

2009 HOUSE JUDICIARY

HB 1298

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1298

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/28/09

Recorder Job Number: 7962

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will open the hearing on HB 1298.

**Al Jaeger, Secretary of State:** Sponsor, support (attachment).

**Chairman DeKrey:** Thank you. Further testimony in support.

**William L. Guy, ND Business Entity Drafting Task Force:** Support (two attachments).

**Rep. Klemin:** Was the Non-profit Limited Liability Company Act that's being created in here; this is an entirely new chapter, is that something was created here in ND or was it a derivative of something done in another state.

**William L. Guy:** It is a derivative of legislation from Minnesota. It may have been done in other states as well. It is to be used only as a holding company, to be a subsidiary of a non-profit corporation and would hold assets or real estate, things of that nature, that they would want to keep separate from liabilities going under the corporation itself.

**Rep. Kretschmar:** Does this provide a penalty, where in the bill is that found.

**Clara Jenkins, Secretary of State:** There is a \$5 penalty, found on page 74 under the NPLLC.

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

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1298

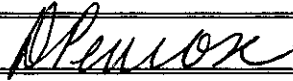
House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/28/09

Recorder Job Number: 7978

Committee Clerk Signature



Minutes:

**Chairman DeKrey:** We will take a look at HB 1298. What are the committee's wishes.

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

**Rep. Kingsbury:** Second.

**Chairman DeKrey:** Voice vote. Motion carried. We now have the bill before us as amended.

What are the committee's wishes.

**Rep. Delmore:** I move a Do Pass as amended.

**Rep. Wolf:** Second.

12 YES 0 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Kretschmar

**FISCAL NOTE**  
**Requested by Legislative Council**  
03/02/2009

Amendment to:      Engrossed  
                              HB 1298

**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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$1,000	\$0	\$1,000	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

The bill allows for the creation of a nonprofit limited liability company for which a fee is assessed, as with other business registrations.

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

Same as 2A.

The amendments being added by the Senate will not made a significant difference up or down in either revenue and expenditures because of offsetting efficiencies and revenue being created through other means.

**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.*

It is anticipated that this business entity option will have limited use.

**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.*

It will be part of normal office processing.

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

None

<b>Name:</b>	Al Jaeger	<b>Agency:</b>	Secretary of State
<b>Phone Number:</b>	328-2900	<b>Date Prepared:</b>	03/02/2009

**FISCAL NOTE**  
**Requested by Legislative Council**  
02/02/2009

Amendment to: HB 1298

**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.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
<b>Revenues</b>	\$0	\$0	\$1,000	\$0	\$1,000	\$0
<b>Expenditures</b>	\$0	\$0	\$0	\$0	\$0	\$0
<b>Appropriations</b>	\$0	\$0	\$0	\$0	\$0	\$0

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

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

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

The bill allows for the creation of a nonprofit limited liability company for which a fee is assessed, as with other business registrations.

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

Same as 2A.

**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.*

It is anticipated that this business entity option will have limited use.

**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.*

It will be part of normal office processing.

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

None

<b>Name:</b>	Al Jaeger	<b>Agency:</b>	Secretary of State
<b>Phone Number:</b>	328-2900	<b>Date Prepared:</b>	02/02/2009

VJR  
1/28/09

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1298

Page 40, line 17, replace "designed" with "designated"

Page 47, line 3, after "members" insert an underscored comma

Page 69, line 27, replace "If" with "In"

Page 70, line 22, replace "incorporated" with "organized"

Page 71, line 8, remove "subsection 34 of"

Page 71, line 10, remove "of the number"

Page 71, line 29, replace "corporation" with "nonprofit limited liability company or foreign nonprofit limited liability company"

Page 72, line 17, replace "corporation" with "nonprofit limited liability company"

Page 74, line 5, replace "fifty" with "forty"

Page 74, line 19, replace "corporation" with "nonprofit limited liability company"

Page 74, line 20, replace "corporation" with "nonprofit limited liability company"

Page 76, line 23, replace "corporation" with "nonprofit limited liability company"

Page 76, line 24, replace "corporation" with "nonprofit limited liability company"

Page 79, line 10, replace "designed" with "designated"

Renumber accordingly

Date: 1/28/09  
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1298

**HOUSE JUDICIARY COMMITTEE**

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Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ DP ☐ DNP ☒ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Delmore Seconded By Rep. Kingsbury

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser		
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 12 No 0

Absent 1

Floor Carrier: Rep. Kretschmar

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

**REPORT OF STANDING COMMITTEE**

**HB 1298: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1298 was placed on the Sixth order on the calendar.

Page 40, line 17, replace "designed" with "designated"

Page 47, line 3, after "members" insert an underscored comma

Page 69, line 27, replace "If" with "In"

Page 70, line 22, replace "incorporated" with "organized"

Page 71, line 8, remove "subsection 34 of"

Page 71, line 10, remove "of the number"

Page 71, line 29, replace "corporation" with "nonprofit limited liability company or foreign nonprofit limited liability company"

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Page 76, line 23, replace "corporation" with "nonprofit limited liability company"

Page 76, line 24, replace "corporation" with "nonprofit limited liability company"

Page 79, line 10, replace "designed" with "designated"

Renumber accordingly



2009 SENATE JUDICIARY

HB 1298

## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1298

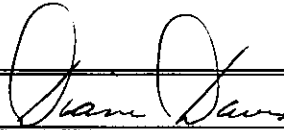
Senate Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 2/16/09

Recorder Job Number: 9555

Committee Clerk Signature



Minutes: **Senator Nething, Chairman**

### **Relating to limited liability companies**

**Al Jaeger** – Secretary of State – See written testimony. Requests amendments. See attachment.

**Senator Nething** – Mentions 2 years ago new legislation was adopted that created a new option available for incorporating ND. Where is this on the list you have.

**Jaeger** – He replies they are not there yet but they are coming. It is the Publicly Traded Corporation Act. At this point what happens at the national level is a time issue. When it does come it will have a separate category.

**William Guy III** – ND Business Entity Drafting Task Force – In support of – See written testimony.

**Senator Olafson** – Asks about the limited liability act pertaining to farm and ranch. Why is it specific to those business as compared to other businesses?

**Clara Jenkins** – Director of Business Systems and Programs for the Sec. of State. –

Responds the limited liability partnerships were required two sessions ago to disclose the

names of all partners in the event they were engaged in farming. They put it on the renewal

part of the registration. They did not put it on the original and that is what this does. This gives

them justification asking for all the names of the partners to make sure if any of them are corporations or limited liability companies that they are established under 10.06.1, which is the ND Farming Act.

**Senator Nething** – Asks if this is an alternate to come under the corporate structure.

**Jenkins** – Said yes, a lot of them can't accommodate the Corporate Farm Act. They come under the LLP statute but if there are entities that are partners within that they have to be created under 10.06.1

**Senator Fiebiger** – Asks Mr. Guy about page 9, is the notice of time kind of vague.

**Guy** – The language is question pertains to the Business Corporation Act and is also utilized in the other statutes that have the notice provision. It allows UPS and Fed X, for notice to be given at the time of deposit like it is for the US mail.

**Senator Fiebiger** – Asks about remote communication, does this include a texted response.

**Guy** – Replies, yes, it says such means by which a person is not physically present at the same location may communicate with each other on a substantially basis.

**Senator Fiebiger** – Asks about checks and balances.

**Guy** – Said this language is not new. Page 25 talks about proxies and revocation.

**Senator Olafson** – Asks if this would be advantageous to non-profits.

**Guy** – Yes, nonprofit LLC's are always a subsidiary of a non-profit corporation.

**Senator Nething** – Asks him about the amendment offered.

**Guy** – Says he has no problem with the amendments.

**Jaeger** – Amendments change it to a 50 center per page fee. Also put in service mark. He thinks this will clean the process up.

**Senator Schneider** – Asks what the difference between a trademark and a service mark are.

**Guy** – States, Coke is a trademark, Microsoft is a service mark because they offer a service.

**Senator Nelson** – What is a trade name.

**Jenkins** – Said service marks were adopted in the 2003 legislative session, when we treat service marks in the same manner as we do trademarks, they may open themselves up to arguments over what someone has. This makes sure it treats them both the same way.

Service marks define a service. Trademark is like Coke or Campbell's Soup.

**Senator Nething** – Asks what is the difference between that and a logo.

**Jenkins** – Same thing, it is usually a mark printed on the package or product. You can't package a service.

**Senator Nething** – Asks Mr. Guy what his group is.

**Guy** – Said it's a task force started in 1983 when they did the Business Corporation Act. It has slowly diminished in size. Their work is supported by the Bar Association but they are not an entity of it.

