

CORPORATIONS

CHAPTER 140

HOUSE BILL NO. 1192
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

SECURITIES, DEFINITIONS, ADMINISTRATION, EXEMPTIONS, AND FEES

AN ACT to create and enact subdivision i of subsection 6 of section 10-04-05 of the North Dakota Century Code, relating to exempt securities; and to amend and reenact section 10-04-02, subsections 1 and 3 of section 10-04-03, subdivision c of subsection 8 and subsection 10 of section 10-04-06, and subsection 6 of section 10-04-10 of the North Dakota Century Code, relating to definitions, administration, exempt transactions, and fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-04-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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

1. "Commissioner" ~~shall mean~~ means the securities commissioner of this state.
2. "Dealer" ~~shall mean~~ means every person, other than a salesman, who engages in this state, either for all or part of his time:
 - a. Directly or indirectly, as agent, broker, or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person; or
 - b. Directly or through an officer, director, employee, or agent, which officer, director, employee, or agent is not registered as a dealer under this chapter, in selling securities issued by such person.
3. "Investment adviser" ~~shall mean~~ means any person who, for compensation, engages in the business of advising others,

either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

- a. A bank, savings institution, or trust company.
 - b. A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession.
 - c. A broker or dealer whose performance of these services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation for them.
 - d. A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation.
 - e. A person whose advice, analysis, or reports relate only to securities exempted by subsection 1 of section 10-04-05.
 - f. A person who has no place of business in this state if his only clients in this state are other investment advisers, brokers or dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees.
 - g. Such other persons not within the intent of this subsection as the commissioner may by rule or order designate.
4. "Issuer" ~~shall mean~~ means every person who issues or proposes to issue any security, except that:
- a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, certificates of interest, or shares in an unincorporated investment trust, whether or not of the fixed, restricted management, or unit type, issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.

- b. With respect to equipment trust certificates or like securities, issuer means the person by whom the equipment or property is or is to be used.
- c. With respect to fractional interests in oil, gas, or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, which are created for the purpose of sale.
5. "Offer for sale" or "offer to sell" shall mean means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, shall be deemed an offer to sell the security to be acquired by subscription or conversion.
6. "Person" shall mean means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any other unincorporated organization.
7. "Registered dealer" shall mean means a dealer registered under this chapter.
8. "Registered salesman" shall mean means a salesman registered under this chapter.
9. "Sale" or "sell" shall mean means every sale or other disposition of a security or interest in a security for value, and every contract to make any such sale or disposition. Any security given or delivered with, or as a bonus on account of any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.
10. "Salesman" shall mean means any individual, other than a dealer, who represents a dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. A partner, officer, or director of a dealer or an issuer or a person occupying a similar status or performing similar functions is a "salesman" only if he otherwise comes within the definition.
11. "Securities Act of 1933" shall mean means the Act of Congress of the United States known as the Securities Act of 1933, as now or hereafter amended.

12. "Security" shall mean means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor where the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

SECTION 2. AMENDMENT. Subsections 1 and 3 of section 10-04-03 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

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

It shall be the prime duty of such the commissioner to administer the provisions of this chapter. The commissioner shall receive a salary within the amount

appropriated for salaries by the legislative assembly. The commissioner shall use a seal with the words "securities commissioner, North Dakota" and such design as the commissioner may prescribe engraved thereon by which seal the commissioner may authenticate documents used by him in the administration of this chapter. The commissioner shall may employ from time to time such employees as are necessary for the administration of this chapter; and they shall perform the duties assigned by the commissioner. In the absence or disability of the commissioner, his chief the deputy shall administer the provisions of this chapter, as acting commissioner.

3. The In addition to their regular compensation, the commissioner, or any person employed by him, and the commissioner's employees shall be paid in addition to their regular compensation, travel expenses necessary and actually incurred by each of them in the performance of their duties.

SECTION 3. Subdivision i of subsection 6 of section 10-04-05 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

- i. If the issuer is a successor to another issuer, it shall be deemed to have met the conditions in subdivisions b, c, and d if: (1) its predecessor and it, taken together, do so, provided that the succession was primarily for the purpose of changing the state of incorporation of the predecessor or forming a holding company and that the assets and liabilities of the successor at the time of succession were substantially the same as those of the predecessor; or (2) if all predecessors met the conditions at the time of succession and the issuer has continued to do so since the succession.

SECTION 4. AMENDMENT. Subdivision c of subsection 8 and subsection 10 of section 10-04-06 of the 1983 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

- c. Either Moody's, Fitch's, or Standard and Poor's securities manuals, or other recognized securities manuals A nationally recognized securities manual approved by the commissioner contain contains, and has contained for a period of not less than ninety days prior to the sale, the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen months prior to the date of such sale, and a profit and loss statement of the issuer for either the fiscal year preceding that date or the most recent year of operations.

- 10. The sale of capital stock of a corporation may be exempted by the securities commissioner if the corporation is organized under chapter 10-30 or approved by the small business administration as qualifying for loans under section 502 of the Small Business Investment Act of 1958, as amended; or the sale of memberships, including dues, in a nonprofit corporation incorporated under chapter 10-24 may be exempted by the securities commissioner if the corporation is organized and operated for the primary purpose of promoting community development.

SECTION 5. AMENDMENT. Subsection 6 of section 10-04-10 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

- 6. Fees. The fee, which must accompany the application, for registration and for each annual renewal thereof shall be is:
 - a. For each dealer employing fifteen or fewer salesmen in this state \$100.00
 - b. For each dealer employing more than fifteen salesmen in this state - - - - \$~~175.00~~
 - e- For each salesman
 - General examination \$ 10.00
 - State law examination \$ 5.00
 - Registration fee \$ 20.00
 - Renewal fee \$ 20.00
 - d- c. For each investment adviser
 - General examination \$ 10.00
 - State law examination \$ 5.00
 - Registration fee \$ 50.00

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

Approved March 14, 1985

CHAPTER 141

SENATE BILL NO. 2494
(Senators David, Krauter)
(Representative Shide)

SECURITIES EXEMPT FROM REGISTRATION

AN ACT to amend and reenact subsection 9 of section 10-04-06 of the North Dakota Century Code, relating to securities transactions exempt from registration requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 10-04-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. Any transaction pursuant to an offer directed by the offeror to not more than ~~ten~~ twenty-five persons (other than those designated in subsection 5) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:
- a. The seller reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.
 - b. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5).
 - c. The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee of one hundred dollars, which fee must accompany the application for approval.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in subdivisions a, b, and c with or without the substitution of a limitation on remuneration.

Approved March 28, 1985

CHAPTER 142

HOUSE BILL NO. 1547
(Richard, Martin)

CORPORATE MINERAL INTERESTS

AN ACT to amend and reenact section 10-06-01 of the North Dakota Century Code, relating to disposal of agricultural land and mineral interests by certain corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

*SECTION 1. AMENDMENT. Section 10-06-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-01. Farming or ranching by corporations prohibited - Retention of mineral interests prohibited. All corporations, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching. For land and minerals acquired after July 1, 1985, any corporation which acquires mineral interests through foreclosure or in lieu of foreclosure which were not specifically valued at the time the security interest in the minerals was acquired, and that is prohibited from owning or leasing land used in farming or ranching, is prohibited from retaining mineral interests in land used for farming or ranching when the corporation divests itself of the land, and the mineral interests must be passed with the surface estate of the land when the corporation divests itself of the land pursuant to this chapter. As used in this chapter, "corporation" includes any joint stock company or association.

Approved March 31, 1985

* NOTE: Section 10-06-01 was also amended by section 1 of House Bill No. 1068, chapter 143, and amended by section 1 of House Bill No. 1136, chapter 144.

CHAPTER 143

HOUSE BILL NO. 1068
(Legislative Council)
(At the request of Interim Judiciary "A" Committee)

**CORPORATIONS EXCLUDED FROM FARM
PARTNERSHIP**

AN ACT to amend and reenact section 10-06-01 of the North Dakota Century Code, relating to prohibition of corporations from becoming partners in a farm or ranch.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 10-06-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-01. Farming or ranching by corporations prohibited. All corporations, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching. A corporation may be a partner in a partnership that is in the business of farming or ranching only if that corporation complies with this chapter. As used in this chapter, "corporation" includes any joint stock company or association.

Approved March 14, 1985

* NOTE: Section 10-06-01 was also amended by section 1 of House Bill No. 1547, chapter 142, and amended by section 1 of House Bill No. 1136, chapter 144.

CHAPTER 144

HOUSE BILL NO. 1136
(Committee on Judiciary)
(At the request of the Secretary of State)

CONVERSION OF BUSINESS CORPORATION TO FARM CORPORATION

AN ACT to amend and reenact section 10-06-01 of the North Dakota Century Code, relating to farm corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 10-06-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-01. Farming or ranching by corporations prohibited. All corporations, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching. As used in this chapter, "corporation" includes any joint stock company or association.

A business corporation organized under chapter 10-19 may convert to a farm corporation by adopting an amendment to its articles of incorporation. The amendment must specify that the corporation elects to be subject to this chapter, and the corporation does comply with all requirements of this chapter. The amendment must be filed with the prescribed fee and with the initial report required by section 10-06-07.3.

Approved March 14, 1985

* NOTE: Section 10-06-01 was also amended by section 1 of House Bill No. 1068, chapter 143, and amended by section 1 of House Bill No. 1547, chapter 142.

CHAPTER 145

HOUSE BILL NO. 1067
(Legislative Council)
(Interim Judiciary "A" Committee)

CORPORATE FARMING PROHIBITION EXCEPTIONS

AN ACT to create and enact five new sections to chapter 10-06 of the North Dakota Century Code, relating to the definition of nonprofit organizations, exemptions from the corporate farm prohibition, and required divestiture; and to amend and reenact sections 10-06-04.1, 10-06-07, and 10-06-07.3 of the North Dakota Century Code, relating to the corporations allowed to farm or ranch, an income limitation on nonfarm activities of corporate farms, and initial report requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

"Nonprofit organization" defined. As used in the chapter, "nonprofit organization" means an organization or trust that has tax-exempt status under at least one of the following sections of the Internal Revenue Code:

1. An organization that was in existence on December 31, 1984, and that is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals under section 501(c)(3), or is a domestic fraternal organization under section 501(c)(10).
2. A charitable, religious, educational, or scientific organization classified as either a private foundation or as a public charity having status as an organization described in section 509(a)(1) or (3).
3. A trust described in section 4947 for which a deduction is allowable under section 170.

SECTION 2. AMENDMENT. Section 10-06-04.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-04.1. Certain nonprofit organizations or trusts may own or lease land - Certain nonprofit organizations may continue farming or ranching - Restriction on acquisition and ownership of land.

1. A nonprofit organization ~~exempt from taxation under section 501(e)(3) of the Internal Revenue Code (26 U.S.C. 501(e)(3))~~ or a trust for the benefit of an individual or a class of individuals related within the degrees of kinship specified in subsection 2 of section 10-06-07 may own or lease farmland or ranch land if that land is leased to a person who farms or ranches the land as a sole proprietorship, partnership, or a corporation allowed to engage in farming or ranching under section 10-06-07.
2. A To the extent farming or ranching is essential to a nonprofit organization's charitable purposes a nonprofit organization exempt from taxation under section 501(e)(3) of the Internal Revenue Code and actively engaged in the business of farming or ranching in this state on January 1, 1983, may continue to engage in the business of farming or ranching without interruption after January 1, 1983.
3. A nonprofit organization ~~exempt from taxation under section 501(e)(3) of the Internal Revenue Code~~ which owned farmland or ranch land for the preservation of unique historical, archaeological, or environmental land ~~prior to~~ before January 1, 1983, may continue ownership of ~~such~~ that land without interruption after January 1, 1983. An organization that is holding land for scenic preservation shall either prohibit all hunting, or if any parcel of the land is open to hunting, it must be open to hunting by the general public.

* **SECTION 3. AMENDMENT.** Section 10-06-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-07. Corporation allowed to engage in the business of farming or ranching - Requirements. This chapter does not prohibit a domestic corporation from owning real estate and engaging in the business of farming or ranching, if the corporation meets all the requirements of chapters 10-19, 10-20, 10-21, 10-22, and 10-23 not inconsistent with this chapter and. The following requirements also apply:

1. The corporation must not have more than fifteen shareholders.

* **NOTE:** Section 10-06-07 was also amended by section 1 of Senate Bill No. 2041, chapter 147.

2. Each shareholder ~~is~~ must be related to each of the other shareholders within one of the following degrees of kinship or affinity: parent, child, son, daughter, stepson, stepdaughter, grandparent, grandchild, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or is the spouse of a person so related.
3. Each shareholder ~~is~~ must be an individual, ~~except that any or one of the following may also be shareholders:~~
 - a. A trust for the benefit of an individual or a class of individuals who are related to a every shareholder of the corporation within the degrees of kinship or affinity specified in this section.
 - b. An estate of a decedent who was related to a every shareholder of the corporation within the degrees of kinship or affinity specified in this section.
4. Neither a trust nor an estate may be a shareholder if the beneficiaries of the trust or the estate together with the other shareholders are more than fifteen in number.
- 4- 5. Each individual who is a shareholder ~~is~~ must be a citizen of the United States or a permanent resident alien of the United States.
- 5- 6. The officers and directors of the corporation must be shareholders who are actively engaged in operating the farm or ranch and at least one of its shareholders ~~shall~~ must be an individual residing on or operating the farm or ranch.
- 6- 7. An annual average of at least sixty-five percent of the corporation's gross income over the previous five years, or for each year of its existence, if less than five years, shall have been derived from farming or ranching operations.
- 7- 8. The corporation's income from nonfarm rent, nonfarm royalties, dividends, interest, and annuities ~~does not~~ cannot exceed twenty percent of the corporation's gross receipts income.

SECTION 4. AMENDMENT. Section 10-06-07.3 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-07.3. Initial report - Shareholder requirements.

1. Every farming or ranching corporation must file an initial report with its articles of incorporation. The report

must be ~~executed~~ signed by the incorporators and must contain the following:

- 1- a. The name of the corporation.
 - 2- b. The name and addresses of the shareholders of the corporation.
 - 3- Each shareholder must be related to each of the other shareholders within one of the following degrees of kinship: parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or is a spouse of a person so related.
 - c. The relationships between shareholders.
 - 4- d. A statement ~~that~~ of whether the shareholders are citizens of the United States or a permanent resident ~~alien~~ aliens of the United States.
 - 5- e. A statement ~~that~~ of whether at least one of the shareholders is actively engaged in operating the farm or ranch and ~~whether~~ at least one of its the shareholders is an individual residing on or operating the farm or ranch.
 - 6- f. A statement listing the acreage and location listed by section, township, range, and county ~~or~~ of all land in the state owned or leased by the corporation and used for farming or ranching.
2. ~~No~~ A corporation may not commence farming or ranching in this state until the secretary of state has received and filed the articles of incorporation and the initial report required by this section. The secretary of state shall ~~cause to be printed in~~ furnish to a newspaper of general circulation in each county or counties ~~wherein in which~~ any land is owned or leased by each corporation a legal notice reporting the following:
- a. The names of each corporation and its respective shareholders as listed in the initial report ~~and a.~~
 - b. A statement to the effect that each of the corporations listed has reported that it owns or leases land used for farming or ranching ~~within in~~ the county and that a description of ~~such that~~ land is available for inspection at the secretary of state's office.

