

HOUSE BILL NO. 1545

Introduced by

Representatives Ekstrom, Clark, Vig

Senators Anderson, Schneider

1 A BILL for an Act to amend and reenact section 10-32-02, subsections 2, 5, and 6 of section
2 10-32-02.2, subdivision b of subsection 1 of section 10-32-10, subsection 1 of section
3 10-32-114, subsection 2 of section 10-32-149, and subdivision c of subsection 1 of section
4 57-38-31.1 of the North Dakota Century Code, relating to creation of a new type of limited
5 liability company called a low-profit limited liability company.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 10-32-02 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **10-32-02. Definitions.** For purposes of this chapter, unless the context otherwise
10 requires:

11 1. "Acquiring organization" means the domestic or foreign organization that acquires
12 the ownership interests of another foreign or domestic organization in an
13 exchange.

14 2. "Address" means:

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

18 b. In all other cases, the mailing address, including a zip code.

19 3. "Articles" or "articles of organization" means:

20 a. In the case of a limited liability company organized under this chapter, articles
21 of organization, articles of amendment, a statement of change of registered
22 office, registered agent, or name of registered agent, a statement establishing
23 or fixing the rights and preferences of a class or series of membership

- 1 interests, articles of merger, articles of abandonment, articles of conversion,
2 and articles of termination.
- 3 b. In the case of a foreign limited liability company, the term includes all records
4 serving a similar function required to be filed with the secretary of state or
5 other state office of the state of organization of the foreign limited liability
6 company.
- 7 4. "Authenticated electronic communication" means:
- 8 a. That the electronic communication is delivered:
- 9 (1) To the principal place of business of the limited liability company; or
10 (2) To a manager or agent of the limited liability company authorized by the
11 limited liability company to receive the electronic communication; and
- 12 b. That the electronic communication sets forth information from which the
13 limited liability company can reasonably conclude that the electronic
14 communication was sent by the purported sender.
- 15 5. "Ballot" means a written ballot or a ballot transmitted by electronic communications.
- 16 6. "Board" or "board of governors" means the board of governors of a limited liability
17 company.
- 18 7. "Board member" means:
- 19 a. An individual serving on the board of governors in the case of a limited liability
20 company; and
- 21 b. An individual serving on the board of directors in the case of a corporation.
- 22 8. "Bylaws" means any rule, resolution, or other provision, regardless how
23 designated, that:
- 24 a. Relates to the management of the business or the regulation of the affairs of
25 the limited liability company; and
- 26 b. Was expressly part of the bylaws by the action, taken from time to time under
27 section 10-32-68, by the board or the members.
- 28 9. "Class", when used with reference to membership interests, means a category of
29 membership interests which differs in one or more rights or preferences from
30 another category of membership interests of the limited liability company.

- 1 10. "Closely held limited liability company" means a limited liability company that does
2 not have more than thirty-five members.
- 3 11. "Constituent organization" means an organization that:
4 a. In a merger, is either the surviving organization or an organization that is
5 merged into the surviving organization; or
6 b. In an exchange, is either the acquiring organization or an organization whose
7 securities are acquired by the acquiring organization.
- 8 12. "Contribution" means any cash, property, services rendered, or a promissory note
9 or other binding obligation to contribute cash or property or to perform services,
10 which a member contributes to a limited liability company in the capacity of that
11 member as a member.
- 12 13. "Contribution agreement" means an agreement between a person and a limited
13 liability company under which:
14 a. The person agrees to make a contribution in the future; and
15 b. The limited liability company agrees that, at the time specified for the
16 contribution in the future, the limited liability company will accept the
17 contribution and reflect the contribution in the required records.
- 18 14. "Contribution allowance agreement" means an agreement between a person and a
19 limited liability company under which:
20 a. The person has the right, but not the obligation, to make a contribution in the
21 future; and
22 b. The limited liability company agrees that, if the person makes the specified
23 contribution at the time specified in the future, the limited liability company will
24 accept the contribution and reflect the contribution in the required records.
- 25 15. "Converted organization" means the organization resulting from a conversion
26 under sections 10-32-108.1 through 10-32-108.6.
- 27 16. "Converting organization" means the organization that effects a conversion under
28 sections 10-32-108.1 through 10-32-108.6.
- 29 17. "Corporation" or "domestic corporation" means a corporation, other than a foreign
30 corporation, organized for profit and incorporated under chapter 10-19.1.