Hearing Closed

**Senator Nelson** moves the amendments

**Senator Olafson** seconds

Verbal pass, all yes

**Senator Olafson** moves do pass as amended

**Senator Fiebiger** seconds

Vote – 6-0

**Senator Olafson** will carry

Date: 4/16  
Roll Call Vote #: 1

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1298

Senate JUDICIARY Committee

☐ Check here for Conference Committee

*amendments*

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☐ Do Pass ☐ Do Not Pass ☐ Amended

Motion Made By Sen Nelson Seconded By Sen Schneider

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman			Sen. Tom Fiebiger		
Sen. Curtis Olafson – V. Chair.			Sen. Carolyn Nelson		
Sen. Stanley W. Lyson			Sen. Mac Schneider		

Total (Yes) \_\_\_\_\_ (N) \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Verbal - yes*

Date: 4/16/09  
Roll Call Vote #: 2  
1298

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO.

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ Amended

Motion Made By Sen. Olafson Seconded By Sen. Lyson

Senators	Yes	No	Senators	Yes	No
Sen. Dave Nething – Chairman	X		Sen. Tom Fiebiger	X	
Sen. Curtis Olafson – V. Chair.	X		Sen. Carolyn Nelson	X	
Sen. Stanley W. Lyson	X		Sen. Mac Schneider	X	

Total (Yes) 6 (N) 0

Absent \_\_\_\_\_

Floor Assignment Sen. Nelson

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

**REPORT OF STANDING COMMITTEE**

**HB 1298, as engrossed: Judiciary Committee (Sen. Nething, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1298 was placed on the Sixth order on the calendar.**

Page 1, line 5, after "reenact" insert "subsection 2 of section 10-01.1-03," after the second comma insert "subsection 5 of section 10-15-38," after "sections" insert "10-15-52.3," and after "10-19.1-01" insert a comma

Page 1, line 6, remove "and" and after the first comma insert "and 10-19.1-23,"

Page 1, line 8, after the third comma insert "subsection 3 of section 10-19.1-104.4,"

Page 1, line 9, replace the first comma with "and", replace "and" with "subsection 2 of section 10-19.1-137, section", and after the third comma insert "subsection 26 of section 10-19.1-147,"

Page 1, line 10, replace the second "section" with "sections" and replace the fifth comma with "and 10-32-20,"

Page 1, line 13, after the second comma insert "subsection 3 of section 10-32-108.4,"

Page 1, line 14, after the first comma insert "subsection 3 of section 10-32-140," and after the second comma insert "section 10-32-150,"

Page 1, line 15, replace the first "section" with "sections" and replace the second comma with "and 10-33-18,"

Page 1, line 16, after the third comma insert "section 10-33-130,"

Page 1, line 17, after the first comma insert "subsection 2 of section 10-33-140,"

Page 1, line 18, after the second comma insert "subsection 8 of section 45-10.2-24,"

Page 1, line 19, after the first comma insert "subsection 2 of section 45-10.2-81, subsection 3 of section 45-10.2-97, subsection 26 of section 45-10.2-109,"

Page 1, line 20, after the second comma insert "subsection 2 of section 45-22-22,"

Page 1, line 21, remove the first "and" and after "45-23-01" insert ", and subsection 26 of section 45-23-08"

Page 2, after line 1, insert:

**"SECTION 1. AMENDMENT.** Subsection 2 of section 10-01.1-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state shall collect the following fees for copying and certifying a copy of any document filed under this chapter:

- a. ~~One dollar for every four pages, or fraction thereof,~~ The fee provided in section 54-09-04 for copying a record;
- b. Fifteen dollars for furnishing a certificate; and

- c. Five dollars for a search of records when supplying copies, certification, or written verification of facts."

Page 3, after line 16, insert:

**"SECTION 4. AMENDMENT.** Subsection 5 of section 10-15-38 of the North Dakota Century Code is amended and reenacted as follows:

5. A cooperative that amends its name and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an amendment.

**SECTION 5. AMENDMENT.** Section 10-15-52.3 of the North Dakota Century Code is amended and reenacted as follows:

**10-15-52.3. Amended certificate of authority.** A foreign cooperative authorized to transact business in this state must procure an amended certificate of authority if it changes its cooperative name or desires to pursue in this state purposes other than those set forth in its prior application for a certificate of authority by making application to the secretary of state.

The requirements in respect to the application and the issuance of an amended certificate of authority and the effect thereof are the same as an original application for a certificate of authority.

In addition, an application must be accompanied by a certificate of fact of amendment duly authenticated by the proper officer of the state or country where the cooperative is incorporated.

A foreign cooperative which amends its name and applies for an amended certificate of authority, and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an application for an amended certificate of authority."

Page 20, after line 26, insert:

**"SECTION 8. AMENDMENT.** Section 10-19.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-23. Filing articles of amendment.** An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law and all fees have been paid as provided under section 10-19.1-147, the articles of amendment must be recorded in the office of the secretary of state. A corporation that amends the corporate name and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the corporation's name in each registration when the corporation files an amendment."

Page 28, after line 15, insert:



**"SECTION 17. AMENDMENT.** Subsection 3 of section 10-19.1-104.4 of the North Dakota Century Code is amended and reenacted as follows:

3. A converting organization that is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion."

Page 29, after line 16, insert:

**"SECTION 21. AMENDMENT.** Subsection 2 of section 10-19.1-137 of the North Dakota Century Code is amended and reenacted as follows:

2. A foreign corporation that changes the foreign corporation's name and applies for an amended certificate of authority, and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the foreign corporation's name in each of the foregoing registrations that is applicable when the foreign corporation files an application for an amended certificate of authority."

Page 32, after line 25, insert:

**"SECTION 23. AMENDMENT.** Subsection 26 of section 10-19.1-147 of the North Dakota Century Code is amended and reenacted as follows:

26. Furnishing a certified copy of any record, instrument, or paper relating to a corporation, ~~one dollar for every four pages or fraction~~ the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal thereto."

Page 47, after line 10, insert:

**"SECTION 30. AMENDMENT.** Section 10-32-20 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-20. Filing of articles of amendment.** An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in section 10-32-150, then the articles of amendment must be recorded in the office of the secretary of state. A limited liability company that amends its name and which is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the limited liability company's name in each registration when the limited liability company files an amendment."

Page 53, after line 30, insert:

**"SECTION 38. AMENDMENT.** Subsection 3 of section 10-32-108.4 of the North Dakota Century Code is amended and reenacted as follows:

3. A converting organization that is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion."

Page 56, after line 28, insert:

**"SECTION 43. AMENDMENT.** Subsection 3 of section 10-32-140 of the North Dakota Century Code is amended and reenacted as follows:

3. A foreign limited liability company that changes the foreign limited liability company's name and applies for an amended certificate of authority and that is the owner of a service mark, trademark, or trade name, a general partner named in a fictitious name certificate, a general partner in a limited partnership or a limited liability limited partnership, or a managing partner in a limited liability partnership that is on file with the secretary of state shall change the foreign limited liability company's name in each of the foregoing registrations which is applicable when the foreign limited liability company files an application for an amended certificate of authority."

Page 57, after line 24, insert:

**"SECTION 45. AMENDMENT.** Section 10-32-150 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-150. Secretary of state - Fees and charges.** The secretary of state shall charge and collect for:

1. Filing articles of organization and issuing a certificate of organization, one hundred thirty-five dollars.
2. Filing articles of amendment, fifty dollars.
3. Filing articles of correction, fifty dollars.
4. Filing restated articles of organization, one hundred twenty-five dollars.
5. Filing articles of conversion of a limited liability company, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.
7. Filing articles of merger and issuing a certificate of merger, fifty dollars.

8. Filing abandonment of merger or exchange, fifty dollars.
9. Filing an application to reserve a name, ten dollars.
10. Filing a notice of transfer of a reserved name, ten dollars.
11. Filing a cancellation of reserved name, ten dollars.
12. Filing a consent to use of name, ten dollars.
13. Filing a statement of change of address of registered office or change of registered agent or both, or a statement of change of address of registered office by registered agent, the fee provided in section 10-01.1-03.
14. Filing a resolution for the establishment of a class or series of membership interests, fifty dollars.
15. Filing a notice of dissolution, ten dollars.
16. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
17. Filing articles of dissolution and termination, twenty dollars.
18. Filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred thirty-five dollars.
19. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.
20. Filing a certificate of fact stating a merger of a foreign limited liability company holding a certificate of authority to transact business in this state, fifty dollars.
21. Filing a certified statement of conversion of a foreign limited liability company, fifty dollars.
22. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.
23. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars.
  - a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) After the date provided in subsection 3 of section 10-32-149, fifty dollars; and
    - (2) After the termination of the limited liability company, or the revocation of the certificate of authority of a foreign limited liability company, the reinstatement fee of one hundred twenty-five dollars.

