

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1391

2005 HOUSE JUDICIARY

HB 1391


2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1391

House Judiciary Committee

☐ Conference Committee

Hearing Date 2/2/05

Tape Number	Side A	Side B	Meter #
1	xx		2.7-48.8
3		xx	1.9-4
Committee Clerk Signature 			

Minutes: 13 members present, 1 member absent (Rep. Kingsbury).

Chairman DeKrey: We will open the hearing on HB 1391.

Al Jaeger, Secretary of State: Introduced HB 1391 and HB 1273. Back in 1993, limited liability companies didn't exist, today we have over 3,300 as a result of legislation that went through these chambers. Limited liability partnerships didn't exist as recently as 1995, 1997, and now we have 1,800. Essentially, this partnership has resulted in the creation of new entities that just expand the options available to those individuals that go into business and do entrepreneurship type activity. The first bill, there are things that apply procedurally to all of the different types of entities, so rather than having a separate bill for each entity, there's one bill and in many cases, there is a procedural change that applies across the board. One of the things that I've really encouraged is that we are consistent in our processes and application, regardless of what the entity is, and then that the laws that pertain to that particular entity is, in and of themselves, just for that entity, but our processes and procedures are consistent across the board

within all of them. We've strived to do that to a great extent. The second bill is a limited partnership bill and that's actually an outgrowth of the state council on uniform state laws and I asked the committee last session to refrain from introducing it, so that we could put it in a format that's in keeping with our practices and procedures, and still not losing the uniformity that the bill was striving for. I do want to acknowledge Clara Jenkins, who is the director of the business division. Clara has 30 years now with the Secretary of State's office, and she has a tremendous amount of hands-on experience and Bill Guy will be explaining the bills. These are two really good bills. I am going to introduce Joel Gilbertson, who is going to introduce Bill Guy on behalf of the Bar Association.

Chairman DeKrey: Thank you.

Joel Gilbertson: I would like to introduce William Guy, from the State Bar Association. We support this bill.

Chairman DeKrey: Thank you.

William Guy III, Chairman, ND State Bar Association: As was indicated by Secretary of State, Al Jaeger, this legislation updates certain sections of the chapters governing business corporations, limited liability companies, nonprofit corporations, general partnerships, limited liability partnerships, and limited liability limited partnerships (see written testimony).

Chairman DeKrey: When was the last time they were updated.

William Guy: These chapter were updated in the last session. We've had a bill like this each session since 1983.

Representative Klemin: This concept of conversion that you said were in a number of different sections, can you have an organization that's organized under the laws of another state

and converted into a ND corporation or a ND LLC, there doesn't seem from the language that you can't do that. Is that possible.

William Guy: It would be. Clara says yes.

Representative Klemin: In section 127, page 171, on the conversion discussed in this section, line 22 it talks about conversion and we've stricken a partnership, limited partnership and one line 23, the word limited it taken out. Are we talking here about other organizations may not convert to any kind of a partnership, or just to a general partnership.

William Guy: That other organizations may not convert into a general partnership, and the reason we've done that is that there is no originating record with the Secretary of State's office. General partnerships don't derive their existence through the Secretary of State's office, so if converted into a general partnership they would just disappear as far as the Secretary of State is concerned, we cannot go into a general partnership nor can a nonprofit corporation be involved in a conversion, but a general partnership can go into another type of entity.

Representative Klemin: Because we are deleting the word limited, we can convert to a limited partnership.

William Guy: If I'm reading what you're looking at on line 23, other organizations may not convert to a partnership, however a partnership may convert to another organization pursuant to the relative sections.

Representative Klemin: My question is, can another organization convert to another partnership.

William Guy: To a limited partnership, yes; that will be contained in the limited partnership act.

This chapter 45-13 through 43-21 are the sections, chapters, pertaining to general partnerships

and so we clarified these sections with regard to the general partnerships and the limited partnership act itself will pertain to the limited partnership version.

Representative Kretschmar: Under the provisions of the bill, could a business corporation convert into a nonprofit corporation.

William Guy: No. Non-profits are not allowed to go in or out of any other entity in a conversion.

Representative Koppelman: In addition to the conversion provisions you talked about, I assume a lot of this is housekeeping, technical corrections and so on. What else necessitated the bill. Are there things happening in the area of penalties that require us to revisit this and make changes.

William Guy: The Secretary of State's office and the Bar Association do this every session just to keep our statutes current, as current as any statutes in the country. Gov. Schaeffer showed me an analysis that his attorneys did between Delaware and ND and except for some constitutional problems in ND, the ND business corporation act is as good as Delaware for the purposes they were considering.

Representative Koppelman: Does this have any substantive impact on small businesses that are operating as LLC's or LLP's, in terms of the reporting requirements, fees, or any other requirements of operation.

William Guy: No, existing S-corp or LLC that's in business now would not see any material change in their operations.

Representative Koppelman: Do you know that the tax treatment for LLC's in ND is different than in some other states. In other words, I think it pertained to things like what things

corporations can purchase for business use if they are a C-Corp or an S-Corp. I believe that the context was that LLP's the tax treatment was much the same, but that the LLC's were treated basically as a small proprietorship, where as in other states, that's not true. Is that accurate.

William Guy: I can't think of any circumstance where that would be true. There is nothing about any of our, except for that constitutional problem with the corporations, where our business entities are substantively any different than any other states.

Representative Meyer: On page 133, can you explain to me why you want to take out the word or phrase that indicates or implies that it may not be incorporated. Isn't that kind of a safe check there, or don't the ...

William Guy: What line are we on.

Representative Meyer: On page 133, line 11 and 12, why would you want to remove that wording.

William Guy: The language there has been moved to line 22, just to better organize the language beginning on line 16.

Representative Meyer: So basically it hasn't changed.

William Guy: Hasn't changed.

Chairman DeKrey: Thank you. Further testimony in support of HB 1391.

Clara Jenkins, Business Division Director, Secretary of State's Office: I am here to speak to the amendment that were distributed to you and offered on behalf of Secretary Jaeger. The amendments are of a housekeeping nature (see written testimony).

Representative Kretschmar: These are amendments dated 2/2/05.

Clara Jenkins: Yes, they are attached to my testimony.

Chairman DeKrey: Thank you. Further testimony in support of HB 1391. Testimony in opposition. We will close the hearing.

(Reopened later in the same session).

Chairman DeKrey: What are the committee's wishes in regard to HB 1391.

Representative Koppelman: I move the Secretary of State's amendments.

Representative Meyer: Seconded.

Chairman DeKrey: Motion carried.

Representative Koppelman: I move a Do Pass as Amended.

Representative Delmore: Seconded.

13 YES 0 NO 1 ABSENT DO PASS AS AMENDED CARRIER: Rep. Koppelman

FISCAL NOTE

Requested by Legislative Council
03/14/2005

Amendment to: Engrossed
 HB 1391

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

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The bill does not result in any additional revenue or expense beyond that which is already within or projected in the agency's operating budget.

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

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

See narrative.

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

See narrative.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

See narrative.

Name:	Al Jaeger	Agency:	Secretary of State
Phone Number:	328-2900	Date Prepared:	03/14/2005

FISCAL NOTE
Requested by Legislative Council
01/18/2005

Bill/Resolution No.: HB 1391

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

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

The bill does not result in any additional revenue or expense beyond that which is already within or projected in the agency's operating budget.

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

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

See narrative.

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

See narrative.

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

See narrative.

Name:	Al Jaeger	Agency:	Secretary of State
Phone Number:	328-2900	Date Prepared:	01/25/2005

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 1, line 8, after the third comma insert "10-19.1-21,"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 5, line 17, overstrike "executed" and insert immediately thereafter "signed"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 6, after line 15, insert:

"(3) If a general partnership, then chapters 45-13 through 45-21;"

Page 6, line 16, replace "(3)" with "(4)"

Page 6, line 17, replace "(4)" with "(5)"

Page 6, line 18, replace "(5)" with "(6)"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 9, line 23, replace "which" with "that"

Page 9, after line 28, insert:

"d. A general partnership, its partnership interests;"

Page 9, line 29, replace "d." with "e."

Page 9, line 30, replace "e." with "f."

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 10, line 12, overstrike the second "the" and insert immediately thereafter "a corporation's" and after "articles" insert "of incorporation or in a foreign corporation's certificate of authority"

Page 10, line 13, overstrike "of the corporation"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 14, line 22, after "any" insert "lawful"

Page 14, line 23, remove the overstrike over "~~business~~" and remove "lawful"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 22, after line 18, insert:

"SECTION 7. AMENDMENT. Section 10-19.1-21 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-21. Articles of amendment. When an amendment has been adopted, articles of amendment must be prepared ~~that~~ which contain:

1. The name of the corporation.
2. The amendment adopted.
3. The date of the adoption of the amendment by the shareholders or by the incorporators or the board when no shares have been issued.
4. ~~If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, or cancellation of issued shares, a statement of the manner in which it will be effected.~~
5. If the amendment restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to ~~them~~ the original articles.
6. 5. A statement that the amendment has been adopted pursuant to this chapter."

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 37, line 2, replace "execute" with "sign"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 40, line 9, replace "shall mean" with "means"

Page 40, remove line 16

Page 40, line 17, replace "(5)" with "(4)"

Page 40, line 18, replace "(6)" with "(5)"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 41, line 17, replace "shall be" with "is"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 42, line 14, replace "shall" with "must"

Page 42, line 22, after "conversion" insert "without organization records"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 43, line 17, replace "a" with "the appropriate"

Page 43, line 24, remove "or"

Page 43, line 25, after "partnership" insert "or a limited liability limited partnership, or is a managing partner in a limited liability partnership"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 46, line 23, after "corporation" insert "or foreign corporation"

Page 46, line 25, after "corporation" insert ", the foreign corporation," and after "or" insert "any"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 47, line 2, after "corporation" insert "or foreign corporation"

Page 47, line 4, after the overstruck comma insert "or foreign corporation"

Page 47, line 6, after "office" insert "if located in this state"

Page 47, line 12, after "office" insert "if located in this state" and after "corporation" insert "or foreign corporation"

Page 47, line 27, remove the overstrike over "~~registered~~" and remove "certified"

Page 47, line 28, after "corporation" insert "or foreign corporation"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 59, line 14, replace "executed" with "signed"

Page 59, line 19, replace "executed" with "signed"

Page 59, line 28, replace "shall" with "must"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 61, line 2, after "All" insert "annual"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 64, line 9, remove "or governed by"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 65, line 12, overstrike "executed" and insert immediately thereafter "signed"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 66, after line 21, insert:

"(3) If a general partnership, then chapters 45-13 through 45-21;"

Page 66, line 22, replace "(3)" with "(4)"

Page 66, line 23, replace "(4)" with "(5)"

Page 66, line 24, replace "(5)" with "(6)"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 71, line 1, overstrike the second "the" and insert immediately thereafter "a limited liability company's" and after "articles" insert "of organization or a foreign limited liability company's certificate of authority"

Page 71, line 2, overstrike "of the limited liability company"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 83, line 26, after "and" insert "which"

Page 83, line 27, remove "or"

Page 83, line 28, after "partnership" insert "or a limited liability limited partnership, or is a managing partner of a limited liability partnership"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 89, line 23, remove "as"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 99, line 25, after "liability" insert "company"

Page 99, line 28, replace "execute" with "sign"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 103, line 28, replace "shall mean" with "means" and after "formed" insert "by two or more persons"

Page 103, line 30, replace "which" with "that"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 104, remove line 4

Page 104, line 5, replace "(5)" with "(4)"

Page 104, line 6, replace "(6)" with "(5)"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 105, line 7, replace "shall be" with "is"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 106, line 4, replace "shall" with "must"

Page 106, line 12, after "conversion" insert "without organizational records"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 107, line 7, replace "a" with "the appropriate"

Page 107, line 14, remove "or"

Page 107, line 15, after "partnership" insert "or a limited liability limited partnership, or is a managing partner of a limited liability partnership"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 110, line 18, after "company" insert "or foreign limited liability company"

Page 110, line 20, after "company" insert ", the foreign limited liability company," and after "or" insert "a"

Page 110, line 29, after "company" insert "or foreign limited liability company"

Page 110, line 30, after "company" insert "or foreign limited liability company"

Page 110, line 31, after "company" insert "or foreign limited liability company"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 111, line 2, after "office" insert "if located in this state"

Page 111, line 6, after "office" insert "if located in this state" and after "company" insert "or foreign limited liability company"

Page 111, line 9, after "company" insert "or foreign limited liability company"

Page 111, line 18, after "company" insert "or foreign limited liability company"

Page 111, line 24, remove the overstrike over "registered" and remove "certified"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 112, line 10, after "company" insert "or foreign limited liability company"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 119, line 21, after "its" insert "the"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 121, line 12, replace "executed" with "signed"

Page 121, line 17, replace "executed" with "signed"

Page 121, line 26, replace "shall" with "must"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 123, line 1, after "All" insert "annual"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 124, line 27, overstrike "executed" and insert immediately thereafter "signed"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 128, line 25, overstrike the second "the" and insert immediately thereafter "a corporation's" and after "of" insert "incorporation or in"

Page 128, line 26, overstrike the first "corporation" and insert immediately thereafter "foreign corporation's certificate of authority" and overstrike "of the corporation"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 130, line 4, after "merger" insert "which"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 131, line 5, after "filed" insert "articles of dissolution"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 137, line 11, after "and" insert "which"

Page 137, line 12, remove the second "or"

Page 137, line 13, after "partnership" insert "or a limited liability limited partnership, or is a managing partner of a limited liability partnership"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 142, line 8, after "corporation" insert "or foreign corporation,"

Page 142, line 10, after "corporation" insert ", the foreign corporation," and after "or" insert "a"

Page 142, line 18, after "corporation" insert "or foreign corporation"

Page 142, line 19, remove the overstrike over "~~or~~" and after "~~upon~~" insert "foreign corporation"

Page 142, line 20, remove the overstrike over "~~or~~" and after "~~upon~~" insert "foreign corporation"

Page 142, line 22, after "office" insert "if located in this state"

Page 142, line 27, after "office" insert "if located in this state"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 143, line 6, after "office" insert "if located in this state"

Page 143, line 7, after "corporation" insert "or foreign corporation"

Page 143, line 14, after "corporation" insert "or foreign corporation"

Page 143, line 30, after "corporation" insert "or foreign corporation"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 153, line 7, replace "executed" with "signed"

Page 153, line 12, replace "executed" with "signed"

Page 153, line 21, replace "shall" with "must"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 157, line 17, overstrike "executed" and insert immediately thereafter "signed"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 163, line 2, remove "and"

Page 163, line 4, replace the underscored period with "; and"

Page 163, after line 4, insert:

"5. The provisions of this chapter relating to electronic records and electronic transactions do not limit or supersede chapter 9-16."