- 1 18. "Dissolution" means that the limited liability company incurred an event under
2 subsection 1 of section 10-32-109, subject only to sections 10-32-116 and
3 10-32-124, that obligates the limited liability company to wind up the limited liability
4 company's affairs and to terminate the limited liability company's existence as a
5 legal entity.
- 6 19. "Dissolution avoidance consent" means the consent of all remaining members:
7 a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after
8 the occurrence of any event that terminates the continued membership of a
9 member in the limited liability company; and
10 b. That the limited liability company must be continued as a legal entity without
11 dissolution.
- 12 20. "Distribution" means a direct or indirect transfer of money or other property, other
13 than its own membership interests, with or without consideration, or an incurrence
14 or issuance of indebtedness, by a limited liability company to any of its members in
15 respect of its membership interests and may be in the form of an interim
16 distribution or a termination distribution, or as consideration for the purchase,
17 redemption, or other acquisition of its membership interests, or otherwise.
- 18 21. "Domestic organization" means an organization created under the laws of this
19 state.
- 20 22. "Electronic" means relating to technology having electrical, digital, magnetic,
21 wireless, optical, electromagnetic, or similar capabilities.
- 22 23. "Electronic communication" means any form of communication, not directly
23 involving the physical transmission of paper:
24 a. That creates a record that may be retained, retrieved, and reviewed by a
25 recipient of the communication; and
26 b. That may be directly reproduced in paper form by the recipient through an
27 automated process.
- 28 24. "Electronic record" means a record created, generated, sent, communicated,
29 received, or stored by electronic means.

25. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
26. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
 - a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-32-150, has been delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state, and has been determined by the secretary of state to conform to law.
 - b. That the secretary of state did then:
 - (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
 - (2) Record the record in the office of the secretary of state.
27. "Financial rights" means a member's rights:
 - a. To share in profits and losses as provided in section 10-32-36;
 - b. To share in distributions as provided in section 10-32-60;
 - c. To receive interim distributions as provided in section 10-32-61; and
 - d. To receive termination distributions as provided in subdivision c of subsection 1 of section 10-32-131.
28. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under chapter 10-19.1.
29. "Foreign limited liability company" means a limited liability company which is organized under or governed by laws other than the laws of this state for a purpose for which a limited liability company may be organized under this chapter.
30. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
31. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

- 1 32. "Governance rights" means all of a member's rights as a member in the limited
2 liability company other than financial rights and the right to assign financial rights.
- 3 33. "Governing body" means for an organization that is:
4 a. A corporation, its board of directors;
5 b. A limited liability company, its board of governors; or
6 c. Any other organization, the body selected by its owners that has the ultimate
7 power to determine the policies of the organization and to control its policies.
- 8 34. "Governing statute" of an organization means:
9 a. With respect to a domestic organization, the following chapters of this code
10 which govern the internal affairs of the organization:
11 (1) If a corporation, then chapter 10-19.1;
12 (2) If a limited liability company, then this chapter;
13 (3) If a general partnership, then chapters 45-13 through 45-21;
14 (4) If a limited partnership, then chapter 45-10.2;
15 (5) If a limited liability partnership, then chapter 45-22; and
16 (6) If a limited liability limited partnership, then chapter 45-23; and
17 b. With respect to a foreign organization, the laws of the jurisdiction under which
18 the organization is created and which govern the internal affairs of the
19 organization.
- 20 35. "Governor" means an individual serving on the board.
- 21 36. "Intentionally" means that the person referred to either has a purpose to do or fail
22 to do the act or cause the result specified or believes that the act or failure to act, if
23 successful, will cause that result. A person "intentionally" violates a statute:
24 a. If the person intentionally does the act or causes the result prohibited by the
25 statute; or
26 b. If the person intentionally fails to do the act or cause the result required by the
27 statute, even though the person may not know of the existence or
28 constitutionality of the statute or the scope or meaning of the terms used in
29 the statute.
- 30 37. "Legal representative" means a person empowered to act for another person,
31 including an agent, manager, officer, partner, or associate of an organization; a

trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.

