are amended and reenacted as follows:

1. A limited liability company may, by affirmative vote of a majority of the governors present, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of ~~governors~~ considers expedient, and without member approval:
 - a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;
 - b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or
 - c. Transfer any or all of its property to a corporation all of the shares of which are owned by a limited liability company.
2. A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its goodwill, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of ~~governors~~ considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company.

SECTION 81. AMENDMENT. Subsection 2 of section 10-32-112 of the North Dakota Century Code is amended and reenacted as follows:

2. When the notice of dissolution has been filed with the secretary of state, and subject to section 10-32-116, the limited liability company shall cease to carry on its business, except to the extent necessary for the winding up of the business of the limited liability company. The members shall retain the right to revoke the dissolution in accordance with section 10-32-116 and the right to remove governors or fill vacancies on the board of ~~governors~~. The limited liability company existence continues to the extent necessary to wind up the affairs of the limited liability company until the dissolution is revoked or articles of termination are filed with the secretary of state.

SECTION 82. AMENDMENT. Subsection 3 of section 10-32-113 of the North Dakota Century Code is amended and reenacted as follows:

3. When a notice of dissolution has been filed with the secretary of state, the board of ~~governors~~, or the managers acting under the direction of the board of ~~governors~~, shall proceed as soon as possible:
 - a. To give notice to creditors and claimants under section 10-32-114 or to proceed under section 10-32-115;
 - b. To collect or make provision for the collection of all known debts due or owing to the limited liability company, including unperformed contribution agreements; and
 - c. Except as provided in sections 10-32-114, 10-32-115, and 10-32-128, to pay or make provision for the payment of all known debts, obligations, and liabilities of the limited liability company according to their priorities under section 10-32-131.

SECTION 83. AMENDMENT. Subsection 1 of section 10-32-114 of the North Dakota Century Code is amended and reenacted as follows:

1. If notice to creditors and claimants is given, the notice must be given by publishing the notice once each week for four successive weeks in an official newspaper as defined in chapter 46-06 in the county or counties where the registered office and the principal executive office of the limited liability company are located and by giving written notice to known creditors and claimants pursuant to subsection ~~34~~ 39 of section 10-32-02.

SECTION 84. AMENDMENT. Subsections 2 and 3 of section 10-32-117 of the North Dakota Century Code are amended and reenacted as follows:

2. When the articles of termination have been filed with the secretary of state, or on a later date within thirty days after filing if the articles of termination so provide, the limited liability company is terminated.
3. The secretary of state shall issue to the ~~dissolved~~ limited liability company or its legal representative a certificate of termination that contains:
 - a. The name of the limited liability company;
 - b. The date the ~~articles of termination were filed with the secretary of state~~ is effective; and
 - c. A statement that the limited liability company is terminated on the effective date of termination.

SECTION 85. AMENDMENT. Subsection 1 of section 10-32-119 of the North Dakota Century Code is amended and reenacted as follows:

1. A court may grant any equitable relief it considers just and reasonable in the circumstances or may dissolve, wind up, and terminate a limited liability company:
 - a. In a supervised voluntary winding up and termination pursuant to section 10-32-118;

- b. In an action by a member when it is established that:
 - (1) The governors or the persons having the authority otherwise vested in the board ~~of governors~~ are deadlocked in the management of the affairs of the limited liability company and the members are unable to break the deadlock;
 - (2) The governors or those in control of the limited liability company have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members or governors of any limited liability company or as managers or employees of a closely held limited liability company;
 - (3) The members of the limited liability company are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to governors whose terms have expired or would have expired upon the election and qualification of their successors;
 - (4) The limited liability company assets are being misapplied or wasted; or
 - (5) An event of dissolution has occurred under subdivision a, d, or e of subsection 1 of section 10-32-109 but the limited liability company is not acting to wind up its affairs;
- c. In an action by a creditor when:
 - (1) The claim of the creditor has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or
 - (2) The limited liability company has admitted in writing that the claim of the creditor is due and owing and it is established that the limited liability company is unable to pay its debts in the ordinary course of business; or
- d. In an action by the attorney general to dissolve the limited liability company in accordance with section 10-32-122 when it is established that a decree of termination is appropriate.

SECTION 86. AMENDMENT. Subsection 2 of section 10-32-130.1 of the North Dakota Century Code is amended and reenacted as follows:

- 2. An amendment to the articles must be approved by the board ~~of governors~~ and must include:
 - a. The date the period of duration expired under the articles;
 - b. The date to which the period of duration is extended; and
 - c. A statement that the limited liability company has been in continuous operation since before the date of expiration of its original period of duration.

SECTION 87. AMENDMENT. Subsection 3 of section 10-32-132 of the North Dakota Century Code is amended and reenacted as follows:

3. If neither the limited liability company's registered agent nor an officer of the limited liability company can be found at the registered office, or if a limited liability company fails to maintain a registered agent in this state and a manager of the limited liability company cannot be found at the registered office, then the secretary of state is the agent of the limited liability company upon whom the process, notice, or demand may be served. The Service on the secretary of state:
 - a. Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
 - b. Shall include the return of the sheriff, or the affidavit of a person not a party, verifying that ~~ne neither the registered agent or nor a~~ manager can be found at the registered office ~~must be provided to the secretary of state. Service on the secretary of state of any process, notice, or demand is;~~ and
 - c. Is deemed personal service upon the limited liability company and is made by filing with the secretary of state ~~an original and two;~~
 - (1) Three copies of the process, notice, or demand; ~~along with the;~~ and
 - (2) The fees provided for in section 10-32-150.

The secretary of state shall immediately forward, by registered mail, addressed to the limited liability company at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

SECTION 88. AMENDMENT. Subsection 2 of section 10-32-149 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as prescribed in subsection ~~43~~ 53 of section 10-32-02, the articles, the bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the governors or members entitled to vote. If the limited liability company or foreign limited liability company is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited liability company or foreign limited liability company by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.

SECTION 89. Section 10-32-153.1 of the North Dakota Century Code is created and enacted as follows:

10-32-153.1. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is confidential. The secretary of

state shall delete or obscure any social security number or federal tax identification number before a copy of any document is released to the public.

SECTION 90. AMENDMENT. Section 10-33-01 of the North Dakota Century Code is amended and reenacted as follows:

10-33-01. Definitions. For the purposes of this chapter, unless the context otherwise requires:

1. "Address" means:

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

2. "Articles" means:

- a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a statement of change of registered office, registered agent, or name of registered agent, articles of merger, articles of consolidation, articles of abandonment, articles of dissolution, and any annual report in which a registered office or registered agent has been established or changed.
- b. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.

3. "Authenticated electronic communication" means:

a. That the electronic communication is delivered:

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

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

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

4. "Board" means the board of directors of a corporation.

~~4.~~ 5. "Board member" means an individual serving on the board.

~~5.~~ 6. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.

~~6.~~ 7. "Corporation" means a corporation, other than a foreign corporation, that is incorporated under or governed by this chapter.

7. 8. "Director" means a member of the board.
8. 9. "Domestic organization" means an organization created under the laws of this state.
10. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
11. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
- a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. That may be directly reproduced in paper form by the recipient through an automated process.
12. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
13. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
14. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
- a. ~~The following have been~~ That a document meeting the applicable requirements of this chapter, together with the fees provided in section 10-33-140, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and ~~have been~~ was determined by the secretary of state to conform to law:
 - (1) A signed original or a legible facsimile telecommunication of a signed original, of a request for reserved name; or a signed original of all other documents, meeting the applicable requirements of this chapter; and
 - (2) The fees provided for in section 10-33-140; and
 - b. ~~The~~ That the secretary of state ~~has~~ shall then:
 - (1) ~~Endorsed on the original the word "filed", and the month, day, and year~~ Record the actual date on which the document is filed, and if different, the effective date of filing; and
 - (2) ~~Recorded~~ Record the document in the office of the secretary of state.
9. 15. "Foreign corporation" means a corporation that is formed under laws other than the laws of this state for a purpose for which a corporation may be organized under this chapter.

- ~~40-~~ 16. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
17. "Good faith" means honesty in fact in the conduct of an act or transaction.
- ~~44-~~ 18. "Intentionally" means the person referred to has a purpose to do or fail to do the act or cause the result specified, or believes the act or failure to act, if successful, will cause that result. A person intentionally violates a statute:
- a. If the person intentionally does the act or causes the result prohibited by the statute; or
 - b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
- ~~42-~~ 19. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and successive federal revenue acts.
- ~~43-~~ 20. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
- ~~44-~~ 21. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver, guardian, custodian, or conservator.
- ~~45-~~ 22. "Member" means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.
- ~~46-~~ 23. "Members with voting rights" means members or a class of members that has voting rights with respect to the purpose or matter involved.
- ~~47-~~ 24. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving pecuniary gain to any officer, director, or member, other than a member that is a nonprofit organization or subdivision, unit, or agency of the United States or a state or local government.
- ~~48-~~ 25. "Notice":
- a. Is given by a member of a corporation to the corporation or an officer of the corporation ~~when:~~
 - (1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; ~~and~~ or
 - (2) When given by a form of electronic communication consented to by the corporation to which the notice is given:

- (a) If by facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.
 - (b) If by electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.
 - (c) If by posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice.
 - (d) If by any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
- b. ~~In~~ Is given, in all other cases, is given to a person:
 - (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
 - (2) When handed to the person; ~~or~~
 - (3) When left at the office of the person with a clerk or other person in charge of the office; ~~or;~~
 - (a) If there is no one in charge, when left in a conspicuous place in the office; or
 - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing ~~therein~~ there; or
 - (4) When given by a form of electronic communication consented to by the person to whom the notice is given:
 - (a) If by facsimile communication, when directed to a telephone number at which the person has consented to receive notice.
 - (b) If by electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
 - (c) If by posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

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

d. Is deemed received when it is given.

~~49.~~ 26. "Officer" means an individual who is more than eighteen years of age and who is:

a. Elected, appointed, or otherwise designated as an officer by the board or the members; or

b. Considered elected as an officer pursuant to section 10-33-52.

~~20.~~ 27. "Organization" means a corporation, whether domestic or foreign, incorporated in or authorized to do business in this state under another chapter of this code; limited liability company; partnership; limited partnership; limited liability partnership; limited liability limited partnership; joint venture; association; business trust; estate; trust; enterprise; or any other legal or commercial entity.

~~24.~~ 28. "Principal executive office" means:

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

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

~~22.~~ 29. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

30. "Registered office" means the place in this state designated in the articles of a corporation as the registered office of the corporation.

~~23.~~ 31. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:

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

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

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

- 24- 32. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
33. "Signed" means the:
- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document, is placed on a document, as provided in subsection 39 of under section 41-01-11, 41-01-09; and:
 - a. b. With respect to a document required by this chapter to be filed with the secretary of state, means the that:
 - (1) The document has been is signed by a person authorized to sign do so by this chapter, the articles, the or bylaws, a resolution approved by the directors as required by section 10-33-42, or the members with voting rights, if any, as required by section 10-33-72; and
 - b. With respect to a document not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document.
 - (2) The signature and the document are communicated by a method or medium of communication acceptable by the secretary of state.
- 25- 34. "Subsidiary" of a specified corporation means:
- a. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly through related corporations or limited liability companies organizations, by the specified corporation; or
 - b. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations organizations, by the specified limited liability company.
- 26- 35. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.
- 27- 36. "Vote" includes authorization by written action.
- 28- 37. "Written action" means:
- a. A written document signed by all of the persons required to take the action; or

- b. The counterparts of a written document signed by any of the persons taking the action.
 - (1) Each counterpart constitutes the action of the persons signing it; and all
 - (2) All the counterparts are one written action by all of the persons signing them.

SECTION 91. Section 10-33-01.1 of the North Dakota Century Code is created and enacted as follows:

10-33-01.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

- 1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
- 2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
- 3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
- 4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 92. AMENDMENT. Section 10-33-10 of the North Dakota Century Code is amended and reenacted as follows:

10-33-10. Corporate name.