SECTION 5. A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Exemption from certain disclosure and other requirements for certain organizations. Sections 10-06-07, 10-06-07.3, 10-06-08, and 10-06-08.1 do not apply to nonprofit organizations or to corporations such as banks, trust companies, or foundations serving in a fiduciary capacity as the personal representative or trustee of an estate or trust for an individual described in subsection 2 of section 10-06-07.

SECTION 6. A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Industrial and business purpose exception. A corporation that is not engaged in the business of farming or ranching may own or lease land used for farming or ranching, only when the land is necessary for residential or commercial development, the siting of buildings, plants, facilities, industrial parks, or similar business or industrial purposes of the corporation, or for uses supportive of or ancillary to adjacent nonagricultural land for the benefit of both land parcels. The farmland or ranch land while not being immediately used for any purpose of the corporation must be available to be leased by persons actually engaged in farming or ranching.

SECTION 7. A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Acquisition of certain farmland or ranch land by certain nonprofit organizations. A nonprofit organization may acquire farmland or ranch land only in accordance with the following:

1. Unless it is permitted to own farmland or ranchland under section 10-06-04.1, the nonprofit organization must, before January 1, 1985, have been either incorporated in this state or issued a certificate of authority to do business in this state.
2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:
 - a. The land must be maintained and managed solely for the purpose of conserving natural area and habitat for biota.
 - b. Any agricultural use of the land is incidental to and in accordance with the management of the land for conservation and the agricultural use is by an individual or by a person allowed to engage in farming or ranching under section 10-06-07.
 - c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.

3. Before any farmland or ranch land can be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranch land for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to an advisory committee consisting of the director of the parks and recreation department, the state engineer, the agriculture commissioner, the state forester, the game and fish commissioner, and the manager of the Garrison Diversion Conservancy District, for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall review the proposed acquisition plan and shall make recommendations to the governor within thirty days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

4. On failure to qualify to continue ownership under subsection 2, the land is disposed of within five years of that failure to qualify.

SECTION 8. A new section to chapter 10-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Required divestiture of agricultural land. In addition to the divestiture requirements of section 7 of this Act and section 10-06-13, a nonprofit corporation that acquires land by gift or devise after December 31, 1984, the ownership of which is not permitted under this chapter, shall divest itself of the land acquired after December 31, 1984, within ten years after the acquisition. Ownership is holding either fee or equitable title, unless fee title is held solely as security for payment of the purchase price, or unless fee title does not carry with it the right to immediate possession of the property. If the corporation fails to divest itself of the land within the required time, the attorney general shall take action under section 10-06-13.

Approved April 15, 1985

CHAPTER 146

HOUSE BILL NO. 1636
(Meyer, Riehl)

CORPORATE FARMLAND DIVESTITURE

AN ACT to amend and reenact section 10-06-13 of the North Dakota Century Code, relating to divestiture of farmland and ranchland.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-06-13 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-13. Enforcement.

1. The attorney general shall commence an action in the district court of the county in which the substantial portion of ~~farm~~ farmland or ranchland used in violation of this chapter is situated, if the attorney general has reason to believe that any person is violating this chapter. The attorney general shall file for record with the register of deeds of each county in which any portion of the land is located a notice of the pendency of the action. If the court finds that the land in question is being held in violation of this chapter, or that a corporation is conducting the business of farming or ranching in violation of this chapter, the court shall enter an order so declaring. The attorney general shall file any such order for record with the register of deeds of each county in which any portion of the land is located. Thereafter, the corporation shall, within the time set by the court not to exceed one year from the date of the court's final order, divest itself of any farming or ranching land owned or leased by it in violation of this chapter, and cease all farming and ranching operations. Any corporation that fails to comply with the court's order shall be dissolved by the secretary of state.
2. The divestment period is deemed to be a covenant running with the title to the land against any corporate grantee,

corporate successor, or corporation assignee of the corporation not authorized to do business under this chapter.

3. Any land not divested within the divestment period prescribed shall be sold at public sale in the manner prescribed by law for the foreclosure of real estate mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law, including enjoining the corporation from completing performance on the remainder of any leasehold which is in violation of this chapter. ~~Any~~
4. Subject to the divestiture requirements of subsections 5, 6, and 7, a domestic or foreign corporation may acquire ~~farm~~ farmland or ranchland as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise. ~~All farm~~
5. Unless retention of the farmland or ranchland is permitted under subsection 6 or 7, all farmland or ranchland acquired as security for indebtedness, in the collection of debts, or by the enforcement of a lien or claim shall be disposed of within three years after acquiring ownership, if the acquisition would otherwise violate this chapter. ~~in the interim such~~
6. The disposition requirement does not apply to a corporation that has acquired title to the land through the process of foreclosure of a mortgage, or a deed from a mortgagor instead of a foreclosure, if, by the expiration of one month after what is or what would have been if the mortgage had been foreclosed the redemption period of the mortgage, that corporation leases to the prior mortgagor from whom it was acquired, with an option to purchase, and if documents evidencing the lease agreement have been filed with the register of deeds of each county in which the land is located. A copy of a notice of lease is sufficient evidence. The exemption in this subsection applies for only five years and then only if the property has been appraised in accordance with subsection 8. The annual lease payments required of the tenant cannot exceed seven percent of the appraised value.
7. The disposition requirement does not apply to a corporation that has acquired title to the land through the process of foreclosure of a mortgage, or a deed from the mortgagor instead of foreclosure, if, by the expiration of one month after what is or what would have been if the mortgage had been foreclosed the redemption period of the mortgage, that corporation contracts for the sale of the land to the prior mortgagor from whom it was

acquired, and if documents evidencing the purchase agreement have been filed with the register of deeds of each county in which the land is located. A copy of a notice of the contract for deed is sufficient evidence. An exemption under this subsection is valid only if an appraisal has been made in accordance with subsection 8, and if it is valid, the exemption is unlimited in duration. The sale price cannot exceed the price determined by the appraisers.

8. If an appraisal is required, the appraisal must be made by three independent appraisers, one selected by the corporation, one selected by the prior mortgagor, and the third selected by the first two appraisers.
9. If a corporation holds land pending divestiture, and the holding is not otherwise governed by this section, the land shall be leased to persons actually engaged in farming or ranching and a disposal shall not be to a corporation ~~either than a~~ unless ownership by that corporation is authorized under the provisions of this chapter.
10. Any corporation continuing to violate the provisions of this chapter shall be dissolved by the attorney general in accordance with the provisions of the laws of this state.

Approved April 15, 1985

CHAPTER 147

SENATE BILL NO. 2041
(Olson)

BUSINESS CORPORATION REVISION

AN ACT to create and enact chapter 10-19.1 of the North Dakota Century Code, relating to the creation, organization, operation, liability, and dissolution of business corporations; to amend and reenact sections 10-06-07, 10-06-07.1, 10-22-01, 10-22-02, 10-22-03, 10-22-05, 10-22-06, 10-22-07, 10-22-15, 10-22-16, 10-22-18, 10-23-09, 10-23-11, 10-23-12, 10-23-13, 10-23-14, 10-23-15, 10-23-16, 10-23-17, 10-30-05, subsection 12 of section 25-03.1-02, and subsection 4 of section 38-08.1-03.1 of the North Dakota Century Code, relating to references to chapters 10-19, 10-20, and 10-21 (North Dakota Business Corporation Act); and to repeal chapters 10-19, 10-20, and 10-21 of the North Dakota Century Code, relating to the North Dakota Business Corporation Act; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 10-06-07 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-07. Corporation allowed to engage in the business of farming or ranching - Requirements. This chapter does not prohibit a domestic corporation from owning real estate and engaging in the business of farming or ranching, if the corporation meets all the requirements of chapters ~~10-19~~, ~~10-20~~, ~~10-21~~ 10-19.1, 10-22, and 10-23 not inconsistent with this chapter and:

1. The corporation must not have more than fifteen shareholders.
2. Each shareholder is related to each of the other shareholders within one of the following degrees of kinship: parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or is the spouse of a person so related.

* NOTE: Section 10-06-07 was also amended by section 3 of House Bill No. 1067, chapter 145.

3. Each shareholder is an individual, except that any of the following may also be shareholders:
 - a. A trust for the benefit of an individual or a class of individuals who are related to a shareholder of the corporation within the degrees of kinship specified in this section.
 - b. An estate of a decedent who was related to a shareholder of the corporation within the degrees of kinship specified in this section.

Neither a trust nor an estate may be a shareholder if the beneficiaries of the trust or the estate together with the other shareholders are more than fifteen in number.

4. Each individual who is a shareholder is a citizen of the United States or a permanent resident alien of the United States.
5. The officers and directors of the corporation must be shareholders who are actively engaged in operating the farm or ranch and at least one of its shareholders shall be an individual residing on or operating the farm or ranch.
6. An annual average of at least sixty-five percent of the corporation's gross income over the previous five years, or for each year of its existence, if less than five years, shall have been derived from farming or ranching operations.
7. The corporation's income from rent, royalties, dividends, interest, and annuities does not exceed twenty percent of the corporation's gross receipts.

SECTION 2. AMENDMENT. Section 10-06-07.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-07.1. Applicability of Business Corporation Act. Chapters ~~10-19, 10-20, 10-21~~ 10-19.1, 10-22, and 10-23 shall be ~~are~~ applicable to farming and ranching corporations and they shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other business corporations except where inconsistent with the intent of this chapter. This chapter ~~shall take~~ takes precedence in the event of any conflict with the provisions of chapters ~~10-19 through 10-19.1, 10-22, and 10-23.~~

SECTION 3. Chapter 10-19.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

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

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Address" means mailing address. In the case of a registered office or principal executive office, the term means the office address, which may not be a post-office box.
3. "Articles" means, in the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, and articles of dissolution. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.
4. "Board" means the board of directors of a corporation.
5. "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.
6. "Closely held corporation" means a corporation which does not have more than thirty-five shareholders.
7. "Constituent corporation" means a domestic or foreign corporation that is a party to a merger or exchange.
8. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
9. "Director" means a member of the board.
10. "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares. A distribution may be in the form of a dividend or a distribution in liquidation, or as

consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.

11. "Filed with the secretary of state" means that signed duplicate originals of a document, together with the fees provided in chapter 10-23, have been delivered to the secretary of state and have been determined by the secretary of state to conform to law. The secretary of state shall then endorse on each original the word "filed" and the month, day, and year, record the document in the office of the secretary of state, and shall then return one original to the person who delivered it for filing.
12. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose or purposes for which a corporation may be incorporated under this chapter.
13. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
14. A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
15. "Legal representative" means a person empowered to act for another person, including an agent, officer, partner, or associate of, an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of the person or estate of a person.
16. "Notice" is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation. In all other cases, "notice" is given to a person when mailed to the person at an address designated by the person or at the last known address of the person, or when handed to the person, or when left at the office of the person with a clerk or other person in charge of the office, or if there is no one in charge, when left in a conspicuous place in the office, or if the

- office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein. Notice by mail is given when deposited in the United States mail with sufficient postage affixed. Notice is deemed received when it is given.
17. "Officer" means a person elected, appointed, or otherwise designated as an officer by the board, and any other person deemed elected as an officer pursuant to section 10-19.1-56.
 18. "Organization" means a domestic or foreign corporation, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.
 19. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.
 20. "Parent" of a specified corporation means a corporation that directly, or indirectly through related corporations, owns more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.
 21. "Person" includes an individual and an organization.
 22. "Principal executive office" means an office where the elected or appointed president of a corporation has an office. If the corporation has no elected or appointed president "principal executive office" means the registered office of the corporation.
 23. "Related corporation" of a specified corporation means a parent or subsidiary of the specified corporation or another subsidiary of a parent of the specified corporation.
 24. "Security" has the meaning given it in subsection 12 of section 10-04-02.
 25. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.
 26. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.

27. "Shareholder" means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.
28. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors or the holders of the required proportion or number of the voting power of the shares present and entitled to vote. A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.
29. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
30. "Subsidiary" of a specified corporation means a corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related corporations, by the specified corporation.
31. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.
32. "Vote" includes authorization by written action.
33. "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the person signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

10-19.1-02. Application to corporations incorporated after June 30, 1985. This chapter applies to all corporations for profit incorporated for a purpose or purposes for which a corporation might be incorporated under this chapter or which are incorporated under chapters 6-05, 10-06, 10-30, 10-31, 26-08, or any other chapter which provides that such corporations are governed by the general corporation laws of this state.

10-19.1-03. Election prior to mandatory application. A corporation in existence prior to July 1, 1985, which has incorporated under chapters 10-19, 10-20, 10-21, 10-22, and 10-23 as

they existed on June 30, 1985, or under the provisions of chapters 6-05, 10-06, 10-30, 10-31, 26-08, or any other chapter which provides that such corporations are governed by the general corporation laws of this state, may elect after June 30, 1985, and before July 1, 1986, to become governed by this chapter.

1. If the articles of an electing corporation include a provision prohibited by this chapter or omit a provision required by this chapter or are otherwise inconsistent with this chapter, the electing corporation shall amend its articles to conform to the requirements of this chapter. The appropriate provisions of the corporation's articles or bylaws or the law by which it was governed before the effective date of the election made pursuant to this section control the manner of adoption of the amendment.
2. An election by a corporation to become governed by this chapter must be made by resolution approved by the affirmative vote of the holders of the same proportion or number of the voting power of the shares entitled to vote that is required for amendment of the articles, of the corporation prior to the election. The duplicate originals of the resolution, and articles of amendment if required, must be filed with the secretary of state, together with the fees provided in chapter 10-23. The resolution and articles of amendment become effective upon acceptance by the secretary of state or at another time within thirty days after acceptance of the resolution and articles of amendment so provided. If no amendment of the articles is required, the resolution must state that the articles of the corporation conform to the requirements of this chapter.
3. Upon filing an election pursuant to this section all provisions of the bylaws that are consistent with this chapter remain or become effective and all provisions of the bylaws that are inconsistent with this chapter cease to be effective.

10-19.1-04. Mandatory application. After June 30, 1986, this chapter applies to all existing corporations incorporated under any chapter of this code providing for the incorporation of corporations for a purpose or purposes for which a corporation might be incorporated under this chapter or which are otherwise to be governed by the general corporation laws of this state.