- b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-32-149, or the annual report lacks sufficient payment as required by this subsection.
- 24. Filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.
- 25. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
- 26. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.
- 27. Furnishing a copy of any record, or paper relating to a limited liability company or a foreign limited liability company:
  - a. ~~One dollar for every four pages, or fraction thereof~~ The fee provided in section 54-09-04 for copying a record; and
  - b. Five dollars for a search of records.
- 28. Furnishing a certificate of good standing, existence, or authorization:
  - a. Fifteen dollars; and
  - b. Five dollars for a search of records.
- 29. ~~Each page of any record or form sent by electronic transmission, one dollar."~~

Page 65, after line 14, insert:

**"SECTION 48. AMENDMENT.** Section 10-33-18 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-18. Filing articles of amendment.** An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to the filing requirements of this chapter and that all fees have been paid as provided in section 10-33-140, then the articles of amendment must be recorded in the office of the secretary of state. A corporation that amends the corporate name and which is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the corporation's name in each registration when the corporation files an amendment."

Page 68, after line 3, insert:

**"SECTION 54. AMENDMENT.** Section 10-33-130 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-130. Foreign corporation - Amendments to the certificate of authority.** If any statement in the application for a certificate of authority by a foreign corporation is false when made or any arrangements or other facts described change, making the application inaccurate in any respect, the foreign corporation shall promptly

file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and, in the case of a change in the foreign corporation's name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. In the case of a dissolution or merger, a foreign corporation that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. A foreign nonprofit corporation that changes the foreign nonprofit corporation's name and applies for an amended certificate of authority and that is the owner of a service mark, trademark, or trade name, a general partner named in a fictitious name certificate, a general partner in a limited partnership or a limited liability limited partnership, or a managing partner in a limited liability partnership that is on file with the secretary of state shall change the foreign nonprofit corporation's name in each of the foregoing registrations that apply if the foreign nonprofit corporation files an application for an amended certificate of authority."

Page 68, after line 28, insert:

**"SECTION 56. AMENDMENT.** Subsection 2 of section 10-33-140 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state shall charge and collect:
  - a. For furnishing a certified copy of any record, instrument, or paper relating to a corporation, ~~one dollar for every four pages or fraction thereof~~ the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal to the certificate.
  - b. At the time of any service of process on the secretary of state as resident agent of a corporation, twenty-five dollars, which may be recovered as taxable costs by the party to the claim for relief causing the service to be made if that party prevails in the suit or action."

Page 75, line 2, replace "one dollar for every four pages or fraction" with "the fee provided in section 54-09-04 for copying a record"

Page 75, line 3, remove "thereof"

Page 83, after line 30, insert:

**"SECTION 62. AMENDMENT.** Subsection 8 of section 45-10.2-24 of the North Dakota Century Code is amended and reenacted as follows:

8. A limited partnership that files an amendment to change its name and which is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state shall change the name of the limited partnership in each of the foregoing registrations that is applicable when the limited partnership files an amendment to the certificate of limited partnership."

Page 85, after line 20, insert:

**"SECTION 65. AMENDMENT.** Subsection 2 of section 45-10.2-81 of the North Dakota Century Code is amended and reenacted as follows:

2. A foreign limited partnership that changes its name and applies for an amended certificate of authority and which is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the name of the foreign limited partnership in each of the foregoing registrations that is applicable when the foreign limited partnership files an application for an amended certificate of authority.

**SECTION 66. AMENDMENT.** Subsection 3 of section 45-10.2-97 of the North Dakota Century Code is amended and reenacted as follows:

3. A converting organization that is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

**SECTION 67. AMENDMENT.** Subsection 26 of section 45-10.2-109 of the North Dakota Century Code is amended and reenacted as follows:

26. Furnishing a certified copy of any record, or paper relating to a limited partnership or foreign limited partnership:
  - a. ~~One dollar for every four pages or fraction~~ The fee provided in section 54-09-04 for copying a record;
  - b. Fifteen dollars for the certificate and affixing the seal thereto; and
  - c. Five dollars for a search of records."

Page 93, after line 31, insert:

**"SECTION 73. AMENDMENT.** Subsection 2 of section 45-22-22 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state shall charge and collect for:
  - a. Furnishing a copy of any record or paper relating to a domestic limited liability partnership or foreign limited liability partnership, ~~one dollar for every four pages, or fraction of pages~~ the fee provided in section 54-09-04 for copying a record.
  - b. A certificate certifying a copy or reciting facts related to a domestic limited liability partnership or foreign limited liability partnership, fifteen dollars.
  - e. ~~Each page of any record or form sent by electronic transmission, one dollar."~~

Page 97, after line 17, insert:

**"SECTION 76. AMENDMENT.** Subsection 26 of section 45-23-08 of the North Dakota Century Code is amended and reenacted as follows:

26. Furnishing a certified copy of any record or paper relating to a limited partnership or foreign limited partnership:
- a. ~~One dollar for every four pages or fraction~~ The fee provided in section 54-09-04 for copying a record;
  - b. Fifteen dollars for the certificate and affixing the seal thereto; and
  - c. Five dollars for a search of records."

Renumber accordingly

2009 TESTIMONY

HB 1298



ALVIN A. JAEGER  
SECRETARY OF STATE

HOME PAGE [www.nd.gov/sos](http://www.nd.gov/sos)



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January 28, 2009

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

FR: Al Jaeger, Secretary of State

RE: HB 1298 – Business Entities

Highlights:

1. Creates a nonprofit limited liability company
2. Enables commercial registered agents to maintain multiple registrations with different addresses, which will be particularly advantageous for North Dakota firms with offices in more than one location.
3. Streamlines the process related to the court-ordered reinstatement of business entities. Since its adoption in 2005, there have been 21 court-ordered reinstatements often related to the transfer of real property.
4. It removes certain information currently required on foreign corporation annual reports, which no longer has value for the state and which will eliminate a significant error factor when these reports are submitted.
5. It makes the annual report filing requirement between the various types of business entities more uniform, which will allow for more efficient processing.
6. While not a specific part of this bill because of the passage of earlier enabling legislation, the agency's web-based software (currently under development and scheduled for completion prior to the end of the year) will allow for the completion, payment, and submission of documents on-line.

The Secretary of State also requests the committee's adoption of the attached amendments that correct typos and inadvertent omissions.

The reverse side contains the number of business registrations filed in the Secretary of State's office as of January 27, 2009.

**Business Registration/Information Division**

**Number of Entities as of January 27, 2009**

**Domestic (in-state)**

**Chartered Corporations**

For Profit Corporations.....	13,002
Cooperatives .....	316
Nonprofit Corporations.....	5,970
Churches.....	1,370
State Banks.....	81
Credit Unions .....	34
Professional .....	919
Farm.....	745
Insurance .....	46

**Foreign (out-of-state)**

**Chartered Corporations**

For Profit Corporations.....	12,746
Cooperatives .....	74
Nonprofit Corporations.....	1,978
Professional .....	132

**Limited Liability Companies**

Domestic .....	6,624
Domestic Professional .....	98
Domestic Farm.....	118
Foreign .....	3,822
Foreign Professional .....	21

**Limited Liability Partnerships**

Domestic .....	2,438
Domestic Professional .....	26
Foreign .....	53
Foreign Professional .....	10

Limited Partnerships..... 1,352

Limited Liability Limited Partnerships 582

Fictitious Partnership Names ..... 1,800

Trademarks .....

1,489
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Trade Names..... 20,593

TOTAL..... 76,439

*Same handout  
given to Senate.*

PROPOSED AMENDMENT TO HOUSE BILL NO. 1298

Page 40, line 17, replace "designed" with "designated"

Page 47, line 3, insert a comma after "members"

Page 69, line 27, replace "If" with "In"

Page 70, line 22, replace "incorporated" with "organized"

Page 71, line 8, remove "subsection 34 of"

Page 71, line 10, remove "of the number"

Page 71, line 29, replace "corporation" with "nonprofit limited liability company or foreign nonprofit limited liability company"

Page 72, line 17, replace "corporation" with "nonprofit limited liability company"

Page 74, line 5, replace "fifty" with "forty"

Page 74, line 19, replace "corporation" with "nonprofit limited liability company"

Page 74, line 20, replace "corporation" with "nonprofit limited liability company"

Page 76, line 23, replace "corporation" with "nonprofit limited liability company"

Page 76, line 24, replace "corporation" with "nonprofit limited liability company"

Page 79, line 10, replace "designed" with "designated"

TESTIMONY FOR WILLIAM L. GUY III, CHAIR  
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE  
IN SUPPORT OF  
HOUSE BILL NO. 1298

*Same  
given to  
Senate.*

Mr. Chairman and members of the Committee, my name is William Guy and I am here to testify in support of House Bill 1298. You have before you a thirteen (13) page version of my testimony. If you are going to use it for a checklist for identifying the important parts of this legislation, then I would suggest focusing on the sections that are identified as "**substantive changes**" and "**technical clarifications**".