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 170, line 6, replace "shall mean" with "means" and after "formed" insert "by two or more persons"

Page 170, remove line 15

Page 170, line 16, replace "(6)" with "(5)"

Page 170, line 17, replace "(7)" with "(6)"

Page 170, line 22, overstrike "limited" and overstrike "created" and insert immediately thereafter "that is formed by two or more persons"

Page 170, line 23, after "jurisdiction" insert "and which has one or more general partners and one or more limited partners"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 174, line 13, replace "shall" with "must"

Page 174, line 21, after "conversion" insert "without organizational records"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 175, line 19, replace "a" with "the appropriate"

Page 175, line 28, remove "or"

Page 175, line 29, after "partnership" insert "or a limited liability limited partnership, or is a managing partner of a limited liability partnership"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 181, line 11, after "must" insert "be accompanied by the plan of merger without organizational records and must"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 182, line 1, overstrike "executed" and insert immediately thereafter "signed"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 184, line 12, after "formed" insert "by two or more persons"

Page 184, line 27, overstrike "executed" and insert immediately thereafter "signed"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 185, line 10, after "formed" insert "by two or more persons"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 186, line 21, remove the overstrike over "~~at the~~"

Page 186, line 29, after "receive" insert "notice"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 189, line 8, after "partnership" insert "or foreign limited liability partnership"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 194, line 3, after "partnership" insert "or foreign limited liability partnership"

Page 194, line 5, after "partnership" insert ", the foreign limited liability partnership," and after "or" insert "a"

Page 194, line 11, after the second "partnership" insert "or foreign limited liability partnership"

Page 194, line 15, after "partnership" insert "or foreign limited liability partnership"

Page 194, line 17, remove the overstrike over "~~er~~" and after "~~en~~" insert "at the principal executive office if located in this state"

Page 194, line 22, after "partnership" insert "or foreign limited liability partnership"

Page 194, line 23, after "partnership" insert "or foreign limited liability partnership"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 195, line 1, after "partnership" insert "or foreign limited liability partnership"

Page 195, line 7, overstrike "certified" and insert immediately thereafter "registered"

Page 195, line 8, after "partnership" insert "or foreign limited liability partnership," and overstrike "limited liability partnership's"

Page 195, line 13, replace "which" with "or foreign limited liability partnership that"

Page 195, line 16, after "partnership" insert "or foreign limited liability partnership"

Page 195, line 18, after "partnership" insert "or foreign limited liability partnership"

Page 195, line 24, after "partnership" insert "or foreign limited liability partnership"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 204, line 1, replace "executed" with "signed"

Page 204, line 6, replace "executed" with "signed"

Page 204, line 16, replace "shall" with "must"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 206, line 2, overstrike "and executed" and insert immediately thereafter "which is signed"

Page 206, line 15, overstrike the second "limited liability limited"

Page 206, line 16, after "formed" insert "by two or more persons"

Page 206, line 21, after "partnership" insert "under provisions similar to this chapter"

Page 206, line 25, overstrike the second "limited"

Page 206, line 26, after "formed" insert "by two or more persons"

Page 206, line 29, replace the first "limited" with "general" and replace the second "limited" with "personal"

Page 206, line 30, remove "limited liability" and after "partnership" insert "under provisions similar to chapter 45-10.2"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 208, line 5, after the underscored quotation mark insert an underscored comma, remove the overstrike over "a", remove the overstrike over "partnership", and replace "an entity" with "formed by two or more persons"

Page 208, line 20, remove the overstrike over "a" and remove the overstrike over "partnership"

Page 208, line 21, remove "an entity"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 210, line 2, after "receive" insert "notice"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 212, line 2, after "partnership" insert "or foreign limited liability limited partnership"

House Amendments to HB 1391 - Judiciary Committee 02/08/2005

Page 222, line 18, replace the first "or" with "of"

Renumber accordingly

Date: 2/2/05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1391

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken

Do Pass as Amended

Motion Made By

Rep. Koppelman

Seconded By

Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	✓		Representative Delmore	✓	
Representative Maragos	H		Representative Meyer	✓	
Representative Bernstein	✓		Representative Onstad	✓	
Representative Boehning	✓		Representative Zaiser	✓	
Representative Charging	✓				
Representative Galvin	✓				
Representative Kingsbury	✓				
Representative Klemin	✓				
Representative Koppelman	✓				
Representative Kretschmar	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment

Rep. Koppelman

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

REPORT OF STANDING COMMITTEE

HB 1391: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1391 was placed on the Sixth order on the calendar.

Page 1, line 8, after the third comma insert "10-19.1-21,"

Page 5, line 17, overstrike "executed" and insert immediately thereafter "signed"

Page 6, after line 15, insert:

"(3) If a general partnership, then chapters 45-13 through 45-21;"

Page 6, line 16, replace "(3)" with "(4)"

Page 6, line 17, replace "(4)" with "(5)"

Page 6, line 18, replace "(5)" with "(6)"

Page 9, line 23, replace "which" with "that"

Page 9, after line 28, insert:

"d. A general partnership, its partnership interests;"

Page 9, line 29, replace "d." with "e."

Page 9, line 30, replace "e." with "f."

Page 10, line 12, overstrike the second "the" and insert immediately thereafter "a corporation's" and after "articles" insert "of incorporation or in a foreign corporation's certificate of authority"

Page 10, line 13, overstrike "of the corporation"

Page 14, line 22, after "any" insert "lawful"

Page 14, line 23, remove the overstrike over "~~business~~" and remove "lawful"

Page 22, after line 18, insert:

"SECTION 7. AMENDMENT. Section 10-19.1-21 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-21. Articles of amendment. When an amendment has been adopted, articles of amendment must be prepared ~~that~~which contain:

1. The name of the corporation.
2. The amendment adopted.
3. The date of the adoption of the amendment by the shareholders or by the incorporators or the board when no shares have been issued.

4. ~~If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, or cancellation of issued shares, a statement of the manner in which it will be effected.~~
5. If the amendment restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to ~~them~~ the original articles.
6. 5. A statement that the amendment has been adopted pursuant to this chapter."

Page 37, line 2, replace "execute" with "sign"

Page 40, line 9, replace "shall mean" with "means"

Page 40, remove line 16

Page 40, line 17, replace "(5)" with "(4)"

Page 40, line 18, replace "(6)" with "(5)"

Page 41, line 17, replace "shall be" with "is"

Page 42, line 14, replace "shall" with "must"

Page 42, line 22, after "conversion" insert "without organization records"

Page 43, line 17, replace "a" with "the appropriate"

Page 43, line 24, remove "or"

Page 43, line 25, after "partnership" insert "or a limited liability limited partnership, or is a managing partner in a limited liability partnership"

Page 46, line 23, after "corporation" insert "or foreign corporation"

Page 46, line 25, after "corporation" insert ", the foreign corporation," and after "or" insert "any"

Page 47, line 2, after "corporation" insert "or foreign corporation"

Page 47, line 4, after the overstruck comma insert "or foreign corporation"

Page 47, line 6, after "office" insert "if located in this state"

Page 47, line 12, after "office" insert "if located in this state" and after "corporation" insert "or foreign corporation"

Page 47, line 27, remove the overstrike over "registered" and remove "certified"

Page 47, line 28, after "corporation" insert "or foreign corporation"

Page 59, line 14, replace "executed" with "signed"

Page 59, line 19, replace "executed" with "signed"

Page 59, line 28, replace "shall" with "must"

Page 61, line 2, after "All" insert "annual"

Page 64, line 9, remove "or governed by"

Page 65, line 12, overstrike "executed" and insert immediately thereafter "signed"

Page 66, after line 21, insert:

"(3) If a general partnership, then chapters 45-13 through 45-21;"

Page 66, line 22, replace "(3)" with "(4)"

Page 66, line 23, replace "(4)" with "(5)"

Page 66, line 24, replace "(5)" with "(6)"

Page 71, line 1, overstrike the second "the" and insert immediately thereafter "a limited liability company's" and after "articles" insert "of organization or a foreign limited liability company's certificate of authority"

Page 71, line 2, overstrike "of the limited liability company"

Page 83, line 26, after "and" insert "which"

Page 83, line 27, remove "or"

Page 83, line 28, after "partnership" insert "or a limited liability limited partnership, or is a managing partner of a limited liability partnership"

Page 89, line 23, remove "as"

Page 99, line 25, after "liability" insert "company"

Page 99, line 28, replace "execute" with "sign"

Page 103, line 28, replace "shall mean" with "means" and after "formed" insert "by two or more persons"

Page 103, line 30, replace "which" with "that"

Page 104, remove line 4

Page 104, line 5, replace "(5)" with "(4)"

Page 104, line 6, replace "(6)" with "(5)"

Page 105, line 7, replace "shall be" with "is"

Page 106, line 4, replace "shall" with "must"

Page 106, line 12, after "conversion" insert "without organizational records"

Page 107, line 7, replace "a" with "the appropriate"

Page 107, line 14, remove "or"

Page 107, line 15, after "partnership" insert "or a limited liability limited partnership, or is a managing partner of a limited liability partnership"

Page 110, line 18, after "company" insert "or foreign limited liability company"

Page 110, line 20, after "company" insert ", the foreign limited liability company," and after "or" insert "a"

Page 110, line 29, after "company" insert "or foreign limited liability company"

Page 110, line 30, after "company" insert "or foreign limited liability company"

Page 110, line 31, after "company" insert "or foreign limited liability company"

Page 111, line 2, after "office" insert "if located in this state"

Page 111, line 6, after "office" insert "if located in this state" and after "company" insert "or foreign limited liability company"

Page 111, line 9, after "company" insert "or foreign limited liability company"

Page 111, line 18, after "company" insert "or foreign limited liability company"

Page 111, line 24, remove the overstrike over "~~registered~~" and remove "certified"

Page 112, line 10, after "company" insert "or foreign limited liability company"

Page 119, line 21, after "~~its~~" insert "the"

Page 121, line 12, replace "executed" with "signed"

Page 121, line 17, replace "executed" with "signed"

Page 121, line 26, replace "shall" with "must"

Page 123, line 1, after "All" insert "annual"

Page 124, line 27, overstrike "executed" and insert immediately thereafter "signed"

Page 128, line 25, overstrike the second "the" and insert immediately thereafter "a corporation's" and after "of" insert "incorporation or in"

Page 128, line 26, overstrike the first "corporation" and insert immediately thereafter "foreign corporation's certificate of authority" and overstrike "of the corporation"

Page 130, line 4, after "merger" insert "which"

Page 131, line 5, after "filed" insert "articles of dissolution"

Page 137, line 11, after "and" insert "which"

Page 137, line 12, remove the second "or"

Page 137, line 13, after "partnership" insert "or a limited liability limited partnership, or is a managing partner of a limited liability partnership"

Page 142, line 8, after "corporation" insert "or foreign corporation,"

Page 142, line 10, after "corporation" insert ", the foreign corporation," and after "or" insert "a"

Page 142, line 18, after "corporation" insert "or foreign corporation"

Page 142, line 19, remove the overstrike over "~~or~~" and after "~~upon~~" insert "foreign corporation"

Page 142, line 20, remove the overstrike over "~~or~~" and after "~~upon~~" insert "foreign corporation"

Page 142, line 22, after "office" insert "if located in this state"

Page 142, line 27, after "office" insert "if located in this state"

Page 143, line 6, after "office" insert "if located in this state"

Page 143, line 7, after "corporation" insert "or foreign corporation"

Page 143, line 14, after "corporation" insert "or foreign corporation"

Page 143, line 30, after "corporation" insert "or foreign corporation"

Page 153, line 7, replace "executed" with "signed"

Page 153, line 12, replace "executed" with "signed"

Page 153, line 21, replace "shall" with "must"

Page 157, line 17, overstrike "executed" and insert immediately thereafter "signed"

Page 163, line 2, remove "and"

Page 163, line 4, replace the underscored period with ": and"

Page 163, after line 4, insert:

"5. The provisions of this chapter relating to electronic records and electronic transactions do not limit or supersede chapter 9-16."