- 1. The corporate name:
 - a. Must be in the English language or in any other language expressed in English letters or characters.
 - b. Need not contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
 - c. May not contain a word or phrase that indicates or implies that it may not be incorporated under this chapter.
 - d. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
 - e. May not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal nonprofit purpose for which a corporation may be incorporated under this chapter.
 - f. Unless a document in compliance with subsection 2 ~~of this section~~ is filed with the articles, may not be the same as or deceptively similar to:

- (1) The name, whether foreign and authorized to ~~do business~~ conduct activities in this state or domestic, of:
 - (a) Another corporation;
 - (b) A corporation incorporated or authorized to do business in this state under another provision of this code;
 - (c) A limited liability company;
 - (d) A limited partnership;
 - (e) A limited liability partnership; or
 - (f) A limited liability limited partnership;_i
 - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - (3) A fictitious name registered in the manner provided in chapter 45-11; or
 - (4) A trade name registered in the manner provided in chapter 47-25.
2. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:
- a. The written consent of the holder of the rights to the name the proposed name is determined to be deceptively similar to; or
 - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
- This subsection does not affect the right of a domestic corporation existing on August 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
3. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
4. This section and section 10-33-11 do not:
- a. Abrogate or limit:
 - (1) The law of unfair competition or unfair practices;
 - (2) Chapter 47-25;
 - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, or service marks; or

- (4) Any other rights to the exclusive use of names or symbols; or
 - b. Derogate the common law or the principles of equity.
5. A corporation that is ~~merged~~ the surviving organization in a merger with another domestic one or foreign corporation, or that is incorporated by the reorganization of one or more domestic or foreign corporations other organizations, or that acquires by sale, lease, or other disposition to or exchange with a ~~domestic corporation~~ an organization all or substantially all of the assets of another ~~domestic or foreign corporation~~ organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other corporations organizations, if the other corporation was an organization whose name is sought to be used:
 - a. Was incorporated, organized, formed, or registered under the laws of, or is authorized to conduct activities in, this state.
 - b. Is authorized to conduct activities or transact business in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.
6. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from ~~doing business~~ conducting activities under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.
7. If a corporation's period of existence has expired or is involuntarily dissolved by the secretary of state pursuant to section 10-33-139, the corporation may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-33-08; amending pursuant to section 10-33-118; or reinstating pursuant to section 10-33-139. If the name has been adopted for use or reserved by another person, the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A corporation that cannot reacquire the use of its corporate name must adopt a new corporate name that complies with the provisions of this section.

SECTION 93. AMENDMENT. Section 10-33-11 of the North Dakota Century Code is amended and reenacted as follows:

10-33-11. Reserved name.

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-33-10 may be reserved by any person.

2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in section 10-33-140:
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in section 10-33-140.
4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, together with the fees provided in section 10-33-140.
5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for reserved name.~~
6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 94. AMENDMENT. Section 10-33-21 of the North Dakota Century Code is amended and reenacted as follows:

10-33-21. General powers.

1. A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.
2. A corporation has perpetual duration.
3. A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.
4. A corporation may purchase, lease, or otherwise acquire, own, hold, improve, and use and otherwise deal in and with real or personal property, or any interest in property, wherever situated.
5. A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in property, wherever situated.
6. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of, use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality.

7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income.
8. A corporation may invest and reinvest its funds.
9. A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.
10. A corporation may conduct its ~~business~~ activities, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.
11. Except as otherwise prohibited by law, a corporation may make donations, irrespective of corporate benefit, for:
 - a. The public welfare;
 - b. Social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes, and for similar or related purposes;
 - c. The purpose of fostering national or international amateur sports competition; and
 - d. The prevention of cruelty to children and animals, and for similar or related purposes.
12. A corporation may pay pensions, retirement allowances, and compensation for past services and establish employee or incentive benefit plans, trusts, and provisions for the benefit of the corporation and the corporation's related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.
13. A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control.
14. A corporation may provide for its benefit life insurance and other insurance with respect to the services of its officers, directors, employees, and agents, or on the life of a member for the purpose of acquiring, at the death of the member, any membership interests in the corporation owned by the member.
15. A corporation may have, alter at pleasure, and use a corporate seal as provided in section 10-33-22.

16. A corporation may adopt, amend, and repeal bylaws relating to the management of the ~~business~~ activities or the regulation of the affairs of the corporation as provided in section 10-33-26.
17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in section 10-33-44 and fix their compensation.
18. A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties and fix their compensation.
19. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-33-82.
20. A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 10-33-83.
21. A corporation shall indemnify those persons identified in section 10-33-84 against certain expenses and liabilities only as provided in section 10-33-84 and may indemnify other persons.
22. A corporation may conduct all or part of its ~~business~~ activities under one or more trade names as provided in chapter 47-25.
23. A corporation may take, receive, and hold real and personal property, including the principal and interest of money or other fund, that is given, conveyed, bequeathed, devised to, or vested in the corporation in trust when the corporation or a related organization has a vested or contingent interest in the trust.
24. Except when the trust instrument prescribes otherwise, a corporation may invest trust property or its proceeds in accordance with sections 59-02-08.1 through 59-02-08.11.
25. A corporation may be a member of or the owner of the ownership interest in another domestic or foreign organization.
26. A corporation may dissolve and wind up.
27. A corporation may merge and consolidate with other domestic or foreign nonprofit corporations organized for related purposes.
28. A corporation ~~doing business~~ conducting activities as a hospital may merge with a corporation incorporated for profit and form a corporation under this chapter.
29. A corporation may acquire an owner's interest in another organization.
30. A corporation may have and exercise all other powers necessary or convenient to effect any or all of the purposes for which the corporation is incorporated.

SECTION 95. AMENDMENT. Subsection 3 of section 10-33-23 of the North Dakota Century Code is amended and reenacted as follows:

3. In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation or to enjoin the corporation from the transaction of unauthorized business activities.

SECTION 96. AMENDMENT. Subsection 2 of section 10-33-25 of the North Dakota Century Code is amended and reenacted as follows:

2. After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall, within a reasonable time, either hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of transacting business conducting activities and taking actions necessary or appropriate to complete the organization of the corporation. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting. Incorporators and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board pursuant to subsection 5 of section 10-33-39.

SECTION 97. AMENDMENT. Subsection 1 of section 10-33-27 of the North Dakota Century Code is amended and reenacted as follows:

1. The business activities and affairs of a corporation must be managed by or under the direction of a board.
 - a. All directors are entitled to vote and have equal rights and preferences except as otherwise provided in the articles or bylaws.
 - b. The members of the first board may be named in the articles, designated or appointed pursuant to the articles, or elected by the incorporators under section 10-33-25.

SECTION 98. AMENDMENT. Subsections 1 and 2 of section 10-33-39 of the North Dakota Century Code are amended and reenacted as follows:

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2.
 - a. Unless the articles or bylaws provide otherwise, a meeting of the board must be held at least once per year.
 - b. If the articles, bylaws, or board fails to select a place for a meeting, the meeting must be held at the principal executive office; ~~unless the articles or bylaws provide otherwise.~~
 - c. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.
 - d. Participation in a meeting by either of the means set forth in subsection 2 constitutes presence at the meeting.
2. ~~A board meeting may be conducted by:~~

- a. ~~A conference among directors using any~~ Any meeting among directors may be conducted:
- a. Solely by one or more means of remote communication through which all of the directors may simultaneously hear each other during the conference constitutes a board participate in the meeting; if:
- (1) If the same notice is given of the conference as would be required by subsection 3 is given for a the meeting; and if
- (2) If the number of directors participating in the conference meeting is sufficient to constitute a quorum at a meeting. Participation in a meeting by this means is personal presence at the meeting; or
- b. ~~Any means of communication through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by this means is personal presence at the meeting. By means of conference telephone or, if authorized by the board, by such other means of remote communication, in each case through which that director, other directors so participating, and all directors physically present at the meeting participate with each other during the meeting.~~

SECTION 99. AMENDMENT. Subsections 1 and 2 of section 10-33-43 of the North Dakota Century Code are amended and reenacted as follows:

1. An action required or permitted to be taken at a board meeting may be taken by written action signed, or consented to by authenticated electronic communication, by all of the directors. If the articles so provide, any action, other than an action requiring member approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.
2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required number of directors, unless a different effective time is provided in the written action.

SECTION 100. AMENDMENT. Subsection 1 of section 10-33-44 of the North Dakota Century Code is amended and reenacted as follows:

1. A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business activities of the corporation to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights or remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

SECTION 101. AMENDMENT. Subsection 1 of section 10-33-50 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 102. AMENDMENT. Subsection 3 of section 10-33-65 of the North Dakota Century Code is amended and reenacted as follows:

3. An annual meeting of members must be held at the time and place stated in or fixed in accordance with the articles or bylaws. If a place is not stated or if a demand for a meeting is made under subsection 2, the meeting must be held in the county where the principal executive office of the corporation is located. To the extent authorized in the articles or bylaws, the board may determine that an annual meeting of the members shall be held solely by means of remote communication in accordance with subsection 2 of section 10-33-75.

SECTION 103. AMENDMENT. Subsection 3 of section 10-33-66 of the North Dakota Century Code is amended and reenacted as follows:

3. Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the articles, bylaws, or by the president or the board. If a special meeting is demanded by the members, the meeting must be held in the county where the principal executive office of the corporation is located. To the extent authorized in the articles or bylaws, the board may determine that a special meeting of the members shall be held solely by means of remote communication in accordance with subsection 2 of section 10-33-75.

SECTION 104. AMENDMENT. Section 10-33-73 of the North Dakota Century Code is amended and reenacted as follows:

10-33-73. Action without a meeting. An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action

signed, or consented to by authenticated electronic communication, by all of the members entitled to vote on that action.

1. If the articles so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who hold voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.
 - a. When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date.
 - b. Failure to provide the notice does not invalidate the written action.
 - c. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.
2. The written action is effective when signed by the required members, unless a different effective time is provided in the written action.
3. ~~When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.~~
4. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the certificate must indicate ~~that~~ if the action was taken under this section.

SECTION 105. AMENDMENT. Section 10-33-75 of the North Dakota Century Code is amended and reenacted as follows:

10-33-75. Electronic Remote communications for member meetings.

1. ~~A conference among~~ This section shall be construed and applied to:
 - a. Facilitate remote communication consistent with the applicable law; and
 - b. Be consistent with reasonable practices concerning remote communication and with continued expansion of these practices.
2. To the extent authorized by the articles or bylaws and determined by the board:
 - a. A meeting of the members may be held solely by any one or more means of remote communication through which the participants may simultaneously hear each other during the conference constitutes a regular or special meeting of the members:
 - a. (1) If the same notice of the meeting is given of the conference as would be required for a meeting to every member entitled to vote; and

- ~~b. (2) If the number of voting members participating in the conference would be meeting is sufficient to constitute a quorum at a meeting.~~

~~Participation in a conference by this means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-33-77 are met.~~

2. ~~b. A member may participate in not physically present at a regular or special meeting of members not described in subsection 4 by any may by means of remote communication through which the member, other participants, and all persons physically present at the participate in a meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-33-77 are met of members held at a designated place.~~
3. In any meeting of members held solely by means of remote communication under subdivision a of subsection 2 or in any meeting of members held at a designated place in which one or more members participate by means of remote communication under subdivision b of subsection 2:
- a. The corporation shall implement reasonable measures:
- (1) To verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a member; and
- (2) To provide each member participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:
- (a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;
- (b) If allowed by the procedures governing the meeting, have the member's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and
- (c) If otherwise entitled, vote on matters submitted to the members.
- b. Participating in a meeting by this means constitutes presence at the meeting in person or by proxy if all of the other requirements of section 10-33-77 are met.
4. With respect to notice to members:
- a. Any notice to members given by the corporation under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the member to whom the notice is given is effective when given. The notice is deemed given:

- (1) If by facsimile communication, when directed to a telephone number at which the member has consented to receive notice;
 - (2) If by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice;
 - (3) If by a posting on an electronic network on which the member has consented to receive notice, together with separate notice to the member of the specific posting, upon the later of:
 - (a) The posting; or
 - (b) The giving of the separate notice; and
 - (4) If by any other form of electronic communication by which the member has consented to receive notice, when directed to the member.
 - b. An affidavit of the secretary, other authorized officer, or authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.
 - c. Consent by a member to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the member, provided that no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.
5. Any ballot, vote, authorization, or consent submitted by electronic communication under this chapter may be revoked by the member submitting the ballot, vote authorization, or consent so long as the revocation is received by an officer of the corporation at or before the meeting or before an action without a meeting is effective according to section 10-33-73.
6. Waiver of notice by a member of a meeting by means of authenticated electronic communication ~~described in subsections 4 and 2~~ may be given in the manner provided in subsection 5 of section 10-33-68. Participation in a meeting by means of ~~communications remote communication~~ described in ~~subsections 4 and subdivisions a and b of subsection 2~~ is a waiver of notice of that meeting, except when the member objects:
 - a. ~~Objects at~~ At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened;
or
 - b. ~~Objects before~~ Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 106. AMENDMENT. Subsection 1 of section 10-33-77 of the North Dakota Century Code is amended and reenacted as follows:

1. If the articles or bylaws permit proxy voting, a member may ~~appoint a proxy to cast or authorize the casting of a vote or otherwise act for the member by signing an:~~
 - a. Filing a nonelectronic written appointment form either personally or of a proxy signed by the member, with an attorney-in-fact officer of a corporation at or before the meeting at which the appointment is to be effective; or
 - b. Telephonic transmission or authenticated electronic communication whether or not accompanied by written instructions of the member, of an appointment of a proxy with the corporation or the corporation's duly authorized agent at or before the meeting at which the appointment is to be effective.