All provisions of the articles and bylaws of the corporation that may be included in the articles or bylaws under this chapter remain in effect. All provisions of the articles and bylaws of the corporation that are inconsistent with this chapter cease to be effective on July 1, 1986. Any provisions required by this chapter to be contained in the articles that do not appear in the articles are read into them as a matter of law.

10-19.1-05. Retention of two-thirds majority.

1. If the articles of a corporation described in section 10-19.1-02 or 10-19.1-03 do not contain a provision specifying the proportion of the voting power of the shares required for approval of amendments to the articles, plans of merger or exchange, or sales of assets, a shareholder or shareholders holding more than one-third of the voting power of all the shares entitled to vote for any or all of the above-mentioned actions may, by signed written demand filed in duplicate original with the secretary of state, along with the fees provided in chapter 10-23, amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of the shares entitled to vote for any or all of the above-mentioned actions for which no required majority was specified, notwithstanding any provisions of section 10-19.1-19, 10-19.1-98, or 10-19.1-104 to the contrary. Notice that the demand has been filed must be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.
2. A shareholder or shareholders holding more than one-third of the voting power of the shares entitled to vote for dissolution of a corporation described in section 10-19.1-02 or 10-19.1-03 may, by signed written demand filed in duplicate original with the secretary of state, along with the fees provided in chapter 10-23, amend the articles of the corporation to include a provision requiring the approval of the holders of two-thirds of the voting power of all the shares for the authorization of the dissolution of the corporation, notwithstanding the provisions of section 10-19.1-107. Notice that the demand has been filed must be given by the shareholder to an officer of the corporation, but failure to give the notice does not invalidate the demand.
3. A signed written demand by the shareholders of a corporation pursuant to subsection 1 or 2 is valid only if filed with the secretary of state before July 1, 1986.

10-19.1-06. Transition. The continuation or completion of any act by a corporation that has not incorporated under, but has become governed by, this chapter, and the continuation or performance of any executed or wholly or partially executory contract, conveyance, or transfer to or by the corporation, if otherwise lawful before the corporation became governed by this chapter, remains valid, and may be continued, completed, consummated, enforced, or terminated as required or permitted by a statute applicable prior to the date on which the corporation became governed by this chapter.

10-19.1-07. Reservation of legislative power. The legislative assembly has the power to prescribe such regulations, provisions, and limitations as it determines to be advisable, which are binding upon any and all corporations subject to this chapter. The legislative assembly may amend, repeal, or modify this chapter.

Every grant of corporate power is subject to alteration, suspension, or repeal in the discretion of the legislative assembly. Any statute of this state relating to corporations may be repealed or amended. The alteration, suspension, amendment, or repeal, or the dissolution of any corporation, does not take away or impair any remedy given against the corporation, its shareholders, or officers for any liability which has been previously incurred.

The legislative assembly, or the house of representatives or the senate, may examine the affairs and conditions of any corporation in this state at all times. For that purpose, any committee appointed by the legislative assembly, or the house of representatives or the senate, may administer all necessary oaths to the directors, officers, and shareholders of a corporation, and may examine them on oath in relation to its affairs and condition, and may examine the safes, books, papers, and documents belonging to such corporation or pertaining to its affairs and condition and compel the production of all keys, books, papers, and documents by summary process to be issued on application to any district court or any district judge under the rules the court prescribes.

10-19.1-08. Purposes. A corporation may be incorporated under this chapter for any business purpose or purposes, unless some other statute of this state requires incorporation for any of those purposes under a different law. Unless otherwise provided in its articles, a corporation has general business purposes.

10-19.1-09. Incorporators. One or more individuals of the age of eighteen years or more may act as incorporators of a corporation by filing with the secretary of state articles of incorporation for the corporation.

10-19.1-10. Articles.

1. The articles of incorporation must contain:

- a. The name of the corporation.
- b. The address of the registered office of the corporation and the name of its registered agent, at that address.
- c. The aggregate number of shares that the corporation has authority to issue.
- d. The name and address of each incorporator.

2. The articles of incorporation may not contain:

- a. Any provision limiting the right of cumulative voting as guaranteed by section 6 of article XII of the Constitution of North Dakota.
 - b. Any provision authorizing the issuance of stocks or bonds in violation of section 9 of article XII of the Constitution of North Dakota.
3. The following provisions govern a corporation unless modified in the articles:
- a. A corporation has general business purposes as provided in section 10-19.1-08.
 - b. A corporation has perpetual existence and certain powers as provided in section 10-19.1-26.
 - c. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-19.1-31.
 - d. The affirmative vote of a majority of directors present is required for an action of the board as provided in section 10-19.1-46.
 - e. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-19.1-47.
 - f. The board may authorize the issuance of securities and rights to purchase securities as provided in subsection 1 of section 10-19.1-61.
 - g. All shares are common shares entitled to vote and are of one class and one series as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
 - h. All shares have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
 - i. The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
 - j. The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits, and determine the value of nonmonetary consideration as provided in subsection 1 of section 10-19.1-63.

- k. Shares of a class or series may not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued as provided in subsection 1 of section 10-19.1-63.
- l. A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board as provided in section 10-19.1-64.
- m. The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this chapter requires the affirmative vote of a majority of the voting power of all shares entitled to vote as provided in subsection 1 of section 10-19.1-74.
- n. Shares of a corporation acquired by the corporation may be reissued as provided in subsection 1 of section 10-19.1-93.
- o. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding shares entitled to vote of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision c of subsection 3 of section 10-19.1-98.
- p. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding participating shares of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision d of subsection 3 of section 10-19.1-98.
- 4. The following provisions govern a corporation unless modified either in the articles or in the bylaws:

 - a. Directors serve for an indefinite term that expires upon the election and qualification of a successor as provided in section 10-19.1-35.
 - b. The compensation of directors is fixed by the board as provided in section 10-19.1-37.
 - c. The method provided in section 10-19.1-41 must be used for removal of directors.
 - d. The method provided in section 10-19.1-42 must be used for filling board vacancies.

- e. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-19.1-43.
- f. A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-19.1-43.
- g. A majority of the board is a quorum for a board meeting as provided in section 10-19.1-45.
- h. A committee must consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present as provided in subsection 2 of section 10-19.1-48.
- i. The board may establish a committee of disinterested persons as provided in section 10-19.1-49.
- j. Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-19.1-59.
- k. Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions as provided in section 10-19.1-71.
- l. No fewer than ten nor more than fifty days' notice is required for a meeting of shareholders as provided in subsection 2 of section 10-19.1-73.
- m. The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting as provided in section 10-19.1-76.
- n. The board may fix a date up to fifty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of an entitled to vote at the meeting as provided in subsection 1 of section 10-19.1-77.
- o. Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 3 of section 10-19.1-77.
- p. Indemnification of certain persons is required as provided in section 10-19.1-91.
- q. The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-19.1-92.

5. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board fixing a greater than majority director or shareholder vote or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, in the bylaws:
- a. The members of the first board may be named in the articles as provided in subsection 1 of section 10-19.1-32.
 - b. A manner for increasing or decreasing the number of directors as provided in section 10-19.1-33.
 - c. Additional qualifications for directors may be imposed as provided in section 10-19.1-34.
 - d. Directors may be classified as provided in section 10-19.1-38.
 - e. The day or date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-19.1-43.
 - f. Absent directors may be permitted to give written consent or opposition to a proposal as provided in section 10-19.1-44.
 - g. A larger than majority vote may be required for board action as provided in section 10-19.1-46.
 - h. Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the president as provided in section 10-19.1-53.
 - i. Additional officers may be designated as provided in section 10-19.1-54.
 - j. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-19.1-53.
 - k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-19.1-58.
 - l. A certain officer or agent may be authorized to sign share certificates as provided in subsection 1 of section 10-19.1-66.
 - m. The transfer or registration of transfer of securities may be restricted as provided in section 10-19.1-70.

- n. The day or date, time, and place of regular shareholder meetings may be fixed as provided in subsection 3 of section 10-19.1-71.
 - o. Certain persons may be authorized to call special meetings of shareholders as provided in subsection 1 of section 10-19.1-72.
 - p. Notices of shareholder meetings may be required to contain certain information as provided in subsection 3 of section 10-19.1-73.
 - q. A larger than majority vote may be required for shareholder action as provided in section 10-19.1-74.
 - r. Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection 4 of section 10-19.1-77.
 - s. Corporate actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-19.1-87.
 - t. The rights and priorities of persons to receive distributions may be established as provided in section 10-19.1-92.
6. The articles may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the corporation.
7. It is not necessary to set forth in the articles any of the corporate powers granted by this chapter.

10-19.1-11. Filing of articles of incorporation. Duplicate originals of the articles of incorporation must be filed with the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, and that all fees have been paid as is provided in chapter 10-23, then the secretary of state shall issue a certificate of incorporation. The certificate of incorporation and the duplicate original of the articles of incorporation must be returned to the incorporators or their representative.

10-19.1-12. Effective date of incorporation. The corporate existence begins upon the issuance of the certificate of incorporation. The certificate of incorporation is conclusive evidence that all conditions precedent and required to be performed by the incorporators have been performed and that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

10-19.1-13. Corporate name.1. The corporate name:

- a. Must be in the English language or in any other language expressed in English letters or characters.
- b. Must contain the word "corporation", "incorporated", or "limited", or must contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." but that word or abbreviation may not be immediately preceded by the word "and" or the character "&".
- c. May not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than one or more business purposes for which a corporation may be incorporated under this chapter.
- d. May not be the same as, or deceptively similar to, the name of a domestic or a foreign corporation or limited partnership authorized to do business in this state, or a name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14 or is a fictitious name registered with the office of the secretary of state in the manner provided in chapter 45-11 or is a trade name registered with the office of the secretary of state in the manner provided in chapter 47-25, unless there is filed with the articles:
 - (1) The written consent of the domestic or foreign corporation, limited partnership, or partnership authorized to do business in this state having a deceptively similar name or the holder of a reserved name or registered trade name to use the deceptively similar name; or
 - (2) A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

This subsection does not affect the right of a domestic corporation existing on July 1, 1985, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.

2. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
3. This section and section 10-19.1-14 do not abrogate or limit the law of unfair competition or unfair practices, nor chapter 47-25, nor the laws of the United States with

respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or any other rights to the exclusive use of names or symbols, nor derogate the common law or the principles of equity.

4. A corporation that is merged with another domestic or foreign corporation, or that is incorporated by the reorganization of one or more domestic or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a domestic corporation all or substantially all of the assets of another domestic or foreign corporation including its name, may have the same name as that used in this state by any of the other corporations, if the other corporation was incorporated under the laws of, or is authorized to transact business in, this state.
5. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.

10-19.1-14. Reserved name.

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-19.1-13 may be reserved by any person.
2. The reservation must be made by filing in duplicate original with the secretary of state a request that the name be reserved, together with the fees provided in chapter 10-23. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing in duplicate original with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in chapter 10-23.

10-19.1-15. Registered office - Registered agent.

1. A corporation shall continuously maintain a registered office in this state. A registered office need not be the

same as the principal place of business or the principal executive office of the corporation.

2. A corporation shall designate in its articles a registered agent. The registered agent may be an individual residing in this state, a domestic corporation, or a foreign corporation authorized to transact business in this state. The registered agent shall maintain a business office that is identical with the registered office. Proof of the registered agent's consent to serve in such capacity must be filed in duplicate original with the secretary of state, together with the fees provided in chapter 10-23.

10-19.1-16. Change of registered office or registered agent - Change of name of registered agent.

1. A corporation may change its registered office, change its registered agent, or state a change in the name of its registered agent, by filing in duplicate original with the secretary of state, along with the fees provided in chapter 10-23, a statement containing:
 - a. The name of the corporation.
 - b. The present record address of its registered office.
 - c. The name of its registered agent.
 - d. If the address of its registered office is to be changed, the new address of its registered office.
 - e. If its registered agent is to be changed, the name of its new registered agent.
 - f. If the name of its registered agent is to be changed, the name of its registered agent as changed.
 - g. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
 - h. A statement that the change of registered office or registered agent was authorized by resolution approved by the board.
2. A registered agent of a corporation may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.

3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the secretary of state a statement as required in subsection l, except that it need be signed only by the registered agent, need not be responsive to subdivision e or h, and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

10-19.1-17. Amendment of articles. The articles of a corporation may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each incorporator and each initial director may be omitted. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with sections 10-19.1-18, 10-19.1-19, and 10-19.1-20.

10-19.1-18. Procedure for amendment before issuance of shares. Before the issuance of shares by a corporation, the articles may be amended pursuant to section 10-19.1-30 by the incorporators or by the board.

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

1. After the issuance of shares by the corporation, the articles may be amended in the manner set forth in this section.
2. A resolution approved by the affirmative vote of a majority of the directors present, or proposed by a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the shareholders of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the shareholders and voted upon at one meeting, but the same or substantially the same amendment proposed by a shareholder or shareholders need not be submitted to the shareholders or be voted upon at more than one meeting during a fifteen-month period. The resolution may amend the articles in their entirety to restate and supersede the original articles and all amendments to them. The provisions of this subsection regarding shareholder proposed amendments do not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder govern.

3. Written notice of the shareholders' meeting setting forth the substance of the proposed amendment must be given to each shareholder in the manner provided in section 10-19.1-73 for the giving of notice of meetings of shareholders.
4. The proposed amendment to the articles is adopted:
 - a. When approved by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote; or
 - b. If the articles provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion or number equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles is the larger of:
 - (1) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or
 - (2) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

10-19.1-20. Class or series voting on amendments. The holders of the outstanding shares of a class or series are entitled to vote as a class or series upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles, if the amendment would:

1. Increase or decrease the aggregate number of authorized shares of the class or series;
2. Increase or decrease the par value of the shares of the class or series;
3. Effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series;
4. Effect an exchange, or create a right of exchange, of all or any part of the shares of another class or series for the shares of the class or series;

5. Change the rights or preferences of the shares of the class or series;
6. Change the shares of the class or series, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same or another class or series;
7. Create a new class or series of shares having rights and preferences prior and superior to the shares of that class or series, or increase the rights and preferences or the number of authorized shares, of a class or series having rights and preferences prior or superior to the shares of that class or series;
8. Divide the shares of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the shares of each series, or authorize the board to do so;
9. Limit or deny any existing preemptive rights of the shares of the class or series; or
10. Cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared.

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

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

10-19.1-22. Effect of amendment.

1. An amendment does not affect an existing cause of action in favor of or against the corporation, nor a pending suit to which the corporation is a party, nor the existing rights of persons other than shareholders.

2. If the corporate name is changed by the amendment, a suit brought by or against the corporation under its former name does not abate for that reason.

10-19.1-23. Filing articles of amendment. Duplicate originals 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 chapter 10-23, then one duplicate original must be recorded in the office of the secretary of state, while the other duplicate original must be returned to the corporation or to its representatives.