This oral testimony is going to focus on the aspects of this bill that I believe deserve your most intense attention.

- **Section 1** pertains to the **North Dakota Registered Agents Act** (Chapter 10-1.1... on pages 2 and 3 of the bill) and enables a commercial registered agent that has multiple locations in the state to register each location as a registered office (by paying the full registration fee for each location).
- **Sections 6 and 15** (pages 3 through 33) pertain to the **North Dakota Business Corporations Act** (Chapter 10-19.1).
  - **Section 6** (on pages 21 and 22) allows corporations (that are not incorporated as publically traded corporations under Chapter 10-35) to confer powers on one or more directors that are greater or less than those of the other directors, and that, unless otherwise provided in the articles, any such provision also applies to voting in a committee or subcommittee.
  - **Section 15** (on page 29) makes clear that statutory and common-law rights of persons who bring claims of injury are not affected by the dissolution of the corporation... this language appears again as **Section 33** pertaining to **limited liability companies** and in **Section 41** pertaining to **nonprofit corporations**.
- **Sections 19 and 20** (on pages 33 through 58) pertain to the **North Dakota Limited Liability Company Act** (Chapter 10-32).
  - **Section 19** (on page 45) deletes the requirement that a limited liability company be organized for a business purpose and instead provides that the purpose may be any lawful purpose.
  - **Section 20** (on pages 45 and 46) makes clear that the name of a limited liability company may not contain either the name "limited" or "company" without association to the words "limited liability company" (or abbreviations of those words).

- **Sections 33 through 46** (pages 68 and 69) pertain to the **North Dakota Nonprofit Corporation Act** (Chapter 10-33). All modifications in the **Nonprofit Corporation Act** that are of any consequence are identical to their counterparts in the **Business Corporation Act** and **Limited Liability Company Act**.
- **Section 44** (on pages 69 through 77) enacts a new Chapter 10-36 to be known as the **North Dakota Nonprofit Limited Liability Company Act**.
  - This is a relatively short chapter that mostly bootstraps off of the **Nonprofit Corporation Act** and occasionally off the **Limited Liability Company Act**.
  - **Section 10-36-03** covers the applicability of these two chapters to Chapter 10-36.
    - In any case not covered by Chapter 10-36, then Chapter 10-33 (the **Nonprofit Corporation Act**) governs.
    - Subsection 2 provides cross references to terms in the **Nonprofit Corporation Act** so that:
      - “Board” refers to the board of governors.
      - “Corporation” refers to a nonprofit limited liability company.
      - “Director” refers to a governor.
      - “Foreign corporation” refers to a foreign nonprofit limited liability company.
      - “Officer” refers to a manager.
    - **Section 4 of Chapter 10-32 (Limited Liability Company Act)** applies to the name of a nonprofit LLC as if the entity were an LLC governed by Chapter 10-32.
  - **Section 10-36-04** (on page 70) makes clear that the status of an entity being a nonprofit limited liability company under this chapter is not determinative of its tax status.
  - **Section 10-36-05** (on page 70) provides that an individual may not be a member of a nonprofit limited liability company.
    - Thus, nonprofit LLCs may not be used as a freestanding entity.
    - Instead a nonprofit LLC will always be a subsidiary of one or more nonprofit corporations.

- **Section 10-36-06** (on page 70) provides that the attorney general has the same authority with regard to a nonprofit limited liability company as with regard to a nonprofit corporation.
- **Section 49** (on pages 77 through 88) pertains to the **North Dakota Limited Partnership Act** (Chapter 45-10.2).
  - **Section 49** (on pages 84 and 85) amends Section 45-10.2-64 which currently provides for charging orders and foreclosures on the ownership interest in a limited partnership as the remedies available to a judgment creditor of a partner in a limited partnership.
    - Currently Section 45-10.2-64 does not limit the remedies of a judgment creditor to a charging order only (which had been the sole remedy under Chapter 45-10.1 prior to the enactment of Chapter 45-10.2 in 2005).
    - The charging order is the sole remedy in six (6) other states including South Dakota, Delaware, Alaska, New Jersey, Texas and Virginia.
    - Often families that own farm and ranch land and/or mineral interests use limited partnerships (or limited liability limited partnerships) as a holding company for their children to collectively own these assets on the death of the parents.
  - The remaining Sections pertaining to limited partnerships are either identical to their corporate counterparts or are grammatical changes or technical clarifications.
- Section 54 pertains to the <sup>Partnership</sup>~~Limited Liability Company~~ **Act** (Chapter 45-22) and requires that the names and addresses of all partners be included in the LLP registration filed with the Secretary of State if the limited liability partnership will be engaged in farming or ranching or owning or leasing land used for farming or ranching.

As you can see the legislation embodied in this bill is for the most part technical clarifications and housekeeping. I appreciate the opportunity to address your committee. If you have any questions I will be happy to answer them.

TESTIMONY OF WILLIAM L. GUY III, CHAIR  
NORTH DAKOTA BUSINESS ENTITY DRAFTING TASK FORCE  
IN SUPPORT OF  
HOUSE BILL NO. 1298

*Same  
given to  
Senate.*

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. 1298. This legislation updates certain sections of the chapters governing Registered Agents (Chapter 10-01.1), Cooperative Associations (Chapter 10-15), Business Corporations (Chapter 10-19.1), Limited Liability Companies (Chapter 10-32), Nonprofit Corporations (Chapter 10-33), Mining and Oil and Gas Production (Chapter 38-08), Limited Partnerships (Chapter 45-10.2), Fictitious Partnership Names (Chapter 45-11), General Partnerships (Chapters 45-13 through 45-21), Limited Liability Partnerships (Chapter 45-22) and Limited Liability Limited Partnerships (Chapter 45-23) and enacts a new chapter for Nonprofit Limited Liability Companies (Chapter 10-36).

This legislation consists mostly of updating, technical clarifications, 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.

As has been the case in years past, our object is to make each of these chapters as user friendly as possible to the general public by keeping the format and as many of the 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).

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

For ease in reviewing this testimony, 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** and **technical clarifications** have been highlighted in **bold type**.

- **Section 1** (page 2 and 3) pertains to the "**North Dakota Registered Agents Act**" (Chapter 10-01.1).
  - **Subsection 2** is a **substantive change** that enables commercial registered agents which have multiple locations in the state to register each location as a commercial registered agent.
  - **Subsection 3** is a **technical clarification** that makes clear that if a commercial registered agent must distinguish its name from that of another commercial registered agent then that applicant must first register a trade name (not a fictitious name as previously required).
- **Section 2** (page 3) is a **substantive change to Cooperative Association** (Chapter 10-15) that deletes the prior authority of the Secretary of State to extend the filing date for the annual report of any cooperative upon written application from the cooperative.
- **Sections 3 through 17** (page 3 thorough 33) pertain to the **North Dakota Business Corporations Act** (Chapter 10-19.1)
  - **Section 3** (on pages 3 through 13) is the definition section of the Business Corporation Act (Chapter 10-19.1):
    - **Subsection 36** (on pages 8 and 9) is a **substantive change** that allows the use of a nationally recognized overnight delivery service to provide notice.
    - **Subsection 38** (on page 10) is a **substantive change** that excludes the Nonprofit Limited Liability Company from the definition



of the term "Organization" (in the same manner as a nonprofit corporation has been previously excluded).

- **Section 4** (on pages 13 through 20) is a series of 4 **substantive changes** and 4 numerical changes.
  - **Subsection 2** (on page 14) provides that the modifications that were previously limited to the articles only can be modified under a shareholder control agreement (much the same as for a number of years have been allowed in LLCs under member control agreements).
  - **Subsection 2.k.** (on page 15) is a numerical change (for language that was previously located at Subsection 2.u. on page 16).
  - **Subsection 2.p.** (on page 15) is numerical change (for language that was previously located at Subsection 2.t. on page 16).
  - **Subsection 3** (on page 3) is a **substantive change** that adds the provision for modification in a shareholder control agreement of provisions that could previously have been modified only in the articles or by-laws.
  - **Subsection 3.o.** (on page 17) is a numerical change (for language previously located on page 18 as subsection 3.p.).
  - **Subsection 4.h.** (on page 19) is a numerical change (for language previously located on page 20 as subsection 4.u.).
  - **Subsection 7** is a **technical clarification** that makes clear that subsection 4 does not limit the permissible scope of a shareholder control agreement.
- **Section 5** (on pages 20 and 21) is a **technical clarification** that makes clear that participation by remote communication constitutes presence in person at a meeting of the Board.
- **Section 6** (on pages 21 and 22) is a **substantive change** that allows corporations that are not incorporated under Chapter 10-35 (Publically

Traded Corporations) to confer powers on one or more directors that are greater or less than those of the other directors and that, unless otherwise provided in the articles, any such provision also applies to voting in a committee or subcommittee.