38. "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, or a low-profit limited liability company organized under or governed by this chapter.

39. "Low-profit limited liability company" means a limited liability company that has set forth in its articles of organization a business purpose that satisfies and that is at all times operated to satisfy each of the requirements listed in this subsection. The low-profit limited liability company:

- a. Shall significantly further the accomplishment of one or more charitable or educational purposes within the meaning of 26 U.S.C. 170(c)(2)(B) and would not have been formed but for its relationship to the accomplishment of the charitable or educational purposes;
- b. May not have as a purpose the accomplishment of one or more political or legislative purposes within the meaning of 26 U.S.C. 170(c)(2)(D); and
- c. May not have as a significant purpose the production of income or the appreciation of property; however, the fact that the low-profit limited liability company produces significant income or capital appreciation is not, in the absence of other factors, conclusive evidence of a significant purpose involving the production of income or the appreciation of property.

40. "Manager" means:

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

~~40.~~ 41. "Member" means a person, with or without voting rights, reflected in the required records of a limited liability company as the owner of a membership interest in the limited liability company.

~~41.~~ 42. "Membership interest" means one of the units, however designated, into which the proprietary interest of the members in a limited liability company is divided consisting of:

- a. The financial rights of a member;

- b. The right of a member to assign financial rights as provided in section 10-32-31;
- c. The governance rights of a member, if any; and
- d. The right of a member to assign any governance rights owned as provided in section 10-32-32.

~~42.~~ 43. "Notice":

- a. Is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company:
 - (1) When in writing and mailed or delivered to the limited liability company or the manager at the registered office or principal executive office of the limited liability company.
 - (2) When given by a form of electronic communication consented to by the limited liability company or a manager to which the notice is given:
 - (a) If by facsimile communication, when directed to a telephone number at which the limited liability company or a manager has consented to receive notice;
 - (b) If by electronic mail, when directed to an electronic mail address at which the limited liability company or a manager has consented to receive notice;
 - (c) If by posting on an electronic network on which the limited liability company or a manager has consented to receive notice, together with separate notice to the limited liability company or a manager of the specific posting, upon the later of:
 - [1] The posting; or
 - [2] The giving of the separate notice; or
 - (d) If by any other form of electronic communication by which the limited liability company or a manager has consented to receive notice, when directed to the limited liability company or a manager.
- b. Is given, in all other cases:

- 1 (1) When mailed to the person at an address designated by the person or
- 2 at the last-known address of the person;
- 3 (2) When handed to the person;
- 4 (3) When left at the office of the person with a clerk or other person in
- 5 charge of the office or:
- 6 (a) If there is no one in charge, when left in a conspicuous place in
- 7 the office; or
- 8 (b) If the office is closed or the person to be notified has no office,
- 9 when left at the dwelling house or usual place of abode of the
- 10 person with some person of suitable age and discretion who is
- 11 residing there; or
- 12 (4) When given by a form of electronic communication consented to by the
- 13 person to whom the notice is given:
- 14 (a) If by facsimile communication, when directed to a telephone
- 15 number at which the person has consented to receive notice.
- 16 (b) If by electronic mail, when directed to an electronic mail address
- 17 at which the person has consented to receive notice.
- 18 (c) If by posting on an electronic network on which the person has
- 19 consented to receive notice, together with separate notice to the
- 20 person of the specific posting, upon the later of:
- 21 [1] The posting; or
- 22 [2] The giving of the separate notice.
- 23 (d) If by any other form of electronic communication by which the
- 24 person has consented to receive notice when directed to the
- 25 person.
- 26 (5) When the method is fair and reasonable when all of the circumstances
- 27 are considered.
- 28 c. Is given by mail when deposited in the United States mail with sufficient
- 29 postage affixed.
- 30 d. Is deemed received when it is given.
- 31 ~~43.~~ 44. "Organization" means:

- 1 a. Whether domestic or foreign, a limited liability company, corporation,
2 partnership, limited partnership, limited liability partnership, limited liability
3 limited partnership, or any other person having a governing statute; but
4 b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation
5 which is incorporated under chapter 10-33 or a foreign nonprofit corporation
6 which is incorporated in another jurisdiction.
- 7 ~~44.~~ 45. "Originating records" means for an organization which is:
8 a. A corporation, its articles of incorporation;
9 b. A limited liability company, its articles of organization;
10 c. A limited partnership, its certificate of limited partnership;
11 d. A limited liability partnership, its registration; or
12 e. A limited liability limited partnership, its certificate of limited liability limited
13 partnership.
- 14 ~~45.~~ 46. "Owners" means the holder of ownership interests in an organization.
- 15 ~~46.~~ 47. "Ownership interests" means for a domestic or foreign organization that is:
16 a. A corporation, its shares;
17 b. A limited liability company, its membership interests;
18 c. A limited partnership, its partnership interests;
19 d. A general partnership, its partnership interests;
20 e. A limited liability partnership, its partnership interests;
21 f. A limited liability limited partnership, its partnership interests; or
22 g. Any other organization, its governance or transferable interests.
- 23 ~~47.~~ 48. "Parent" of a specified organization means an organization that directly or
24 indirectly, through related organizations, owns more than fifty percent of the voting
25 power of the ownership interests entitled to vote for governors, or other members
26 of the governing body of the specified organization.
- 27 ~~48.~~ 49. "Pertains" means a contribution "pertains":
28 a. To a particular series when the contribution is made in return for a
29 membership interest in that particular series.
30 b. To a particular class when the class has no series and the contribution is
31 made in return for a membership interest in the class.

- 1 A contribution that pertains to a series does not pertain to the class of which the
2 series is a part.
- 3 ~~49.~~ 50. "Principal executive office" means:
- 4 a. If the limited liability company has an elected or appointed president, an office
5 where the elected or appointed president of the limited liability company has
6 an office; or
- 7 b. If the limited liability company has no elected or appointed president, the
8 registered office of the limited liability company.
- 9 ~~50.~~ 51. "Record" means information that is inscribed on a tangible medium or that is stored
10 in an electronic or other medium and is retrievable in perceivable form.
- 11 ~~51.~~ 52. "Registered office" means the place in this state designated in a limited liability
12 company's articles of organization or a foreign limited liability company's certificate
13 of authority as the registered office.
- 14 ~~52.~~ 53. "Related organization" means an organization that controls, is controlled by, or is
15 under common control with another organization with control existing if an
16 organization:
- 17 a. Owns, directly or indirectly, at least fifty percent of the ownership interests of
18 another organization;
- 19 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
20 more of the voting members of the governing body of another organization; or
- 21 c. Has the power, directly or indirectly, to direct or cause the direction of the
22 management and policies of another organization, whether through the
23 ownership of voting interests, by contract, or otherwise.
- 24 ~~53.~~ 54. "Remote communication" means communication via electronic communication,
25 conference telephone, videoconference, the internet, or such other means by
26 which persons not physically present in the same location may communicate with
27 each other on a substantially simultaneous basis.
- 28 ~~54.~~ 55. "Required records" are those records required to be maintained under section
29 10-32-51.
- 30 ~~55.~~ 56. "Security" has the meaning given in section 10-04-02.

6 a. That the signature of a person, which may be a facsimile affixed, engraved,
7 printed, placed, stamped with indelible ink, transmitted by facsimile
8 telecommunication or electronically, or in any other manner reproduced on the
9 record, is placed on a record with the present intention to authenticate that
10 record.

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

19 ~~58.~~ 59. "Subsidiary" of a specified organization means an organization having more than
20 fifty percent of the voting power of its ownership interests entitled to vote for
21 governors, or other members of the governing body of the organization owned
22 directly, or indirectly, through related organizations, by the specified organization.