10-19.1-24. Effective date of articles of amendment. The articles of amendment are effective upon acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.

10-19.1-25. Amendment of articles in court-supervised reorganization.

1. Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganization of corporations, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and to put it into effect, so long as the articles as amended contain only provisions which might be lawfully contained in original articles at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended for such purpose so as to:
 - a. Change the corporate name, period of duration, or corporate purposes of the corporation.
 - b. Repeal, alter, or amend the bylaws of the corporation.
 - c. Change the aggregate number of shares, or shares of any class, which the corporation has the authority to issue.
 - d. Change the preferences, limitations, relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part thereof, whether issued or unissued.
 - e. Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe

for shares of any class, and fix the terms and conditions thereof.

- f. Constitute or reconstitute and classify or reclassify board and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.
2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:
 - a. Articles of amendment approved by decree or order of the court must be executed and verified in duplicate by the person or persons designated or appointed by the court for that purpose and must set forth the name of the corporation, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, and the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.
 - b. Duplicate originals 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 chapter 10-23 then one duplicate original must be recorded in the office of the secretary of state while the other duplicate original must be returned to the corporation or to its representative. The articles of amendment become effective upon their acceptance by the secretary of state or at another time within thirty days after their acceptance if the articles of amendment so provide. The articles are deemed to be amended accordingly, without any action by the directors or shareholders of the corporation and with the same effect as if the amendment had been adopted by unanimous action of the directors and shareholders.

10-19.1-26. Powers.

1. A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.
2. A corporation has perpetual duration.
3. A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.

4. A corporation may purchase, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated.
5. A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest therein, wherever situated.
6. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of and otherwise use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality thereof.
7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises and income.
8. A corporation may invest and reinvest its funds.
9. A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.
10. A corporation may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.
11. Except as otherwise prohibited by law, a corporation may make donations, irrespective of corporate benefit, for the public welfare; for social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes, and for similar or related purposes; for the purpose of fostering national or international amateur sports competition; and for the prevention of cruelty to children and animals.
12. A corporation may pay pensions, retirement allowances, and compensation for past services to and for the benefit of, and establish, maintain, continue, and carry out, wholly or partially at the expense of the corporation, employee or incentive benefit plans, trusts, and provisions to or for the benefit of, any or all of its and its related corporations' officers, directors, employees, and agents and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain

insurance for and on behalf of a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

13. A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control with or to others.
14. A corporation may provide for its benefit life insurance and other insurance with respect to the services of any or all of its officers, directors, employees, and agents, or on the life of a shareholder for the purpose of acquiring at the death of the shareholder any or all shares in the corporation owned by the shareholder.
15. A corporation may have, alter at pleasure, and use a corporate seal as provided in section 10-19.1-27.
16. A corporation may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the corporation as provided in section 10-19.1-31.
17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in sections 10-19.1-48 and 10-19.1-49 and fix their compensation.
18. A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties and fix their compensation.
19. A corporation may issue securities and rights to purchase securities as provided in sections 10-19.1-61 through 10-19.1-69.
20. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-19.1-89.
21. A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 10-19.1-90.
22. A corporation shall indemnify persons against certain expenses and liabilities only as provided in section 10-19.1-91.

23. A corporation may conduct all or part of its business under one or more trade names as provided in chapter 47-25.

24. A corporation may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the corporation is incorporated.

10-19.1-27. Corporate seal. A corporation may, but need not, have a corporate seal. The use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a document or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document is not necessary.

10-19.1-28. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation is invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer but such lack of capacity or power may be asserted:

1. In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfers sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract. However, anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.
2. In a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation.
3. In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation or to enjoin the corporation from the transaction of unauthorized business.

10-19.1-29. Unauthorized assumption of corporate powers - Liability. All persons who assume to act as a corporation without authority are jointly and severally liable for all debts and liabilities incurred or arising as a result.

10-19.1-30. Organization.

1. If the first board is not named in the articles, the incorporators may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected or until shares are issued, whichever occurs first.
2. After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall either hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation, including, without limitation, amending the articles, electing directors, adopting bylaws, electing officers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a corporate seal, approving forms of certificates or transaction statements for shares of the corporation, adopting a fiscal year for the corporation, accepting subscriptions for and issuing shares of the corporation, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting.

10-19.1-31. Bylaws.

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the corporation not inconsistent with law or the articles.
2. Initial bylaws may be adopted by the first board or by the incorporators, pursuant to section 10-19.1-30. Unless reserved by the articles to the shareholders, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws, the board may not adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors.

3. If a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board and the resolution sets forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2, 3, and 4 of section 10-19.1-19, for amendment of the articles. The provisions of this subsection regarding shareholder proposed amendments shall not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder shall govern.

10-19.1-32. Board.

1. The business and affairs of a corporation must be managed by or under the direction of a board, subject to subsection 2 and section 10-19.1-83. The members of the first board may be named in the articles or elected by the incorporators pursuant to section 10-19.1-30 or by the shareholders.
2. The holders of the shares entitled to vote for directors of the corporation may, by unanimous affirmative vote, take any action that this chapter requires or permits the board to take or the shareholders to take after action or approval of the board. As to an action taken by the shareholders in that manner:
 - a. The directors have no duties, liabilities, or responsibilities as directors under this chapter with respect to or arising from the action.
 - b. The shareholders collectively and individually have all of the duties, liabilities, and responsibilities of directors under this chapter with respect to and arising from the action.
 - c. If the action relates to a matter required or permitted by this chapter or by any other law to be approved or adopted by the board, either with or without approval or adoption by the shareholders, the action is deemed to have been approved or adopted by the board.
 - d. A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board is

satisfied by a statement that the shareholders have taken the action under this subsection.

10-19.1-33. Number. The board must consist of one or more directors. The number of directors must be fixed by or in the manner provided in the articles or bylaws. The number of directors may be increased or, subject to section 10-19.1-41, decreased at any time by amendment to or in the manner provided in the articles or bylaws.

10-19.1-34. Qualifications - Election. Directors must be individuals. The method of election and any additional qualifications for directors may be imposed by or in the manner provided in the articles or bylaws.

10-19.1-35. Terms. Unless fixed terms are provided for in the articles or bylaws, a director serves for an indefinite term that expires at the next regular meeting of the shareholders. A fixed term of a director may not exceed five years. A director holds office until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the director.

10-19.1-36. Acts not void or voidable. The expiration of a director's term with or without the election of a qualified successor does not make prior or subsequent acts of the officers or the board void or voidable.

10-19.1-37. Compensation. Subject to any limitations in the articles or bylaws, the board may fix the compensation of directors.

10-19.1-38. Classification of directors. Directors may be divided into classes as provided in the articles or bylaws.

10-19.1-39. Cumulative voting for directors. Each shareholder entitled to vote for directors has the right to cumulate those votes in all elections of directors by giving written notice of intent to cumulate those votes to any officer of the corporation before the meeting, or to the presiding officer at the meeting at which the election is to occur at any time before the election of directors at the meeting, in which case:

1. The presiding officer at the meeting shall announce, before the election of directors, that shareholders may cumulate their votes; and
2. Each shareholder shall cumulate those votes either by casting for one candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes represented by the shares entitled to vote, or by distributing all of those votes on the same principle among any number of candidates.

10-19.1-40. Resignation. A director may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective time is specified in the notice.

10-19.1-41. Removal of directors.

1. The provisions of this section apply unless modified by the articles, the bylaws, or an agreement described in section 10-19.1-83.
2. A director may be removed at any time, with or without cause, if:
 - a. The director was named by the board to fill a vacancy;
 - b. The shareholders have not elected directors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and
 - c. A majority of the remaining directors present affirmatively vote to remove the director.
3. Any one or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of the proportion or number of the voting power of the shares of the classes or series the director represents sufficient to elect them. If less than the entire board is to be removed, no one of the directors may be removed if the votes of a sufficient number of shares are cast against the director's removal which, if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which the director is a part, would be sufficient to elect the director. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.
4. New directors may be elected at a meeting at which directors are removed.

10-19.1-42. Vacancies.

1. Unless different rules for filling vacancies are provided for in the articles or bylaws:
 - a. Vacancies on the board resulting from the death, resignation, removal, or disqualification of a

director may be filled by the affirmative vote of a majority of the remaining directors, even though the remaining directors constitute less than a quorum; and

b. Vacancies on the board resulting from newly created directorships may be filled by the affirmative vote of a majority of the directors serving at the time of the increase.

2. Each director elected under this section to fill a vacancy holds office until a qualified successor is elected by the shareholders at the next regular or special meeting of the shareholders.

10-19.1-43. Board meetings.

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2. If the board fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.

2. A board meeting may be conducted by:

a. A conference among directors using any means of communication through which the directors may simultaneously hear each other during the conference constitutes a board meeting, if the same notice is given of the conference as would be required by subsection 3 for a meeting, and if the number of directors participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a meeting by that means constitutes presence in person at the meeting; or

b. Any means of communication through which the director, other directors so participating, and all directors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence in person at the meeting.

3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving ten days' notice to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

4. If the day or date, time, and place of a board meeting have been provided in the articles or bylaws, or announced at a previous meeting of the board, no notice is required. Notice of an adjourned meeting need not be given other

than by announcement at the meeting at which adjournment is taken.

5. A director may waive notice of a meeting of the board. A waiver of notice by a director entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing or by attendance. Attendance by a director at a meeting is a waiver of notice of that meeting, except where the director objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting.

10-19.1-44. Absent directors. If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as a vote in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

10-19.1-45. Quorum. A majority, or a larger or smaller proportion or number provided in the articles or bylaws, of the directors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the proportion or number otherwise required for a quorum.

10-19.1-46. Act of the board. The board shall take action by the affirmative vote of a majority of the directors present at a duly held meeting, except where this chapter or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

10-19.1-47. Action without meeting.

1. An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed by the number of directors that would be required to take the same action at a meeting of the board at which all directors were present.

2. The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.
3. When written action is permitted to be taken by less than all directors, all directors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions taken thereby.

10-19.1-48. Committees.

1. A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees are subject at all times to the direction and control of the board, except as provided in section 10-19.1-49.
2. Committee members must be individuals. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee must consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present.
3. Sections 10-19.1-43, 10-19.1-44, and 10-19.1-45 apply to committees and members of committees to the same extent as those sections apply to the board and directors.
4. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any director.
5. The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 10-19.1-50.
6. Committee members are deemed to be directors for purposes of sections 10-19.1-50, 10-19.1-51, and 10-19.1-91.

10-19.1-49. Committee of disinterested persons. Unless prohibited by the articles or bylaws, the board may establish a committee composed of two or more disinterested directors or other disinterested persons to determine whether it is in the best interests of the corporation to pursue a particular legal right or remedy of the corporation and whether to cause the dismissal or discontinuance of a particular proceeding that seeks to assert a right or remedy on behalf of the corporation. For purposes of this section, a director or other person is "disinterested" if the director or other person is not the owner of more than one percent of the outstanding shares of, or a present or former officer,

employee, or agent of, the corporation or of a related corporation and has not been made or threatened to be made a party to the proceeding in question. The committee, once established, is not subject to the direction or control of, or termination by, the board. A vacancy on the committee may be filled by a majority vote of the remaining members. The good faith determinations of the committee are binding upon the corporation and its directors, officers, and shareholders. The committee terminates when it issues a written report of its determinations to the board.

10-19.1-50. Standard of conduct.

1. A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.
2. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
 - a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
 - b. Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or
 - c. A committee of the board upon which the director does not serve, duly established in accordance with sections 10-19.1-48 and 10-19.1-49 as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.
3. Subsection 2 does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by subdivision a unwarranted.
4. A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:
 - a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, in which case the director

shall not be considered to be present at the meeting for any purpose of this chapter;

- b. Votes against the action at the meeting; or
- c. Is prohibited by section 10-19.1-51 from voting on the action.

10-19.1-51. Director conflicts of interest.

- 1. A contract or other transaction between a corporation and one or more of its directors, or between a corporation and an organization in or of which one or more of its directors are directors, officers, or legal representatives or have a material financial interest, is not void or voidable because the director or directors or the other organizations are parties or because the director or directors are present at the meeting of the shareholders or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if:
 - a. The contract or transaction was, and the person asserting the validity of the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;
 - b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the shareholders and the contract or transaction is approved in good faith by the holders of a majority of the outstanding shares, but shares owned by the interested director or directors shall not be counted in determining the presence of a quorum and shall not be voted;
 - c. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or
 - d. The contract or transaction is a distribution described in subsection 1 of section 10-19.1-92 or a merger or exchange described in subsection 1 or 2 of section 10-19.1-96.
- 2. For purposes of this section:

- a. A director does not have a material financial interest in a resolution fixing the compensation of the director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, even though the first director is also receiving compensation from the corporation; and
- b. A director has a material financial interest in each organization in which the director, or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters of the director, or any combination of them have a material financial interest.

10-19.1-52. Officers. The officers of a corporation must consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom must be elected by the board at such time and in such manner as may be provided in the bylaws.

10-19.1-53. Duties of officers and agents. All officers and agents of the corporation, as between themselves and the corporation, have such authority and must perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board not inconsistent with the bylaws.

10-19.1-54. Other officers. Any other officers, assistant officers, and agents, as necessary, may be elected or appointed by the board or chosen in such other manner as may be provided in the bylaws.

10-19.1-55. Multiple offices. Any number of offices or functions of those offices may be held or exercised by the same person. If a document must be signed by persons holding different offices or functions and a person holds or exercises more than one of those offices or functions, that person may sign the document in more than one capacity, but only if the document indicates each capacity in which the person signs.

10-19.1-56. Officers deemed elected. In the absence of an election or appointment of officers by the board, the person or persons exercising the functions of the principal officers of the corporation are deemed to have been elected to those offices.

10-19.1-57. Contract rights. The election or appointment of a person as an officer or agent does not, of itself, create contract rights. However, a corporation may enter into a contract with an officer or agent. The resignation or removal of an officer or agent is without prejudice to any contractual rights or obligations.

10-19.1-58. Resignation - Removal - Vacancies.

1. An officer may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is specified in the notice.
2. An officer may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the directors present, subject to the provisions of a shareholder control agreement.
3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause may be filled for the unexpired portion of the term in the manner provided in the articles or bylaws, or determined by the board, or pursuant to section 10-19.1-56.

10-19.1-59. Delegation. Unless prohibited by the articles or bylaws or by a resolution approved by the affirmative vote of a majority of the directors present, an officer elected or appointed by the board may, without the approval of the board, delegate some or all of the duties and powers of an office to other persons. An officer who delegates the duties or powers of an office remains subject to the standard of conduct for an officer with respect to the discharge of all duties and powers so delegated.

10-19.1-60. Standard of conduct. An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 10-19.1-59 is deemed an officer for purposes of this section and sections 10-19.1-86 and 10-19.1-91.