Page 170, line 6, replace "shall mean" with "means" and after "formed" insert "by two or more persons"

Page 170, remove line 15

Page 170, line 16, replace "(6)" with "(5)"

Page 170, line 17, replace "(7)" with "(6)"

Page 170, line 22, overstrike "limited" and overstrike "created" and insert immediately thereafter "that is formed by two or more persons"

Page 170, line 23, after "jurisdiction" insert "and which has one or more general partners and one or more limited partners"

Page 174, line 13, replace "shall" with "must"

Page 174, line 21, after "conversion" insert "without organizational records"

Page 175, line 19, replace "a" with "the appropriate"

Page 175, line 28, remove "or"

Page 175, line 29, after "partnership" insert "or a limited liability limited partnership, or is a managing partner of a limited liability partnership"

Page 181, line 11, after "must" insert "be accompanied by the plan of merger without organizational records and must"

Page 182, line 1, overstrike "executed" and insert immediately thereafter "signed"

Page 184, line 12, after "formed" insert "by two or more persons"

Page 184, line 27, overstrike "executed" and insert immediately thereafter "signed"

Page 185, line 10, after "formed" insert "by two or more persons"

Page 186, line 21, remove the overstrike over "~~at the~~"

Page 186, line 29, after "receive" insert "notice"

Page 189, line 8, after "partnership" insert "or foreign limited liability partnership"

Page 194, line 3, after "partnership" insert "or foreign limited liability partnership"

Page 194, line 5, after "partnership" insert ", the foreign limited liability partnership," and after "or" insert "a"

Page 194, line 11, after the second "partnership" insert "or foreign limited liability partnership"

Page 194, line 15, after "partnership" insert "or foreign limited liability partnership"

Page 194, line 17, remove the overstrike over "~~or~~" and after "~~or~~" insert "at the principal executive office if located in this state"

Page 194, line 22, after "partnership" insert "or foreign limited liability partnership"

Page 194, line 23, after "partnership" insert "or foreign limited liability partnership"

Page 195, line 1, after "partnership" insert "or foreign limited liability partnership"

Page 195, line 7, overstrike "certified" and insert immediately thereafter "registered"

Page 195, line 8, after "partnership" insert "or foreign limited liability partnership," and overstrike "limited liability partnership's"

Page 195, line 13, replace "which" with "or foreign limited liability partnership that"

Page 195, line 16, after "partnership" insert "or foreign limited liability partnership"

Page 195, line 18, after "partnership" insert "or foreign limited liability partnership"

Page 195, line 24, after "partnership" insert "or foreign limited liability partnership"

Page 204, line 1, replace "executed" with "signed"

Page 204, line 6, replace "executed" with "signed"

Page 204, line 16, replace "shall" with "must"

Page 206, line 2, overstrike "and executed" and insert immediately thereafter "which is signed"

Page 206, line 15, overstrike the second "limited liability limited"

Page 206, line 16, after "formed" insert "by two or more persons"

Page 206, line 21, after "partnership" insert "under provisions similar to this chapter"

Page 206, line 25, overstrike the second "limited"

Page 206, line 26, after "formed" insert "by two or more persons"

Page 206, line 29, replace the first "limited" with "general" and replace the second "limited" with "personal"

Page 206, line 30, remove "limited liability" and after "partnership" insert "under provisions similar to chapter 45-10.2"

Page 208, line 5, after the underscored quotation mark insert an underscored comma, remove the overstrike over "a", remove the overstrike over "partnership", and replace "an entity" with "formed by two or more persons"

Page 208, line 20, remove the overstrike over "a" and remove the overstrike over "partnership"

Page 208, line 21, remove "an entity"

Page 210, line 2, after "receive" insert "notice"

Page 212, line 2, after "partnership" insert "or foreign limited liability limited partnership"

Page 222, line 18, replace the first "or" with "of"

Renumber accordingly

2005 SENATE JUDICIARY

HB 1391

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1391

Senate Judiciary Committee

☐ Conference Committee

Hearing Date March 9, 2005

Tape Number	Side A	Side B	Meter #
1	X		2700 - 5050
Committee Clerk Signature <i>Maria L. Solley</i>			

Minutes: Relating to limited liability partnership *FTE

Senator John (Jack) T. Traynor, Chairman called the Judiciary committee to order. All

Senators were present. The hearing opened with the following testimony:

Testimony In Support of the Bill:

Al Jager, Secretary of the State of ND - Introduced the bill (meter 2700) Clara Jenkins and Bill Guy have spent countless hours working on this bill We end up with the longest bill each session.

Joel Gilbertson, Vogal Law Firm and State Bar Assoc. (meter 225) The state bar has worked on several bills over the years with the Secretary of State dept. Introduced Bill Guy

Bill Guy, Vogal Law Firm Moorhead MN (meter 290) Gave Testimony - Att. #1

Sen. Nelson questioned why the deletion on page 7 you delete the definition of notice and knowledge and then add a whole section? Section 2 page 12, first section is the definition, similar to the original deleted definition. The idea is to layout the rules constituting knowledge

and notice. Those issues come up often in litigation's. It is to give better guidance to the practice and the judge and we want it to be consistent throughout.

Sen. Nelson asked for an update on the use of electronic communications (meter 3250). He referred to last sessions request page 5. 10-19.1. Most electronic references are for clarification. The real substantive work was done last time. Discussed the definition of the word "record" vs. "document" since it was a previously undefined term.

Sen. Traynor sited on page 146 line 3 the word "record" was entered two times (typo)

Clara Jenkins, Dir. Business Division Secretary of States office (meter 4180) Gave testimony Att. #2 with Amendment requested by Legislative Council to change "who" with "what". The committee discussed that they thought the Legislative Council could have made this change.

Discussion the aspects of "who" vs. "what" One page 83 is a concept that will solve many problems for many organizations to allow corporations partnership that looses its charter who has lost there charter do to not filing an annual report and failed to reinstate in the statutory time line they can petition the courts for reinstatement. That was not possible before and we get calls every month on what to do.

Testimony in Opposition of the Bill

None

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Sen. Nelson made the motion to Pass the Amendment submitted by Clara **Senator Triplett** seconded the motion. All members were in favor motion passes.

Sen. Nelson made the motion to do pass as amended and **Sen. Trenbeath** seconded the motion.

All members were in favor and the motion passes.

Page 3

Senate Judiciary Committee

Bill/Resolution Number HB 1391

Hearing Date March 9, 2005

Carrier: **Sen. Nelson**

Senator John (Jack) T. Traynor, Chairman closed the Hearing

Date: 3/9/05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1391

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Clara's Amend + Added delete Record pg 14163

Motion Made By Senator Nelson Seconded By Senator Triplett

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) _____ 6 No _____ 0

Absent _____ 0

Floor Assignment _____

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

Date: 3/9/05
Roll Call Vote #: 7

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1391

Senate Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass AS Amended

Motion Made By Senator Nelson Seconded By Senator Trenbeath

Senators	Yes	No	Senators	Yes	No
Sen. Traynor	✓		Sen. Nelson	✓	
Senator Syverson	✓		Senator Triplett	✓	
Senator Hacker	✓				
Sen. Trenbeath	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Nelson

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

REPORT OF STANDING COMMITTEE

HB 1391, as engrossed: Judiciary Committee (Sen. Traynor, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1391 was placed on the Sixth order on the calendar.

Page 11, line 24, overstrike "who" and insert immediately thereafter "that"

Page 16, line 11, replace "19-19.1-39" with "10-19.1-39"

Page 47, line 4, remove "limited"

Page 47, line 5, replace the first "partnership" with "corporation" and replace "limited partnership" with "corporation"

Page 48, line 20, overstrike "a person" and insert immediately thereafter "an individual"

Page 52, line 5, overstrike "who" and insert immediately thereafter "that"

Page 58, line 15, overstrike "who" and insert immediately thereafter "that"

Page 60, line 28, replace "who" with "that"

Page 76, line 14, after "a" insert "member who is not a"

Page 83, line 17, replace "restating" with "reinstating"

Page 88, line 25, overstrike "who" and insert immediately thereafter "that"

Page 120, line 23, overstrike "who" and insert immediately thereafter "that"

Page 122, line 15, replace "who" with "that"

Page 123, line 9, replace "who" with "that"

Page 140, line 13, overstrike "who" and insert immediately thereafter "that"

Page 142, line 19, replace "Shareholder" with "Member"

Page 144, line 27, overstrike "a person" and insert immediately thereafter "an individual"

Page 146, line 3, remove "record" and overstrike the third comma

Page 152, line 23, overstrike "who" and insert immediately thereafter "that"

Page 154, line 10, replace "who" with "that"

Page 155, line 4, replace "who" with "that"

Page 158, line 20, overstrike "who" and insert immediately thereafter "that"

Page 203, line 22, overstrike "who" and insert immediately thereafter "that"

Page 205, line 8, replace "who" with "that"

Page 206, line 7, replace "who" with "that"

REPORT OF STANDING COMMITTEE (410)
March 10, 2005 9:35 a.m.

Module No: SR-44-4602
Carrier: Nelson
Insert LC: 58272.0201 Title: .0300

Renumber accordingly

2005 TESTIMONY

HB 1391

TESTIMONY OF WILLIAM L. GUY III, CHAIRMAN
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE
IN SUPPORT OF
HOUSE BILL NO. 1391

Mr. Chairman and member of the Committee, I am here on behalf of a task force which, as in the past, has undertaken the drafting of housekeeping and technical legislation with respect to the various business entity statutes in the North Dakota Century Code. Accordingly, the task force has prepared the legislation that you have before you as House Bill No. 1391. This legislation updates certain sections of the chapters governing Business Corporations (Chapter 10-19.1) Limited Liability Companies (Chapter 10-32), Nonprofit Corporations (Chapter 10-33), General Partnerships (Chapters 45-13 through 45-21), Limited Liability Partnerships (Chapter 45-22) and Limited Liability Limited Partnerships (Chapter 45-23).

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

Finally, we have presented to the chair of your committee certain amendments which will be discussed by Clara Jenkins from the office of the Secretary of State at the end of my presentation.

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

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

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

Sections 1 through 44 (page 2 through 61) pertain to the North Dakota Business Corporation Act (Chapter 10-19.1).

Section 1 (beginning on page 2) is the definition section of the Business Corporation Act (Chapter 10-19.1)

In the past, the term "record" (which is defined in Subsection 43 on page 10) and the term "document" (which is not a defined term) were used interchangeably throughout Chapter 19.1.

Part of this year's legislation will convert the word "document" wherever it appears to the defined term "record".

Accordingly, that change is made in the definitions section of Chapter 10-19.1 and is deemed to be a grammatical change:

Subsections 6, 14, 15 and 30 are new defined terms and represent **substantive changes** which introduce new concepts to the Business Corporations Act.

"Ballot" (Subsection 6 on page 3) makes clear that the term includes either a written ballot or a ballot transmitted by electronic communication.

"Converted Organization" (Subsection 14 on page 4) means an organization into which a converting organization converts.

As you will see later on in this Bill, the concept of "conversion" is similar to that of merger and is the process which has occurred in the past when a general partnership becomes a limited liability partnership (LLP) in North Dakota by filing a registration with the Secretary of State or when a limited partnership (LP) becomes a limited liability limited partnership (LLLLP) in North Dakota by amending its certificate of limited partnership into a certificate of limited liability limited partnership.

A converted organization (one that results from a conversion) is identical to and uses the same tax ID number as the converting organization.

"Converting Organization" (Subsection 15 on page 4) means an organization that converts into another organization (a "converted organization") through the process of conversion.

"Governing Statute" (Subsection 30 on page 6) is:

The statute in the North Dakota Century Code by which a domestic organization is governed and includes:

This Chapter for business corporations;

- Chapter 10-32 for limited liability companies (LLC's);
- Chapter 45-10.2 for limited partnerships (LP's);
- Chapter 45-22 for limited liability partnerships (LLP's);
- Chapter 45-23 for limited liability limited partnerships (LLLLP's); and

· With respect to foreign organizations, the counterpart statute of the foreign jurisdiction for the entity in question.

· **Subsection 27** is a **technical clarification** that makes clear that a foreign limited liability company need not be organized "... for profit. . ."

· The definition of "knows" has been deleted because now Section 10-19.1-01.2 sets forth in much greater detail the meaning and requirements of this term.

· **Subsection 37** is a **technical clarification** of the term "organization" and deletes joint ventures, associations, business trusts, estate trusts and enterprises from that definition which will now include only those entities for which there is a governing statute (see Subsection 30 on page 6) under the North Dakota Century Code.

· **Subsection 40** (on page 9) is a **technical clarification** of the term "ownership interests" which has been expanded to include partnership interests as well as shares in a corporation and membership interests in an LLC.

· **Subsection 41** (on page 10) is a **technical clarification** which makes clear that the term "parent" includes foreign corporations and foreign limited liability companies as well as the domestic counterparts of these entities.

· **Subsection 53** (on page 11) is a grammatical change.

· **Subsection 55** (in page 12) is a **technical clarification** which makes clear that the surviving organization may preexist the merger or may be created by the merger.

Section 2 (on page 12) is a new section representing a substantive change which sets forth the requirements for "knowledge and "notice" and is the counterpart of similar sections that will be enacted in each of our other business entity chapters.

This section, which will be new to each of our business entity chapters, does an excellent job of summarizing when entities and those involved with entities are deemed to have knowledge and notice.

As you read through this section carefully, you will see that it is very straightforward but very detailed.

Section 4 (beginning on page 14):

In **Subsection 3** includes:

- A **technical clarification** in **Subdivision (j)** of the fact that the consideration to be received for shares issued by a corporation is subject to the limitations of article XII of the North Dakota Constitution;

- A **technical clarification** in **Subdivision (m)** which relates to the method of determining the voting power at a shareholder meeting;

- A **technical clarification** in **Subdivision (s)** that a written action of the shareholders must be signed by all of them (unless provided otherwise in the articles of incorporation);

In **Subsection 4** includes:

- A **technical clarification** in **Subsection (j)** that unless the board determines otherwise, the officers have the duties specified under the chapter.

- A **technical clarification** in **Subdivision (l)** that the board may issue uncertificated shares.

Section 5 (beginning on page 18) is a series of **technical clarifications** of the requirements for the name of a corporation.

Section 6 (beginning on page 21) is a **technical clarification** of the process for voting by class or by series in shareholder votes.

Section 7 (on page 22) is a grammatical change with respect to the term "record".

Section 8 (beginning on page 22) is a **technical clarification** of the requirements for the voting power necessary to elect a director and also again makes clear that cumulative voting of directors is provided for in article XII of the North Dakota Constitution.

Section 9 (beginning on page 23) is a **technical clarification** which makes clear that any notice of a board meeting can be given electronically to a director who has consented to notice in that form.

Section 10 (on page 24) is a grammatical change.

Section 11 (on page 24) is a grammatical change with respect to the term "record".

Section 12 (beginning on page 24) is a **technical clarification** of the voting requirements for the adoption by the board of the articles of amendment of the articles of incorporation when effecting a division or combination of shares.

Section 13 (beginning on page 25) is a **technical clarification** which makes clear that article XII of the North Dakota Constitution restricts the types of consideration which may be paid for shares in a corporation.

Section 14 (beginning on page 27) is a grammatical change with respect to the term "record."

Section 15 (beginning on page 28) is a **technical clarification** of the voting requirements when shareholders are voting by class or by series of shares.