SECTION 107. AMENDMENT. Section 10-33-81 of the North Dakota Century Code is amended and reenacted as follows:

10-33-81. Equitable remedies. If a corporation or an officer or director of the corporation violates this chapter, a court in this state, in an action brought by at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, or by the attorney general, may grant equitable relief it considers just and reasonable in the circumstances and award expenses, including reasonable attorney's fees and disbursements, to the members. The court may award the attorney general reasonable attorney's fees, investigation fees, costs, and expenses of any investigation and action brought by the attorney general under this chapter.

SECTION 108. AMENDMENT. Section 10-33-93 of the North Dakota Century Code is amended and reenacted as follows:

10-33-93. Merger of corporation ~~doing business~~ conducting activities as a hospital with a corporation organized for profit - Retention of property tax status. Notwithstanding any provision of chapter 10-19.1 and this chapter, a corporation ~~doing business~~ conducting activities as a hospital may merge with a corporation incorporated for profit and form a corporation incorporated under this chapter.

1. Notwithstanding chapter 57-02 or any other provision of law, any interest in property of corporations merging under this section retains the same property tax status after the merger as it had in the taxable year before the merger.
2. Notwithstanding chapter 57-39.2 or 57-40.2 or any other provision of law, the sale, purchase, or use of any property by a corporation merging under this section retains the same status under the sales and use tax laws after the merger as it would have had before the merger.

SECTION 109. AMENDMENT. Subsection 1 of section 10-33-101 of the North Dakota Century Code is amended and reenacted as follows:

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

- a. By publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located; and
- b. By giving written notice to known creditors and claimants pursuant to subsection ~~48~~ 25 of section 10-33-01.

SECTION 110. AMENDMENT. Subsections 2 and 3 of section 10-33-103 of the North Dakota Century Code are amended and reenacted as follows:

2. When the certificate of dissolution has been issued by the secretary of state, or on a later date within thirty days after filing if the articles of dissolution so provide, the corporation is dissolved.
3. The secretary of state shall issue to the dissolved corporation, or its legal representative, a certificate of dissolution that contains:
 - a. The name of the corporation;
 - b. The date the articles of dissolution ~~were filed with the secretary of state~~ is effective; and
 - c. A statement that the corporation was dissolved as of the effective date of dissolution.

SECTION 111. AMENDMENT. Subsection 4 of section 10-33-104 of the North Dakota Century Code is amended and reenacted as follows:

4. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state.
 - a. After the notice is filed, the corporation may resume ~~business~~ its activities.
 - b. If notice to the attorney general has been given under section 10-33-122, the notice of revocation also must be given to the attorney general on or before the time that it is filed with the secretary of state.

SECTION 112. AMENDMENT. Subsection 1 of section 10-33-107 of the North Dakota Century Code is amended and reenacted as follows:

1. A court may grant equitable relief it considers just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and ~~business~~ activities:
 - a. In a supervised voluntary dissolution under section 10-33-106.
 - b. In an action by a director or at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, when it is established that:
 - (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs, the members cannot break the

deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;

- (2) The directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers;
 - (3) The members of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
 - (4) The corporate assets are being misapplied or wasted; or
 - (5) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-33-118.
- c. In an action by a creditor when:
- (1) The claim of the creditor has been reduced to judgment and an execution on it has been returned unsatisfied; or
 - (2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation cannot pay its debts in the ordinary course of its activities.
- d. In an action by the attorney general when it is established that:
- (1) The articles and certificate of incorporation were obtained through fraud;
 - (2) The corporation should not have been formed under this chapter;
 - (3) The corporation failed to comply with the requirements of sections 10-33-02 through 10-33-19 essential to incorporation under or election to become governed by this chapter;
 - (4) The corporation has flagrantly violated a provision of this chapter, has violated a provision of this chapter more than once, or has violated more than one provision of this chapter;
 - (5) The corporation has engaged in an unauthorized act, contract, conveyance, or transfer or has exceeded its powers;
 - (6) The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate purpose, franchise, privileges, or enterprise;

- (7) The corporation has liabilities and obligations exceeding the corporate assets;
 - (8) The period of corporate existence has ended without extension;
 - (9) The corporation has failed for a period of ninety days to pay fees, charges, or penalties required by this chapter;
 - (10) The corporation has failed for a period of thirty days:
 - (a) To appoint and maintain a registered agent in this state; or
 - (b) After changing its registered office, to file with the secretary of state a statement of the change;
 - (11) The corporation has answered falsely or failed to answer a reasonable written interrogatory from the secretary of state or the attorney general to the corporation, its officers, or directors;
 - (12) The corporation has solicited property and has failed to use it for the purpose solicited; or
 - (13) The corporation has fraudulently used or solicited property.
- e. An action may not be commenced under subdivision d until thirty days after notice to the corporation by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the corporation thirty additional days in which to effect the correction before filing the action.

SECTION 113. AMENDMENT. Subsections 1, 2, and 3 of section 10-33-108 of the North Dakota Century Code are amended and reenacted as follows:

1. In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the business activities of the corporation until a full hearing can be held.
2. When a proceeding involving a corporation described in subsection 1 of section 10-33-122 is begun, the court shall order that a copy of the petition be served on the attorney general. In all proceedings under this section, the attorney general has a right to participate as a party.
3. After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets. A receiver has authority, subject to the order of the court, to continue the business activities of the corporation and to sell, lease, transfer, or otherwise dispose of all or any

of the property and assets of the corporation either at public or private sale.

SECTION 114. AMENDMENT. Subsection 3 of section 10-33-120 of the North Dakota Century Code is amended and reenacted as follows:

3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The Service on the secretary of state:
 - a. Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
 - b. Shall include the return of the sheriff, or the affidavit of a person who is not a party, verifying that ~~neither the registered agent or nor an~~ officer can be found at the registered office ~~must be provided to the secretary of state.~~ Service on the secretary of state of any process, notice, or demand is; and
 - c. Is deemed personal service upon the corporation and must be made by filing with the secretary of state ~~an original and two;~~
 - (1) Three copies of the process, notice, or demand, ~~along with the;~~ and
 - (2) The fees provided in section 10-33-140.

The secretary of state shall immediately forward, by registered mail, addressed to the corporation at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

SECTION 115. AMENDMENT. Subsection 1 of section 10-33-128 of the North Dakota Century Code is amended and reenacted as follows:

1. An applicant for the certificate shall file with the secretary of state a certificate of status from the filing office in the jurisdiction in which the foreign corporation is incorporated and an application executed by an authorized person and setting forth:
 - a. The name of the foreign corporation and, if different, the name under which it proposes to conduct activities in this state;
 - b. The jurisdiction of its incorporation;
 - c. The date of incorporation in the jurisdiction of its incorporation and the period of duration of the foreign corporation;
 - d. The address of the principal executive office of the foreign corporation in the jurisdiction where it is incorporated;

- e. The address of the proposed registered office of the foreign corporation in this state;
- f. The name of the proposed registered agent in this state that is:
 - (1) An individual resident of this state;
 - (2) A corporation whether incorporated under this chapter or under another provision of this code; or
 - (3) A foreign corporation having a place of ~~business~~ activity in, and authorized to conduct activities in, this state whether authorized to conduct activities in this state under this chapter or under another provision of this code;
- g. The purpose or purposes of the foreign corporation which it proposes to pursue in conducting its activities in this state;
- h. The names and addresses of the directors and officers of the foreign corporation; and
- i. Any additional information deemed necessary or appropriate by the secretary of state to enable the secretary of state to determine whether the foreign corporation is entitled to a certificate of authority to conduct activities in this state.

SECTION 116. AMENDMENT. Subsection 2 of section 10-33-139 of the North Dakota Century Code is amended and reenacted as follows:

- 2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as prescribed in subsection ~~24~~ 33 of section 10-33-01 or in the articles or bylaws, or in a resolution approved by the affirmative vote of the required proportion or number of the directors or members entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

SECTION 117. Section 10-33-142.1 of the North Dakota Century Code is created and enacted as follows:

10-33-142.1. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any document is released to the public.

⁴² **SECTION 118. AMENDMENT.** Section 45-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-01. (101) Definitions. As used in this chapter, unless the context otherwise requires:

1. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location which may not be only a post-office box; and
 - b. In all other cases, the mailing address, including a zip code.
2. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:
 - (1) To the principal place of business of the limited partnership;
or
 - (2) To a general partner or agent of the limited partnership authorized by the limited partnership to receive the electronic communication; and
 - b. That the electronic communication sets forth information from which the limited partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. "Business" includes every trade, occupation, and profession.
- ~~3-~~ 4. "Certificate of limited partnership" means the certificate referred to in section 45-10.1-08, and the certificate as amended or restated.
- ~~4-~~ 5. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a partner contributes to a limited partnership in that partner's capacity as a partner.
- ~~5-~~ 6. "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to the partner's transferee.
- ~~6-~~ 7. "Domestic organization" means an organization created under the laws of this state.
8. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

⁴² Section 45-10.1-01 was also amended by section 1 of Senate Bill No. 2073, chapter 389.

9. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
- a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. That may be directly reproduced in paper form by the recipient through an automated process.
10. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
11. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
12. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section 45-10.1-26.
- ~~7.~~ 13. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
- a. That a ~~signed original or a legible facsimile telecommunication of a signed original of a request for reserved name or a signed original of all other documents~~ document meeting the applicable requirements of this chapter together with the fees provided in section 45-10.1-15 was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
 - b. That the secretary of state shall then:
 - (1) ~~Endorse on the original the word "filed" and the month, day, and year~~ Record the actual date on which the document is filed, and if different, the effective date of filing; and
 - (2) Record the document in the office of the secretary of state.
- ~~8.~~ 14. "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.
- ~~9.~~ 15. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
16. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.
- ~~10.~~ 17. "Jurisdiction of origin" means the jurisdiction in which the limited partnership status of the foreign limited partnership is created.

- 44- 18. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
19. "Legal representative" means a person empowered to act for another person, including an agent, a manager, an officer, a partner, or an associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.
20. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.
- 42- 21. "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.
- 43- 22. "Notice":
- a. Is given to a limited partnership or to a partner of the limited partnership ~~when~~:
- (1) When in writing and mailed or delivered to the limited partnership or the partner at the registered office or principal executive office of the limited partnership; or
- (2) When given by a form of electronic communication consented to by the limited partnership or the partner to which the notice is given:
- (a) If by facsimile communication, when directed to a telephone number at which the limited partnership or the partner has consented to receive notice;
- (b) If by electronic mail, when directed to an electronic mail address at which the limited partnership or partner has consented to receive notice;
- (c) If by posting on an electronic network on which the limited partnership or partner has consented to receive notice, together with separate notice to the limited partnership or partner of the specific posting, upon the later of:
- [1] The posting; or
- [2] The giving of the separate notice.
- (d) If by any other form of electronic communication by which the limited partnership or partner has consented to receive notice, when directed to the limited partnership or partner.
- b. ~~In all other cases, is~~ Is given to a person in all other cases:

- (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
- (2) When handed to the person; ~~or~~
- (3) When left at the office of the person with a clerk or other person in charge of the office; or:
 - (a) If there is no one in charge, when left in a conspicuous place in the office; or
 - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion residing there; or
- (4) When given by a form of electronic communication consented to by the person to whom the notice is given:
 - (a) If by facsimile communication, when directed to a telephone number at which the person has consented to receive notice;
 - (b) If by electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
 - (c) If by posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice.
 - (d) If by any other form of electronic communication by which the person has consented to receive notice, when directed to the person.
- c. Is given when deposited in the United States mail with sufficient postage affixed.
- d. Is deemed received when it is given.