- **Section 7** (on page 22) is a **technical clarification** that makes clear the affirmative vote of a majority of the directors currently holding office (not the entire Board) may establish committees.
- **Section 8** (on pages 22 and 23) is a **technical clarification** that similarly makes clear that a contract being ratified by the Board where one of the directors has a conflict of interest may be ratified by a majority of the directors currently holding office (not the entire Board, excluding the interested director or directors).
- **Section 9** (on page 23) is a **technical clarification** which makes clear that notification of all shareholders after a written action that is allowed to be taken by fewer than all of the shareholders must be provided to all of the shareholders no later than five (5) days after the date on which the action was taken (rather than the effective time of the action as was previously required).
- **Section 10** (on pages 23) contains several grammatical changes and two **technical clarifications**:
  - **Subsection 1.b.** (on pages 23 and 24) contains three grammatical clarifications in which the word "remote communication" is substituted for "telephonic transmission".
  - **Subsections 3 and 4** contain grammatical changes related to the designation of the agent who is duly authorized to tabulate proxy votes and a **technical clarification** which makes clear that the remote communication or authenticated electronic communication must be submitted along with information by which the officer or duly authorized agent of the corporation can determine that the

revocation was authorized by the shareholder.

- **Section 11** (on pages 26 and 27) is a grammatical change with respect to the identification of the various national stock markets.
- **Section 12** (on pages 27 and 28) is a **technical clarification** which makes clear that a "special legal counsel" for the corporation is one who, in the preceding five years, has not represented the corporation (in any capacity other than special legal counsel) or the officer, director, or employee whose indemnification is in issue.
- **Section 13** (on page 28) is a grammatical change with regard to identifying the procedures used for the dissolution of a corporation both before and after the issuance of shares.
- **Section 14** (on pages 28 and 29) contains several grammatical changes with respect to the procedure to be used in a voluntary dissolution after the issuance of shares as well as a **technical clarification** which makes clear that if the corporation has no outstanding shares then the directors may authorize dissolution (in the same manner as if shares had never been issued).
- **Section 15** (on page 29) is a **substantive change** which adds a new subsection 4 which makes clear that the statutory and common-law rights of persons who bring claims of injury are not affected by the dissolution of the corporation.
- **Section 16** (on pages 29 through 32) contains two **substantive changes** and three grammatical changes.
  - **Subsections 1.e. and 1.f.** (on page 30) are **substantive changes** which delete the requirement of a foreign corporation to itemize in its annual report to the Secretary of State the aggregate number of shares that it is authorized to issue.
  - **Subsection 5** (on page 31) is a **substantive change** that deletes the authority of the corporation to extend the filing of its annual

report to the Secretary of State upon a timely filed written request.

- **Subsection 8** contains several grammatical changes.
- **Section 17** (on pages 32 and 33) contains several numerical changes and grammatical changes.
- **Sections 18 through 37** (page 33 through 58) pertain to the North Dakota Limited Liability Company Act (Chapter 10-32).
  - **Section 18** (pages 33 through 45) is the definitions section of the **Limited Liability Company Act** (Chapter 10-32) which contains a series of **substantive changes** that are identical to their counterparts in Chapter 10-19.1 including:
    - References to nonprofit limited liability companies in subsection 38 (on page 38), in subsection 42 (on page 39) and in subsection 44 (on page 41).
    - Provision for overnight delivery (on page 40) in subsection 43.
  - **Section 19** (on page 45) is a **substantive change** which deletes the requirement that a limited liability company be organized for a business purpose and substitutes instead that the purpose may be any lawful purpose.
  - **Section 20** (on page 45) is a **technical clarification** which makes clear that Sections 10-32-67 and 10-32-109 pertain to the fact that a limited liability company need have only one member.
  - **Section 21** (on pages 45 and 46) is a **technical clarification** which makes clear that the name of a limited liability company may not contain either the name "limited" or "company" without association to the words "limited liability company" (or abbreviations of those words).
  - **Section 22** (on pages 46 and 47) contains two **substantive changes**.
    - **Subsection 3** (on page 47) is a **substantive change** that requires the date of adoption of the amendment to the articles of organization by the members or by the organizers of the board

(when no member interests have been issued).

- **Subsection 4** (on page 47) is a **substantive change** that requires a statement that restated articles supersede the original articles and all amendments to the original articles.
- **Section 23** (on page 47) is a **substantive change** which is identical to its corporate counterpart in Section 9 on page 23 regarding five (5) day deadline for notifying the members of written action taken by less than all members.
- **Section 24** (on pages 47 through 50) is a **substantive change** which is identical to its corporate counterpart in Section 10 (on pages 23 through 26) regarding proxies.
- **Section 25** (on pages 50 and 51) is a **substantive change** which is identical to its corporate counterpart in Section 5 (on page 21) regarding participation in a board meeting by remote communication constituting presence in person.
- **Section 26** (on page 51) is a **substantive change** which is identical to its corporate counterpart in Section 7 (on page 22) regarding the vote of a majority of the directors then in office in establishing a committee.
- **Section 27** (on pages 51 and 52) is a **substantive change** which is identical to its corporate counterpart in Section 8 (on pages 22 and 23) regarding the vote of a majority of the directors then holding office in evaluating a conflict of interest in a contract or transaction.
- **Section 28** (on pages 52 and 53) is a **substantive change** which is identical to its corporate counterpart in Section 12 (on pages 27 and 28) regarding the qualifications of special legal counsel.
- **Section 29** (on page 53) is a **technical clarification** that makes clear that subsection 4.c. pertains to the surviving foreign organization in a merger (regarding the payment to dissenting owners of ownership interest to which the dissenting owners are entitled under the governing statute of that

foreign organization).

- **Section 30** (on pages 53 through 55) is a **substantive change** which is identical to its corporate counterpart in Section 13 (on page 28) regarding the identification of dissolution procedures both before and after the issuance of member interests.
- **Section 31** (on page 55) is a **technical clarification** which makes clear that the procedure for a voluntary dissolution and termination prior to the acceptance of contributions to the limited liability company.
- **Section 32** (on page 55 and 56) is a **technical clarification** which is identical to its corporate counterpart in Section 14 (on pages 28 and 29) regarding the dissolution of a limited liability company after accepting contributions.
- **Section 33** (on page 56) is a **substantive change** which is identical to its corporate counterpart in Section 15 (on page 29) relating to the statutory and common-law rights of injured parties not being affected by dissolution of the entity.
- **Section 34** (on pages 56 and 57) is a **substantive change** which is identical to its corporate counterpart in Section 16 (on page 31) pertaining to deleting the ability of a limited liability company to extend the filing date of its annual report.
- **Section 35** (on pages 57 and 58) is a grammatical change which is identical to its corporate counterpart in Section 17 (on pages 32 and 33).
- **Sections 36 through 43** (pages 58 through 69) pertain to the **North Dakota Nonprofit Corporation Act** (Chapter 10-33).
  - **Section 36** (on pages 58 through 65) is the definitions section of the Nonprofit Corporation Act:
    - **Subsection 26** (on pages 61 through 63) is a **substantive change** which is identical to its corporate counterpart in Subsection 36 of Section 3 (on pages 8 through 10) pertaining to use of nationally

recognized overnight delivery services to give notice under the statute.

- **Subsection 28** (on page 63) is a **substantive change** which is identical to its corporate counterpart in Subsection 38 of Section 3 (on page 10) relating to the exclusion of Nonprofit Limited Liability Companies from the definition of the term "Organization".
- **Section 37** (on page 65) is a **technical clarification** which is identical to its corporate counterpart in Section 5 (on pages 21 and 22) pertaining to participation by remote communication constituting presence in person at a meeting of the board.
- **Section 38** (on pages 65 and 66) is a **substantive change** which is identical to its corporate counterpart in Section 7 (on page 22) relating to action by a majority of directors currently holding office being able to establish committees of the board.
- **Section 39** (on page 66) is a **substantive change** which is identical to its corporate counterpart in Section 8 (on pages 22 and 23) pertaining to the authority of the majority of the directors currently holding office authorizing a contract or transaction in which a member of the board has a conflict of interest.
- **Section 40** (on pages 66 and 67) is a **substantive change** which is identical to its corporate counterpart in Section 12 (on pages 27 and 28) relating to the qualifications of special legal counsel.
- **Section 41** (on pages 67 and 68) is a **substantive change** which is identical to its corporate counterpart in Section 15 (on page 29) pertaining to the statutory and common-law rights of injured persons not being affected by dissolution of the entity.
- **Section 42** (on page 68) is a **substantive change** which is identical to its corporate counterpart in Section 16 (on pages 29 through 32) pertaining to the deletion of the provision allowing corporations to extend the filing of

their annual report upon written application.