Section 16 (on page 29) is a **substantive change** which provides:

- that an amendment to the articles of incorporation that would allow written action by fewer than all of the shareholders requires the approval of all of the shareholders to that amendment; and
- that when written action is taken by fewer than all of the shareholders, all of the shareholders must be notified of its text within five days after the effective time of the action.

Section 17 (beginning on page 29) is:

- a **technical clarification** of the fact that shareholder action may be taken by electronic ballot as well as by written ballot; and,
- a **substantive change** with respect to how and when electronic ballots may be used.

Section 18 (on page 30) is a grammatical change.

Section 19 (beginning on page 30) consists of several grammatical changes.

Section 20 (beginning on page 31) again is a grammatical change with respect to the term "record".

Section 21 (beginning on page 32) is:

- a **technical clarification** dealing with the process by which the rights of dissenting shareholders are asserted; and,
- a **substantive change** with respect to the addition of three circumstances under which those rights may be asserted.

Section 22 (beginning on page 35) is a **technical clarification** of the process of asserting dissenters' rights.

Section 23 (page 36) is a **technical clarification** which adds the term "governor" of a

limited liability company to the list of fiduciaries whose activities are deemed to be encompassed in the defined term of "official capacity".

Section 24 (beginning on page 36) is a new section and is a **substantive change** which authorizes a continuance of corporate authority which action is necessary by an organization which ceased to exist as the consequence of a merger.

Section 25 (on page 37) is a **technical clarification** which makes clear that the merger contemplated in this section includes a merger of a parent into a subsidiary.

Section 26 (beginning on page 37) is a **technical clarification** of the circumstances under which shareholder approval will be or will not be required when a corporation sells, leases, transfers or otherwise disposes of substantially all of its property and assets.

Section 27 through 32 (beginning on page 39) consists of NDCC Sections 10-19.1-104.1 through 10-19.104.6.

Sections 10-19.1-104.1 through 10-19.104.6 are new sections representing a **substantive change** with respect to authorizing the process known as "conversion" for business corporations. -

Section 104.1 contains the enabling language together with a series of definitions which are unique to the process of conversion including:

- "act of the board" which includes actual meetings or written action by the board;
- "act of the shareholders" which includes actual meetings or written action by the shareholders
- "certificate of creation" refers to the certificate issued by the Secretary of State causing an organization to come into legal existence such as:
 - the certificate of incorporation for a corporation;
 - the certificate of organization for a limited liability company (LLC);;
 - the certificate of limited partnership for a limited partnership (LP);
 - the filed registration for a limited liability partnership (LLP);
 - and,
 - the certificate of limited liability limited partnership for a limited liability limited partnership (LLLP).
- "date of origin" means the date on which:

- a converting organization came into existence; or
- the converted organization is deemed to have come into existence.

“organizational record” refer to the originating record of an organization and the documents that provide for its internal governance procedures and include:

- for a corporation, its articles of incorporation and bylaws;
- for a limited liability company (LLC), its articles of organization, operating agreement or bylaws and any member control agreement;
- for a limited partnership (LP), its limited partnership agreement;
- for a general partnership (GP), its partnership agreement;
- for a limited liability partnership, its partnership agreement; or
- for a limited liability limited partnership (LLLP), its partnership agreement.

“originating record” means the record in response to which the Secretary of State creates the existence of an organization by issuing its certificate of creation and is:

- for a corporation, its articles of incorporation;
- for a limited liability company (LLC), its articles of organization;
- for a limited partnership (LP), its certificate of limited partnership;
- for a limited liability partnership (LLP), its registration; or
- for a limited liability limited partnership (LLLP), its certificate of limited liability limited partnership.

Section 104.2 details the requirements for the plan of conversion.

Section 104.3 provides for the process of plan approval and amendment.

Section 104.4 sets forth the requirements for the articles of conversion and the requirement that they then be filed with the Secretary of State.

Section 104.5 provides the process for the abandonment of a proposed conversion.

Section 104.6 provides for the effective date and the effect of conversion (and again the effect of a conversion is nearly identical to that of a merger except that "an organization that has been converted . . . is for all purposes the same entity that existed before the conversion".

Section 33 (page 46) is a numbering change as a consequence of adding three defined terms to the definition section of this chapter.

Section 34 (beginning on page 46) is a **technical clarification** of the procedure by which service of process on corporations, foreign corporations and non-resident directors is accomplished and is the counterpart to similar sections in the other business entity chapters.

Section 35 (beginning on page 48) is a grammatical change with respect to the term "record".

Section 36 (page 49) clarifies the fact that service of process on a foreign corporation is covered by the amendments made under Section 34 of this Bill.

Section 37 (beginning on page 49) is a grammatical change and a **technical clarification** of the fact that the Secretary of State shall notify corporations which cease to be in good standing.

Section 38 (beginning on page 51) is a **substantive change** which amends the fee schedule of the office of the Secretary of State:

- by providing for the fees that will be charged for the filing articles of conversion; and
- by clarifying the fact that fees paid to the Secretary of State for filing an incomplete annual report will not be refunded if the corrected annual report is not eventually filed.

Section 39 (beginning on page 56) is a **technical clarification**:

- of the enforcement powers of the Secretary of State; and
- of the appeal process by corporations who have been administratively dissolved.

Section 40 (beginning on page 58) is a new section and is a **substantive change** setting forth:

- the process for the delivery to and filing of records by the Secretary of State; and

the procedure for determining the effective date of those records.

Section 41 (beginning on page 59) is a new section and is a **substantive change** which sets out the process for correcting a record which has been filed with the Secretary of State and has been subsequently determined to contain inaccurate or erroneous information.

Sections, 42, 43 and 44 (beginning on page 60) contain grammatical changes with respect to the term "record".

Section 45 (beginning on page 61) is a **technical clarification** which makes clear that ownership interest in professional organizations may be issued only to individuals (and not to other entities).

Sections 46 through 90 (pages 61 through 123) relate to the North Dakota Limited Liability Company Act (Chapter 10-32):

Section 46 (beginning on page 61) sets forth the amendments to the definition section of Chapter 10-32 and contains the same amended definitions as in Section 1 which contains definitions under Chapter 10-19.1 except:

- the term "acquiring organization" contains several grammatical changes.
- the term "corporation" is amended in a **technical clarification** to refer to a corporation incorporated under Chapter 10-19.1.
- the term "domestic corporation" is deleted in a **technical clarification** (in favor of the term "corporation" above) in order that these terms be consistent with their counterpart terms in the other business entity chapters.

Section 47 (beginning on page 73) is a new section and is a **substantive change** adding to Chapter 10-32 a "knowledge" and "notice" section which is identical to Section 2 of this Bill for business corporations, to Section 92 of this Bill for nonprofit corporations and in the new Limited Partnership Act.

Section 48 (beginning on page 75) is a **technical clarification** which relates to the method of determining the voting power at a member meeting and is the counterpart of the same corporate concept on Section 4 of this Bill.

Section 49 (beginning on page 79) is a **technical clarification** of requirements for the name of a limited liability company and is the counterpart to corresponding sections used in other business entity chapters, including Section 5 of this Bill for business corporations, to Section 94 of this Bill for nonprofit corporations, to Section 123 of this Bill for general partnerships, to Section 138 of this Bill for limited liability partnerships (LLPs), and to Section 148 of this Bill for limited liability limited partnerships (LLLLPs).

Section 50 (on page 82) is a **technical clarification** which deletes the word "domestic" with respect to the terms "corporation" and "limited liability company" as superfluous language.

Section 51 (on page 82) is a grammatical change.

Section 52 (beginning on page 82) is a **technical clarification** of the process for voting by class or by series in a member vote and is the limited liability company counterpart of Section 6 with respect to Chapter 10-19.1.

Section 53 (on page 83) is a **substantive change** which requires a limited liability company that amends its name and is the owner of a trademark or trade name or is a general partner named in a fictitious name certificate or is a general partner in a limited partnership to change its name in each of those registrations when the limited liability company files the name changing amendment. This requirement causes the limited liability companies that amend the name to now be treated in the same manner as business corporations.

Section 54 (beginning on page 83) is a grammatical change with respect to the term "record".

Section 55 (beginning on page 84) is a **technical clarification** of the voting requirements when shareholders are voting by class or by series of interests and is the limited liability company counterpart of Section 15 with respect to Chapter 10-19.1.

Section 56 (on page 85) is the limited liability company counterpart to Section 16 of this Bill with respect to business corporations and is a **substantive change** which provides:

- that an amendment to the articles or organization or to the member control agreement that would allow written action by fewer than all of the members requires the approval of all of the members to that amendment; and
- that when written action is taken by fewer than all of the members, all of the members must be notified of its text within five days after the effective time of the action.

Section 57 (beginning on page 85) is the limited liability company counterpart to Section 17 of this Bill for business corporations and is:

- a **technical clarification** of the fact that member action may be taken by electronic ballot as well as by written ballot; and,
- a **substantive change** with respect to how and when electronic ballots may be used.

Section 58 (on page 86) is a grammatical change with respect to the term "record".

Section 59 (on page 86) is a **technical clarification** which deletes the word "domestic" with respect to limited liability companies organized under this chapter as superfluous language.

Section 60 (beginning on page 87) is the limited liability company counterpart for Section 21 of this Bill for business corporations and is:

- a **technical clarification** dealing with the process by which the rights of dissenting members are asserted; and,
- a **substantive change** with respect to the addition of three circumstances under which those rights may be asserted.

Section 61 (beginning on page 90) is a **technical clarification** of the process for asserting dissenters' rights and is the limited liability company counterpart to Section 22 of this Bill for business corporations.

Section 62 (beginning on page 91) is a numbering change only.

Section 63 (beginning on page 93) is a **technical clarification** of the requirements for the voting power to elect a governor and is the limited liability company counterpart to Section 8 of this Bill for business corporations.

Section 64 (beginning on page 94) is a **technical clarification** which makes clear that any notice of a board meeting can be given electronically to a governor who has consented to notice in that form and is the limited liability company counterpart to Section 9 of this Bill for business corporations.

Section 65 (on page 95) is a grammatical change with respect to the term "record".

Sections 66, 67, 68 and 69 (beginning on page 95) involve grammatical changes only.

Section 70 (page 99) is a new section and is a **substantive change** which authorizes a continuance of limited liability company authority when action is necessary by an organization which has ceased to exist as a consequence of a merger and is the limited liability company counterpart of Section 24 of this Bill for business corporations.

Section 71 (beginning on page 100) is a **technical clarification** that makes clear that the merger contemplated in this section includes a merger of a parent into a subsidiary and is the limited liability company counterpart of Section 25 of this Bill for business corporations.

Section 72 (beginning on page 101) is a **technical clarification** of the circumstances under which member approval will or will not be required when a limited liability company sells, leases, transfers or otherwise disposes of substantially all of its property and assets

and is the limited liability company counterpart of Section 26 of this Bill for business corporations.

Sections 73 through 78 (on pages 102 through 110) are new sections representing a **substantive change** with respect to the process known as "conversion" for limited liability companies and are the limited liability company counterparts to Sections 27 through 32 of this Bill for business corporations

Section 79 (on page 110) is a numbering change only.

Section 80 (beginning on page 110) is a **technical clarification** of the procedure by which service of process on limited liability companies, foreign limited liability companies and non-resident governors is accomplished and is the limited liability company counterpart to Section 80 of this Bill for business corporations.

Section 81 (on page 112) is a grammatical change with respect to the term "record".

Section 82 (on page 112) is the is the limited liability company counterpart of Section 36 of this Bill for business corporations and is a **technical clarification** which makes clear that the service of process on a foreign limited liability company is to be handled pursuant to Section 80 of this Bill.

Section 83 (beginning on page 113) involves a numbering change.

Section 84 (beginning on page 115) is the limited liability company counterpart of Section 38 of this Bill for business corporations and is a **substantive change** which amends the fee schedule of the office of the Secretary of State:

- by providing for the fees that will be changed for filing articles of conversion; and,
- clarifying the fact that fees paid to the Secretary of State for the filing of an incomplete annual report will not be refunded if the corrected annual report is not eventually filed.

Section 85 (beginning on page 117) is the limited liability company counterpart of Section 39 of this Bill for business corporations and is a **technical clarification**:

- of the enforcement powers of the Secretary of State; and,
- of the appeal process by a limited liability company who have been administratively dissolved.

Section 86 (beginning on page 120) is the limited liability company counterpart of Section 40 of this Bill for business corporations and is a new section which is a **substantive change** setting forth:

- the process for the delivery to and filing of records by the Secretary of State; and,
- the procedure for determining the effective date of those records.

Section 87 (beginning on page 121) is a new section and is a **substantive change** which provides for the process of correcting a record which has been filed with the Secretary of State and has been subsequently determined to contain inaccurate or erroneous information and is the limited liability company counterpart of Section 41 of this Bill for business corporations.

Sections, 88, 89 and 90 (on pages 122 through 123) are grammatical changes with respect to the term "record".

Sections 91 through 119 (pages 123 through 156) relate to the North Dakota Nonprofit Corporation Act (Chapter 10-33):

Section 91 (beginning on page 123) sets forth the amendments to the definition section of Chapter 10-33 and contains the same amended definitions as in Section 1 of this Bill for business corporations and in Section 46 of this Bill for limited liability companies except that several changes which relate to business corporations and limited liability companies only are omitted.

Section 92 (beginning on page 130) is a new section and is a **substantive change** adding a Chapter 10-33 "knowledge" and "notice" section which is identical to Section 2 of this Bill for business corporations and to Section 47 of this Bill for limited liability companies.

Section 93 (beginning on page 132) is a **technical clarification** that a written action of the shareholders must be signed by all of them (unless provided otherwise in the articles of incorporation).

Section 94 (beginning on page 133) is a **technical clarification** of the requirements for a nonprofit corporation name and is the counterpart of Section 5 of this Bill for business corporations and of Section 49 of this Bill for limited liability companies.

Sections 95 and 96 (beginning on page 136) are grammatical changes.

Section 97 (on page 137) is a **substantive change** which requires a nonprofit corporation that amends its name and is the owner of a trademark or trade name or is a general partner in a fictitious name certificate or is a general partner in a limited partnership to change its name in each of those registrations when the nonprofit corporation files the name changing amendment. ***This requirement is the nonprofit corporation counterpart of Section 53 of this Bill for limited liability companies, to Section 9 of this Bill for business corporations, and to Section 64 of this Bill for limited liability companies.