44. 23. "Organization" means:

- a. Whether domestic or foreign, a corporation incorporated in or authorized to do business in this state under this or another chapter of this code, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; but

- b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

24. "Partner" means a general or limited partner.

~~45.~~ 25. "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

~~46.~~ 26. "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

~~47.~~ 27. "Principal executive office" means:

- a. An office from which the limited partnership conducts business; or
- b. If the limited partnership has no office from which it conducts business, then the registered office of the limited partnership.

~~48.~~ 28. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

29. "Signed" means ~~that~~:

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document, is placed on a document, as provided in subsection 39 of under section 41-01-11, 41-01-09; and:
 - a. b. With respect to a document required by this chapter to be filed with the secretary of state, ~~means the~~ that:
 - (1) The document is signed by a person authorized to sign the document by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
 - b. ~~With respect to a document not required by this chapter to be filed with the secretary of state, means the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document.~~
- ~~49.~~ "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.
- (2) The signature and the document are communicated by a method or medium of communication acceptable by the secretary of state.

SECTION 119. Section 45-10.1-01.1 of the North Dakota Century Code is created and enacted as follows:

45-10.1-01.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 120. 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.

SECTION 121. AMENDMENT. Subsection 6 of section 45-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

6. A limited partnership that is merged the surviving organization in a merger with another domestic one or foreign organization, or that is organized by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic an organization all or substantially all of the assets of another domestic or foreign organization including its name, may include in its name, subject to the requirements of subsection 1, the name of any of the other organizations, if the other organization whose name is sought to be used:
 - a. Was incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.

SECTION 122. AMENDMENT. Section 45-10.1-03 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-03. (103) Reserved name.

1. The exclusive right to the use of a limited partnership name otherwise permitted by section 45-10.1-02 may be reserved by any person.
2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in section 45-10.1-15:
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a limited partnership name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing in the office of the secretary of state a notice of the transfer, and specifying the name and address of the transferee, together with fees provided in section 45-10.1-15.
4. The right to the exclusive use of a limited partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation, together with the fees provided in section 45-10.1-15.
5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for reserved name.~~
6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 123. AMENDMENT. Section 45-10.1-07.1 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-07.1. Registration of general partner. A general partner must be registered separately with the secretary of state at the time of filing a certificate of limited partnership or the registration of foreign limited partnership whenever that general partner is either a domestic or foreign:

1. Corporation;
2. Limited liability company;
3. Limited ~~liability~~ partnership;
4. Limited liability partnership;
5. Limited liability limited partnership;

6. General partnership using a fictitious name; or
- 6- 7. Any other organization that has a registration responsibility with the secretary of state.

SECTION 124. AMENDMENT. Subsections 7 and 8 of section 45-10.1-09 of the North Dakota Century Code are amended and reenacted as follows:

7. A limited partnership must notify the secretary of state in writing whenever a general partner changes the address of its principal place of business. ~~A corporate~~ An annual report filed by the secretary of state that reflects a change of address of a general partner may serve as such notice. This notice is not subject to the amendment fee prescribed in section 45-10.1-15.
8. A limited partnership that changes its name and that is the owner of a trademark, or uses a fictitious name registered with the secretary of state, or is a general partner of another limited partnership or limited liability limited partnership on file with the secretary of state, or is a managing partner of a limited liability partnership on file with the secretary of state, must effect a change of name in each of such registrations simultaneously with the filing of the amendments.

SECTION 125. AMENDMENT. Section 45-10.1-13 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-13. (206) Secretary of state - Filing in office of secretary of state.

1. A signed ~~copy~~ document of the certificate of limited partnership and of any certificates of amendment or cancellation, or of any judicial decree of amendment or cancellation, must be delivered to the secretary of state. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Unless the secretary of state finds that any certificate does not conform to law, upon receipt of all filing fees required by law the secretary of state shall ~~endorse on the copy the word "Filed" and the day, month, and year of the filing and shall file the copy~~ document in the office of the secretary of state.
2. Upon the filing of a certificate of amendment or judicial decree of amendment in the office of the secretary of state, the certificate of limited partnership is amended as set forth therein, and upon the effective date of a certificate of cancellation, or a judicial decree thereof, the certificate of limited partnership is canceled.

SECTION 126. AMENDMENT. Section 45-10.1-55 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-55. (905) Foreign limited partnership - Changes and amendments.

1. If any statement in the application for registration of a foreign limited partnership is false when made or any arrangements or other facts described change, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state ~~a certificate~~ an amended registration, signed by a

general partner, correcting the statement, and in the case of a change in the name of the foreign limited partnership, a certificate to that effect authenticated by the proper office of the jurisdiction of origin.

2. A foreign limited partnership that changes the foreign limited partnership's name and files a ~~statement~~ an amended registration as provided in subsection 1 and is the owner of a trademark, uses a fictitious name registered with the secretary of state, or is a general partner of another limited partnership or a limited liability limited partnership on file with the secretary of state, or is a managing partner of a limited liability partnership on file with the secretary of state, shall effect a change of name in each of the foregoing registrations which is applicable when the foreign limited partnership files the ~~certificate amending the amended~~ registration of foreign limited partnership.
3. A foreign limited partnership shall file a ~~certificate of amendment~~ an amended registration, signed by a general partner, when a general partner that is a corporation or limited liability company files an amendment changing the general partner's ~~corporate~~ name, or when the general partner files an application for an amended certificate of authority. This ~~certificate of amendment~~ amended registration must be filed simultaneously with the amendment to the articles of incorporation, articles of organization, or application for an amended certificate of authority.
4. A foreign limited partnership shall notify the secretary of state in writing when a general partner changes the address of the general partner's principal place of business. A ~~corporate~~ general partner's annual report filed by the secretary of state that reflects a change of address of a general partner may serve as a notice under this subsection. This notice is not subject to the amendment fee prescribed in section 45-10.1-15.

SECTION 127. AMENDMENT. Section 45-10.1-56 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-56. (906) Foreign limited partnership - Cancellation of registration. A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed ~~and sworn to~~ by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to claims for relief arising out of the transactions of business in this state.

SECTION 128. Section 45-10.1-63 of the North Dakota Century Code is created and enacted as follows:

45-10.1-63. Service of process on a limited partnership.

1. A process, notice, or demand required or permitted by law to be served on a limited partnership may be served on the registered agent or on any responsible person found at the registered office or on the secretary of state as provided in this section.
2. If neither the registered agent nor a responsible person can be found at the registered office and if a responsible person affiliated with the limited partnership cannot be found at the principal place of business in this

state, the secretary of state is the agent of the limited partnership on whom the process, notice, or demand may be served. Service on the secretary of state:

- a. Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication.
 - b. Shall include the return of the sheriff or affidavit of a person not a party, verifying that neither a registered agent nor a responsible person can be found at the registered office or at the principal place of business in this state.
 - c. Is deemed personal service on the limited partnership and may be made by filing with the secretary of state:
 - (1) Three copies of the process, notice, or demand; and
 - (2) The fees provided in section 45-22-22.
 - d. The secretary of state immediately shall forward, by certified mail addressed to the limited partnership at the limited partnership's registered office or principal place of business in this state, a copy of the process, notice, or demand.
 - e. Service on the secretary of state is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand.
3. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.
 4. This section does not limit the right of a person to serve process, notice, or demand required or permitted by law to be served on a limited partnership in any other manner permitted by law.

SECTION 129. Section 45-10.1-64 of the North Dakota Century Code is created and enacted as follows:

45-10.1-64. Secretary of state - Annual report of limited partnership and foreign limited partnership.

1. Each limited partnership, and each foreign limited partnership authorized to transact business in this state, shall file, within the time prescribed by subsection 3, an annual report setting forth:
 - a. The name of the limited partnership or foreign limited partnership and the jurisdiction of origin.
 - b. The address of the registered office of the limited partnership or foreign limited partnership in this state and the name of the limited partnership's or foreign limited partnership's registered agent in this state at that address.

- c. The address of the limited partnership's or foreign limited partnership's principal executive office.
 - d. A brief statement of the character of the business in which the limited partnership or foreign limited partnership is actually engaged in this state.
 - e. The name and respective address of every general partner of the limited partnership or foreign limited partnership.
- 2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided in the annual report must be accurate as of the time of filing the report. The annual report must be signed as prescribed in subsection 29 of section 45-10.1-01 or a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited partnership or foreign limited partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited partnership or foreign limited partnership by the receiver or trustee. The secretary of state may destroy any annual reports provided for in this section after the annual report is on file for six years.
- 3. The annual report of a limited partnership or foreign limited partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited partnership or foreign limited partnership must be delivered before April first of the year following the calendar year in which the registration was filed by the secretary of state. A limited partnership existing before July 1, 1999, or a foreign limited partnership registered before July 1, 1999, shall file the limited partnership's or foreign limited partnership's first annual report before April first in the year of the expiration of the limited partnership's or foreign limited partnership's registration or renewal registration in effect on December 31, 1999.
 - a. An annual report in a sealed envelope postmarked by the United States postal service on or before April first or an annual report in a sealed packet with a verified shipment date by any other carrier service on or before April first, complies with the delivery requirement under this subsection.
 - b. The secretary of state shall file the report if the report conforms to the requirements of subsection 2.
 - (1) If the report does not conform, the report must be returned to the limited partnership or foreign limited partnership for any necessary corrections.
 - (2) If the report is filed before the deadlines prescribed in this subsection, penalties for the failure to file a report within the time provided do not apply if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.
- 4. After the date established under subsection 3, the secretary of state shall notify any limited partnership or foreign limited partnership failing

to file an annual report that the limited partnership's or foreign limited partnership's certificate or registration is not in good standing and that the limited partnership's certificate or foreign limited partnership's registration may be terminated or revoked pursuant to subsection 5.

- a. The secretary of state must mail notice of termination or revocation to the last registered agent at the last registered office of record.
 - b. If the limited partnership or foreign limited partnership files an annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as prescribed by section 45-10.1-15, the secretary of state will restore the limited partnership's or foreign limited partnership's certificate or registration to good standing.
5. A limited partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established in subsection 3, ceases to exist and is considered involuntarily terminated by operation of law.
 - a. The secretary of state shall note the termination of the limited partnership's certificate on the records of the secretary of state and shall give notice of the action to the terminated limited partnership.
 - b. Notice by the secretary of state must be mailed to the limited partnership's last registered agent at the last registered office of record.
6. A foreign limited partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established by subsection 3, forfeits the right to transact business in this state.
 - a. The secretary of state shall note the revocation of the foreign limited partnership's registration on the records of the secretary of state and shall give notice of the action to the foreign limited partnership.
 - b. Notice by the secretary of state must be mailed to the foreign limited partnership's last registered agent at the last registered office of record.
7. A limited partnership that is terminated for failure to file an annual report, or a foreign limited partnership registration that is forfeited for failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as prescribed in section 45-10.1-15. The fees must be paid and the report filed within one year following the involuntary termination or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the termination or revocation to the reinstatement.

SECTION 130. Section 45-10.1-65 of the North Dakota Century Code is created and enacted as follows:

45-10.1-65. Secretary of state - Fees for filing documents. The secretary of state shall charge and collect for:

1. Filing a limited partnership, one hundred dollars.
2. Filing a limited partnership amendment, forty dollars.
3. Filing a limited partnership dissolution, twenty-five dollars.
4. Filing a limited partnership cancellation, twenty-five dollars.
5. Filing a reservation of name, ten dollars.
6. Filing a notice of transfer of a reserved limited partnership name, ten dollars.
7. Filing a cancellation of a reserved limited partnership name, ten dollars.
8. Filing a consent to use a deceptively similar name, ten dollars.
9. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
10. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited partnership affected by the change.
11. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.
12. Filing a resignation as registered agent, ten dollars.
13. Filing a registration of foreign limited partnership, one hundred dollars.
14. Filing a certified statement of amendment of foreign limited partnership, forty dollars.
15. Filing a certified statement of dissolution of foreign limited partnership, twenty-five dollars.
16. Filing a certified statement of cancellation of foreign limited partnership, twenty-five dollars.
17. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.
18. Filing an annual report of a limited partnership or foreign limited partnership, twenty-five dollars. The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:
 - a. After the date prescribed in subsection 3 of section 45-10.1-14, twenty dollars; and
 - b. After the termination of the limited partnership or the revocation of the registration of a foreign limited partnership, the reinstatement fee of one hundred dollars.