- **Section 43** (on pages 68 and 69) is a grammatical change which is identical to its corporate counterpart in Section 17 (on pages 32 and 33).
- **Section 44** (on pages 69 through 77) is a **substantive change** in which new Chapter 10-36 is enacted to provide for **North Dakota Nonprofit Limited Liability Company Act**.
  - Section 10-36-01 provides that the Chapter may be cited as the "North Dakota Nonprofit Limited Liability Company Act".
  - Section 10-36-02 contains definitions of nonprofit limited liability companies and foreign nonprofit limited liability companies which are identical to their counterparts in other chapters.
  - Section 10-36-03 pertains to the applicability of Chapters 10-32 and 10-33.
    - In any case not provided in this Chapter, then Chapter 10-33 (the Nonprofit Corporation Act) governs.
    - Subsection 2 provides that references in the Nonprofit Corporation Act to:
      - "Board" refers to the board of governors.
      - "Corporation" refers to a nonprofit limited liability company.
      - "Director" refers to a governor.
      - "Foreign corporation" refers to a foreign nonprofit limited liability company.
      - "Officer" refers to a manager.
    - Section 4 provides that Chapter 10-32 (of the limited liability company act) applies to the name of a nonprofit LLC as if the entity were a LLC governed under 10-32.
- Section 10-36-04 (on page 70) makes clear that the status of an entity being a nonprofit limited liability company under this chapter is not



determinative of its tax treatment.

- Section 10-36-05 (on page 70) provides that an individual may not be a member of a nonprofit limited liability company. (Thus, nonprofit LLCs may not be used as a freestanding entity (instead a nonprofit LLC will always be a subsidiary of one or more nonprofit corporations)).
- Section 10-36-06 (on page 70) provides that the attorney general has the same authority with regard to a nonprofit limited liability company as with regard to a nonprofit corporation under Chapter 10-33.
- Section 10-36-07 (on pages 70 through 73) sets forth the requirements for nonprofit limited liability company annual reports which are substantially similar to the requirements for nonprofit corporations.
- Section 10-36-08 (on pages 73 through 75) set forth the fees and charges of the Secretary of State for various filings with that office which are substantially similar to the fees charged to nonprofit corporations.
- Section 10-36-09 (on pages 75 through 77) pertains to the Secretary of State with regard to enforcement, appeals and penalties which are substantially similar to its counterpart in the nonprofit corporation act.
- **Section 45** (on page 77) amends Section 38-08.1-03 and is a **technical clarification** that includes reference to Chapters 10-32, 45-10.2, 45-22 and 45-23 with regard to the entities which are required to obtain authority to do business in the state of North Dakota if engaged in geophysical exploration within the state.
- **Sections 46 through 52** (on pages 77 through 86) pertain to the **North Dakota Limited Partnership Act** (Chapter 45-10.2).
  - **Section 46** (on pages 77 through 80) is the definitions section of the Limited Partnership Act (Chapter 45-10.2).
    - **Subsection 27** is a **substantive change** which is identical to its corporate counterpart under Subsection 36 of Section 3 (on pages 8 through 10) with regard to the use of a nationally recognized delivery service to provide notice under the statute.

- **Subsection 28** is a **substantive change** which is identical to its corporate counterpart under Subsection 38 of Section 3 (on page 10) regarding the exclusion of nonprofit limited liability companies from the definition of the term "Organization".
- **Section 47** (on pages 80 through 83) is a **substantive change** which is identical to its corporate counterpart in Section 10-19.1-76.2 (on pages 23 through 26) regarding the use of remote communication in proxies and the authentication of remotely communicated revocation of proxies or appointments of new proxies.
- **Section 48** (on pages 83 and 84) is a grammatical change.
- **Section 49** (on pages 84 and 85) is a **substantive change** in which Section 45-10.2-64, which currently provides for charging orders and for foreclosures on ownership interest in a limited partnership, is modified to limit the remedies of a judgment holder to a charging order only (which had been the sole remedy under Chapter 45-10.1 prior to the enactment of Chapter 45-10.2 in 2005 and which is the sole remedy in \_\_\_\_\_ other states, including South Dakota, \_\_\_\_\_ and \_\_\_\_\_ and which had been the traditional sole remedy to a judgment creditor under limited partnership statutes prior to the enactment of Chapter 45-10.2).
- **Section 50** (on page 85) is a grammatical change which is identical to its corporate counterpart in Section 17 (on pages 32 and 33).
- **Section 51** (on page 86) enacts a new Subsection to Section 45-11-08.2 which is a **substantive change** which adds the fact that limited partnership (LP), limited liability partnership (LLP) or limited liability limited partnership (LLLLP) has ceased to exist for six (6) months to the criteria by which the Secretary of State may cancel a certificate of fictitious partnership name.
- **Section 52** (on pages 86 thorough 88) amends Section 45-13-01 as the definitions section of the general partnership chapters as follows:

- **Subsection 17** is a **substantive change** which is identical to its corporate counterpart in Subsection 36 of Section 3 (on pages 8 through 10) regarding the use of an overnight delivery service to provide notice under the statute.
- **Subsection 18** is a **substantive change** which is identical to its corporate counterpart under Subsection 38 of Section 3 (on page 10) regarding the exclusion of Nonprofit Limited Liability Companies from the definition of the term "Organization".
- **Sections 53 through 55** (on pages 89 through 94) pertain to the **North Dakota Limited Liability Partnership Act** (Chapter 45-22).
  - **Section 53** (on pages 89 through 92) contains **substantive changes** to the definitions of the terms "Notice" and "Organization" which are identical to their corporate counterparts in Subsection 36 (on pages 8 through 10) and Subsection 38 (on page 10) which pertain to the use of nationally recognized overnight delivery service in providing notice under the statute and in the exclusion of Nonprofit Limited Liability Companies from the definition of the term "Organization".
  - **Section 54** (on pages 92 and 93) is a **substantive change** which requires the names and addresses of all partners to be included in the registration filed with the Secretary of State if the limited liability partnership will be engaged in farming or ranching or owning or leasing land used for farming or ranching.
  - **Section 55** (on pages 93 and 94) is a grammatical change which is identical to its corporate counterpart in Section 17 (on pages 32 and 33).
- **Section 56** (on pages 94 through 97) contains **substantive changes** to the terms "Notice" and "Organization" in Chapter 45-23-01 (North Dakota Limited Liability Limited Partnership Act) which are identical to their corporate counterparts in Subsections 36 and 38 of Section 3 pertaining to use of nationally recognized overnight delivery services to accomplish notice under the statute and to the

exclusion of Nonprofit Limited Liability Companies from the definition of the term "Organization".

As you can see, the legislation embodied in this bill is for the most part technical clarifications and housekeeping. I appreciate the opportunity to address your committee. If you have any questions, I will be happy to answer them.

Attachment 1  
HB 1298

ALVIN A. JAEGER  
SECRETARY OF STATE

HOME PAGE [www.nd.gov/sos](http://www.nd.gov/sos)



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February 16, 2009

TO: Senator Nething, Chairman, and Members of the Senate Judiciary Committee

FR: Al Jaeger, Secretary of State

RE: HB 1298 – Business Entities

Highlights:

1. Creates a nonprofit limited liability company
2. Enables commercial registered agents to maintain multiple registrations with different addresses, which will be particularly advantageous for North Dakota firms with offices in more than one location.
3. Streamlines the process related to the court-ordered reinstatement of business entities. Since its adoption in 2005, there have been 22 court-ordered reinstatements often related to the transfer of real property.
4. It removes certain information currently required on foreign corporation annual reports, which no longer has value for the state and which will eliminate a significant error factor when these reports are submitted.
5. It makes the annual report filing requirement between the various types of business entities more uniform, which will allow for more efficient processing.
6. While not a specific part of this bill because of the passage of earlier enabling legislation, the agency's web-based software (currently under development and scheduled for completion prior to the end of the year) will allow for the completion, payment, and submission of documents on-line.

Because of an amendment made to SB 2392, relating to fees for copies, the Secretary of State requests the committee's adoption of the attached amendments. Instead of a specific formula in each business entity chapter used for calculating fees for copies, the formula is being removed in each chapter and replaced by a reference to N.D.C.C. § 54-09-04, which will govern the fees charged for copies provided by any division with the agency. The amendments also insert the term service mark where applicable throughout the various business entity chapters.