Section 98 (on page 137) is a grammatical change with respect to the term "record".

Section 99 (on page 137) a **technical clarification** which clarifies the relationship of article XII of the North Dakota Constitution to cumulative voting for directors in nonprofit corporations.

Section 100 (beginning on page 137) is a **technical clarification** which makes clear that any notice to a board meeting can be given electronically to a director who has consented to notice in that form and is the nonprofit corporation counterpart to Section 9 of this Bill for business corporations .

Section 101 (beginning on page 138) is a **technical clarification** to the citation to Section 501(c)(3) of the Internal Revenue Code.

Section 102 (on page 139) is a grammatical change with respect to the term "record".

Section 103 (on page 139) is a **technical clarification** of the votes required by the members in the election of directors as well as two grammatical changes.

Section 104 (beginning on page 139) is a **substantive change** which is the nonprofit corporation counterpart of Section 16 of this Bill for business corporations and Section 56 of this Bill for limited liability companies and which makes clear:

- that an amendment to the articles of incorporation that would allow for written action by fewer than all of the members requires the approval of all of the members to that amendment; and,

- that when written action is taken by fewer than all of the members, all of the members must be notified of its text within five days after the effective time of action.

Section 105 (beginning on page 140) is the nonprofit corporation counterpart to Section 17 of this Bill for business corporations and to Section 57 of this Bill for liability companies and is:

- a **technical clarification** of the fact that member action may be taken by electronic ballot as well as by written ballot; and,

- a **substantive change** with respect to how and when electronic ballots may be used.

Section 106 (beginning on page 141) is a grammatical change with respect to the term "record".

Section 107 (beginning on page 142) is a **technical clarification** of the procedure by which service of process on nonprofit corporations, foreign nonprofit corporations and non-resident directors is accomplished and is the counterpart of Section 34 of this Bill for business corporations and Section 80 for limited liability companies.

Sections 108 and 109 (beginning on page 144) contain grammatical changes with respect to the term "record".

Section 110 (on page 145) is a **technical clarification** of the fact that service of process on a foreign corporation is covered by the amendments made under Section 107 of this Bill and is the nonprofit corporation counterpart of Section 36 of this Bill for business corporations and of Section 82 of this Bill for limited liability companies.

Section 111 (on page 145) contain grammatical changes only.

Section 112 (beginning on page 148) is a **substantive change** which amends the nonprofit corporation act counterpart of Section 38 of this Bill for business corporations and Section 84 for limited liability companies and is a **substantive change** which amends the fee schedule of the office of the Secretary of State to provide that the fees paid to the Secretary of State for the filing of an incomplete annual report will not be refunded if the corrected annual report is not eventually filed and is the nonprofit corporation act counterpart of Section 38 of this Bill for business corporations and of Section 84 of this Bill for limited liability companies.

Section 113 (beginning on page 149) is the nonprofit corporation act counterpart of Section 39 of this Bill for business corporations and Section 85 of this Bill for limited liability companies and is a **technical clarification**:

- of the enforcement powers of the Secretary of State; and,
- of the appeal process by nonprofit corporations who have been administratively dissolved.

Section 114 (on page 152) is the nonprofit corporation act counterpart of Section 40 of this Bill for business corporations and Section 86 of this Bill for limited liability companies and is a new section which is a **substantive change** setting forth:

- the process for the delivery to and filing of records by the Secretary of State; and,
- the procedure for determining the effective date of those records.

Section 115 (beginning on page 153) is a new section which is a **substantive change** which provides for the process of correcting a record which has been filed with the Secretary of State and which has been subsequently determined to contain inaccurate or erroneous information and is the nonprofit corporation act counterpart to Section 41 of this Bill for business corporations and to Section 87 of this Bill for limited liability companies.

Sections 116, 117, 118 and 119 (beginning on page 154) contain grammatical changes with respect to the term "record".

Sections 120 through 136 (on pages 156 through 183) relate to North Dakota general partnerships (Chapters 45-13 through 45-21):

Section 120 (beginning on page 156) sets forth the amendments to the definitions section of Chapter 45-13 and contains substantially the same amended definitions as in Section 1 of this Bill for business corporations and in Section 46 of this Bill for limited liability companies

Section 121 (beginning on page 162) is a **substantive change** which inserts language regarding the legal recognition of electronic records and electronic signatures and is the counterpart to identical provisions which have been a part of each of the other business entity chapters for several years.

Section 122 (beginning on page 163) is a **technical clarification** to the "knowledge" and "notice" section that has previously resided in Chapter 45-13 and is the general partnership counterpart Section 2 of this Bill for business corporations, to Section 47 of this Bill for limited liability companies, and to Section 92 of this Bill of this for nonprofit corporations.

Section 123 (beginning on page 164) is a **technical clarification** of the requirements of the name for a general partnership and is the general partnership counterpart of Section 5 of this Bill for business corporations, to Section 49 of this bill for limited liability companies and to Section 94 of this Bill for nonprofit corporations.

Section 124 (on page 167) is a grammatical change.

Section 125 (beginning on page 167) is a **technical clarification** of the already existing fees for the conversion of general partnerships and is the general partnership counterpart to Section 38 of this Bill for business corporations, to Section 84 for limited liability companies and to Section 112 of this Bill for nonprofit corporations.

Section 126 (beginning on page 168) is a **substantive change** introducing the concept of "conversion" and is the general partnership counterpart to Sections 27 through 32 of this Bill or business corporations, and to Sections 73 through 78 of this Bill for limited liability companies.

Sections 133 through 136 (beginning on page 178) are **technical clarifications** of the existing provisions for the merger of general partnerships into other organizations and are the counterparts to corresponding sections used in our other business entity chapters.

Sections 137 through 145 (on pages 183-204) relate to the North Dakota Limited Liability Partnership Act (Chapter 45-22):

Section 137 (beginning on page 183) sets forth amendments to the definitions section of Chapter 45-22 and contains the same amended definitions as in Section 1 of this Bill for business corporations and in Section 46 of this Bill for limited liability companies except for grammatical changes to several definitions which are unique to limited liability limited partnerships.

Section 138 (beginning on page 189) is a series of **technical clarifications** of the requirements for the name of a limited liability limited partnership and is the limited liability partnership counterpart to Section 5 of this Bill for business corporations, Section to Section 49 of this Bill for limited liability companies and to Section 94 of this Bill for nonprofit corporations.

Section 139 (on page 193) contains several grammatical changes.

Section 140 (beginning on page 193) is a **technical clarification** of the procedure by which service of process on limited liability limited partnerships, foreign limited liability limited partnerships and on non-resident partners is accomplished and is the limited liability partnership counterpart to Section 35 of this Bill for business corporations, to Section 80 of this Bill for limited liability companies and to Section 107 of this Bill for nonprofit corporations.

Section 141 (beginning on page 195) contains several grammatical changes.

Section 142 (beginning on page 198) is a **technical clarification** of the fact that fees paid to the Secretary of State for the filing of an incomplete report will not be refunded if the corrected annual report is not eventually filed and is the limited liability partnership counterpart to Section 38 of this Bill for business corporations, to Section 84 of this Bill limited liability companies and to Section 125 of this Bill for nonprofit corporations.

Section 143 (beginning on page 200) is the limited liability partnership counterpart to Section 39 of this Bill for business corporations, to Section 85 of this Bill for limited liability companies and to Section 113 of this Bill for nonprofit corporations and is a **technical clarification**:

- of enforcement powers of the Secretary of State; and,
- of the appeal process by limited liability partnerships who have been administratively dissolved.

Section 144 (beginning on page 202) is the limited liability partnership counterpart to Section 44 of this Bill for business corporations, to Section 86 of this Bill for limited liability companies and to Section 114 of this Bill for nonprofit corporations and is a new section which is a **substantive change** setting forth:

the process for the delivery to and filing of records by the Secretary of State; and, the procedure for determining the effective date of those records.

Section 145 (beginning on page 203) is a new section which is a **substantive change** which provides for the process of correcting a record which has been filed with the Secretary of State and has subsequently been determined to contain inaccurate or erroneous information and is the limited liability partnership counterpart to Section 41 of this Bill for business corporations, to Section 87 of this Bill for limited liability companies, and to Section 115 of this Bill for nonprofit corporations.

Sections 146 through 154 (pages 204 through 223) relate to the North Dakota Limited Liability Limited Partnership Act (Chapter 45-23):

Section 146 (beginning on page 204) sets for the amendments to the definitions section of Chapter 45-23 and is the limited liability limited partnership counterpart to Section 1 of this Bill for business corporations and to Section 46 of this Bill for limited liability companies.

Section 147 (on page 212) is a **technical clarification** which changes several chapter references from "45-10.1" to "45-10.2".

Section 148 (beginning on page 213) is a series of **technical clarifications** of the requirements for the name of a limited liability limited partnership and is the limited liability limited partnership counterpart to Section 5 of this Bill for business corporations, to Section 49 of this Bill for limited liability companies, to Section 95 for nonprofit corporations, to Section 123 for general partnerships and to Section 138 for limited liability partnerships.

Section 149 (beginning on page 216) is a **technical clarification** of the process for converting a limited partnership to a limited liability partnership and for converting from a limited liability limited partnership to a limited partnership.

Section 150 (beginning on page 218) contains a series of grammatical changes.

Section 151 (on page 219) contains a numbering change only.

Section 152 (beginning on page 219) is a **technical clarification** clarifying the status of foreign limited liability limited partnerships.

Section 153 (beginning on page 220) is the limited liability limited partnership counterpart to Section 38 of this Bill for business corporations, to Section 84 of this Bill for limited liability limited companies, to Section 112 of this Bill for nonprofit corporations, to Section 125 of this Bill for general partnerships and to Section 142 for limited liability partnerships

and is a **substantive change** which amends the fee schedule of the office of the Secretary of State:

- by providing for the fees that will be charged for filing articles of conversion; and,
- by clarifying the fact that fees paid to the Secretary of State for the filing of an incomplete annual report will not be refunded if the corrected annual report is not eventually filed.

Section 154 (beginning on page 222) is a grammatical change with respect to the term "record".

Section 155 (on page 223) repeals Section 45-22-01.1 pertaining to electronic records and signatures in Chapter 45-22 since this section is unnecessary due to the fact that Section 45-22 stands on the shoulders of Chapters 45-13 through 45-21.

As you can see, the legislation embodied in this Bill introduces the concepts of conversion and document correction and further integrates and refines other key elements of our existing business and nonprofit entity statutes with each other. I appreciate the opportunity to address your Committee. If you have any questions, I would be happy to answer them.

ALVIN A. JAEGER
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SECRETARY OF STATE

STATE OF NORTH DAKOTA
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February 2, 2005

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

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

RE: Amendments to HB 1391

The amendments to HB 1391 are generally of a "housekeeping" nature and are proposed to accomplish the following:

- Correct several typographical errors
- Insert text that was inadvertently omitted during the drafting process
- Delete text that was inadvertently duplicated
- Correct several statutory reference codes
- Apply consistent use of terminology, especially for those terms that are specifically defined in section 1 of each of the related chapters
- Improve format of the statutes making them more efficient for users
- Apply clarity to those sections when the provisions apply to both domestic and foreign entities

The most substantive amendment appears on page 1 of the amendments creating a new section 7 of the bill and amending N.D.C.C. § 10-19.1-21. The section, as amended, removes the current subsection 4 thereby eliminating a problematic element on a corporate amendment when filed with the Secretary of State. As amended, articles of amendment would no longer have to disclose how an amendment might affect issued shares. A corporation currently reports that information annually on its annual report and is not necessary to be included on the amendment.

The Secretary of State respectfully requests the committee's favorable consideration on these amendments and HB 1391 as amended.

PROPOSED AMENDMENTS TO HOUSE BILL 1391

Page 1, line 8, after "10-19.1-20", insert "10-19.1-21,"

Page 5, line 17, overstrike "executed" and insert immediately thereafter "signed"

Page 6, after line 15, insert:

"(3) If a general partnership, then chapters 45-13 through 45-21;"

Page 6, line 16, replace "(3)" with "(4)"

Page 6, line 17, replace "(4)" with "(5)"

Page 6, line 18, replace "(5)" with "(6)"

Page 9, after line 28, insert:

"d. A general partnership, its partnership interests;"

Page 9, line 29, replace "d." with "e."

Page 9, line 30, replace "e." with "f."

Page 10, line 12, overstrike the second "the", and immediately thereafter, insert

"a corporation's", after "articles", insert "of incorporation or in a foreign corporation's certificate of authority"

Page 10, line 13, overstrike "of the corporation"

Page 14, line 22, after "any", insert "lawful"

Page 14, line 23, remove the overstrike over "business" and remove "lawful"

Page 22, after line 18, insert:

"SECTION 7. AMENDMENT. Section 10-19.1-21 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-21. Articles of amendment. When an amendment has been adopted, articles of amendment must be prepared that contain:

1. The name of the corporation.
 2. The amendment adopted.
 3. The date of the adoption of the amendment by the shareholders or by the incorporators or the board when no shares have been issued.
 4. ~~If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, or cancellation of issued shares, a statement of the manner in which it will be effected.~~
 5. If the amendment restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to them.
- 6.5. A statement that the amendment has been adopted pursuant to this chapter."