19. Any document submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.
20. Filing any process, notice, or demand for service, twenty-five dollars.

SECTION 131. Section 45-10.1-66 of the North Dakota Century Code is created and enacted as follows:

45-10.1-66. Secretary of state - Duties. The secretary of state shall maintain an alphabetical index of all limited partnerships and foreign limited partnerships on file with that office. Except for annual reports, all documents filed with the secretary of state under this chapter must be retained in that office until the documents have been committed to microcopy, at which time the documents may be destroyed.

SECTION 132. Section 45-10.1-67 of the North Dakota Century Code is created and enacted as follows:

45-10.1-67. Secretary of state - Powers - Enforcement - Penalty - Appeal.

1. The secretary of state shall administer this chapter.
2. The secretary of state may propound to any limited partnership subject to this chapter and to any partner any interrogatory reasonably necessary and proper to ascertain whether the partnership has complied with this chapter.
 - a. Any interrogatory must be answered within thirty days after mailing or within any additional time fixed by the secretary of state. Every answer to the interrogatory must be full and complete and be made in writing and under oath.
 - b. If an interrogatory is directed:
 - (1) To an individual, the interrogatory must be answered by that individual;
 - (2) To a domestic limited partnership, the interrogatory must be answered by a general partner; or
 - (3) To a foreign limited partnership, the interrogatory must be answered by a resident partner or, if no partner is a resident partner, a partner designated by the foreign limited partnership.
 - c. The secretary of state need not file any document to which an interrogatory relates until the interrogatory is answered, except if the answers disclose the document is not in conformity with this chapter.
 - d. The secretary of state shall certify to the attorney general, for any action the attorney general determines appropriate, any interrogatory and answers that disclose a violation of this chapter.

- e. Each general partner of a domestic limited partnership or a resident partner or designated partner of a foreign limited partnership who fails or refuses within the time provided by this section to answer truthfully and fully every interrogatory propounded to that person by the secretary of state is guilty of an infraction.
 - f. Any interrogatory propounded by the secretary of state and the answers are not open to public inspection under section 44-04-18. The secretary of state may not disclose any fact or information obtained from an interrogatory except to the extent permitted by law or required for evidence in any criminal proceeding or other action by this state.
- 3. If the secretary of state rejects any document required by this chapter to be approved by the secretary of state before the document may be filed, the secretary of state shall give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection. That person may appeal to the district court of the county in which the registered office of the domestic limited partnership or foreign limited partnership is, or is proposed to be, situated by filing with the clerk of that court a petition setting forth a copy of the document sought to be filed and a copy of the written rejection of the document by the secretary of state. The court shall try the matter de novo. The court shall sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.
- 4. If the secretary of state revokes the registration of any foreign limited partnership, the foreign limited partnership may appeal to district court of the county where the registered office of the foreign limited partnership in this state is situated by filing with the clerk of that court a petition setting forth a copy of the foreign limited partnership's registration and a copy of the notice of revocation given by the secretary of state. The court shall try the matter de novo. The court shall sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.
- 5. The attorney general may maintain an action to restrain a foreign limited partnership from transacting business in this state in violation of this chapter.

SECTION 133. Section 45-10.1-68 of the North Dakota Century Code is created and enacted as follows:

45-10.1-68. Secretary of state - Certificates and certified copies to be received in evidence.

- 1. All copies of documents filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated.
- 2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to domestic limited partnerships or foreign limited partnerships which would not appear from a certified copy of any of the foregoing documents or

certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated.

SECTION 134. Section 45-10.1-69 of the North Dakota Century Code is created and enacted as follows:

45-10.1-69. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any document is released to the public.

SECTION 135. Section 45-10.1-70 of the North Dakota Century Code is created and enacted as follows:

45-10.1-70. Secretary of state - Forms to be furnished by the secretary of state. Every annual report must be made on forms prescribed by the secretary of state. Upon request, the secretary of state may furnish forms for all other documents to be filed in the office of the secretary of state. However, the use of these documents, unless otherwise specifically required by law, is not mandatory.

SECTION 136. Section 45-10.1-71 of the North Dakota Century Code is created and enacted as follows:

45-10.1-71. Audit reports and audit of limited partnerships receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any limited partnership that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the limited partnership, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the taxable year of the limited partnership. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any limited partnership required to submit an annual report under this section.

SECTION 137. Section 45-10.1-72 of the North Dakota Century Code is created and enacted as follows:

45-10.1-72. Foreign trade zones.

1. As used in this section, unless the context otherwise requires:
 - a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an act to provide for the establishment, operation, and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934 [48 Stat. 998; 19 U.S.C. 81a et seq.], as amended.
 - b. "Private limited partnership" means a domestic limited partnership or foreign limited partnership, one of the purposes of which is to

establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.

- c. "Public corporation" means this state, any political subdivision of this state, any public agency of this state or any political subdivision of this state, or any corporate instrumentality of this state.
2. Any private limited partnership or public corporation may apply to the proper authorities of the United States for a grant of the privilege of establishing, operating, and maintaining foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation, and maintenance of such zones, in accordance with the Act of Congress and other applicable laws and rules.

SECTION 138. AMENDMENT. Section 45-13-01 of the North Dakota Century Code is amended and reenacted as follows:

45-13-01. (101) Definitions. In chapters 45-13 through 45-21 unless the context or subject matter otherwise requires:

1. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location, which may not be only a post-office box; and
 - b. In any other case, the mailing address, including the zip code.
2. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:
 - (1) To the principal place of business of the partnership; or
 - (2) To a partner or agent of the partnership authorized by the partnership to receive the electronic communication; and
 - b. That the electronic communication sets forth information from which the partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. "Business" includes every trade, occupation, and profession.
- ~~2. "Chief executive office" means an office from which the partnership conducts business.~~
- ~~3.~~ 4. "Debtor in bankruptcy" means a person who is the subject of:
 - a. An order for relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or
 - b. A comparable order under federal, state, or foreign law governing insolvency.

4. 5. "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.
5. 6. "Domestic organization" means an organization created under the laws of this state.
7. 7. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
8. 8. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
- a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. That may be directly reproduced in paper form by the recipient through an automated process.
9. 9. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
10. 10. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
11. 11. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
- a. ~~A signed original or a legible facsimile telecommunication of a signed original of a request for reserved name or the signed original of all other documents~~ That a document meeting the applicable requirements of this chapter together with the fees provided in section 45-13-05 was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
 - b. ~~The~~ That the secretary of state shall then endorse on the original the word "filed" and the month, day, and year, and record the document in the office of the secretary of state:
 - (1) Record the actual date on which the documents are filed, and if different, the effective date of filing; and
 - (2) Record the document in the office of the secretary of state.
6. 12. "Foreign limited liability partnership" means a partnership that is formed under laws other than the laws of this state and has the status of a limited liability partnership under those laws.
7. 13. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.

14. "Limited liability partnership" means a partnership that filed a registration under chapter 45-22 and does not have a similar statement in effect in any other jurisdiction.

~~8.~~ 15. "Managing partner" means one of the partners charged with the management of the partnership in this state and if no partners are specifically so designated, then all partners.

16. "Notice":

a. Is given to a partnership or to a partner of a partnership ~~when~~:

(1) When in writing and mailed or delivered to the partnership or to the partner at the ~~chief~~ principal executive office of the partnership; or

(2) When given by a form of electronic communication consented to by the partnership or a partner to which the notice is given:

(a) If by facsimile communication, when directed to a telephone number at which the partnership or a partner has consented to receive notice.

(b) If by electronic mail, when directed to an electronic mail address at which the partnership or a partner has consented to receive notice.

(c) If by posting on an electronic network on which the partnership or a partner has consented to receive notice, together with separate notice to the partnership or a partner if the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

(d) If by any other form of electronic communication by which the partnership or a partner has consented to receive notice, when directed to the partnership.

b. ~~In~~ Is given, in all other cases is given to a person:

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

(2) When handed to the person; ~~or~~

(3) When left at the office of the person with a clerk or other person in charge of the office or, ~~if~~:

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

(b) If the office is closed or the person to be notified has no office, when left at the dwelling, house, or other

usual place of abode of the person with some person of suitable age and discretion residing there; or

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice.

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

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

d. Is deemed received when it is given.

9. 17. "Organization" means:

a. Whether domestic or foreign, a corporation incorporated in or authorized to do business in this state under this or another chapter of this code, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; but

b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

40. 18. "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under section 45-14-02, predecessor law, or comparable law of another jurisdiction.

19. "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

44. 20. "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

42. 21. "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.
43. 22. "Principal executive office" means an office from which the partnership conducts business.
23. "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.
44. 24. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
25. "Signed" means ~~the~~:
- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document, is placed on a document, as provided in subsection 39 of under section 41-01-11, 41-01-09; and:
 - a. b. With respect to a document required by this chapter to be filed with the secretary of state, ~~means the~~ that:
 - (1) The document is signed by a person authorized to do so by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
 - ~~b. With respect to a document not required by this chapter to be filed with the secretary of state, means the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document.~~
 - (2) The signature and the document are communicated by a method or medium of communication acceptable by the secretary of state.
45. 26. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.
46. 27. "Statement" means ~~a~~:
- a. A statement of partnership authority under section 45-15-03; a_i
 - b. A statement of denial under section 45-15-04; a_i
 - c. A statement of dissociation under section 45-19-04; a_i
 - d. A statement of dissolution under section 45-20-05; a_i
 - e. A statement of merger under section 45-21-07; i₁ or an

f. An amendment or cancellation of any of the foregoing.

47. 28. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

SECTION 139. Section 45-13-01.1 of the North Dakota Century Code is created and enacted as follows:

45-13-01.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 140. AMENDMENT. Subsections 5 and 6 of section 45-13-04.1 of the North Dakota Century Code are amended and reenacted as follows:

5. A partnership that is ~~merged~~ the surviving organization in a merger with another partnership one or domestic or foreign limited partnership, or that is formed by the reorganization of one or more partnerships or domestic or foreign limited partnerships ~~other organizations,~~ or that acquires by sale, lease, or other disposition to or exchange with a ~~partnership~~ an organization all or substantially all of the assets of another ~~partnership or domestic or foreign limited partnership~~ organization including ~~the partnership's or limited partnership's~~ its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any ~~of the other partnership or domestic or foreign limited partnership organizations~~ if the other partnership or domestic or foreign limited partnership organization whose name is sought to be used:
 - a. Is formed under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 45-10.1-03;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.
6. The use of a name by a partnership in violation of this section does not affect or vitiate the ~~partnership's~~ partnership existence of the partnership. However, a court in this state may, upon application of the

state or of an interested or affected person, enjoin the partnership from doing business under a name assumed in violation of this section, although a statement may have been filed with the secretary of state.

SECTION 141. AMENDMENT. Section 45-13-04.2 of the North Dakota Century Code is amended and reenacted as follows:

45-13-04.2. Reserved name.

1. The exclusive right to the use of a partnership name otherwise permitted by section 45-13-04.1 may be reserved by any person.
2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 45-13-05.
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a partnership name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 45-13-05.
4. The right to the exclusive use of a partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation together with the fees provided in section 45-13-05.
5. ~~The secretary of state may accept for filing a legible facsimile telecommunication of the signed original of any request for reserved name.~~
6. The secretary of state may destroy any reserved name request and any index of reserved names one year after expiration.