The reverse side contains the number of business registrations filed in the Secretary of State's office as of January 27, 2009.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1298

Page 1, line 5, after "reenact", insert "subsection 2 of section 10-01.1-03,"

Page 1, line 5, after "10-15-36," insert "subsection 5 of section 10-15-38, section 10-15-52.3,"

Page 1, line 6, after "10-19.1-10," insert "section 10-19.1-23,"

Page 1, line 8, after "10-19.1-91," insert "subsection 3 of section 10-19.1-104.4,"

Page 1, line 9, after "10-19.1-107," insert "subsection 2 of section 10-19.1-137,"

Page 1, line 9, after "10-19.1-146," insert "subsection 26 of section 10-19.1-147,"

Page 1, line 10, after "10-32-18," insert "section 10-32-20,"

Page 1, line 13, after "10-32-107," insert "subsection 3 of section 10-32-108.4,"

Page 1, line 14, after "10-32-111," insert "subsection 3 of section 10-32-140,"

Page 1, line 14, after "10-32-149," insert "section 10-32-150,"

Page 1, line 15, after "10-33-01," insert "section 10-33-18,"

Page 1, line 16, after "10-33-84," insert "section 10-33-130,"

Page 1, line 17, after "10-33-139," insert "subsection 2 of section 10-33-140"

Page 1, line 18, after "45-10.2-21," insert "subsection 8 of section 45-10.2-24,"

Page 1, line 19, after "45-10.2-64," insert "subsection 2 of section 45-10.2-81, subsection 3 of  
section 45-10.2-97, subsection 26 of section 45-10.2-109,"

Page 1, line 20, after "45-22-03," insert "subsection 2 of section 45-22-22,"

Page 1, line 21, replace the first "and" with a comma

Page 1, line 21, after "45-23-01" insert ", and subsection 26 of section 45-23-08"

Page 2, line 2, after "**AMENDMENT.**" , insert "Subsection 2 of section 10-01.1-03 of the North

Dakota Century Code is amended and reenacted as follows:

2. The secretary of state shall collect the following fees for copying and certifying copy of any document filed under this chapter:

- a. ~~One dollar for every four pages, or fraction thereof, The fee provided in section 54-09-04~~ for copying a record;
- b. Fifteen dollars for furnishing a certificate; and
- c. Five dollars for a search of records when supplying copies, certification, or written verification of facts.

**SECTION 2. AMENDMENT."**

Page 3, line 6, replace "**SECTION 2**" with "**SECTION 3**"

Page 3, after line 16, insert:

**"SECTION 4. AMENDMENT.** Subsection 5 of section 10-15-38 of the North Dakota Century Code is amended and reenacted as follows:

5. A cooperative that amends its name and is the owner of a service mark, trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an amendment.

**SECTION 5. AMENDMENT.** Section 10-15-52.3 of the North Dakota Century Code is amended and reenacted as follows:

**10-15-52.3. Amended certificate of authority.** A foreign cooperative authorized to transact business in this state must procure an amended certificate of authority if it changes its cooperative name or desires to pursue in this state purposes other than those

set forth in its prior application for a certificate of authority by making application to the secretary of state.

The requirements in respect to the application and the issuance of an amended certificate of authority and the effect thereof are the same as an original application for a certificate of authority.

In addition, an application must be accompanied by a certificate of fact of amendment duly authenticated by the proper officer of the state or country where the cooperative is incorporated.

A foreign cooperative which amends its name and applies for an amended certificate of authority, and is the owner of a service mark, trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner " a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an application for an amended certificate of authority."

Page 3, line 17, replace "**SECTION 3**" with "**SECTION 6**"

Page 14, line 3, replace "**SECTION 4**" with "**SECTION 7**"

Page 20, after line 26, insert

**"SECTION 8. AMENDMENT.** Section 10-19.1-23 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-23. Filing articles of amendment.** An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law and all fees have been paid as provided under section 10-19.1-147, the articles of amendment must be recorded in the office of the secretary of state. A corporation that amends the corporate name and is the owner



of a service mark, trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the corporation's name in each registration when the corporation files an amendment."

Page 20, line 27, replace "**SECTION 5**" with "**SECTION 9**"

Page 21, line 8, replace "**SECTION 6**" with "**SECTION 10**"

Page 22, line 3, replace "**SECTION 7**" with "**SECTION 11**"

Page 22, line 13, replace "**SECTION 8**" with "**SECTION 12**"

Page 23, line 6, replace "**SECTION 9**" with "**SECTION 13**"

Page 23, line 23, replace "**SECTION 10**" with "**SECTION 14**"

Page 26, line 23, replace "**SECTION 11**" with "**SECTION 15**"

Page 27, line 17, replace "**SECTION 12**" with "**SECTION 16**"

Page 28, after line 15, insert:

**"SECTION 17. AMENDMENT.** Subsection 3 of section 10-19.1-104.4 of the North Dakota Century Code is amended and reenacted as follows:

3. A converting organization that is the owner of a service mark, trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion."

Page 28, line 16, replace "**SECTION 13**" with "**SECTION 18**"

Page 28, line 24, replace "**SECTION 14**" with "**SECTION 19**"

Page 29, line 13, replace "**SECTION 15**" with "**SECTION 20**"

Page 29, after line 16, insert:

**"SECTION 21. AMENDMENT.** Subsection 2 of section 10-19.1-137 of the North Dakota Century Code is amended and reenacted as follows:

2. A foreign corporation that changes the foreign corporation's name and applies for an amended certificate of authority, and is the owner of a service mark, trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the foreign corporation's name in each of the foregoing registrations that is applicable when the foreign corporation files an application for an amended certificate of authority."

Page 29, line 17, replace "**SECTION 16**" with "**SECTION 22**"

Page 32, after line 25, insert:

**"SECTION 23. AMENDMENT.** Subsection 26 of section 10-19.1-147 of the North Dakota Century Code is amended as follows:

26. Furnishing a certified copy of any record, instrument, or paper relating to a corporation, ~~one dollar for every four pages or fraction~~ the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal thereto."

Page 32, line 26, replace "**SECTION 17**" with "**SECTION 24**"

Page 33, line 9, replace "**SECTION 18**" with "**SECTION 25**"

Page 45, line 12, replace "**SECTION 19**" with "**SECTION 26**"

Page 45, line 18, replace "**SECTION 20**" with "**SECTION 27**"

Page 45, line 22, replace "**SECTION 21**" with "**SECTION 28**"

Page 46, line 28, replace "**SECTION 22**" with "**SECTION 29**"

Page 47, after line 10, insert:

**"SECTION 30. AMENDMENT.** Section 10-32-20 of the North Dakota Century

Code is amended and reenacted as follows:

**"10-32-20. Filing of articles of amendment.** An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in section 10-32-150, then the articles of amendment must be recorded in the office of the secretary of state. A limited liability company that amends its name and which is the owner of a service mark, trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the limited liability company's name in each registration when the limited liability company files an amendment."

Page 47, line 11, replace "**SECTION 23**" with "**SECTION 31**"

Page 47, line 22, replace "**SECTION 24**" with "**SECTION 32**"

Page 50, line 23, replace "**SECTION 25**" with "**SECTION 33**"

Page 51, line 5, replace "**SECTION 26**" with "**SECTION 34**"

Page 51, line 15, replace "**SECTION 27**" with "**SECTION 35**"

Page 52, line 8, replace "**SECTION 28**" with "**SECTION 36**"

Page 53, line 12, replace "**SECTION 29**" with "**SECTION 37**"

Page 53, after line 30, insert:

**"SECTION 38. AMENDMENT.** Subsection 3 of section 10-32-108.4 of the North Dakota Century Code is amended and reenacted as follows:

3. A converting organization that is the owner of a service mark, trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion."

Page 54, line 1, replace "**SECTION 30**" with "**SECTION 39**"

Page 55, line 10, replace "**SECTION 31**" with "**SECTION 40**"

Page 56, line 1, replace "**SECTION 32**" with "**SECTION 41**"

Page 56, line 25, replace "**SECTION 33**" with "**SECTION 42**"

Page 56, after line 28, insert:

**"SECTION 43. AMENDMENT.** Subsection 3 of section 10-32-140 of the North Dakota Century Code is amended and reenacted as follows:

3. A foreign limited liability company that changes the foreign limited liability company's name and applies for an amended certificate of authority and that is the owner of a service mark, trademark or trade name, a general partner named in a fictitious name certificate, a general partner in a limited partnership or a limited liability limited partnership, or a managing partner in a limited liability partnership that is on file with the secretary of state shall change the foreign limited liability company's name in

each of the foregoing registrations which is applicable when the foreign limited liability company files an application for an amended certificate of authority."