10-19.1-61. Authorized shares.

1. Subject to any restrictions in the articles, a corporation may issue securities and rights to purchase securities only when authorized by the board.
2. All the shares of a corporation:
 - a. Must be of one class and one series, unless the articles establish, or authorize the board to establish, more than one class or series;
 - b. Must be common shares entitled to vote and shall have equal rights and preferences in all matters not otherwise provided for by the board, unless and to the extent that the articles have created nonvoting shares

- or have fixed the relative rights and preferences of different classes and series; and
- c. Must have, unless a different par value is specified in the articles, a par value of one cent per share.
3. Subject to any restrictions in the articles, the power granted in subsection 2 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series.
4. A statement executed by an officer setting forth the name of the corporation and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed in duplicate original with the secretary of state, together with the fees provided in chapter 10-23, before the issuance of any shares for which the resolution creates rights or preferences not set forth in the articles. The resolution is effective when the statement has been filed with the secretary of state unless the statement specifies a later effective date within thirty days of filing the statement with the secretary of state.
5. Without limiting the authority granted in this section, a corporation may issue shares of a class or series:
- a. Subject to the right of the corporation to redeem any of those shares at the price fixed for their redemption by the articles or by the board;
- b. Entitling the shareholders to cumulative, partially cumulative, or noncumulative distributions;
- c. Having preference over any class or series of shares for the payment of distributions of any or all kinds;
- d. Convertible into shares of any other class or any series of the same or another class; or
- e. Having full, partial, or no voting rights, except as provided in section 10-19.1-20.

10-19.1-62. Subscriptions for shares.

1. A subscription for shares, whether made before or after the incorporation of a corporation, is not enforceable against the subscriber unless it is in writing and signed by the subscriber.

2. A subscription for shares is irrevocable for a period of six months, unless the subscription agreement provides for, or unless all of the subscribers consent to, an earlier revocation.
3. A subscription for shares, whether made before or after the incorporation of a corporation, shall be paid in full at the time or times, or in the installments, if any, specified in the subscription agreement. In the absence of a provision in the subscription agreement specifying the time at which the subscription is to be paid, the subscription shall be paid at the time or times determined by the board, but a call made by the board for payment on subscriptions shall be uniform for all shares of the same class or for all shares of the same series.
4. Unless otherwise provided in the subscription agreement, in the event of default in the payment of an installment or call when due, the corporation may proceed to collect the amount due in the same manner as a debt due the corporation, or, if the amount due remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent subscriber, the board may declare a forfeiture of the subscription or cancel it in accordance with this subsection.
5. Upon forfeiture of a subscription, the shares subscribed for may be offered for sale by the corporation for a price in money equaling or exceeding the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to the sale. The excess of net proceeds realized by the corporation over the sum of the amount owed by the delinquent subscriber plus the expenses incidental to the sale shall be paid to the delinquent subscriber or to a legal representative. The payment shall not exceed the amount actually paid by the delinquent subscriber.
6. If, within twenty days after the corporation offers to sell the shares subscribed for by the delinquent subscriber, no prospective purchaser offers to purchase the shares for a money price sufficient to pay the sum of the full balance owed by the delinquent subscriber plus the expenses incidental to the sale, or if the corporation has refunded to the subscriber or a legal representative a portion of the subscription price actually paid, the subscription may be canceled, the shares subscribed for may be restored to the status of authorized but unissued shares, and the corporation may retain the portion of the subscription price actually paid that does not exceed ten percent of the subscription price.

10-19.1-63. Consideration for shares - Value and payment - Liability.

1. Subject to any restrictions in the articles:

a. The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued has been received by the corporation, the shares must be considered fully paid and nonassessable. Neither promissory notes nor future services constitute payment or part payment for shares of a corporation.

b. Upon authorization by resolution approved by the affirmative vote of a majority of the directors present or approved by the affirmative vote of the holders of a majority of the voting power of the shares present, the corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or issue its own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends or splits, including reverse share splits. No shares of a class or series may be issued to the holders of shares of another class or series, unless the issuance either is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

2. The determinations of the board or the shareholders as to the amount or fair value or the fairness to the corporation of the consideration received or to be received by the corporation for its shares or the terms of payment, as well as the agreement to issue shares for that consideration, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Directors or shareholders who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving an issue of shares for a consideration that is unfair to the corporation, or overvalue property or services received or to be received by the corporation as consideration for shares issued, are jointly and severally liable to the corporation for the benefit of the then shareholders who did not consent to and are damaged by the action, to the extent of the damages of those shareholders. A director or shareholder against whom a

- claim is asserted pursuant to this section, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors or shareholders who are liable under this section.
3. A corporation may issue only shares for which the agreed consideration has been fully paid, delivered, or rendered to the corporation:
- a. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without rendering the shares not fully paid and nonassessable.
 - b. If shares are issued in violation of this subsection, the following persons are jointly and severally liable to the corporation for the difference between the agreed consideration for the shares and the consideration actually received by the corporation:
 - (1) A director or shareholder who was present and entitled to vote but who failed to vote against the issuance of the shares knowing of the violation;
 - (2) The person to whom the shares were issued; and
 - (3) A successor or transferee of the interest in the corporation of a person described in paragraph 1 or 2, including a purchaser of shares, a subsequent assignee, successor, or transferee, a pledgee, a holder of any other security interest in the assets of the corporation or shares granted by the person described in paragraph 1 or 2, or a legal representative of or for the person or estate of the person, which successor, transferee, purchaser, assignee, pledgee, holder, or representative acquired the interest knowing of the violation.
4. A pledgee or holder of any other security interest in all or any shares that have been issued in violation of subsection 3 is not liable under subdivision b of subsection 3 if all those shares are surrendered to the corporation. The surrender does not impair any rights of the pledgee or holder of any other security interest against the pledgor or person granting the security interest.

5. A pledgee, holder of any other security interest, or legal representative is liable under subdivision b of subsection 3 only in that capacity. The liability of the person under subdivision a of subsection 3 is limited to the assets held in that capacity for the person or estate of the person described in paragraph 1 or 2 of subdivision b of subsection 3.
6. Each person liable under subdivision b of subsection 3 has a full right of contribution on an equitable basis from all other persons liable under that subdivision for the same transaction.
7. An action may not be maintained against a person under subdivision b of subsection 3 unless commenced within two years from the date on which shares are issued in violation of subsection 3.

10-19.1-64. Rights to purchase.

1. "Right to purchase" means the right, however designated, pursuant to the terms of a security or agreement, entitling a person to subscribe to, purchase, or acquire securities of a corporation, whether by the exchange or conversion of other securities, or by the exercise of options, warrants, or other rights, or otherwise, but excluding preemptive rights.
2. Rights to purchase may be either transferable or nontransferable and either separable or inseparable from other securities of the corporation, as the board may determine under this section.
3. A corporation may issue rights to purchase if:
 - a. Shares issuable upon the exercise of all outstanding rights to purchase, including the rights to purchase that are to be issued, are authorized under subsection 1 of section 10-19.1-10, and are unissued; and
 - b. The terms, provisions, and conditions of the rights to purchase to be issued, including the conversion basis or the price at which securities may be purchased or subscribed for, are fixed by the board, subject to any restrictions in the articles.
4. The instrument evidencing the right to purchase must set forth in full, summarize, or incorporate by reference all the terms, provisions, and conditions applicable to the right to purchase.

10-19.1-65. Preemptive rights.

1. To the extent allowed by section 9 of article XII of the Constitution of North Dakota, a shareholder of a corporation has the preemptive rights provided in this section, unless denied or limited in the articles or by the board pursuant to subdivision b of subsection 2 of section 10-19.1-61.
2. A preemptive right is the right of a shareholder to acquire a certain fraction of the unissued securities or rights to purchase securities of a corporation before the corporation may offer them to other persons.
3. A shareholder has a preemptive right whenever the corporation proposes to issue new or additional shares or rights to purchase shares of the same class or series as those held by the shareholder or new or additional securities other than shares, or rights to purchase securities other than shares, that are exchangeable for, convertible into, or carry a right to acquire new or additional shares of the same class or series as those held by the shareholder.
4. A shareholder does not have a preemptive right to acquire securities or rights to purchase securities that are:
 - a. Issued for a consideration other than money;
 - b. Issued pursuant to a plan of merger or exchange;
 - c. Issued pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote;
 - d. Issued upon exercise of previously issued rights to purchase securities of the corporation;
 - e. Issued pursuant to a public offering of the corporation's securities or rights to purchase securities. For purposes of this subdivision, "public offering" means an offering of the corporation's securities or rights to purchase securities if the resale or other distribution of those securities or rights to purchase securities is not restricted by either state or federal securities laws; or
 - f. Issued pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.
5. The fraction of the new issue that each shareholder may acquire by exercise of a preemptive right is the ratio

- that the number of shares of that class or series owned by the shareholder before the new issue bears to the total number of shares of that class or series issued and outstanding before the new issue. For purposes of determining pursuant to this subsection the total number of shares of a class or series issued and outstanding at a particular time, all shares of that class or series issuable upon a conversion or exchange or upon the exercise of rights to purchase are considered issued and outstanding at that time.
6. A shareholder may waive a preemptive right in writing. The waiver is binding upon the shareholder whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed issuance described in the waiver.
 7. When proposing the issuance of securities with respect to which shareholders have preemptive rights under this section, the board shall cause notice to be given to each shareholder entitled to preemptive rights. The notice must be given at least ten days before the date by which the shareholder must exercise a preemptive right and must contain:
 - a. The number or amount of securities with respect to which the shareholder has a preemptive right, and the method used to determine that number or amount;
 - b. The price and other terms and conditions upon which the shareholder may purchase them; and
 - c. The time within which and the method by which the shareholder must exercise the right.
8. Securities that are subject to preemptive rights but not acquired by shareholders in the exercise of those rights may, for a period not exceeding one year after the date fixed by the board for the exercise of those preemptive rights, be issued to persons the board determines, at a price not less than, and on terms no more favorable to the purchaser than, those offered to the shareholders. Securities that are not issued during that one-year period shall, at the expiration of the period, again become subject to preemptive rights of shareholders.
9. No amendment to the articles which has the effect of denying, limiting, or modifying the preemptive rights provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a director at an election of the entire board under cumulative voting are cast against the amendment.

10-19.1-66. Share certificates - Issuance and contents.

1. The shares of a corporation must be represented by certificates signed by the president or by a vice president and by the secretary, or by an assistant secretary of the corporation.
2. If a person signs or has a facsimile signature placed upon a certificate while an officer, transfer agent, or registrar of a corporation, the certificate may be issued by the corporation, even if the person has ceased to have that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of its issue.
3. Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class must set forth upon the face or back of the certificate, or must state that the corporation will furnish to any shareholders upon request and without charge, a full or summary statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class or series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board to fix and determine the relative rights and preferences of subsequent series. Each certificate representing shares must state upon its face:
 - a. The name of the corporation.
 - b. That the corporation is organized under the laws of this state.
 - c. The name of the person to whom issued.
 - d. The number and class of shares, and the designation of the series, if any, which such certificate represents.
 - e. The par value of such share represented by such certificate, or a statement that the shares are without par value.
4. A certificate signed as provided in subsection 1 is prima facie evidence of the ownership of the shares referred to in the certificate.

10-19.1-67. Lost share certificates - Replacement.

1. A new share certificate may be issued pursuant to section 41-08-41 in place of one that is alleged to have been lost, stolen, or destroyed.
2. The issuance of a new certificate under this section does not constitute an overissue of the shares it represents.

10-19.1-68. Fractional shares.

1. A corporation may issue fractions of a share originally or upon transfer. If it does not issue fractions of a share, it shall in connection with an original issuance of shares:
 - a. Arrange for the disposition of fractional interests by those entitled to them;
 - b. Pay in money the fair value of fractions of a share as of the time when persons entitled to receive the fractions are determined; or
 - c. Issue scrip or warrants in registered or bearer form that entitle the holder to receive a certificate for a full share upon the surrender of the scrip or warrants aggregating a full share.
2. A corporation may not pay money for fractional shares if that action would result in the cancellation of more than twenty percent of the outstanding shares of a class. A determination by the board of the fair value of fractions of a share is conclusive in the absence of fraud. A certificate for a fractional share does, but scrip or warrants do not unless they provide otherwise, entitle the shareholder to exercise voting rights or to receive distributions. The board may cause scrip or warrants to be issued subject to the condition that they become void if not exchanged for full shares before a specified date, or that the shares for which scrip or warrants are exchangeable may be sold by the corporation and the proceeds distributed to the holder of the scrip or warrants, or to any other condition or set of conditions the board may impose.

10-19.1-69. Liability of subscribers and shareholders with respect to shares. A holder of or subscriber for shares of a corporation is under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration of which such shares were issued or to be issued.

Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or

notice that the full consideration therefore has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

A personal representative, conservator, guardian, trustee, assignee for the benefit of creditors, or a receiver is not personally liable to the corporation as a holder of or subscriber for shares of a corporation but the estate and funds in said person's hands are liable.

No pledgee or other holder of shares as collateral security is personally liable as a shareholder.

10-19.1-70. Restriction on transfer or registration of securities.

1. A restriction on the transfer or registration of transfer of securities of a corporation may be imposed in the articles, in the bylaws, by a resolution adopted by the shareholders, or by an agreement among or other written action by a number of shareholders or holders of other securities or among them and the corporation. A restriction is not binding with respect to securities issued prior to the adoption of the restriction, unless the holders of those securities are parties to the agreement or voted in favor of the restriction.
2. A written restriction on the transfer or registration of transfer of securities of a corporation that is not manifestly unreasonable under the circumstances and is noted conspicuously on the face or back of the certificate may be enforced against the holder of the restricted securities or a successor or transferee of the holder, including a pledgee or a legal representative. Unless noted conspicuously on the face or back of the certificate, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction. A restriction under this section is deemed to be noted conspicuously and is effective if the existence of the restriction is stated on the certificate and reference is made to a separate document creating or describing the restriction.

10-19.1-71. Regular meetings of shareholders.

1. Regular meetings of shareholders may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles or bylaws or by subsection 2.
2. If a regular meeting of shareholders has not been held during the immediately preceding fifteen months, a shareholder or shareholders holding five percent or more or the voting power of all shares entitled to vote may

demand a regular meeting of shareholders by written notice of demand given to the president or secretary of the corporation. Within thirty days after receipt of the demand by one of those officers, the board shall cause a regular meeting of shareholders to be called. If the board fails to cause a regular meeting to be called as required by this subsection, the shareholder or shareholders making the demand may call the regular meeting by giving notice as required by section 10-19.1-73. All necessary expenses of the notice and the meeting must be paid by the corporation.