Page 34, line 26, replace "national association" with "National Association"

Page 34, line 17, replace "securities dealers, incorporated" with "Securities Dealers, Incorporated"

Page 37, line 2, overstrike "execute" and insert immediately thereafter "sign"

Page 40, remove line 16

Page 40, line 17, replace "(5)" with "(4)"

Page 40, line 18, replace "(6)" with "(5)"

Page 42, line 22, after "conversion", insert "without organization records"

Page 43, line 17, replace "a" with "the appropriate"

Page 43, line 25, after "partnership", insert "or a limited liability limited partnership, or is a managing partner in a limited liability partnership"

Page 46, line 23, after "corporation", insert "or foreign corporation"

Page 46, line 25, after "corporation", insert ", on the foreign corporation," and after "or", insert "on any"

Page 47, line 2, after "corporation", insert "or foreign corporation"

Page 47, line 4, after "corporation", insert "or foreign corporation"

Page 47, line 6, after "office", insert "if located in this state"

Page 47, line 12, after "office", insert "if located in this state", and after "corporation", insert "or foreign corporation"

Page 47, line 27, remove the overstrike over "~~registered~~" and remove "certified"

Page 47, line 28, after "corporation", insert "or foreign corporation"

Page 59, line 14, replace "executed" with "signed"

Page 59, line 19, replace "executed" with "signed"

Page 61, after "All", insert "annual"

Page 64, line 9, remove "or governed"

Page 65, line 12, overstrike "executed" and insert immediately thereafter "signed"

Page 66, after line 21, insert:

"(3) If a general partnership, then chapters 45-13 through 45-21;"

Page 66, line 22, replace "(3)" with "(4)"

Page 66, line 23, replace "(4)" with "(5)"

Page 66, line 24, replace "(5)" with "(6)"

Page 71, line 1, overstrike the second "the", and immediately thereafter, insert "a limited liability company's", after "articles", insert "of organization or a foreign limited liability company's certificate of authority"

Page 71, line 2, overstrike "of the limited liability company"

Page 83, line 28, after "partnership", insert "or a limited liability limited
partnership, or is a managing partner of a limited liability partnership"

Page 89, line 23, remove "as"

Page 99, line 15, after "liability", insert "company"

Page 99, line 28, replace "execute" with "sign"

Page 103, line 28, after "formed", insert "by two or more persons"

Page 104, remove line 4

Page 104, line 5, replace "(5)" with "(4)"

Page 104, line 6, replace "(6)" with "(5)"

Page 106, line 12, after "conversion", insert "without organizational records"

Page 107, line 7, replace "a" with "the appropriate"

Page 107, line 15, after "partnership", insert "or a limited liability limited
partnership, or is a managing partner of a limited liability partnership"

Page 110, line 18, after "company", insert "or foreign limited liability company"

Page 110, line 20, after "company", insert "on a foreign limited liability company,"
and after "or", insert "on a"

Page 110, line 29, after "company", insert "or foreign limited liability company"

Page 110, line 30, after "company", insert "or foreign limited liability company"

Page 110, line 31, after "company", insert "or foreign limited liability company"

Page 111, line 2, after "office", insert "if located in this state"

Page 111, line 6, after "office", insert "if located in this state" and after "company",
insert "or foreign limited liability company"

Page 111, line 9, after "company", insert "or foreign limited liability company"

Page 111, line 18, after "company", insert "or foreign limited liability company"

Page 111, line 24, remove the overstrike over "registered" and remove "certified"

Page 112, line 10, after "company", insert "or foreign limited liability company"

Page 119, line 21, after "its", insert "the"

Page 121, line 12, replace "executed" with "signed"

Page 121, line 17, replace "executed" with "signed"

Page 123, line 1, after "All", insert "annual"

Page 124, line 27, overstrike "executed" and insert immediately thereafter
"signed"

Page 128, line 25, overstrike the second "the" and immediately thereafter, insert
"a corporation's", and after "of", insert "incorporation or in"

Page 128, line 26, overstrike "corporation" and immediately thereafter, insert
"foreign corporation's certificate of authority", and overstrike "of the
corporation"

Page 130, line 4, after "merger", insert "and which"

Page 131, line 5, after "filed", insert "articles of dissolution"

Page 137, line 13, after "partnership", insert "or a limited liability limited
partnership, or is a managing partner of a limited liability partnership"

Page 142, line 8, after "corporation", insert "foreign corporation,"

Page 142, line 10, after "corporation", insert "foreign corporation,", and after or,
insert "on a"

Page 142, line 18, after "corporation", insert "or foreign corporation"

Page 142, line 19, after "corporation", insert "or foreign corporation"

Page 142, line 20, after "corporation", insert "or foreign corporation"

Page 142, line 22, after "office", insert "if located in this state"

Page 142, line 27, after "office", insert "if located in this state"

Page 143, line 6, after "office", insert "if located in this state"

Page 143, line 7, after "corporation", insert "or foreign corporation"

Page 143, line 14, after "corporation", insert "or foreign corporation"

Page 143, line 30, after "corporation", insert "or foreign corporation"

Page 153, line 7, replace "executed" with "signed"

Page 153, line 12, replace "executed" with "signed"

Page 157, line 17, overstrike "executed" and insert immediately thereafter

"signed"

Page 163, after line 4, insert:

"5. The provisions of this chapter related to electronic records and
electronic transactions do not limit or supersede any provision of
chapter 9-16."

Page 170, line 6, after "formed", insert "by two or more persons"

Page 170, remove line 15

Page 170, line 16, replace "(6)" with "(5)"

Page 170, line 17, replace "(7)" with "(6)"

Page 170, line 22, overstrike the second "limited", overstrike "created", and
immediately thereafter, insert "formed by two or more persons"

Page 170, line 23, after "jurisdiction", insert "and, having one or more general partners and one or more limited partners"

Page 174, line 21, after "conversion", insert "without organizational records"

Page 175, line 19, replace "a" with "the appropriate"

Page 175, line 29, after "partnership", insert "or a limited liability limited partnership, or is a managing partner of a limited liability partnership"

Page 181, line 11, after "must", insert "be accompanied by the plan of merger without organizational records, and must"

Page 182, line 1, overstrike "executed" and insert immediately thereafter "signed"

Page 184, line 12, after "formed", insert "by two or more persons"

Page 184, line 27, overstrike "executed" and insert immediately thereafter "signed"

Page 185, line 10, after "formed", insert "by two or more persons"

Page 186, line 21, remove the overstrike over "at the"

Page 186, line 29, after "receive", insert "notice"

Page 189, line 8, after "partnership", insert "or foreign limited liability partnership"

Page 194, line 3, after "partnership", insert "or foreign limited liability partnership."

Page 194, line 5, after "partnership", insert "or foreign limited liability partnership.", and immediately before "partner", insert "on a"

Page 194, line 11, after "partnership", insert "or foreign limited liability partnership"

Page 194, line 15, after "partnership", insert "or foreign limited liability partnership."

Page 194, line 17, remove the overstrike over "er" and after "en", insert "at the principal executive office if located in this state"

Page 194, line 22, after "partnership", insert "or foreign limited liability partnership"

Page 194, line 23, after "partnership", insert "or foreign limited liability partnership"

Page 195, line 1, after "partnership", insert "or foreign limited liability partnership."

Page 195, line 7, overstrike "certified" and immediately thereafter, insert "registered"

Page 195, line 8, after "partnership", insert "or foreign limited liability partnership.", and overstrike "limited liability partnership's"

Page 195, line 13, after "partnership", insert "or foreign limited liability partnership"

Page 195, line 16, after "partnership", insert "or foreign limited liability partnership"

Page 195, line 18, after "partnership", insert "or foreign limited liability partnership"

Page 195, line 24, after "partnership", insert "or foreign limited liability partnership"

Page 204, line 1, replace "executed" with "signed"

Page 204, line 6, replace "executed" with "signed"

Page 206, line 2, overstrike "executed" and insert immediately thereafter "signed"

Page 206, line 15, overstrike the last three words of the line "limited liability limited"

Page 206, line 16, after "formed", insert "by two or more persons"

Page 206, line 21, after "partnership", insert "under provisions similar to this chapter"

Page 206, line 25, overstrike the second "limited"

Page 206, line 26, after "formed", insert "by two or more persons"

Page 206, line 29, replace the first "limited" with "general" and, replace the second "limited" with "personal"

Page 206, line 30, remove "limited liability", and after "partnership", insert "under provisions similar to chapter 45-10.2"

Page 208, line 5, replace "an entity" with "a partnership formed by two or more persons"

Page 208, line 21, replace "an entity" with "a partnership"

Page 210, line 2, after "receive", insert "notice"

Page 212, line 2, after "partnership", insert "or foreign limited liability limited partnership"

Page 222, line 18, replace the first "or" with "of"

Renumber accordingly.

AA #1

**TESTIMONY OF WILLIAM L. GUY III, CHAIRMAN
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE
IN SUPPORT OF
HOUSE BILL NO. 1391**

Mr. Chairman and members of the Committee, I am here on behalf of a task force which, as in the past, has undertaken the drafting of housekeeping and technical legislation with respect to the various business entity statutes in the North Dakota Century Code. Accordingly, the task force has prepared the legislation that you have before you as House Bill No. 1391. This legislation updates certain sections of the chapters governing Business Corporations (Chapter 10-19.1) Limited Liability Companies (Chapter 10-32), Nonprofit Corporations (Chapter 10-33), General Partnerships (Chapters 45-13 through 45-21), Limited Liability Partnerships (Chapter 45-22) and Limited Liability Limited Partnerships (Chapter 45-23).

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

Finally, we have presented to the chair of your committee certain amendments which will be discussed by Clara Jenkins from the office of the Secretary of State at the end of my presentation.

As has been the case in years past, our objective is to make each of these chapters as user friendly as possible to the general public by keeping the format and as many defined terms as possible either identical to or parallel in each of the state's principal

business entities such as business corporations, nonprofit corporations, limited liability companies (LLC's), limited partnerships (LP's), limited liability partnerships (LLP's), limited liability limited partnerships (LLLLP's) and general partnerships (GP's).

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

For ease in reviewing this testimony, the modifications in each section will be identified as being either a "grammatical change", a "numerical change", a "technical clarification", or a "substantive change". All **substantive changes** have been highlighted in **bold type**. To expedite your review, I will focus on the substantive changes and technical clarifications. If there are any questions about any of the other changes, I would be happy to answer those questions at the end of my presentation.

Sections 1 through 44 (page 2 through 62) pertain to the North Dakota Business Corporation Act (Chapter 10-19.1).

Section 1 (beginning on page 2) is the definition section of the Business Corporation Act (Chapter 10-19.1)

In the past, the term "record" (which is defined in Subsection 43 on page 10) and the term "document" (which is not a defined term) were used interchangeably throughout Chapter 19.1.

Part of this year's legislation will convert the word "document" wherever it appears to the defined term "record".

Accordingly, that change is made in the definitions section of Chapter 10-19.1 and is deemed to be a grammatical change:

Subsections 6, 14, 15 and 30 are new defined terms and represent **substantive changes** which introduce new concepts to the Business Corporations Act.

"Ballot" (Subsection 6 on page 3) makes clear that the term includes either a written ballot or a ballot transmitted by electronic communication.

"Converted Organization" (Subsection 14 on page 4) means an organization into which a converting organization converts.

As you will see later on in this Bill, the concept of "conversion" is similar to that of merger and is the process which has occurred in the past when a general partnership becomes a limited liability partnership (LLP) in North Dakota by filing a registration with the Secretary of State or when a limited partnership (LP) becomes a limited liability limited partnership (LLLLP) in North Dakota by amending its certificate of limited partnership into a certificate of limited liability limited partnership.

However, the term "converted organization" excludes nonprofit corporations and general partnerships.

"Converting Organization" (Subsection 15 on page 4) means an organization that converts into another organization (a "converted organization") through the process of conversion.

"Governing Statute" (Subsection 30 on page 6) is:

The statute in the North Dakota Century Code by which a domestic organization is governed and includes:

- This Chapter for business corporations;
- Chapter 10-32 for limited liability companies (LLC's);
- Chapter 45-10.2 for limited partnerships (LP's);
- Chapter 45-22 for limited liability partnerships (LLP's);
- Chapter 45-23 for limited liability limited partnerships (LLLP's); and

With respect to foreign organizations, the counterpart statute of the foreign jurisdiction for the entity in question.

Subsection 27 (on page 6) is a **technical clarification** that makes clear that a foreign limited liability company need not be organized "... for profit. . ."

The definition of "knows" has been deleted because now Section 10-19.1-01.2 sets forth in much greater detail the meaning and requirements of this term.

Subsection 37 (on page 9) is a **technical clarification** of the term "organization" and deletes joint ventures, associations, business trusts, estate trusts and enterprises from that definition which will now include only those entities for which there is a governing statute (see Subsection 30 on page 6) under the North Dakota Century Code.

Subsection 40 (on page 9) is a **technical clarification** of the term "ownership interests" which has been expanded to include partnership interests as well as shares in a corporation and membership interests in an LLC.

Subsection 41 (on page 10) is a **technical clarification** which makes clear that the term "parent" includes foreign corporations and foreign limited liability companies as well as the domestic counterparts of these entities.

Subsection 53 (on page 11) is a grammatical change.

Subsection 55 (on page 12) is a **technical clarification** which makes clear that the surviving organization in a merger may preexist the merger or may be created by the merger.

Section 2 (on page 12) is a new section representing a **substantive change** which sets forth the requirements for "knowledge and "notice" and is the counterpart of similar sections that will be enacted in each of our other business entity chapters.

This section, which will be new to each of our business entity chapters, does an excellent job of summarizing when entities and those involved with entities are deemed to have knowledge and notice.

As you read through this section carefully, you will see that it is very straightforward but very detailed.

Section 4 (beginning on page 15):

In **Subsection 3** includes:

A **technical clarification** in **Subdivision j** of the fact that the consideration to be received for shares issued by a corporation is subject to the limitations of article XII of the North Dakota Constitution;

A **technical clarification** in **Subdivision m** which relates to the method of determining the voting power at a shareholder meeting;

A **technical clarification** in **Subdivision s** that a written action of the shareholders must be signed by all of them (unless provided otherwise in the articles of incorporation);

In **Subsection 4** includes:

A **technical clarification** in **Subsection j** that unless the board determines otherwise, the officers have the duties specified under the chapter.

A **technical clarification** in **Subdivision l** that the board may issue uncertificated shares.

Section 5 (beginning on page 18) is a series of **technical clarifications** of the requirements for the name of a corporation and is the counterpart of similar sections that will be enacted in each of our other business entity chapters.

Section 6 (beginning on page 21) is a **technical clarification** of the process for voting by class or by series in shareholder votes.

Section 7 (on page 22) is a grammatical change with respect to the term "record".