SECTION 142. AMENDMENT. Subsections 6 and 7 of section 45-13-05 of the North Dakota Century Code are amended and reenacted as follows:

6. Any statement filed under this section must be renewed every five years from the date of the initial filing. A statement of renewal must be executed by the partnership on a form furnished by the secretary of state which is sent to the address of the chief principal executive office at least sixty days before the deadline for filing. If the secretary of state finds that the statement of renewal conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement of renewal. If the secretary of state finds that the statement of renewal does not so conform, the secretary of state shall return the statement of renewal to the partnership for any necessary

corrections. If the statement of renewal is not returned corrected within thirty days after the statement of renewal was returned for correction, the statement of renewal is subject to cancellation. If any partnership fails to file the statement of renewal, the secretary of state shall cancel the initial statement and shall mail notice of the cancellation to the address of the ~~chief~~principal executive office.

7. A partnership shall notify the secretary of state in writing upon a change in address of the partnership's ~~chief~~ principal executive office. A statement of renewal filed by the secretary of state which reflects a change of address of the ~~chief~~ principal executive office of the partnership may serve as a notice under this subsection.

SECTION 143. AMENDMENT. Subsection 1 of section 45-13-06 of the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 2, the law of the jurisdiction in which a ~~partnership has the partnership's~~ partnership is located ~~partnership's~~ of the partnership is located ~~chief~~ principal executive office governs relations among the partners and between the partners and the partnership.

SECTION 144. AMENDMENT. Subsection 1 of section 45-15-03 of the North Dakota Century Code is amended and reenacted as follows:

1. A partnership may file with the secretary of state, along with the fees provided in section 45-13-05, a statement of partnership authority which:
 - a. Must include:
 - (1) The name of the partnership;
 - (2) The street address of the partnership's ~~chief~~ principal executive office and of one office in this state, if there is one;
 - (3) The name and mailing address of each partner;
 - (4) The address of the registered office of the partnership and the name of the registered agent at that address;
 - (5) The name of each partner authorized to execute an instrument transferring real property held in the name of the partnership; and
 - (6) The nature of business to be transacted.
 - b. May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

SECTION 145. AMENDMENT. Subsection 1 of section 45-15-03.1 of the North Dakota Century Code is amended and reenacted as follows:

1. A partnership that files and maintains a statement of partnership authority shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business or the ~~chief~~ principal executive office of the partnership.

SECTION 146. AMENDMENT. Subsection 2 of section 45-15-03.2 of the North Dakota Century Code is amended and reenacted as follows:

2. A registered agent of a partnership may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice was given to the partnership at the partnership's ~~chief~~ principal executive office, or to a legal representative of the partnership. The appointment of the agent terminates thirty days after notice is filed with the secretary of state.

SECTION 147. AMENDMENT. Section 45-15-04 of the North Dakota Century Code is amended and reenacted as follows:

45-15-04. (304) Statement of denial. A partner or other person named as a partner in a filed statement of partnership authority may file with the secretary of state, along with the fees provided in section 45-13-05, a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority as provided in subsections 3 and 4 of section 45-15-03.

SECTION 148. Section 45-16-07 of the North Dakota Century Code is created and enacted as follows:

45-16-07. Action without a meeting. An action required or permitted to be taken at a meeting of the partners may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the partners entitled to vote on the action.

1. If the partnership agreement so provides, any action may be taken by written action signed by the partners who own voting power equal to the voting power that would be required to take the same action at a meeting of the partners at which all partners were present.
 - a. When written action is permitted to be taken by less than all partners, all partners must be notified immediately of its text and effective date.
 - b. Failure to provide the notice does not invalidate the written action.
 - c. A partner who does not sign or consent to the written action has no liability for the action or actions taken by the written actions.
2. The written action is effective when it has been signed, or consented to by authenticated electronic communication, by the required partners, unless a different effective time is provided in the written action.
3. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the partner signing the certificate must so indicate if the action was taken under this section.

SECTION 149. Section 45-16-08 of the North Dakota Century Code is created and enacted as follows:

45-16-08. Remote communications for partner meetings.

1. This section shall be construed and applied to:

- a. Facilitate remote communication consistent with other applicable law; and
 - b. Be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.
- 2. To the extent authorized in the partnership agreement:
 - a. A meeting of the partners may be held solely by any combination of means of remote communication through which the participants may participate in the meeting:
 - (1) If the notice of the meeting is given to every partner entitled to vote; and
 - (2) If the partnership interests held by the partners participating in the meeting would be sufficient to constitute a quorum at a meeting.
 - b. A partner not physically present at a meeting of partners may by means of remote communication participate in a meeting of partners held at a designated place.
- 3. In any meeting of partners held solely by means of remote communication under subdivision a of subsection 2, or in any meeting partners held at a designated place in which one or more partners participate by means of remote communication under subdivision b of subsection 2:
 - a. The partnership shall implement reasonable measures:
 - (1) To verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a partner; and
 - (2) To provide each partner participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:
 - (a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;
 - (b) If allowed by the procedures governing the meeting, have the partner's remarks heard or read by other participants in the meeting substantially concurrently with the making of those remarks; and
 - (c) If otherwise entitled, vote on matters submitted to the partners.
 - b. Participation in a meeting by this means constitutes presence at the meeting.
- 4. With respect to notice to partners:

- a. Any notice to partners given by the partnership under any provision of this chapter or the partnership agreement by a form of electronic communication consented to by the partner to whom the notice is given is effective when given. The notice is deemed given:
 - (1) If by facsimile communication, when directed to a telephone number at which the partner has consented to receive notice;
 - (2) If by electronic mail, when directed to an electronic mail address at which the partner has consented to receive notice;
 - (3) If by posting on an electronic network, on which the partner has consented to receive notice, together with separate notice to the partner of the specific posting, upon the later of:
 - (a) The posting; or
 - (b) The giving of the separate notice; or
 - (4) If by any other form of electronic communication by which the partners have consented to receive notice, when directed to the partner.
 - b. An affidavit of the managing partner, other authorized partner, or authorized agent of the partnership, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.
 - c. Consent by a partner to notice given by electronic communication may be given in writing or by authenticated electronic communication. The partnership is entitled to rely on any consent so given until revoked by the partner. However, no revocation affects the validity of any notice given before receipt by the partnership of revocation of the consent.
5. Any ballot, vote, authorization or consent submitted by electronic communication under this chapter may be revoked by the partner submitting the ballot, vote, authorization, or consent so long as the revocation is received by the other partners of the partnership at or before the meeting or before an action without a meeting is effective according to section 10-16-07.
6. Waiver of notice by a partner at a meeting by means of authenticated electronic communication may be given in the manner provided in the partnership agreement. Participation in a meeting by means of remote communication described in subdivisions a and b of subsection 2 is a waiver of notice of that meeting, except when the partner objects:
- a. At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or conveyed; or
 - b. Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 150. AMENDMENT. Subsection 1 of section 45-19-04 of the North Dakota Century Code is amended and reenacted as follows:

1. A dissociated partner or the partnership may file with the secretary of state, along with the fees provided in section 45-13-05, a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

SECTION 151. AMENDMENT. Subsections 1 and 2 of section 45-21-05 of the North Dakota Century Code are amended and reenacted as follows:

1. Pursuant to a plan of merger approved as provided in subsection 3, a partnership may be merged with one or more ~~partnerships or limited partnerships~~ other organizations.
2. The plan of merger must set forth:
 - a. ~~The name of each;~~
 - (1) ~~The partnership or limited partnership that is a party to the merger;~~
 - (2) Each other organization proposing to merge; and
 - (3) The surviving organization into which the other organizations will merge.
 - b. ~~The name of the surviving entity into which the other partnerships or limited partnerships will merge;~~
 - c. ~~Whether the surviving entity is a partnership or a limited partnership and the~~ The status of each partner;
 - d. c. The terms and conditions of the merger;
 - e. d. The manner and basis of converting the interests of each party to the merger into interests or obligations of the surviving ~~entity~~ organization, or into money or other property in whole or part; and
 - f. e. The street address of the ~~surviving entity's chief~~ principal executive office of the surviving organization.

SECTION 152. AMENDMENT. Subsection 2 of section 45-21-06 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership or limited partnership to enforce an obligation of a domestic partnership or limited partnership that is a party to a merger. The surviving entity shall promptly notify the secretary of state of the mailing address of its ~~chief~~ principal executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership or limited partnership.

SECTION 153. AMENDMENT. Subsections 1 and 2 of section 45-21-07 of the North Dakota Century Code are amended and reenacted as follows:

1. After a merger, the surviving ~~partnership or limited partnership organization~~ may file a statement that one or more partnerships or limited partnerships have merged into the surviving ~~entity~~ organization.
2. A statement of merger must contain:
 - a. The name of ~~each~~:
 - (1) The partnership or limited partnership that is a party to the merger;
 - (2) Each other organization that is a party to the merger; and
 - (3) The surviving organization into which the other organizations were merged.
 - b. ~~The name of the surviving entity into which the other partnerships or limited partnership were merged;~~
 - c. The street address of the ~~surviving entity's chief~~ principal executive office of the surviving organization and of an office in this state, if any; ~~and~~
 - d. ~~Whether the surviving entity is a partnership or a limited partnership.~~

SECTION 154. AMENDMENT. Section 45-22-01 of the North Dakota Century Code is amended and reenacted as follows:

45-22-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Address" means:
 - a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location which may not be only a post-office box; and
 - b. In all other cases, the mailing address, including a zip code.
2. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:
 - (1) To the principal place of business of the limited liability partnership; or
 - (2) To a partner or agent of the limited liability partnership authorized by the limited liability partnership to receive the electronic communication; and
 - b. That the electronic communication sets forth information from which the limited liability partnership can reasonably conclude that the electronic communication was sent by the purported sender.

3. "Domestic limited liability partnership" means a partnership that is organized under the laws of this state with a registration in effect and which is not a foreign limited liability partnership.
3. 4. "Domestic organization" means an organization created under the laws of this state.
5. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
6. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
- a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
- b. That may be directly reproduced in paper form by the recipient through an automated process.
7. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
8. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
9. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
- a. That a ~~signed original or a legible facsimile telecommunication of a signed original of a request for reserved name; or a signed original of all other documents~~document meeting the applicable requirements of this chapter, together with the fees provided in section 45-22-23, ~~was~~ has been delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and ~~was~~ has been determined by the secretary of state to conform to law.
- b. That the secretary of state shall then:
- (1) ~~Endorse on the original the word "filed" and the month, day, and year~~ Record the actual date on which the document is filed, and if different, the effective date of filing; and
- (2) Record the document in the office of the secretary of state.
4. 10. "Foreign limited liability partnership" means a partnership organized as a limited liability partnership under laws other than the laws of this state which is in good standing in the partnership's jurisdiction of origin.
5. 11. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
12. "Jurisdiction of origin" means the jurisdiction in which the limited liability partnership status of the foreign limited liability partnership was created.

- 6- 13. "Limited liability partnership" means a domestic limited liability partnership or a foreign limited liability partnership.
- 7- 14. "Managing partner" means one of the partners charged with the management ~~in this state~~ of the limited liability partnership or foreign limited liability partnership in this state and if no partners are so specifically designated, then all partners.
- 8- 15. "Notice":
- a. Is given to a limited liability partnership or to a partner of the limited liability partnership ~~when~~:
- (1) When in writing and mailed or delivered to the limited liability partnership or the partner at the registered office or principal executive office of the limited liability partnership; or
- (2) When given by a form of electronic communication consented to by the limited liability partnership or the partner to which the notice is given:
- (a) If by facsimile communication, when directed to a telephone number at which the limited liability partnership or the partner has consented to receive notice.
- (b) If by electronic mail, when directed to an electronic mail address at which the limited liability partnership or the partner has consented to receive notice.
- (c) If by posting on an electronic network on which the limited liability partnership or the partner has consented to receive notice, together with separate notice to the limited liability partnership or the partner if the specific posting, upon the later of:
- [1] The posting; or
- [2] The giving of the separate notice.
- (d) If by any other form of electronic communication by which the limited liability partnership or a partner has consented to receive notice, when directed to the limited liability partnership.
- b. ~~In~~ Is given, in all other cases, is given to a person:
- (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
- (2) When handed to the person; ~~or~~
- (3) When left at the office of the person with a clerk or other person in charge of the office or:

- (a) If there is no one in charge, when left in a conspicuous place in the office; or
 - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing ~~therein~~ there; or
- (4) When given by a form of electronic communication consented to by the person to whom the notice is given:
 - (a) If by facsimile communication, when directed to a telephone number at which the person has consented to receive notice.
 - (b) If by electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
 - (c) If by posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice.
 - (d) If by any other form of electronic communication by which the person has consented to receive notice, when directed to the person.
- c. Is given when deposited in the United States mail with sufficient postage affixed.
- d. Is deemed received when given.