Page 56, line 29, replace "**SECTION 34**" with "**SECTION 44**"

Page 57, after line 24, insert:

**"SECTION 45. AMENDMENT.** Section 10-32-150 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-150. Secretary of state - Fees and charges.** The secretary of state shall charge and collect for:

1. Filing articles of organization and issuing a certificate of organization, one hundred thirty-five dollars.
2. Filing articles of amendment, fifty dollars.
3. Filing articles of correction, fifty dollars.
4. Filing restated articles of organization, one hundred twenty-five dollars.
5. Filing articles of conversion of a limited liability company, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.

7. Filing articles of merger and issuing a certificate of merger, fifty dollars.
8. Filing abandonment of merger or exchange, fifty dollars.
9. Filing an application to reserve a name, ten dollars.
10. Filing a notice of transfer of a reserved name, ten dollars.
11. Filing a cancellation of reserved name, ten dollars.
12. Filing a consent to use of name, ten dollars.
13. Filing a statement of change of address of registered office or change of registered agent or both, or a statement of change of address of registered office by registered agent, the fee provided in section 10-01.1-03.
14. Filing a resolution for the establishment of a class or series of membership interests, fifty dollars.
15. Filing a notice of dissolution, ten dollars.
16. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
17. Filing articles of dissolution and termination, twenty dollars.
18. Filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred thirty-five dollars.
19. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.
20. Filing a certificate of fact stating a merger of a foreign limited liability company holding a certificate of authority to transact business in this state, fifty dollars.
21. Filing a certified statement of conversion of a foreign limited liability company, fifty dollars.

22. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.

23. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars.

a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:

(1) After the date provided in subsection 3 of section 10-32-149, fifty dollars; and

(2) After the termination of the limited liability company, or the revocation of the certificate of authority of a foreign limited liability company, the reinstatement fee of one hundred twenty-five dollars.

b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-32-149, or the annual report lacks sufficient payment as required by this subsection.

24. Filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.

25. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.

26. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.

27. Furnishing a copy of any record, or paper relating to a limited liability company or a foreign limited liability company:

a. ~~One dollar for every four pages, or fraction thereof~~ The fee provided in section 54-09-04 for copying a record; and

b. Five dollars for a search of records.

28. Furnishing a certificate of good standing, existence, or authorization:

a. Fifteen dollars; and

b. Five dollars for a search of records.

~~29. Each page of any record or form sent by electronic transmission, one dollar."~~

Page 57, line 25, replace "**SECTION 35**" with "**SECTION 46**"

Page 58, line 8, replace "**SECTION 36**" with "**SECTION 47**"

Page 65, after line 14, insert:

**"SECTION 48. AMENDMENT.** Section 10-33-18 of the North Dakota Century

Code is amended and reenacted as follows:

**10-33-18. Filing articles of amendment.** An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to the filing requirements of this chapter and that all fees have been paid as provided in section 10-33-140, then the articles of amendment must be recorded in the office of the secretary of state. A corporation that amends the corporate name and which is the owner of a service mark, trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the corporation's name in each registration when the corporation files an amendment."

Page 65, line 15, replace "**SECTION 37**" with "**SECTION 49**"



Page 65, line 28, replace "**SECTION 38**" with "**SECTION 50**"

Page 66, line 7, replace "**SECTION 39**" with "**SECTION 51**"

Page 66, line 29, replace "**SECTION 40**" with "**SECTION 52**"

Page 67, line 28, replace "**SECTION 41**" with "**SECTION 53**"

Page 68, after line 3, insert:

**"SECTION 54. AMENDMENT.** Section 10-33-130 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-130. Foreign corporation - Amendments to the certificate of authority.** If any statement in the application for a certificate of authority by a foreign corporation is false when made or any arrangements or other facts described change, making the application inaccurate in any respect, the foreign corporation shall promptly file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and, in the case of a change in the foreign corporation's name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. In the case of a dissolution or merger, a foreign corporation that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. A foreign nonprofit corporation that changes the foreign nonprofit corporation's name and applies for an amended certificate of authority and that is the owner of a service mark, trademark or trade name, a general partner named in a fictitious name certificate, a general partner in a limited partnership or a limited liability limited partnership, or a managing partner in a limited liability partnership that is on file with the secretary of state shall

change the foreign nonprofit corporation's name in each of the foregoing registrations that apply if the foreign nonprofit corporation files an application for an amended certificate of authority."

Page 68, line 4, replace "**SECTION 42**" with "**SECTION 55**"

Page 68, after line 28, insert:

**"SECTION 56. AMENDMENT.** Subsection 2 of section 10-33-140 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state shall charge and collect:

- a. For furnishing a certified copy of any record, instrument, or paper relating to a corporation, ~~one dollar for every four pages or fraction thereof~~ the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal to the certificate.
- b. At the time of any service of process on the secretary of state as resident agent of a corporation, twenty-five dollars, which may be recovered as taxable costs by the party to the claim for relief causing the service to be made if that party prevails in the suit or action."

Page 68, line 29, replace "**SECTION 43**" with "**SECTION 57**"

Page 69, line 12, replace "**SECTION 44**" with "**SECTION 58**"

Page 75, line 2, remove "one dollar for every four pages or fraction"

Page 75, line 3, replace "thereof " with "the fee provided in section 54-09-04 for copying a record"

Page 77, line 19, replace "**SECTION 45**" with "**SECTION 59**"

Page 77, line 27, replace "**SECTION 46**" with "**SECTION 60**"

Page 80, line 30, replace "**SECTION 47**" with "**SECTION 61**"

Page 83, after line 30, insert:

**"SECTION 62. AMENDMENT.** Subsection 8 of section 45-10.2-24 of the North Dakota Century Code is amended and reenacted as follows:

8. A limited partnership that files an amendment to change its name and which is the owner of a service mark, trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state shall change the name of the limited partnership in each of the foregoing registrations that is applicable when the limited partnership files an amendment to the certificate of limited partnership."

Page 84, line 1, replace "**SECTION 48**" with "**SECTION 63**"

Page 84, line 23, replace "**SECTION 49**" with "**SECTION 64**"

Page 85, after line 20, insert:

**"SECTION 65. AMENDMENT.** Subsection 2 of section 45-10.2-81 of the North Dakota Century Code is amended and reenacted as follows:

2. A foreign limited partnership that changes its name and applies for an amended certificate of authority and which is the owner of a service mark, trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the name of the foreign limited partnership in each of the foregoing

registrations that is applicable when the foreign limited partnership files an application for an amended certificate of authority.

**SECTION 66. AMENDMENT.** Subsection 3 of section 45-10.2-97 of the North Dakota Century Code is amended and reenacted as follows:

3. A converting organization that is the owner of a service mark, trademark or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

**SECTION 67. AMENDMENT.** Subsection 26 of section 45-10.2-109 of the North Dakota Century Code is amended and reenacted as follows:

26. Furnishing a certified copy of any record, or paper relating to a limited partnership or foreign limited partnership:
  - a. ~~One dollar for every four pages or fraction~~ The fee provided in section 54-09-04 for copying a record;
  - b. Fifteen dollars for the certificate and affixing the seal thereto; and
  - c. Five dollars for a search of records."

Page 85, line 21, replace "**SECTION 50**" with "**SECTION 68**"

Page 86, line 5, replace "**SECTION 51**" with "**SECTION 69**"

Page 86, line 10, replace "**SECTION 52**" with "**SECTION 70**"

Page 89, line 8, replace "**SECTION 53**" with "**SECTION 71**"

Page 92, line 11, replace "**SECTION 54**" with "**SECTION 72**"

Page 93, after line 31, insert:

**"SECTION 73. AMENDMENT.** Subsection 2 of section 45-22-22 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state shall charge and collect for:

- a. Furnishing a copy of any record or paper relating to a domestic limited liability partnership or foreign limited liability partnership, ~~one dollar for every four pages, or fraction of pages~~ the fee provided in section 54-09-04 for copying a record.
- b. A certificate certifying a copy or reciting facts related to a domestic limited liability partnership or foreign limited liability partnership, fifteen dollars.
- c. ~~Each page of any record or form sent by electronic transmission, one dollar."~~

Page 94, line 1, replace "**SECTION 55**" with "**SECTION 74**"

Page 94, line 16, replace "**SECTION 56**" with "**SECTION 75**"

Page 97, after line 17, insert:

**"SECTION 76. AMENDMENT.** Subsection 26 of section 45-23-08 of the North Dakota Century Code is amended and reenacted as follows:

26. Furnishing a certified copy of any record or paper relating to a limited partnership or foreign limited partnership:

- a. ~~One dollar for every four pages or fraction~~ The fee provided in section 54-09-04 for copying a record;
- b. Fifteen dollars for the certificate and affixing the seal thereto; and
- c. Five dollars for a search of records."

Renumber accordingly.