Section 8 (beginning on page 23) is a **technical clarification** of the requirements for the voting power necessary to elect a director and also again makes clear that cumulative voting of directors is provided for in article XII of the North Dakota Constitution.

Section 9 (beginning on page 23) is a **technical clarification** which makes clear that any notice of a board meeting can be given electronically to a director who has consented to notice in that form.

Section 10 (on page 24) is a grammatical change.

Section 11 (on page 25) is a grammatical change with respect to the term "record".

Section 12 (on page 25) is a **technical clarification** of the voting requirements for the adoption by the board of the articles of amendment of the articles of incorporation when effecting a division or combination of shares.

Section 13 (on page 25) is a **technical clarification** which makes clear that article XII of the North Dakota Constitution restricts the types of consideration which may be paid for shares in a corporation.

Section 14 (beginning on page 25) is a grammatical change with respect to the term "record".

Section 15 (on page 28) is a **technical clarification** of the voting requirements when shareholders are voting by class or by series of shares.

Section 16 (beginning on page 28) is a **substantive change** which provides:

that an amendment to the articles of incorporation that would allow written action by fewer than all of the shareholders requires the approval of all of the shareholders to that amendment; and,

that when written action is taken by fewer than all of the shareholders, all of the shareholders must be notified of its text within five days after the effective time of the action.

Section 17 (beginning on page 29) is:

a **technical clarification** of the fact that shareholder action may be taken by electronic ballot as well as by written ballot; and,

a **substantive change** with respect to how and when electronic ballots may be used.

Section 18 (beginning on page 30) is a grammatical change.

Section 19 (on page 31) consists of several grammatical changes.

Section 20 (beginning on page 31) again is a grammatical change with respect to the term "record".

Section 21 (on page 32) is:

a **technical clarification** dealing with the process by which the rights of dissenting shareholders are asserted; and,

a **substantive change** with respect to the addition of three circumstances under which those rights may be asserted.

Section 22 (beginning on page 33) is a **technical clarification** to the process of asserting dissenters' rights.

Section 23 (on page 36) is a **technical clarification** which adds the term "governor" of a limited liability company to the list of fiduciaries whose

activities are deemed to be encompassed in the defined term of "official capacity".

Section 24 (beginning on page 36) is a new section and is a **substantive change** which authorizes a continuance of corporate authority when action is necessary by an organization which has ceased to exist as the consequence of a merger.

Section 25 (on page 37) is a **technical clarification** which makes clear that the merger contemplated in this section includes a merger of a parent into a subsidiary.

Section 26 (on page 38) is a **technical clarification** of the circumstances under which shareholder approval will be or will not be required when a corporation sells, leases, transfers or otherwise disposes of substantially all of its property and assets.

Section 27 through 32 (beginning on page 38) are new sections representing a **substantive change** with respect to authorizing the process known as "conversion for business corporations".

Section 27 (beginning on page 38) contains the enabling language together with a series of definitions which are unique to the process of conversion including:

"**act of the board**" which includes actual meetings or written action by the board;

· **"act of the shareholders"** which includes actual meetings or written action by the shareholders

· **"certificate of creation"** refers to the certificate issued by the Secretary of State causing an organization to come into legal existence and is:

- the certificate of incorporation for a corporation;
- the certificate of organization for a limited liability company (LLC);;
- the certificate of limited partnership for a limited partnership (LP);
- the filed registration for a limited liability partnership (LLP); and,
- the certificate of limited liability limited partnership for a limited liability limited partnership (LLLP).

· **"date of origin"** means the date on which:

- a converting organization came into existence; or
- the converted organization is deemed to have come into existence.

· **"organizational record"** refer to the originating record of an organization and the documents that provide for its internal governance procedures and include:

- for a corporation, its articles of incorporation and bylaws;
- for a limited liability company (LLC), its articles of organization, operating agreement or bylaws and any member control agreement;
- for a limited partnership (LP), its limited partnership agreement;
- for a general partnership (GP), its partnership agreement;
- for a limited liability partnership, its partnership agreement; or
- for a limited liability limited partnership (LLLP), its partnership agreement.

"originating record" means the record in response to which the Secretary of State creates the existence of an organization by issuing its certificate of creation and is:

- for a corporation, its articles of incorporation;
- for a limited liability company (LLC), its articles of organization;
- for a limited partnership (LP), its certificate of limited partnership;
- for a limited liability partnership (LLP), its registration; or

for a limited liability limited partnership (LLLP), its certificate of limited liability limited partnership.

Section 28 (beginning on page 39) details the requirements for the plan of conversion.

Section 29 (beginning on page 41) provides for the process of plan approval and amendment.

Section 30 (on page 42) sets forth the requirements for the articles of conversion and the requirement that they then be filed with the Secretary of State.

Section 31 (beginning on page 43) provides the process for the abandonment of a proposed conversion.

Section 32 (beginning on page 44) provides for the effective date and the effect of conversion.

Section 33 (beginning on page 46) is a numbering change as a consequence of adding three defined terms to the definition section of this chapter.

Section 34 (on page 47) is a **technical clarification** of the procedure by which service of process on corporations, foreign corporations and non-resident directors is accomplished and is the counterpart to similar sections in the other business entity chapters.

Section 35 (beginning on page 47) is a grammatical change with respect to the term "record".

Section 36 (beginning in page 49) clarifies the fact that service of process on a foreign corporation is covered by the amendments made under Section 34 of this Bill.

Section 37 (on page 50) is a grammatical change and a **technical clarification** of the fact that the Secretary of State shall notify corporations which cease to be in good standing.

Section 38 (beginning on page 50) is a **substantive change** which amends the fee schedule of the office of the Secretary of State:

- by providing for the fees that will be charged for the filing articles of conversion; and
- by clarifying the fact that fees paid to the Secretary of State for filing an incomplete annual report will not be refunded if the corrected annual report is not eventually filed.

Section 39 (beginning on page 53) is a **technical clarification**:

- of the enforcement powers of the Secretary of State; and
- of the appeal process by corporations who have been administratively dissolved.

Section 40 (beginning on page 57) is a new section and is a **substantive change** setting forth:

- the process for the delivery to and filing of records by the Secretary of State; and
- the procedure for determining the effective date of those records.

Section 41 (beginning on page 59) is a new section and is a **substantive change** which sets out the process for correcting a record which has been filed with the Secretary of State and has been subsequently determined to contain inaccurate or erroneous information.

Sections, 42, 43 and 44 (beginning on page 60) contain grammatical changes with respect to the term "record".

Section 45 (on page 62) is a **technical clarification** which makes clear that ownership interest in professional organizations may be issued only to individuals (and not to other entities).

Sections 46 through 90 (pages 62 through 123) relate to the North Dakota Limited Liability Company Act (Chapter 10-32):

Section 46 (beginning on page 62) sets forth the amendments to the definition section of Chapter 10-32 and contains the same amended definitions as in Section 1 of this Bill which contains definitions under Chapter 10-19.1 except:

- the term "**acquiring organization**" contains several grammatical changes.
- the term "**corporation**" is amended in a **technical clarification** to refer to a corporation incorporated under Chapter 10-19.1.
- the term "**domestic corporation**" is deleted in a **technical clarification** (in favor of the term "corporation" above) in order that

these terms be consistent with their counterpart terms in the other business entity chapters.

Section 47 (beginning on page 63) is a new section and is a **substantive change** adding to Chapter 10-32 a "**knowledge**" and "**notice**" section which is identical to Section 2 of this Bill for business corporations, to Section 92 of this Bill for nonprofit corporations and in the new Limited Partnership Act.

Section 48 (beginning on page 74) is a **technical clarification** which relates to the method of determining the voting power at a member meeting and is the counterpart of the same corporate concept on Section 4 of this Bill.

Section 49 (beginning on page 77) is a **technical clarification** of requirements for the name of a limited liability company and is the counterpart to corresponding sections used in other business entity chapters, including Section 5 of this Bill for business corporations, to Section 94 of this Bill for nonprofit corporations, to Section 123 of this Bill for general partnerships, to Section 138 of this Bill for limited liability partnerships (LLPs), and to Section 148 of this Bill for limited liability limited partnerships (LLLPs).

Section 50 (beginning on page 80) is a **technical clarification** which deletes the word "**domestic**" with respect to the terms "**corporation**" and "**limited liability company**" as superfluous language.

Section 51 (on page 83) is a grammatical change.

Section 52 (on page 84) is a **technical clarification** of the process for voting by class or by series in a member vote and is the limited liability company counterpart of Section 6 of this Bill with respect to Chapter 10-19.1.

Section 53 (beginning on page 84) is a **substantive change** which requires a limited liability company that amends its name and is the owner of a trademark or trade name or is a general partner named in a fictitious name certificate or is a general partner in a limited partnership to change its name in each of those registrations when the limited liability company files the name changing amendment. This requirement causes the limited liability companies that amend the name to now be treated in the same manner as business corporations.

Section 54 (on page 85) is a grammatical change with respect to the term "record".

Section 55 (on page 85) is a **technical clarification** of the voting requirements when shareholders are voting by class or by series of interests and is the limited liability company counterpart of Section 15 of this Bill with respect to Chapter 10-19.1.

Section 56 (beginning on page 85) is the limited liability company counterpart to Section 16 of this Bill with respect to business corporations and is a **substantive change** which provides:

- that an amendment to the articles or organization or to the member control agreement that would allow written action by fewer than all of

the members requires the approval of all of the members to that amendment; and,

- that when written action is taken by fewer than all of the members, all of the members must be notified of its text within five days after the effective time of the action.

Section 57 (on page 87) is the limited liability company counterpart to Section 17 of this Bill for business corporations and is:

- a **technical clarification** of the fact that member action may be taken by electronic ballot as well as by written ballot; and,
- a **substantive change** with respect to how and when electronic ballots may be used.

Section 58 (beginning on page 87) is a grammatical change with respect to the term "record".

Section 59 (on page 88) is a **technical clarification** which deletes the word "domestic" with respect to limited liability companies organized under this chapter as superfluous language.

Section 60 (beginning on page 88) is the limited liability company counterpart for Section 21 of this Bill for business corporations and is:

- a **technical clarification** dealing with the process by which the rights of dissenting members are asserted; and,
- a **substantive change** with respect to the addition of three circumstances under which those rights may be asserted.

Section 61 (beginning on page 89) is a **technical clarification** of the process for asserting dissenters' rights and is the limited liability company counterpart to Section 22 of this Bill for business corporations.

Section 62 (on page 92) is a numbering change only.

Section 63 (beginning on page 92) is a **technical clarification** of the requirements for the voting power to elect a governor and is the limited liability company counterpart to Section 8 of this Bill for business corporations.

Section 64 (beginning on page 95) is a **technical clarification** which makes clear that any notice of a board meeting can be given electronically to a governor who has consented to notice in that form and is the limited liability company counterpart to Section 9 of this Bill for business corporations.

Section 65 (on page 96) is a grammatical change with respect to the term "record".

Sections 66, 67, 68 and 69 (beginning on page 96) involve grammatical changes only.

Section 70 (beginning on page 99) is a new section and is a **substantive change** which authorizes a continuance of limited liability company authority when action is necessary by an organization which has ceased to exist as a consequence of a merger and is the limited liability company counterpart of Section 24 of this Bill for business corporations.

Section 71 (on page 101) is a **technical clarification** that makes clear that the merger contemplated in this section includes a merger of a parent into a subsidiary and is the limited liability company counterpart of Section 25 of this Bill for business corporations.

Section 72 (beginning on page 101) is a **technical clarification** of the circumstances under which member approval will or will not be required when a limited liability company sells, leases, transfers or otherwise disposes of substantially all of its property and assets and is the limited liability company counterpart of Section 26 of this Bill for business corporations.

Sections 73 through 78 (on pages 102 through 110) are new sections representing a **substantive change** with respect to the process known as "conversion" for limited liability companies and are the limited liability company counterparts to Sections 27 through 32 of this Bill for business corporations.

Section 79 (beginning on page 110) is a numbering change only.

Section 80 (on page 111) is a **technical clarification** of the procedure by which service of process on limited liability companies, foreign limited liability companies and non-resident governors is accomplished and is the limited liability company counterpart to Section 80 of this Bill for business corporations.

Section 81 (beginning on page 112) is a grammatical change with respect to the term "record".

Section 82 (on page 114) is the is the limited liability company counterpart of Section 36 of this Bill for business corporations and is a **technical clarification** which makes clear that the service of process on a foreign limited liability company is to be handled pursuant to Section 80 of this Bill.

Section 83 (on page 114) involves a numbering change.

Section 84 (beginning on page 115) is the limited liability company counterpart of Section 38 of this Bill for business corporations and is a **substantive change** which amends the fee schedule of the office of the Secretary of State:

- by providing for the fees that will be changed for filing articles of conversion; and,
- by clarifying the fact that fees paid to the Secretary of State for the filing of an incomplete annual report will not be refunded if the corrected annual report is not eventually filed.

Section 85 (beginning on page 117) is the limited liability company counterpart of Section 39 of this Bill for business corporations and is a **technical clarification**:

- of the enforcement powers of the Secretary of State; and,
- of the appeal process by a limited liability company who have been administratively dissolved.

Section 86 (beginning on page 119) is the limited liability company counterpart of Section 40 of this Bill for business corporations and is a new section which is a **substantive change** setting forth:

- the process for the delivery to and filing of records by the Secretary of State; and,
- the procedure for determining the effective date of those records.

Section 87 (beginning on page 122) is a new section and is a **substantive change** which provides for the process of correcting a record which has been filed with the Secretary of State and has been subsequently determined to contain inaccurate or erroneous information and is the limited liability company counterpart of Section 41 of this Bill for business corporations.

Sections, 88, 89 and 90 (on pages 122 through 124) are grammatical changes with respect to the term "record".

Sections 91 through 119 (pages 124 through 156) relate to the North Dakota Nonprofit Corporation Act (Chapter 10-33):

Section 91 (on page 124) sets forth the amendments to the definition section of Chapter 10-33 and contains the same amended definitions as in Section 1 of this Bill for business corporations and in Section 46 of this Bill for limited liability companies except that several changes which relate to business corporations and limited liability companies only are omitted.