9- 16. "Organization" means:

- a. Whether domestic or foreign, a corporation incorporated in or authorized to do business in this state under this or another chapter of this code, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; but
- b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

17. "Originally registered" and "original registration" means the document establishing the limited liability partnership status of the foreign limited liability partnership in the foreign limited liability partnership's jurisdiction of origin.

- ~~40-~~ 18. "Partnership" means an association of two or more persons to carry on as coowners of a business for profit formed under chapters 45-13 through 45-21, predecessor law, or comparable law of another jurisdiction.
- ~~44-~~ 19. "Principal executive office" means:
- a. An office from which the limited liability partnership conducts business; or
 - b. If the limited liability partnership has no office from which the limited liability partnership conducts business, the registered office of the limited liability partnership.
- ~~42-~~ 20. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
21. "Register" means the act of filing with the secretary of state which causes:
- a. A domestic limited liability partnership to be created; or
 - b. A foreign limited liability partnership to be authorized to transact business in this state.
- ~~43-~~ 22. "Registered office" means the place in this state designated as the registered office of the limited liability partnership.
- ~~44-~~ 23. "Registration" means the document which, when filed with the secretary of state, causes:
- a. A domestic limited liability partnership to be created; or
 - b. A foreign limited liability partnership to be authorized to do business in this state.
- ~~45-~~ 24. "Signed" means:
- a. That the signature of a person which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by telecommunication or electronically, or in any other manner reproduced on the document, is placed on a document, as provided in subsection 39 of under section 41-04-11. 41-01-09; and
 - ~~a.~~ b. With respect to a document required by this chapter to be filed with the secretary of state, ~~the term means the that:~~
- (1) The document is signed by a person authorized to do so by this chapter, or by or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners.
 - ~~b.~~ ~~With respect to a document not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed,~~

engraved, printed, placed, stamped with indelible ink, transmitted by telecommunication or electronically, or in any other manner reproduced on the document.

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

SECTION 155. Section 45-22-01.1 of the North Dakota Century Code is created and enacted as follows:

45-22-01.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record of signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 156. AMENDMENT. Subsection 3 of section 45-22-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A registration, signed by a managing partner, must contain:
 - a. With respect to a domestic limited liability partnership:
 - (1) The name of the domestic limited liability partnership.
 - (2) The nature of the business to be transacted in this state.
 - (3) The address of the principal executive office of the domestic limited liability partnership.
 - (4) The address of the registered office of the domestic limited liability partnership and the name of the registered agent at that address.
 - (5) The name and address of each managing partner.
 - (6) A statement that the partnership elects to be a limited liability partnership.
 - (7) A deferred effective date, if any.
 - b. With respect to a foreign limited liability partnership:
 - (1) The name of the foreign limited liability partnership and, if different, the name under which the foreign limited liability partnership proposes to transact business in this state.

- (2) The jurisdiction of origin.
 - (3) The date on which the foreign limited liability partnership expires in the jurisdiction of origin.
 - (4) The nature of the business to be transacted in this state.
 - (5) The address of the principal executive office of the foreign limited liability partnership.
 - (6) The address of the registered office of the foreign limited liability partnership and the name of the foreign limited liability partnership's registered agent at that address.
 - (7) The name and address of each managing partner.
 - (8) An acknowledgment that the status of the foreign limited liability partnership in this state will automatically expire unless the foreign limited liability partnership continuously maintains limited liability partnership status in the jurisdiction of origin.
- c. The registration must be accompanied by payment of the fees provided in section 45-22-22 together with a certificate of good standing or certificate of existence authenticated by the registering officer of the state or country where the foreign limited liability partnership is originally registered and the consent of the designated registered agent for service of process to serve in that capacity.

SECTION 157. AMENDMENT. Subsection 5 of section 45-22-04 of the North Dakota Century Code is amended and reenacted as follows:

5. A limited liability partnership that is ~~merged~~ the surviving organization in a merger with a domestic one or foreign organization, that is registered by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic organization all or substantially all of the assets of another ~~domestic or foreign~~ organization including the ~~organization's~~ its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought:
- a. Is incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.

SECTION 158. AMENDMENT. Section 45-22-05 of the North Dakota Century Code is amended and reenacted as follows:

45-22-05. Reserved name.

1. The exclusive right to the use of a limited liability partnership name otherwise permitted by section 45-22-04 may be reserved by any person.
2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 45-22-22.
 - a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.
 - b. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a limited liability partnership name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 45-22-22.
4. The right to the exclusive use of a limited liability partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation together with the fees provided in section 45-22-22.
5. ~~The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for a reserved name.~~
6. The secretary of state may destroy any reserved name request and name request index one year after expiration.

SECTION 159. AMENDMENT. Subsection 2 of section 45-22-17 of the North Dakota Century Code is amended and reenacted as follows:

2. If neither the registered agent nor a responsible person can be found at the registered office and if a responsible person affiliated with the limited liability partnership cannot be found at the principal place of business in this state, the secretary of state is the agent of the limited liability partnership on whom the process, notice, or demand may be served.
Service on the secretary of state:
 - a. ~~The~~ Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
 - b. Shall include the return of the sheriff or affidavit of a person not a party, verifying that neither a registered agent or nor a responsible person cannot can be found at the registered office or at the principal place of business in this state is conclusive evidence the

limited liability partnership has no registered agent or responsible person at the limited liability partnership's registered office or at the limited liability partnership's principal place of business in this state.

- b. c. Service on the secretary of state of any process, notice, or demand is is deemed personal service on the limited liability partnership and may be made by filing with the secretary of state ~~one original and two~~:

(1) Three copies of the process, notice, or demand ~~together with the~~; and

(2) The fees provided in section 45-22-22.

- ~~c.~~ d. The secretary of state immediately shall forward, by certified mail addressed to the limited liability partnership at the limited liability partnership's registered office or principal place of business in this state, a copy of the process, notice, or demand.

- ~~d.~~ e. Service on the secretary of state is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand.

SECTION 160. AMENDMENT. Subsection 2 of section 45-22-21.1 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as prescribed in subsection ~~46~~ 24 of section 45-22-01, the partnership agreement, or in a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited liability partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited liability partnership by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.

SECTION 161. AMENDMENT. Section 45-23-01 of the North Dakota Century Code is amended and reenacted as follows:

45-23-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Address" means:
 - a. In case of a registered office or principal executive office, the mailing address of the actual office location which may not be only a post-office box; and
 - b. In all other cases, the mailing address.
2. "Authenticated electronic communication" means:
 - a. That the electronic communication is delivered:

- (1) To the principal place of business of the limited liability limited partnership; or
 - (2) To a partner or agent of the limited liability limited partnership authorized by the limited liability limited partnership to receive the electronic communication; and
 - b. That the electronic communication sets forth information from which the limited liability limited partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. "Domestic limited liability limited partnership" means a limited liability limited partnership that is formed under this chapter.
- 3- 4. "Domestic organization" means an organization created under the laws of this state.
5. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
6. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
 - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
 - b. That may be directly reproduced in paper form by the recipient through an automated process.
7. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
8. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.
9. "Filed with the secretary of state", ~~except as otherwise permitted by law or rule,~~ means, except as otherwise permitted by law or rule:
 - a. That a ~~signed original or legible facsimile telecommunication of a signed original of a request for reserved name or a signed original of all of the documents~~ document meeting the applicable requirements of this chapter, together with the fees provided in section 45-23-08, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
 - b. That the secretary of state shall then ~~endorse on the original the word "filed" and the month, day, and year:~~
 - (1) Record the actual date on which the document is filed, and if different, the effective date of filing; and ~~record~~
 - (2) Record the document in the office of the secretary of state.

4. 10. "Foreign limited liability limited partnership" means a limited liability limited partnership that is:
- Organized under the laws other than the laws of this state for a purpose or purposes for which a limited liability limited partnership may be organized under this chapter; and
 - In good standing in the jurisdiction of origin.
5. 11. "Foreign limited partnership" means a limited partnership that is:
- Organized under laws other than the laws of this state for a purpose for which a limited partnership may be organized under chapter 45-10.1; and
 - Authorized to transact business in this state as provided in chapter 45-10.1.
6. 12. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
13. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability limited partnership status of a foreign limited liability limited partnership was created.
7. 14. "Limited liability limited partnership" means a domestic limited liability limited partnership.
8. 15. "Limited partnership" means a limited partnership formed under chapter 45-10.1.
9. 16. "Notice":
- Is given to a limited liability limited partnership or to a partner of the limited liability limited partnership ~~when~~:
- (1) When in writing and mailed or delivered to the limited liability limited partnership or to the partner at the registered office or principal executive office of the partnership; or
 - (2) When given by a form of electronic communication consented to by the limited liability limited partnership or a partner to which the notice is given:
 - (a) If by facsimile communication, when directed to a telephone number at which the limited liability limited partnership or a partner has consented to receive notice.
 - (b) If by electronic mail, when directed to an electronic mail address at which the limited liability limited partnership or a partner has consented to receive notice.

- (c) If by posting on an electronic network on which the limited liability limited partnership or a partner has consented to receive notice, together with separate notice to the limited liability limited partnership or a partner if the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice.
 - (d) If by any other form of electronic communication by which the partnership or a partner has consented to receive notice, when directed to the partnership.
- b. ~~In all other cases, is~~ Is given to a person in all other cases:
 - (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
 - (2) When handed to the person; ~~or~~
 - (3) When left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office and if the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion residing ~~in that house or abode~~ there; or
 - (4) When given by a form of electronic communication consented to by the person to whom the notice is given:
 - (a) If by facsimile communication, when directed to a telephone number at which the person has consented to receive notice.
 - (b) If by electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
 - (c) If by posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice.
 - (d) If by any other form of electronic communication by which the person has consented to receive notice, when directed to the person;
- c. Is given when deposited in the United States mail with sufficient postage affixed; and

d. Is deemed received when given.

~~40-~~ 17. "Organization" means:

a. Whether domestic or foreign, a corporation incorporated in or authorized to do business in this state under this or another chapter of this code, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity; but

b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

18. "Principal executive office" means:

a. An office from which the limited liability limited partnership conducts business; or

b. If the limited liability limited partnership has no office from which the limited liability limited partnership conducts business, then the registered office of the limited liability limited partnership.

~~44-~~ 19. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

20. "Registered office" means the place in this state designated as the registered office of the limited liability limited partnership.

~~42-~~ 21. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

22. "Signed" means:

a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the document, is placed on a document, as provided in ~~section 41-01-11.~~ 41-01-09; and

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

(1) The document is signed by a person authorized to sign by this chapter, or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

~~b.~~ With respect to a document not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted

by facsimile telecommunication or electronically, or in any other manner reproduced on the document.

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

SECTION 162. Section 45-23-01.1 of the North Dakota Century Code is created and enacted as follows:

45-23-01.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;
2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;
3. If a provision requires a record to be in writing, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

SECTION 163. AMENDMENT. Subsection 5 of section 45-23-03 of the North Dakota Century Code is amended and reenacted as follows:

5. A limited liability limited partnership that is ~~merged the surviving organization in a merger with another domestic one or foreign organization, that is organized by the reorganization of one or more domestic or foreign organizations,~~ or that acquires by sale, lease, or other disposition to or exchange with ~~a domestic~~ an organization all or substantially all of the assets of another ~~domestic or foreign~~ organization, including ~~the organization's~~ its name, may include in the limited liability limited partnership's name, subject to the requirements of subsection 1, the name of any of the other organizations, if the other organization whose name is sought to be used:
 - a. Is incorporated, organized, formed, or registered under the laws of this state;
 - b. Is authorized to transact business or conduct activities in this state;
 - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
 - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
 - e. Holds a trade name registered in the manner provided in chapter 47-25.

SECTION 164. Section 45-23-07 of the North Dakota Century Code is created and enacted as follows:

45-23-07. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any document filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any document is released to the public.

SECTION 165. REPEAL. Sections 45-10.1-14, 45-10.1-15, and 45-10.1-16 of the North Dakota Century Code are repealed.