3. A regular meeting, if any, must be held on the day or date and at the time and place fixed by, or in a manner authorized by, the articles or bylaws, except that a meeting called by or at the demand of a shareholder pursuant to subsection 2 must be held in the county where the principal executive office of the corporation is located.
4. At each regular meeting of shareholders there must be an election of qualified successors for directors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting. No other particular business is required to be transacted at a regular meeting. Any business appropriate for action by the shareholders may be transacted at a regular meeting.

10-19.1-72. Special meetings of shareholders.

1. Special meetings of the shareholders may be called for any purpose or purposes at any time, by:
 - a. The president;
 - b. Two or more directors;
 - c. A person authorized in the articles or bylaws to call special meetings; or
 - d. A shareholder or shareholders holding ten percent or more of the voting power of all shares entitled to vote.
2. A shareholder or shareholders holding five percent or more of the voting power of all shares entitled to vote may demand a special meeting of shareholders by written notice of demand given to the president or secretary of the corporation and containing the purposes of the meeting. Within thirty days after receipt by one of those officers of the demand, the board shall cause a special meeting of shareholders to be called. If the board fails to cause a special meeting to be called as required by this

subsection, the shareholder or shareholders making the demand may call the special meeting by giving notice as required by section 10-19.1-73. All necessary expenses of the notice and the meeting shall be paid by the corporation.

3. Special meetings must be held on the date and at the time and place fixed by the president, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to subsection 2 must be held in the county where the principal executive office is located.
4. The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the corporation, unless all of the shareholders have waived notice of the meeting in accordance with subsection 4 of section 10-19.1-73.

10-19.1-73. Notice.

1. Notice of all meetings of shareholders must be given to every holder of shares entitled to vote, except where the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment.
2. The notice must be given at least ten days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than fifty days before the date of the meeting.
3. The notice must contain the date, time, and place of the meeting, and any other information required by this chapter. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles or bylaws or deemed necessary or desirable by the board or by any other person or persons calling the meeting.
4. A shareholder may waive notice of a meeting of shareholders. A waiver of notice by a shareholder entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance. Attendance by a shareholder at a meeting is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be

considered at that meeting and does not participate in the consideration of the item at that meeting.

10-19.1-74. Act of the shareholders.

1. The shareholders shall take action by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote, except where this chapter or the articles require a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.
2. In any case where a class or series of shares is entitled by this chapter, the articles, the bylaws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares of that class or series as is required pursuant to subsection 1.

10-19.1-75. Action without a meeting. An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed by all of the shareholders entitled to vote on that action. The written action is effective when it has been signed by all of those shareholders, unless a different effective time is provided in the written action.

10-19.1-76. Quorum. The holders of a majority of the voting power of the shares entitled to vote at a meeting are a quorum for the transaction of business, unless a larger or smaller proportion or number is provided in the articles or bylaws. In no event may a quorum consist of less than one-third of the shares entitled to vote at the meeting. If a quorum is present when a duly called or held meeting is convened, the shareholders present may continue to transact business until adjournment, even though the withdrawal of a number of shareholders originally present leaves less than the proportion or number otherwise required for a quorum.

10-19.1-77. Voting rights.

1. The board may fix a date not more than fifty days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of shareholders as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only shareholders on that date are entitled to notice of and permitted to vote at that meeting of shareholders.
2. A resolution approved by the affirmative vote of a majority of the directors present may establish a procedure whereby a shareholder may certify in writing to the corporation that all or a portion of the shares registered in the name of the shareholder are held for the

account of one or more beneficial owners. Upon receipt by the corporation of the writing, the persons specified as beneficial owners, rather than the actual shareholder, are deemed the shareholders for the purposes specified in the writing.

3. Unless otherwise provided in the articles or bylaws or in the terms of the shares, a shareholder has one vote for each share held.
4. The articles may give or prescribe the manner of giving a creditor, securityholder, or other person a right to vote under this section.
5. Shares owned by two or more shareholders may be voted by any one of them unless the corporation receives written notice from any one of them denying the authority of that person to vote those shares.
6. Except as provided in subsection 5, a holder of shares entitled to vote may vote any portion of the shares in any way the shareholder chooses. If a shareholder votes without designating the proportion or number of shares voted in a particular way, the shareholder is deemed to have voted all of the shares in that way.

10-19.1-78. Voting list. The officer or agent having charge of the stock transfer books for shares of a corporation shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at the meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to the meeting, must be kept on file at the registered office of the corporation and is subject to inspection by any shareholder at any time during usual business hours. The list must also be produced and kept open at the time and place of the meeting and is subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer books are prima facie evidence as to who are the shareholders entitled to examine the lists or transfer books or to vote at any meeting of shareholders. Failure to comply with the requirements of this section does not affect the validity of any action taken at the meeting. Any officer or agent having charge of the stock transfer books who fails to prepare the list of shareholders, or keep it on file for a period of ten days, or produce and keep it open for inspection at the meeting, as provided in this section, is liable to any shareholder suffering damage on account of such failure, to the extent of such damage. The provisions of chapter 10-18, except where in conflict with this section, apply and control the transfer of shares.

10-19.1-79. Voting of shares by organizations and legal representatives.

1. Shares of a corporation registered in the name of another domestic or foreign corporation may be voted by the president or another legal representative of that corporation.
2. Except as provided in subsection 3, shares of a corporation registered in the name of a subsidiary are not entitled to vote on any matter.
3. Shares of a corporation in the name of or under the control of the corporation or a subsidiary in a fiduciary capacity are not entitled to vote on any matter, except to the extent that the settlor or beneficial owner possesses and exercises a right to vote or gives the corporation binding instructions on how to vote the shares.
4. Shares under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or attorney in fact may be voted by the person, either in person or by proxy, without registration of those shares in the name of the person. Shares registered in the name of a trustee of a trust or in the name of a custodian may be voted by the person, either in person or by proxy, but a trustee of a trust or a custodian may not vote shares held by the person unless they are registered in the name of the person.
5. Shares registered in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Shares under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without registering the shares in the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.
6. Shares registered in the name of an organization not described in subsections 1 through 5 may be voted either in person or by proxy by the legal representative of that organization.
7. A shareholder whose shares are pledged may vote those shares until the shares are registered in the name of the pledgee.

10-19.1-80. Proxies.

1. A shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy with an officer of the corporation at or before the meeting at which the appointment is to be effective. An appointment of a proxy

- for shares held jointly by two or more shareholders is valid if signed by any one of them, unless the corporation receives from any one of those shareholders written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.
2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest, including a security interest, in the shares or in the corporation.
 3. An appointment may be terminated at will, unless the appointment is coupled with an interest, in which case it may not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Termination may be made by filing written notice of the termination of the appointment with an officer of the corporation, or by filing a new written appointment of a proxy with an officer of the corporation. Termination in either manner revokes all prior proxy appointments and is effective when filed with an officer of the corporation.
 4. The death or incapacity of a person appointing a proxy does not revoke the authority of the proxy, unless written notice of the death or incapacity is received by an officer of the corporation before the proxy exercises the authority under that appointment.
 5. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a shareholder:
 - a. Any one of them may vote the shares on each item of business in accordance with specific instructions contained in the appointment; and
 - b. If no specific instructions are contained in the appointment with respect to voting the shares on a particular item of business, the shares must be voted as a majority of the proxies determine. If the proxies are equally divided, the shares may not be voted.
 6. Unless the appointment of a proxy contains a restriction, limitation, or specific reservation of authority, the corporation may accept a vote or action taken by a person named in the appointment. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the shareholder or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

10-19.1-81. Voting trusts.

1. Shares in a corporation may be transferred to a trustee pursuant to written agreement, for the purpose of conferring on the trustee the right to vote and otherwise represent the beneficial owner of those shares for a period not exceeding ten years, except that if the agreement is made in connection with an indebtedness of the corporation, the voting trust may extend until the indebtedness is discharged. Unless otherwise specified in the agreement, the voting trust may be terminated at any time by the beneficial owners of a majority of the voting power of the shares held by the trustee. A signed original of the agreement must be filed with the corporation.
2. Unless otherwise provided in the trust agreement, if there are two or more trustees, the manner of voting is determined as provided in subsection 5 of section 10-19.1-77.

10-19.1-82. Shareholder voting agreements. A written agreement solely among persons who are then shareholders or subscribers for shares to be issued, relating to the voting of their shares, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of section 10-19.1-80 regarding proxies and is not subject to the provisions of section 10-19.1-81 regarding voting trusts.

10-19.1-83. Shareholder control agreements.

1. A written agreement solely among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subsections 2 and 3.
2. A written agreement solely among persons described in subsection 1 that relates to the control of or the liquidation and dissolution of the corporation, the relations among them, or any phase of the business and affairs of the corporation, including, without limitation, the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued.

3. The agreement is enforceable by the persons described in subsection 1 who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A signed original of the agreement must be filed with the corporation. The existence and location of a copy of the agreement must be noted conspicuously on the face or back of each certificate for shares issued by the corporation and on each transaction statement. A shareholder, a beneficial owner of shares, or another person having a security interest in shares has the right upon written demand to obtain a copy of the agreement from the corporation at the expense of the corporation.
4. The effect of an agreement authorized by this section is to relieve the board and the director or directors in their capacities as directors of, and to impose upon the parties to the agreement, the liability for acts or omissions imposed by law upon directors to the extent that and so long as the discretion or powers of the directors in the management of the business and affairs of the corporation are exercised by the shareholders under a provision in the agreement. A shareholder is not liable pursuant to this subsection by virtue of a shareholder vote, if the shareholder had no right to vote on the action.
5. This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among shareholders or between the shareholders and the corporation with respect to any of the matters described in this section.

10-19.1-84. Books and records - Inspection.

1. A corporation shall keep at its principal executive office, or at another place or places within the United States determined by the board, a share register not more than one year old, containing the names and addresses of the shareholders and the number and classes of shares held by each shareholder. A corporation shall also keep, at its principal executive office, or at another place or places within the United States determined by the board, a record of the dates on which certificates were issued.
2. A corporation shall keep at its principal executive office, or, if its principal executive office is outside of this state, shall make available at its registered office within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subsection 4 or 5 originals or copies of:

- a. Records of all proceedings of shareholders for the last three years;
 - b. Records of all proceedings of the board for the last three years;
 - c. Its articles and all amendments currently in effect;
 - d. Its bylaws and all amendments currently in effect;
 - e. Financial statements required by section 10-19.1-85 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;
 - f. Reports made to shareholders generally within the last three years;
 - g. A statement of the names and usual business addresses of its directors and principal officers;
 - h. Voting trust agreements described in section 10-19.1-81; and
 - i. Shareholder control agreements described in section 10-19.1-83.
3. A corporation shall keep appropriate and complete financial records.
 4. A shareholder or a holder of a voting trust certificate has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time:
 - a. The share register; and
 - b. All documents referred to in subsection 2.
 5. A shareholder or a holder of a voting trust certificate who has been a shareholder for at least six months immediately preceding the shareholder's demand or who is the holder of record of at least five percent of all the outstanding shares of the corporation has a right, upon written demand, to examine and copy, in person or by a legal representative, other corporate records at any reasonable time only if the shareholder, beneficial owner, or holder of a voting trust certificate demonstrates a proper purpose for the examination. A "proper purpose" is one reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation.

6. On application of the corporation, a court in this state may issue a protective order permitting the corporation to withhold portions of the records of proceedings of the board for a reasonable period of time, not to exceed twelve months, in order to prevent premature disclosure of confidential information which would be likely to cause competitive injury to the corporation. A protective order may be renewed for successive reasonable periods of time, each not to exceed twelve months and in total not to exceed thirty-six months, for good cause shown. If a protective order is issued, the statute of limitations for any action which the shareholder, beneficial owner, or holder of a voting trust certificate might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the corporation, it shall award reasonable expenses, including attorney's fees and disbursements, to the shareholder, beneficial owner, or holder of a voting trust certificate.
7. Copies of all documents referred to in subsection 2 must be furnished at the expense of the corporation. A copy of the most recently generated share register must be furnished at the expense of the corporation if the requesting party shows a proper purpose. In all other cases, the corporation may charge the requesting party a reasonable fee to cover the expenses of providing the copy.
8. The records maintained by a corporation, including its share register, financial records, and minute books, may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or microimages, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert any of the records referred to in subsection 4 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subsection 7. A copy of the conversion is admissible in evidence, and must be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

10-19.1-85. Financial statements. A corporation shall, upon written request by a shareholder, furnish annual financial statements, including at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, which must be prepared on the basis of accounting methods reasonable in

the circumstances and may be consolidated statements of the corporation and one or more of its subsidiaries. In the case of statements audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements; in other cases, each copy must be accompanied by a statement of the treasurer or other person in charge of the corporation's financial records stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances, describing the basis of presentation, and describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

10-19.1-86. Actions by shareholders. No action may be brought in this state by a shareholder in the right of a domestic or foreign corporation unless plaintiff is a holder of record of shares or voting trust certificates at the time of the transaction of which plaintiff complains, or the plaintiff's shares or voting trust certificates thereafter devolved upon the plaintiff by operation of law from a person who was a holder of record at such time:

1. In any action thereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of the corporation or voting trust certificates, the court having jurisdiction, upon final judgment and finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in defense of such action.
2. In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of record of less than five percent of the outstanding shares of any class of the corporation or voting trust certificates, unless the shares or voting trust certificates so held have a market value in excess of twenty-five thousand dollars, the corporation in whose right such action is brought is entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable. Market value must be determined on the date the plaintiff institutes the action or, in the case of an intervenor, on the date the intervenor becomes a party to the action. The amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. The corporation has recourse to such security in such amount as the court having jurisdiction determines upon the termination of the action, whether or

not the court finds the action was brought without reasonable cause.

10-19.1-87. Rights of dissenting shareholders.

1. A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:

a. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation not made in the usual or regular course of its business, but not including a disposition in dissolution described in subsection 2 of section 10-19.1-109 or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;

b. A plan of merger to which the corporation is a party, except as provided in subsection 3;

c. A plan of exchange pursuant to which the shares of the corporation are to be acquired; or

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

2. A shareholder may not assert dissenters' rights as to less than all of the shares registered in the name of the shareholder, unless the shareholder dissents with respect to all the shares that are beneficially owned by another person but registered in the name of the shareholder and discloses the name and address of each beneficial owner on whose behalf the shareholder dissents. In that event, the rights of the dissenter must be determined as if the shares as to which the shareholder has dissented and the other shares were registered in the names of different shareholders. The beneficial owner of shares who is not the shareholder may assert dissenters' rights with respect to shares held on behalf of the beneficial owner, and must be treated as a dissenting shareholder under the terms of this section and section 10-19.1-88, if the beneficial owner submits to the corporation at the time of or before the assertion of the rights a written consent of the shareholder.