Section 92 (beginning on page 124) is a new section and is a **substantive change** adding a Chapter 10-33 "knowledge" and "notice" section which is

identical to Section 2 of this Bill for business corporations and to Section 47 of this Bill for limited liability companies.

Section 93 (beginning on page 132) is a **technical clarification** that a written action of the shareholders must be signed by all of them (unless provided otherwise in the articles of incorporation).

Section 94 (on page 134) is a **technical clarification** of the requirements for a nonprofit corporation name and is the counterpart of Section 5 of this Bill for business corporations and of Section 49 of this Bill for limited liability companies.

Sections 95 and 96 (beginning on page 134) are grammatical changes.

Section 97 (on page 138) is a **substantive change** which requires a nonprofit corporation that amends its name and is the owner of a trademark or trade name or is a general partner in a fictitious name certificate or is a general partner in a limited partnership to change its name in each of those registrations when the nonprofit corporation files the name changing amendment and is the nonprofit corporation counterpart of Section 53 of this Bill for limited liability companies, to Section 9 of this Bill for business corporations, and to Section 64 of this Bill for limited liability companies.

Section 98 (beginning on page 138) is a grammatical change with respect to the term "record".

Section 99 (on page 139) a **technical clarification** which clarifies the relationship of article XII of the North Dakota Constitution to cumulative voting for directors in nonprofit corporations.

Section 100 (on page 139) is a **technical clarification** which makes clear that any notice to a board meeting can be given electronically to a director who has consented to notice in that form and is the nonprofit corporation counterpart to Section 9 of this Bill for business corporations .

Section 101 (beginning on page 139) is a **technical clarification** to the citation to Section 501(c)(3) of the Internal Revenue Code.

Section 102 (on page 140) is a grammatical change with respect to the term "record".

Section 103 (beginning on page 140) is a **technical clarification** of the votes required by the members in the election of directors as well as two grammatical changes.

Section 104 (on page 141) is a **substantive change** which is the nonprofit corporation counterpart of Section 16 of this Bill for business corporations and Section 56 of this Bill for limited liability companies and which makes clear:

- that an amendment to the articles of incorporation that would allow for written action by fewer than all of the members requires the approval of all of the members to that amendment; and,

- that when written action is taken by fewer than all of the members, all of the members must be notified of its text within five days after the effective time of action.

Section 105 (beginning on page 141) is the nonprofit corporation counterpart to Section 17 of this Bill for business corporations and to Section 57 of this Bill for liability companies and is:

- a **technical clarification** of the fact that member action may be taken by electronic ballot as well as by written ballot; and,
- a **substantive change** with respect to how and when electronic ballots may be used.

Section 106 (beginning on page 141) is a grammatical change with respect to the term "record".

Section 107 (on page 143) is a **technical clarification** of the procedure by which service of process on nonprofit corporations, foreign nonprofit corporations and non-resident directors is accomplished and is the counterpart of Section 34 of this Bill for business corporations and Section 80 of this Bill for limited liability companies.

Sections 108 and 109 (beginning on page 143) contain grammatical changes with respect to the term "record".

Section 110 (on page 146) is a **technical clarification** of the fact that service of process on a foreign corporation is covered by the amendments made under Section 107 of this Bill and is the nonprofit corporation

counterpart of Section 36 of this Bill for business corporations and of Section 82 of this Bill for limited liability companies.

Section 111 (beginning on page 146) contain grammatical changes only.

Section 112 (beginning on page 147) is a **substantive change** which amends the nonprofit corporation act counterpart of Section 38 of this Bill for business corporations and Section 84 of this Bill for limited liability companies and is a **substantive change** which amends the fee schedule of the office of the Secretary of State to provide that the fees paid to the Secretary of State for the filing of an incomplete annual report will not be refunded if the corrected annual report is not eventually filed and is the nonprofit corporation act counterpart of Section 38 of this Bill for business corporations and of Section 84 of this Bill for limited liability companies.

Section 113 (beginning on page 149) is the nonprofit corporation act counterpart of Section 39 of this Bill for business corporations and Section 85 of this Bill for limited liability companies and is a **technical clarification**:

- of the enforcement powers of the Secretary of State; and,
- of the appeal process by nonprofit corporations who have been administratively dissolved.

Section 114 (beginning on page 151) is the nonprofit corporation act counterpart of Section 40 of this Bill for business corporations and Section 86 of this Bill for limited liability companies and is a new section which is a **substantive change** setting forth:

- the process for the delivery to and filing of records by the Secretary of State; and,
- the procedure for determining the effective date of those records.

Section 115 (on page 154) is a new section which is a **substantive change** which provides for the process of correcting a record which has been filed with the Secretary of State and which has been subsequently determined to contain inaccurate or erroneous information and is the nonprofit corporation act counterpart to Section 41 of this Bill for business corporations and to Section 87 of this Bill for limited liability companies.

Sections 116, 117, 118 and 119 (beginning on page 154) contain grammatical changes with respect to the term "record".

Sections 120 through 136 (on pages 156 through 184) relate to North Dakota general partnerships (Chapters 45-13 through 45-21):

Section 120 (beginning on page 156) sets forth the amendments to the definitions section of Chapter 45-13 and contains substantially the same amended definitions as in Section 1 of this Bill for business corporations and in Section 46 of this Bill for limited liability companies

Section 121 (beginning on page 158) is a **substantive change** which inserts language regarding the legal recognition of electronic records and electronic signatures and is the counterpart to identical provisions which have been a part of each of the other business entity chapters for several years.

Section 122 (on page 164) is a **technical clarification** to the "*knowledge*"

and "**notice**" section that has previously resided in Chapter 45-13 and is the general partnership counterpart Section 2 of this Bill for business corporations, to Section 47 of this Bill for limited liability companies, and to Section 92 of this Bill of this for nonprofit corporations.

Section 123 (beginning on page 164) is a **technical clarification** of the requirements of the name for a general partnership and is the general partnership counterpart of Section 5 of this Bill for business corporations, to Section 49 of this Bill for limited liability companies and to Section 94 of this Bill for nonprofit corporations.

Section 124 (beginning on page 166) is a grammatical change.

Section 125 (on page 169) is a **technical clarification** of the already existing fees for the conversion of general partnerships and is the general partnership counterpart to Section 38 of this Bill for business corporations, to Section 84 of this Bill for limited liability companies and to Section 112 of this Bill for nonprofit corporations.

Section 126 (beginning on page 169) is a **substantive change** introducing the concept of "conversion" and is the general partnership counterpart to Sections 27 through 32 of this Bill or business corporations, and to Sections 73 through 78 of this Bill for limited liability companies.

Sections 133 through 136 (beginning on page 178) are **technical clarifications** of the existing provisions for the merger of general

partnerships into other organizations and are the counterparts to corresponding sections used in our other business entity chapters.

Sections 137 through 145 (on pages 184-205) relate to the North Dakota Limited Liability Partnership Act (Chapter 45-22):

Section 137 (beginning on page 184) sets forth amendments to the definitions section of Chapter 45-22 and contains the same amended definitions as in Section 1 of this Bill for business corporations and in Section 46 of this Bill for limited liability companies except for grammatical changes to several definitions which are unique to limited liability partnerships.

Section 138 (beginning on page 185) is a series of **technical clarifications** of the requirements for the name of a limited liability partnership (LLP) and is the limited liability partnership counterpart to Section 5 of this Bill for business corporations, Section to Section 49 of this Bill for limited liability companies and to Section 94 of this Bill for nonprofit corporations.

Section 139 (beginning on page 191) contains several grammatical changes.

Section 140 (on page 195) is a **technical clarification** of the procedure by which service of process on limited liability partnerships, foreign limited liability limited partnerships and on non-resident partners is accomplished and is the limited liability partnership counterpart to Section 35 of this Bill for business corporations, to Section 80 of this Bill for limited liability companies and to Section 107 of this Bill for nonprofit corporations.

Section 141 (beginning on page 195) contains several grammatical changes.

Section 142 (beginning on page 198) is a **technical clarification** of the fact that fees paid to the Secretary of State for the filing of an incomplete report will not be refunded if the corrected annual report is not eventually filed and is the limited liability partnership counterpart to Section 38 of this Bill for business corporations, to Section 84 of this Bill limited liability companies and to Section 125 of this Bill for nonprofit corporations.

Section 143 (beginning on page 200) is the limited liability partnership counterpart to Section 39 of this Bill for business corporations, to Section 85 of this Bill for limited liability companies and to Section 113 of this Bill for nonprofit corporations and is a **technical clarification**:

- of enforcement powers of the Secretary of State; and,
- of the appeal process by limited liability partnerships who have been administratively dissolved.

Section 144 (beginning on page 202) is the limited liability partnership counterpart to Section 44 of this Bill for business corporations, to Section 86 of this Bill for limited liability companies and to Section 114 of this Bill for nonprofit corporations and is a new section which is a **substantive change** setting forth:

- the process for the delivery to and filing of records by the Secretary of State; and,
- the procedure for determining the effective date of those records.

Section 145 (beginning on page 204) is a new section which is a **substantive change** which provides for the process of correcting a record which has been filed with the Secretary of State and has subsequently been determined to contain inaccurate or erroneous information and is the limited liability partnership counterpart to Section 41 of this Bill for business corporations, to Section 87 of this Bill for limited liability companies, and to Section 115 of this Bill for nonprofit corporations.

Sections 146 through 154 (pages 205 through 224) relate to the North Dakota Limited Liability Limited Partnership Act (Chapter 45-23):

Section 146 (beginning on page 205) sets for the amendments to the definitions section of Chapter 45-23 and is the limited liability limited partnership (LLLP) counterpart to Section 1 of this Bill for business corporations and to Section 46 of this Bill for limited liability companies.

Section 147 (beginning on page 207) is a **technical clarification** which changes several chapter references from "45-10.1" to "45-10.2".

Section 148 (beginning on page 214) is a series of **technical clarifications** of the requirements for the name of a limited liability limited partnership and is the limited liability limited partnership counterpart to Section 5 of this Bill for business corporations, to Section 49 of this Bill for limited liability companies, to Section 95 of this Bill for nonprofit corporations, to Section 123 for general partnerships and to Section 138 of this Bill for limited liability partnerships.

Section 149 (beginning on page 215) is a **technical clarification** of the process for converting a limited partnership to a limited liability limited partnership and for converting from a limited liability limited partnership to a limited partnership.

Section 150 (beginning on page 218) contains a series of grammatical changes.

Section 151 (on page 221) contains a numbering change only.

Section 152 (on page 221) is a **technical clarification** clarifying the status of foreign limited liability limited partnerships.

Section 153 (beginning on page 221) is the limited liability limited partnership counterpart to Section 38 of this Bill for business corporations, to Section 84 of this Bill for limited liability companies, to Section 112 of this Bill for nonprofit corporations, to Section 125 of this Bill for general partnerships and to Section 142 for limited liability partnerships and is a **substantive change** which amends the fee schedule of the office of the Secretary of State:

- by providing for the fees that will be charged for filing articles of conversion; and,
- by clarifying the fact that fees paid to the Secretary of State for the filing of an incomplete annual report will not be refunded if the corrected annual report is not eventually filed.

Section 154 (beginning on page 222) is a grammatical change with respect to the term "record".

Section 155 (beginning on page 224) repeals Section 45-22-01.1 pertaining to electronic records and signatures in Chapter 45-22 since this section is unnecessary due to the fact that Section 45-22 stands on the shoulders of Chapters 45-13 through 45-21.

As you can see, the legislation embodied in this Bill introduces the concepts of conversion and document correction and further integrates and refines other key elements of our existing business and nonprofit entity statutes with each other. I appreciate the opportunity to address your Committee. If you have any questions, I will be happy to answer them.

ALVIN A. JAEGER
SECRETARY OF STATE

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March 9, 2005

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TO: Senator Traynor, Chairman,
and Members of the Senate Judiciary Committee

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

RE: Amendments to Engrossed HB 1391 -- Business Organizations

At the request of the Legislative Council, several segments of the attached amendments are offered in order to conform the bill to the correct syntax as it pertains to the definition of "person" in the Century Code.

In 1-01-49(8), person means "an individual, organization, government, political subdivision, or government agency or instrumentality."

Since it is generally understood that the use of the pronoun "who" refers to an individual, it is more accurate to use "that" instead of "who" in the context of the identified sections.

The remaining segments of the amendments are to correct inadvertent omissions, incorrect terminology, and typographical errors discovered since the House passed the bill.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1391

Page 11, line 24, overstrike "who" and insert immediately thereafter "that"

Page 16, line 11, replace "19-19.1-39" with "10-19.1-39"

Page 47, line 4, remove "limited"

Page 47, line 5, replace the first "partnership" with "corporation" and replace
"limited partnership" with "corporation"

Page 48, line 20, overstrike "a person" and insert immediately thereafter "an
individual"

Page 52, line 5, overstrike "who" and insert immediately thereafter "that"

Page 58, line 15, overstrike "who" and insert immediately thereafter "that"

Page 60, line 28, replace "who" with "that"

Page 76, line 14, after "a", insert "member who is not a"

Page 83, line 17, replace "restating" with "reinstating"

Page 88, line 25, overstrike "who" and insert immediately thereafter "that"

Page 120, line 23, overstrike "who" and insert immediately thereafter "that"

Page 122, line 15, replace "who" with "that"

Page 123, line 9, replace "who" with "that"

Page 140, line 13, overstrike "who" and insert immediately thereafter "that"

Page 142, line 19, replace "Shareholder" with "Member"

Page 144, line 27, overstrike "person" and insert immediately thereafter
"individual"

Page 152, line, 23, overstrike "who" and insert immediately thereafter "that"

Page 154, line 10, replace "who" with "that"

Page 155, line 4, replace "who" with "that"

Page 158, line 20, overstrike "who" and insert immediately thereafter "that"

Page 203, line 22, overstrike "who" and insert immediately thereafter "that"

Page 205, line 8, replace "who" with "that"

Page 206, line 7, replace "who" with "that"

Renumber accordingly

pg. 146, line 3 "record" - delete underscored word.