Approved March 27, 2003

Filed March 28, 2003

CHAPTER 86

SENATE BILL NO. 2348

(Senators J. Lee, Flakoll, Nething)
(Representatives DeKrey, Hawken, Mueller)

HEALTH CARE FACILITY TRANSACTIONS

AN ACT to create and enact sections 10-33-148 and 10-33-149 and a new subsection to section 50-24.4-15 of the North Dakota Century Code, relating to transactions by nonprofit corporations that operate or control hospitals and nursing homes and property-related costs for nursing homes; to amend and reenact sections 10-33-144, 10-33-145, 10-33-146, and 10-33-147 of the North Dakota Century Code, relating to transactions by nonprofit corporations that operate or control hospitals or nursing homes; and to provide a continuing appropriation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-33-144 of the North Dakota Century Code is amended and reenacted as follows:

10-33-144. Transaction by a nonprofit corporation doing business as operating or controlling a hospital or nursing home - Notice to attorney general - Waiting period.

1. A nonprofit corporation doing business as operating or controlling a hospital or nursing home shall notify the attorney general in writing before closing an agreement or a transaction that will:
 - a. Sell, lease, transfer, exchange, option, convey, ~~mortgage, create a security interest in,~~ or otherwise dispose of to a for-profit ~~organization corporation or entity or a nonprofit corporation or entity~~ if fifty percent or more of the assets ~~or operations of the corporation doing business as a hospital or fifty percent or more of the assets or operations of a related organization of the selling corporation~~ are involved in the agreement or transaction;
 - b. ~~Sell, lease, transfer, exchange, option, convey, mortgage, create a security interest in, or otherwise dispose of any of the assets or operations of the corporation doing business as a hospital or any of the assets or operations of a related organization if the transaction or agreement will result in any for-profit organization owning or controlling fifty percent or more of the assets or operations of the corporation doing business as a hospital or fifty percent or more of the assets or operations of a related organization~~ Transfer control, responsibility, or governance of fifty percent or more of the assets or operations of the nonprofit corporation to a for-profit corporation or entity or another nonprofit corporation or entity; or
 - c. Result in any for-profit ~~organization corporation or entity or another nonprofit corporation or entity~~ having control of, governance of, or the power to direct management and policies of the nonprofit

corporation ~~doing business as~~ operating or controlling a hospital, nursing home, or a related organization.

2. The substitution of a new corporate member that transfers the control of, responsibility for, or governance of the nonprofit corporation, the substitution of a member of the governing body, or any arrangement, written or oral, that would transfer voting control of the entity, is a transfer for purposes of this section.
3. This section applies to a foreign nonprofit corporation that operates or controls a hospital or nursing home within this state.
4. This section does not apply to the following transactions:
 - a. An action involving the enforcement or foreclosure of a security interest, lien, mortgage, judgment, or other creditor rights.
 - b. Agreements or transactions in the usual and regular course of the nonprofit corporation's business and activities.
5. The notice must be provided to the attorney general not less than ninety days before the closing date of the proposed agreement or transaction, and must include:
 - a. The names and addresses of the corporation doing business as a hospital, the for-profit organization, and all other parties to the proposed agreement or transaction;
 - b. The terms of the proposed agreement or transaction, including the proposed sale price;
 - c. A copy of the proposed agreement or transaction; and
 - d. Information regarding whether a Any financial or economic analysis by an expert or independent consultant has been prepared concerning the degree to which the proposed agreement or transaction will serve the public interest, or concerning the fair market value of the corporation doing business as a hospital retained by the nonprofit corporation which addresses the criteria set forth in section 10-33-145.
3. 6. A nonprofit corporation doing business as a hospital or nursing home may neither transfer nor convey any assets or control through an agreement or transaction described in this section until ninety days after the corporation gives the attorney general notice required under this section, unless the attorney general waives all or part of the waiting period. Before the end of the waiting period, the attorney general may extend the period up to sixty additional days by providing written notice of the extension to the corporation. The waiting period may be extended for one or more additional sixty-day periods upon agreement between the corporation and the attorney general, or pursuant to a court order.
4. The notice requirements of this section do not apply to a proposed agreement or transaction between related organizations serving the

same or similar charitable purposes and are in addition to any notice requirements that may apply under section 10-33-122.

SECTION 2. AMENDMENT. Section 10-33-145 of the North Dakota Century Code is amended and reenacted as follows:

10-33-145. Transaction by a nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home - Attorney general's powers and duties - Experts - Continuing appropriation.

1. Upon receipt of a notice under section 10-33-144, the attorney general may review and investigate the proposed agreement or transaction and may require the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home and the ~~for-profit organization~~ other parties to the agreement or transaction to provide to the attorney general any additional information relevant to the review or investigation of the proposed agreement or transaction.
2. Upon receipt of a notice under section 10-33-144, the attorney general may review the proposed agreement or transaction to determine whether consummation of the proposed agreement or transaction by the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home is consistent with the purposes of the nonprofit corporation or entity operating or controlling a hospital or nursing home and the fiduciary obligations of the ~~corporation doing business as a hospital~~ and the obligations of the officers and directors of the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home and is in accordance with law. The attorney general shall consider the following factors in reviewing and evaluating a proposed agreement or transaction:
 - a. Whether appropriate steps were taken by the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home to safeguard restricted assets transferred to the ~~for-profit organization~~ acquiring entity;
 - b. Whether appropriate steps were taken by the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home to ensure that any proceeds of the proposed agreement or transaction are used for ~~charitable~~ purposes consistent with restrictions placed on assets of and with the ~~charitable~~ purposes of the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home;
 - c. Whether the terms and conditions of the proposed agreement or transaction are fair and reasonable to the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home, including whether the nonprofit corporation doing business as a or entity operating or controlling the hospital or nursing home will receive fair market value for ~~the its~~ assets of ~~the corporation~~ and, in a proposed agreement or transaction involving a nursing home, whether the proposed agreement or transaction constitutes a bona fide transaction;
 - d. Whether any conflict of interest or breach of fiduciary duty, ~~as determined by the attorney general~~, exists and or was disclosed,

including any conflict of interest or breach of fiduciary duty related to directors and officers of, executives of, and experts retained by the nonprofit corporation doing business as or entity operating or controlling a hospital, the for-profit organization, or nursing home and any other party to the agreement or transaction; and

- e. Whether the agreement or transaction will result in inurement, pecuniary gain, or excess benefit to any person associated with the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home or to any other person;
 - f. Whether the transaction is in the best interests of the nonprofit corporation or entity operating or controlling a hospital or nursing home; and
 - g. Whether the transaction is authorized by the nonprofit corporation's governing documents.
3. For the purpose of reviewing and evaluating the factors identified in subsection 2, the attorney general may retain experts if necessary and reasonable and ~~shall~~ may obtain public comment regarding the proposed agreement or transaction. A contract entered by the attorney general with an expert under this section does not require a bid and is exempt from chapters 44-08 and 54-44.4. If the attorney general intends to seek payment from the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home for the cost of any expert retained under this subsection, at least five days before retaining that expert, the attorney general shall notify the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home of the expert cost projected to be incurred. A nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home which receives notice under this subsection shall pay the reasonable cost of any retained expert. If the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home objects to paying the costs of an expert, the corporation or entity may seek a district court order limiting the corporation's or entity's liability for the costs. In determining whether to issue an order, the court shall consider whether the expert is necessary and reasonable and the cost of the expert relative to the value of the proposed agreement or transaction.
 4. Section 44-04-18.4 applies to any information provided to the attorney general under sections 10-33-144 through 10-33-147.
 5. All costs, fees, and other moneys received under sections 10-33-144 through 10-33-149 must be deposited into the attorney general's operating fund. The moneys in the fund are appropriated to pay the costs incurred in the attorney general's performance of responsibilities pursuant to sections 10-33-144 through 10-33-149.

SECTION 3. AMENDMENT. Section 10-33-146 of the North Dakota Century Code is amended and reenacted as follows:

10-33-146. Transaction by a nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home - Notice of decision - Public meeting - Meeting notice. Before the attorney general approves, denies, or

~~takes any other action on a proposed agreement or transaction under section 10-33-144 or 10-33-145. Within ninety days of receipt of the written notice required under section 10-33-144, and such other additional extension of time permitted or provided under section 10-33-144, the attorney general shall notify, in writing, the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home of the attorney general's decision to approve, deny, or take any other action on the proposed agreement or transaction. Before issuing a written decision under this section, the attorney general shall may conduct at least one or more public hearing hearings, one of which must be held in the county where the corporation doing business as a hospital or nursing home is located. At a public hearing under this section, the attorney general shall request and receive comments from any interested person regarding the proposed agreement or transaction. At least fourteen days before a public hearing under this section, the attorney general shall provide notice of the meeting by publication in the official newspaper of the city in which the corporation doing business as a hospital or nursing home is located. The attorney general shall also provide notice of the meeting to the governing body of the county in which the corporation doing business as a hospital or nursing home is located, if applicable, and to the governing body of the city in which the corporation doing business as a hospital or nursing home is located, if applicable. Any party to the agreement may institute legal proceedings in the district court of the county in which the hospital or nursing home is located to review the attorney general's decision. In a district court action brought under this section, the attorney general's decision is subject to de novo review by the court. In a proceeding under this section, the attorney general must be served with notice and is entitled to be heard. If the attorney general substantially prevails in a proceeding under this section, the attorney general is entitled to an award of attorney's fees, investigation fees, costs, and expenses of any investigation and proceeding under this section. The court shall award attorney's fees to the attorney general under this section based upon the hourly rates the attorney general charges to state agencies for the attorney general's legal services. A court may not apply the limitation on the rate of the attorney general's attorney's fees under this section as a limitation on an award of attorney's fees to the attorney general under any other section.~~

SECTION 4. AMENDMENT. Section 10-33-147 of the North Dakota Century Code is amended and reenacted as follows:

10-33-147. Transaction by a nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home - Attorney general decision. The attorney general may bring proceedings to secure compliance with ~~section~~ sections 10-33-144 through 10-33-149 in the district court of the county in which the hospital or nursing home is located. If the attorney general determines consummation of the proposed transaction or agreement is not consistent with the fiduciary obligations of the nonprofit corporation doing business as or entity operating or controlling a hospital or nursing home and the corporation's officers and directors, or is not in accordance with law, the attorney general may bring proceedings in the district court of the county in which the hospital or nursing home is located to enjoin the consummation of the proposed transaction or agreement or to secure any other relief available under the law. In a district court action brought under this section, the attorney general's decision is subject to de novo review by the court. If the attorney general substantially prevails in an action brought under this section, the attorney general is entitled to an award of attorney's fees, investigation fees, costs, and expenses of any investigation and action brought under this section. The court shall award attorney's fees to the attorney general under this section based upon the hourly rates the attorney general charges to state agencies for the attorney general's legal services. A court may not apply the limitation on the rate of the attorney general's attorney's fees under this section as a limitation on an award

of attorney's fees to the attorney general under any other section. Failure of the attorney general to take action on a proposed agreement or transaction described in ~~section~~ sections 10-33-144 through 10-33-149 does not constitute approval of the transaction and does not prevent the attorney general from taking other action.

SECTION 5. Section 10-33-148 of the North Dakota Century Code is created and enacted as follows:

10-33-148. Investigation - Subpoena - Hearing - Powers of the attorney general. In discharging the attorney general's responsibilities under sections 10-33-144 through 10-33-149, and in connection with the public hearing provided for in section 10-33-146, the attorney general may conduct investigations, issue subpoenas to any person directly related to the proposed agreement or transaction, and conduct hearings in aid of an investigation or inquiry.

SECTION 6. Section 10-33-149 of the North Dakota Century Code is created and enacted as follows:

10-33-149. Authority of the attorney general or a court is not impaired. Sections 10-33-144 through 10-33-148 are in addition to, and do not supersede, any other authority of the attorney general established by statute, case law, or common law.

⁴³ **SECTION 7.** A new subsection to section 50-24.4-15 of the North Dakota Century Code is created and enacted as follows:

Recognize any mandated costs, fees, or other moneys paid to the attorney general through transactions under sections 10-33-144 through 10-33-149.

Approved April 11, 2003
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⁴³ Section 50-24.4-15 was also amended by section 1 of House Bill No. 1268, chapter 428.