3. The right to obtain payment under this section does not apply to the shareholders of the surviving corporation in a merger or of the acquiring corporation in an exchange, if a vote of the shareholders of the corporation is not necessary to authorize the merger or exchange.
4. The shareholders of a corporation who have a right under this section to obtain payment for their shares do not have a right at law or in equity to have a corporate action described in subsection 1 set aside or rescinded, except when the corporate action is fraudulent with regard to the complaining shareholder or the corporation.

10-19.1-88. Procedures for asserting dissenters' rights.

1. If a corporation calls a shareholder meeting at which any action described in subsection 1 of section 10-19.1-87 is to be voted upon, the notice of the meeting must inform each shareholder of the right to dissent and must include a copy of section 10-19.1-87 and this section.
2. The shareholder of a corporation which is a party to an action described in subsection 1 of section 10-19.1-87 shall file with the corporation, prior to or at the meeting of shareholders at which the action is submitted to a vote, a written objection to the action and may not vote in favor of the action.
3. The shareholder, within ten days after the date on which the vote was taken, shall make written demand on the corporation for payment of the fair value of the shares as of the day prior to the day on which the vote was taken approving the action. The demand must state the number and class of shares owned by the dissenting shareholder. Any shareholder failing to make demand within the ten-day period is bound by the action.
4. If the action is effected, the corporation shall pay to the shareholder, upon surrender of the shareholder's certificate or certificates representing the shares, the fair value of the shares.
5. Within ten days after the action is effected, the corporation shall give notice of the action to each dissenting shareholder who has made demand as provided in this section.
6. If within thirty days after the date on which the action was effected, the value of the shares is agreed upon between the dissenting shareholder and the corporation, payment for the shares must be made within ninety days after the date on which the action was effected, upon the surrender of the shareholder's certificate or certificates representing the shares. Upon payment of the agreed

value, the dissenting shareholder shall cease to have any interest in the shares or in the corporation.

7. If within the period of thirty days the shareholder and the corporation do not agree on the value of the shares, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, bring an action in any court of competent jurisdiction asking for a finding and determination of the fair value of the shares and is entitled to judgment against the corporation for the amount of the fair value as of the day prior to the day on which the vote was taken approving the action, together with interest to the date of the judgment. The judgment is payable only upon and simultaneously with the surrender to the corporation of the certificate or certificates representing the shares. Upon payment of the judgment, the dissenting shareholder ceases to have any interest in these shares or in the corporation. Unless the dissenting shareholder files the petition within the time permitted the shareholder and all persons claiming under the shareholder are bound by the action.

10-19.1-89. Loans - Guarantees - Suretyship.

1. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist any person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the directors present and:
- a. Is in the usual and regular course of business of the corporation;
 - b. Is with, or for the benefit of, a related corporation, an organization in which the corporation has a financial interest, all organizations with which the corporation has a business relationship, or an organization to which the corporation has the power to make donations;
 - c. Is with, or for the benefit of, an officer or other employee of the corporation or a subsidiary, including an officer or employee who is a director of the corporation or a subsidiary, and may reasonably be expected, in the judgment of the board, to benefit the corporation; or
 - d. Has been approved by the affirmative vote of the holders of two-thirds of the outstanding shares.
2. A loan, guaranty, surety contract, or other financial assistance under subsection 1 may be with or without interest and may be unsecured or may be secured in any

manner, including, without limitation, a grant of a security interest in shares of the corporation.

3. This section does not grant any authority to act as a bank or to carry on the business of banking.

10-19.1-90. Advances. A corporation may, without a vote of the directors, advance money to its directors, officers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

10-19.1-91. Indemnification.

1. For purposes of this section, the terms defined in this subsection have the meanings given them.

a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.

b. "Official capacity" means:

(1) With respect to a director, the position of director in a corporation;

(2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment or agency relationship undertaken by an employee or agent of the corporation; and

(3) With respect to a director, officer, employee, or agent of the corporation who, while a director, officer, employee, or agent of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, officer, partner, trustee, or agent of another organization or employee benefit plan, the position of that person as a director, officer, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.

- d. "Special legal counsel" means counsel who has not represented the corporation or a related corporation, or a director, officer, employee, or agent whose indemnification is in issue.
2. Subject to subsection 5, a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:
- a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omission;
- b. Acted in good faith;
- c. Received no improper personal benefit and section 10-19.1-51, if applicable, has been satisfied;
- d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
- e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

3. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in subsection 2.
4. Subject to subsection 5, if a person is made or threatened to be made a party to a proceeding, the person is entitled, upon written request to the corporation, to payment or reimbursement by the corporation of reasonable expenses, including attorneys' fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:
 - a. Upon receipt by the corporation of a written affirmation by the person of a good faith belief that the criteria for indemnification set forth in subsection 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the corporation, if it is ultimately determined that the criteria for indemnification have not been satisfied; and
 - b. After a determination that the facts then known to those making the determination would not preclude indemnification under this section.

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

5. The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2, 3, and 4 including, without limitation, monetary limits on indemnification or advances for expenses, if the conditions apply equally to all persons or to all persons within a given class.
6. This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorneys' fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.
7. All indemnification determinations must be made:
 - a. By the board by a majority of a quorum. Directors who are at the time parties to the proceeding shall not be counted for determining either a majority or the presence of a quorum;

- b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;
 - c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;
 - d. If a determination is not made under subdivisions a, b, and c, by the shareholders, excluding the votes of shares held by parties to the proceeding; or
 - e. If an adverse determination is made under subdivisions a through d, or if no determination is made under subdivisions a through d within sixty days after the termination of a proceeding or after a request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.
8. With respect to a person who is not, and who was not at the time of the acts or omissions complained of in the proceedings, a director, officer, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the corporation, the determination whether indemnification of this person is required because the criteria set forth in subsection 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 may be made by an annually appointed committee of the board, having at least one member who is a director. The committee shall report at least annually to the board concerning its actions.
 9. A corporation may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the corporation would have been required to indemnify the person against the liability under the provisions of this section.
 10. A corporation that indemnifies or advances expenses to a person in accordance with this section in connection with

a proceeding by or on behalf of the corporation shall report the amount of the indemnification or advance and to whom and on whose behalf it was paid as part of the annual financial statements furnished to shareholders pursuant to section 10-19.1-85 covering the period when the indemnification or advance was paid or accrued under the accounting method of the corporation reflected in the financial statements.

10-19.1-92. Distributions.

1. The board may authorize and cause the corporation to make a distribution only if the board determines, in accordance with subsection 2, that the corporation will be able to pay its debts in the ordinary course of business after making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous, and the corporation may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution. The effect of a distribution on the ability of the corporation to pay its debts in the ordinary course of business after making the distribution shall be measured in accordance with subsection 3. The right of the board to authorize, and the corporation to make, distributions may be prohibited, limited, or restricted by, or the rights and priorities of persons to receive distributions may be established by, the articles or bylaws or an agreement.
2. A determination that the corporation will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-19.1-50 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 10-19.1-50 or 10-19.1-95 will accrue if the requirements of this subsection have been met.
3. In the case of a distribution made by a corporation in connection with a purchase, redemption, or other acquisition of its shares, the effect of the distribution must be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the corporation, or as of the date on which the shareholder ceases to be a shareholder of the corporation with respect to the shares, whichever is the earliest. The effect of any other distribution must be measured as of the date of its authorization if payment occurs one hundred twenty days or less following the date of authorization, or as of the date of payment if payment occurs more than one hundred

twenty days following the date of authorization. The provisions of chapter 13-02 do not apply to distributions made by a corporation governed by this chapter.

4. Indebtedness of a corporation incurred or issued in a distribution in accordance with this section to a shareholder who as a result of the transaction is no longer a shareholder is on a parity with the indebtedness of the corporation to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the corporation or a related corporation, or subject to any other agreement between the corporation and the shareholder.
5. A distribution may be made to the holders of a class or series of shares only if:
 - a. All amounts payable to the holders of shares having a preference for the payment of that kind of distribution are paid; and
 - b. The payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights, unless the distribution is made to those shareholders in the order and to the extent of their respective priorities.
6. If the money or property available for distribution is insufficient to satisfy all preferences, the distributions shall be made pro rata according to the order of priority of preferences by classes and by series within those classes.

10-19.1-93. Power to acquire shares.

1. A corporation may acquire its own shares, subject to section 10-19.1-92. Shares so acquired constitute authorized but unissued shares of the corporation, unless the articles provide that they may not be reissued, in which case the number of authorized shares is reduced by the number of shares acquired.
2. If the number of authorized shares of a corporation is reduced by an acquisition of its shares, the corporation shall, no later than the time it makes its next annual report to shareholders or, if no report is made, no later than three months after the end of the fiscal year in which the acquisition occurs, file with the secretary of state a statement of cancellation showing the reduction in the authorized shares. The statement must contain:
 - a. The name of the corporation;

- b. The number of acquired shares canceled, itemized by classes and series; and
- c. The aggregate number of authorized shares itemized by classes and series, after giving effect to the cancellation.

10-19.1-94. Liability of shareholders for illegal distributions.

1. A shareholder who knows or should have known that a distribution was made in violation of section 10-19.1-92 is liable to the corporation, its receiver or other person winding up its affairs, or a director under subsection 2 of section 10-19.1-95 but only to the extent that the distribution received by the shareholder exceeded the amount that properly could have been paid under section 10-19.1-92.
2. An action may not be commenced under this section more than two years from the date of the distribution.

10-19.1-95. Liability of directors for illegal distributions.

1. In addition to any other liabilities, a director who is present and votes for or fails to vote against, except a director who is prohibited by section 10-19.1-51 from voting on the distribution, or who consents in writing to, a distribution made in violation of section 10-19.1-92 or a restriction contained in the articles or bylaws or an agreement, and who fails to comply with the standard of conduct provided in section 10-19.1-50, is liable to the corporation jointly and severally with all other directors so liable and to other directors under subsection 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 10-19.1-92.
2. A director against whom an action is brought under this section with respect to a distribution may implead in that action all shareholders who received the distribution and may compel pro rata contribution from them in that action to the extent provided in subsection 1 of section 10-19.1-94.
3. A director against whom an action is brought under this section with respect to a distribution may implead in that action all other directors who voted for or consented in writing to the distribution and who failed to comply with the standard of conduct provided in section 10-19.1-50, and may compel pro rata contribution from them in that action.

4. An action may not be commenced under this section more than two years from the date of the distribution.

10-19.1-96. Merger - Exchange - Transfer.

1. Any two or more corporations may merge, resulting in a single corporation, with or without a business purpose, pursuant to a plan of merger approved in the manner provided in sections 10-19.1-97 through 10-19.1-103.

2. The shares of one or more classes or series of a corporation may be exchanged for shares of the same or a different class or series of one or more other corporations pursuant to a plan of exchange approved in the manner provided in sections 10-19.1-97, 10-19.1-98, 10-19.1-101, 10-19.1-102, and 10-19.1-103.

3. A corporation may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the manner provided in section 10-19.1-104.

10-19.1-97. Plan of merger or exchange.

1. A plan of merger or exchange must contain:

a. The names of the corporations proposing to merge or participate in an exchange and:

(1) In the case of a merger, the name of the surviving corporation;

(2) In the case of an exchange, the name of the acquiring corporation;

b. The terms and conditions of the proposed merger or exchange;

c. In the case of a merger, the manner and basis of converting the shares of the constituent corporations into securities of the surviving corporation or of any other corporation, or, in whole or in part, into money or other property; or in the case of an exchange, the manner and basis of exchanging the shares of other constituent corporations for shares of the acquiring corporation;

d. In the case of a merger, a statement of any amendments to the articles of the surviving corporation proposed as part of the merger; and

e. Any other provisions with respect to the proposed merger or exchange that are deemed necessary or desirable.

2. The procedure authorized by this section does not limit the power of a corporation to acquire for money or property other than its shares all or part of the shares of a class or series of another corporation by a negotiated agreement with the shareholders of the other corporation.

10-19.1-98. Plan approval.

1. A resolution containing the plan of merger or exchange must be approved by the affirmative vote of a majority of the directors present at a meeting of the board of each constituent corporation and must then be submitted to the shareholders of each constituent corporation at a regular or a special meeting. Written notice must be given to every shareholder, whether or not entitled to vote at the meeting, no fewer than fourteen days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.

2. At the meeting a vote of the shareholders must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote. A class or series of shares of the corporation is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles, entitle the class or series of shares to vote as a class or series and, in the case of an exchange, if the class or series is affected by the plan of exchange.

3. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange to a vote at a meeting of shareholders of a surviving or acquiring corporation is not required if:

a. The articles of the corporation will not be amended in the transaction;

b. Each holder of shares of the corporation that were outstanding immediately before the effective date of the transaction will hold the same number of shares with identical rights immediately thereafter;

c. The number of shares of the corporation entitled to vote immediately after the merger or exchange, plus the number of shares of the corporation entitled to vote issuable on conversion or exchange of securities other than shares or on the exercise of rights to

purchase securities issued by virtue of the terms of the transaction, will not exceed by more than twenty percent, or, in the case of an exchange, a larger or smaller proportion provided in or pursuant to the articles, the number of shares of the corporation entitled to vote immediately before the transaction, and

- d. The number of participating shares of the corporation immediately after the transaction, plus the number of participating shares of the corporation issuable on conversion or exchange of, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than twenty percent, or, in the case of an exchange, a larger or smaller proportion provided in or pursuant to the articles, the number of participating shares of the corporation immediately before the transaction. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

10-19.1-99. Articles of merger - Certificate.

1. Upon receiving the approval required by section 10-19.1-98, articles of merger must be prepared that contain:

a. The plan of merger; and

b. For each corporation either:

- (1) A statement that the plan has been approved by a vote of the shareholders pursuant to subsection 2 of section 10-19.1-98; or
- (2) A statement that a vote of the shareholders is not required by virtue of subsection 3 of section 10-19.1-98.

2. The articles of merger must be signed on behalf of each constituent corporation and filed in duplicate original with the secretary of state, together with the fees provided in chapter 10-23.

3. The secretary of state shall issue a certificate of merger to the surviving corporation or its legal representative. The certificate must contain the effective date of merger.

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

1. A parent owning at least ninety percent of the outstanding shares of each class and series of a subsidiary may merge

the subsidiary into itself without a vote of the shareholders of either corporation. A resolution approved by the affirmative vote of a majority of the directors of the parent present must set forth a plan of merger that contains:

- a. The name of the subsidiary and the name of the parent; and
 - b. The manner and basis of converting the shares of the subsidiary into securities of the parent or of another corporation or, in whole or in part, into money or other property.
2. A copy of the plan of merger must be mailed to each shareholder, other than the parent, of the subsidiary.
 3. Articles of merger must be prepared that contain:
 - a. The plan of merger;
 - b. The number of outstanding shares of each class and series of the subsidiary and the number of shares of each class and series owned by the parent; and
 - c. The date a copy of the plan of merger was mailed to shareholders, other than the parent, of the subsidiary.
 4. Within thirty days after a copy of the plan of merger is mailed to shareholders of the subsidiary, or upon waiver of the mailing by the holders of all outstanding shares, the articles of merger must be signed on behalf of the parent and filed in duplicate original with the secretary of state, along with the fees provided in chapter 10-23.
 5. The secretary of state shall issue a certificate of merger to the parent or its legal representative. The certificate must contain the effective date of the merger.