27 ~~60.~~ 61. "Surviving organization" means the organization resulting from a merger which:

29 b. May be created by the merger.

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- 1 a. Filed with the secretary of state under section 10-32-117 together with the
2 fees provided in section 10-32-150; or
3 b. Considered filed with the secretary of state under subdivision c of
4 subsection 2 of section 10-32-106 together with the fees provided in section
5 10-32-150.
- 6 ~~62.~~ 63. "Vote" includes authorization by written action.
- 7 ~~63.~~ 64. "Winding up" means the period triggered by dissolution during which the limited
8 liability company ceases to carry on business, except to the extent necessary for
9 concluding affairs, and disposing of assets under section 10-32-131.
- 10 ~~64.~~ 65. "Written action" means:
- 11 a. A written record signed by every person required to take the action described;
12 and
13 b. The counterparts of a written record signed by any person taking the action
14 described.
- 15 (1) Each counterpart constitutes the action of the persons signing it; and
16 (2) All the counterparts, taken together, constitute one written action by all
17 of the persons signing them.
- 18 **SECTION 2. AMENDMENT.** Subsections 2, 5, and 6 of section 10-32-02.2 of the
19 North Dakota Century Code are amended and reenacted as follows:
- 20 2. A person has notice of a fact if the person:
- 21 a. Knows of the fact;
22 b. Has received notice of the fact as provided in subsection ~~42~~ 43 of section
23 10-32-02;
24 c. Has reason to know the fact exists from all of the facts known to the person at
25 the time in question; or
26 d. Has notice of it under subsection 3.
- 27 5. A person receives a notification as provided in subsection ~~42~~ 43 of section
28 10-32-02.
- 29 6. Except as otherwise provided in subsection 7 and except as otherwise provided in
30 subsection ~~42~~ 43 of section 10-32-02, a person other than an individual knows, has
31 notice, or receives a notification of a fact for purposes of a particular transaction

when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.

a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.

b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

SECTION 3. AMENDMENT. Subdivision b of subsection 1 of section 10-32-10 of the North Dakota Century Code is amended and reenacted as follows:

b. ~~Must~~ Except as otherwise provided for a low-profit limited liability company, must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state, except a low-profit limited liability company name must contain the words "low-profit limited liability company" or the abbreviations "L3C" or "l3c";

SECTION 4. AMENDMENT. Subsection 1 of section 10-32-114 of the North Dakota Century Code is amended and reenacted as follows:

1. If notice to creditors and claimants is given, the notice must be given by publishing the notice once each week for four successive weeks in an official newspaper as defined in chapter 46-06 in the county or counties where the registered office and the principal executive office of the limited liability company are located and by giving written notice to known creditors and claimants pursuant to subsection ~~42~~ 43 of section 10-32-02.

SECTION 5. AMENDMENT. Subsection 2 of section 10-32-149 of the North Dakota Century Code is amended and reenacted as follows:

- 1 2. The annual report must be submitted on forms prescribed by the secretary of state.
2 The information provided must be given as of the date of the execution of the
3 report. The annual report must be signed as provided in subsection ~~56~~ 57 of
4 section 10-32-02, the articles, the bylaws, or a resolution approved by the
5 affirmative vote of the required proportion or number of the governors or members
6 entitled to vote. If the limited liability company or foreign limited liability company is
7 in the hands of a receiver or trustee, the annual report must be signed on behalf of
8 the limited liability company or foreign limited liability company by the receiver or
9 trustee. The secretary of state may destroy any annual report provided for in this
10 section after the annual report is on file for six years.

11 **SECTION 6. AMENDMENT.** Subdivision c of subsection 1 of section 57-38-31.1 of the
12 North Dakota Century Code is amended and reenacted as follows:

- 13 c. "Passthrough entity" means an entity that for the applicable tax year is treated
14 as an S corporation under this chapter or a general partnership, limited
15 partnership, limited liability partnership, trust, or limited liability company,
16 including a low-profit limited liability company, that for the applicable tax year
17 is not taxed as a corporation under this chapter.