10-19.1-101. Abandonment of plan of merger or exchange.

1. After a plan of merger or exchange has been approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all voting shares of each constituent corporation and before the effective date of the plan, it may be abandoned:
 - a. If the shareholders of each of the constituent corporations have considered abandoning the plan and the abandonment has been approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all voting shares of each constituent corporation;

- b. If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or
 - c. Pursuant to subsection 2.
2. If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned, a resolution abandoning the plan of merger or exchange may be approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under the plan. If articles of merger have been filed with the secretary of state, the board shall file in duplicate original with the secretary of state, together with the fees provided in chapter 10-23, articles of abandonment that contain:
- a. The name of the corporation;
 - b. The provision of this section under which the plan is abandoned; and
 - c. The text of the resolution approved by the affirmative vote of a majority of the directors present abandoning the plan.

If the certificate of merger has been issued, the board shall surrender the certificate to the secretary of state upon filing the articles of abandonment.

10-19.1-102. Effective date of merger or exchange - Effect.

- 1. A merger is effective when the articles of merger are filed with the secretary of state or on a later date specified in the articles of merger. An exchange is effective on the date specified in the plan of exchange.
- 2. When a merger becomes effective:
 - a. The constituent corporations become a single corporation, the surviving corporation.
 - b. The separate existence of all constituent corporations except the surviving corporation ceases.
 - c. The surviving corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this chapter.
 - d. The surviving corporation possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the

constituent corporations. All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares, and all other choses in action, and every other interest of or belonging to or due to each of the constituent corporations vests in the surviving corporation without any further act or deed. Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent corporation by its current officers or, if the corporation no longer exists, by its last officers. The title to any real estate or any interest therein vested in any of the constituent corporations does not revert nor in any way become impaired by reason of the merger.

- e. The surviving corporation is responsible and liable for all the liabilities and obligations of each of the constituent corporations. A claim of or against or a pending proceeding by or against a constituent corporation may be prosecuted as if the merger had not taken place, or the surviving corporation may be substituted in the place of the constituent corporation. Neither the rights of creditors nor any liens upon the property of a constituent corporation are impaired by the merger.
- f. The articles of the surviving corporation are deemed to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

- 3. When a merger or exchange becomes effective, the shares of the corporation or corporations to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are deemed to be exchanged in the case of an exchange. The holders of those shares are entitled only to the securities, money, or other property into which those shares have been converted or for which those shares have been exchanged in accordance with the plan, subject to any dissenter's rights under section 10-19.1-87.

10-19.1-103. Merger or exchange with foreign corporation.

- 1. A domestic corporation may merge with or participate in an exchange with a foreign corporation by following the procedures set forth in this section, if the merger or exchange is permitted by the laws of the state under which the foreign corporation is incorporated.
- 2. Each domestic corporation shall comply with the provisions of sections 10-19.1-96 through 10-19.1-103 with respect to the merger or exchange of shares of corporations and each foreign corporation shall comply with the applicable

provisions of the laws under which it was incorporated or by which it is governed.

3. If the surviving corporation in a merger will be a domestic corporation, it shall comply with this chapter.
4. If the surviving corporation in a merger will be a foreign corporation and will transact business in this state, it shall comply with the provisions of chapter 10-22 with respect to foreign corporations. In every case the surviving corporation shall file with the secretary of state:
 - a. An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent corporation and in a proceeding for the enforcement of the rights of a dissenting shareholder of a constituent corporation against the surviving corporation;
 - b. An irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding, and an address to which process may be forwarded; and
 - c. An agreement that it will promptly pay to the dissenting shareholders of each domestic constituent corporation the amount, if any, to which they are entitled under section 10-19.1-87.

10-19.1-104. Transfer of assets - When permitted.

1. A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, in which case no shareholder approval is required.
2. A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, when approved at a regular or special meeting of the shareholders by the affirmative vote of the holders of a

majority of the voting power of the shares entitled to vote. Written notice of the meeting must be given to all shareholders whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.

3. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.
4. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

10-19.1-105. Methods of dissolution. A corporation may be dissolved:

1. By the incorporators pursuant to section 10-19.1-106;
2. By the shareholders pursuant to sections 10-19.1-107 through 10-19.1-113; or
3. By order of a court pursuant to sections 10-19.1-114 through 10-19.1-122.

10-19.1-106. Voluntary dissolution by incorporators. A corporation that has not issued shares may be dissolved by the incorporators in the manner set forth in this section:

1. A majority of the incorporators shall sign articles of dissolution containing:
 - a. The name of the corporation;
 - b. The date of incorporation;
 - c. A statement that shares have not been issued;
 - d. A statement that all consideration received from subscribers for shares to be issued, less expenses incurred in the organization of the corporation, has been returned to the subscribers; and
 - e. A statement that no debts remain unpaid.
2. The articles of dissolution must be filed in duplicate original with the secretary of state, together with the fees provided in chapter 10-23.

3. When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.
4. The secretary of state shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:
 - a. The name of the corporation;
 - b. The date the articles of dissolution were filed with the secretary of state; and
 - c. A statement that the corporation is dissolved.

10-19.1-107. Voluntary dissolution by shareholders. A corporation may be dissolved by the shareholders when authorized in the manner set forth in this section:

1. Written notice must be given to each shareholder, whether or not entitled to vote at a meeting of shareholders within the time and in the manner provided in section 10-19.1-73 for notice of meetings of shareholders and, whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the corporation.
2. The proposed dissolution must be submitted for approval at a meeting of shareholders. If the proposed dissolution is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution must be commenced.

10-19.1-108. Filing notice of intent to dissolve - Effect.

1. If dissolution of the corporation is approved pursuant to subsections 1 and 2 of section 10-19.1-107, the corporation shall file in duplicate original with the secretary of state, together with the fees provided in chapter 10-23, a notice of intent to dissolve. The notice must contain:
 - a. The name of the corporation;
 - b. The date and place of the meeting at which the resolution was approved pursuant to subsections 1 and 2 of section 10-19.1-107; and
 - c. A statement that the requisite vote of the shareholders was received, or that all shareholders entitled to vote signed a written action.
2. When the notice of intent to dissolve has been filed with the secretary of state, and subject to section 10-19.1-112, the corporation shall cease to carry on its

business, except to the extent necessary for the winding up of the corporation. The shareholders shall retain the right to revoke the dissolution proceedings in accordance with section 10-19.1-112 and the right to remove directors or fill vacancies on the board. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the secretary of state.

3. The filing with the secretary of state of a notice of intent to dissolve does not affect any remedy in favor of the corporation or any remedy against it or its directors, officers, or shareholders in those capacities, except as provided in section 10-19.1-124.

10-19.1-109. Procedure in dissolution.

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible:

- a. To collect or make provisions for the collection of all debts due or owing to the corporation, including unpaid subscriptions for shares; and
- b. To pay or make provision for the payment of all debts, obligations, and liabilities of the corporation according to their priorities.

2. Notwithstanding section 10-19.1-104, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the shareholders.

3. All tangible or intangible property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation must be distributed to the shareholders in accordance with subsection 4 of section 10-19.1-92.

10-19.1-110. Notice to creditors and claimants.

1. When a notice of intent to dissolve has been filed with the secretary of state, the corporation may give notice of the filing to each known creditor of and claimant against the corporation at the last known address of each known present, future, or contingent creditor and claimant. The corporation may give published notice to known creditors or claimants whose address is unknown and to unknown present, future, or contingent creditors and claimants, by

publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located.

2. The notice to creditors and claimants must contain:

- a. A statement that the corporation is in the process of dissolving;
- b. A statement that the corporation has filed with the secretary of state a notice of intent to dissolve;
- c. The date of filing the notice of intent to dissolve;
- d. The address of the office to which written claims against the corporation must be presented; and
- e. The date by which all the claims must be received, which must be the later of ninety days after the notice of intent to dissolve was filed with the secretary of state or, with respect to a particular creditor or claimant, ninety days after the date on which notice was given to that creditor or claimant.

10-19.1-111. Claims in dissolution.

1. If the corporation gives proper notice to creditors and claimants pursuant to section 10-19.1-110:

- a. The claim of a creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is subject to the provisions of section 10-19.1-124;
- b. The corporation has thirty days from the receipt of each claim to accept or reject the claim by giving written notice to the person submitting it; a claim not expressly rejected in this manner is deemed accepted; and
- c. A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has sixty days from the date of rejection, or one hundred eighty days from the date the corporation filed with the secretary of state the notice of intent to dissolve, whichever is longer, to pursue any other remedies with respect to the claim. If the creditor or claimant does not initiate legal proceedings with respect to the claim during that period, the claim is subject to section 10-19.1-124.

2. The claim of a creditor or claimant to whom notice is not given and who does not initiate legal proceedings, concerning the claim within two years after the date of filing the notice of intent to dissolve is thereafter subject to the provisions of 10-19.1-124.

10-19.1-112. Revocation of dissolution proceedings.

1. Dissolution proceedings commenced pursuant to section 10-19.1-107 may be revoked prior to filing of articles of dissolution.
2. Written notice must be given to every shareholder entitled to vote at a shareholders' meeting within the time and in the manner provided in section 10-19.1-73 for notice of meetings of shareholders and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings. The proposed revocation must be submitted to the shareholders at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote, the dissolution proceedings are revoked.
3. Revocation of dissolution proceedings is effective when a notice of revocation is filed in duplicate original with the secretary of state, together with the fees provided in chapter 10-23. The corporation may thereafter resume business.

10-19.1-113. Articles of dissolution - Certificate of dissolution - Effect.

1. Articles of dissolution for a corporation dissolving pursuant to section 10-19.1-107 must be filed in duplicate original with the secretary of state, along with the fees provided in chapter 10-23, after:
 - a. The payment of claims of all known creditors and claimants has been made or provided for;
 - b. The longer of the periods described in subdivision c of subsection 1 of section 10-19.1-111 has expired, if the corporation has given notice to creditors and claimants of the corporation in the manner described in section 10-19.1-110; or, in all other cases,
 - c. The two-year period described in subsection 2 of section 10-19.1-111 has expired.
2. The articles of dissolution must state:
 - a. Whether notice has been given to all creditors and claimants of the corporation in the manner provided in

section 10-19.1-110, and, if notice has been given, the last date on which the notice was given and the date on which the longer of the periods described in subdivision c of subsection 1 of section 10-19.1-111 expired;

- b. That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provisions have been made therefor;
- c. That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with subsection 4 of section 10-19.1-92 or that adequate provision has been made for that distribution; and
- d. That there are no pending legal proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding, and that all other claims are barred under section 10-19.1-124.

3. When the articles of dissolution have been filed with the secretary of state, the corporation is dissolved.

4. The secretary of state shall issue to the dissolved corporation or its legal representative a certificate of dissolution that contains:

- a. The name of the corporation;
- b. The date the articles of dissolution were filed with the secretary of state; and
- c. A statement that the corporation is dissolved.

10-19.1-114. Supervised voluntary dissolution. After the notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the corporation, or for good cause shown, a shareholder or creditor may apply to a court within the county in which the principal executed office or the registered office of the corporation is situated to have the dissolution conducted or continued under the supervision of the court as provided in sections 10-19.1-115 through 10-19.1-124.

10-19.1-115. Involuntary dissolution.

1. A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:

- a. In a supervised voluntary dissolution pursuant to section 10-19.1-114;

b. In an action by a shareholder when it is established that:

- (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock;
- (2) The directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders, directors, or officers, or as employees of a closely held corporation;
- (3) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
- (4) The corporate assets are being misapplied or wasted; or
- (5) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-19.1-124.

c. In an action by a creditor when:

- (1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or
- (2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or

d. In an action by the attorney general to dissolve the corporation in accordance with section 10-19.1-118 when it is established that a decree of dissolution is appropriate.

2. In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation has accumulated or current operating profits.

3. In determining whether to order equitable relief or dissolution, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other.
4. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.
5. Proceedings under this section must be brought in a court within the county in which the registered office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

10-19.1-116. Procedure in involuntary or supervised voluntary dissolution.

1. In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be held.
2. After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets, including all amounts owing to the corporation by subscribers on account of any unpaid portion to the corporation by subscribers on account of any unpaid portion of the consideration for the issuance of shares. A receiver has authority, subject to the order of the court, to continue the business of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.
3. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge or:
 - a. The costs and expenses of the proceedings, including attorneys' fees and disbursements;

- b. Debts, taxes and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
 - c. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workmen's compensation insurance, as provided by law, at the time the injury was sustained;
 - d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
 - e. Other claims duly proved and allowed.
4. After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, must be distributed to the shareholders in accordance with subsection 4 of section 10-19.1-92.

10-19.1-117. Qualifications of receivers - Powers.

- 1. A receiver must be a natural person or a domestic corporation or a foreign corporation authorized to transact business in this state. A receiver shall give bond as directed by the court with the sureties required by the court.
- 2. A receiver may sue and defend in all courts as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction of the corporation and its property.

10-19.1-118. Action by attorney general.

- 1. A corporation may be dissolved involuntarily by a decree of a court in this state in an action filed by the attorney general when it is established that:
 - a. The articles and certificate of incorporation were procured through fraud;
 - b. The corporation was incorporated for a purpose not permitted by section 10-19.1-08;
 - c. The corporation failed to comply with the requirements of sections 10-19.1-02 through 10-19.1-24 essential to incorporation under or election to become governed by this chapter;

- d. The corporation has failed for thirty days to appoint and maintain a registered agent in this state;
 - e. The corporation has failed for thirty days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change; or
 - f. The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate franchise, privileges, or enterprise.
2. An action may not be commenced under this section until thirty days after notice to the corporation by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the corporation thirty additional days in which to effect the correction before filing the action.

10-19.1-119. Filing claims in proceedings to dissolve.

1. In proceedings referred to in section 10-19.1-115 to dissolve a corporation, the court may require all creditors and claimants of the corporation to file their claims under oath with the clerk of court or with the receiver in a form prescribed by the court.
2. If the court requires the filing of claims, it shall fix a date, which may not be less than one hundred twenty days from the date of the order, as the last day for the filing of claims, and shall prescribe the notice of the fixed date that must be given to creditors and claimants. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the corporation.

10-19.1-120. Discontinuance of dissolution proceedings. The involuntary or supervised voluntary dissolution of a corporation must be discontinued at any time during the dissolution proceedings when it is established that cause for dissolution no longer exists. When this is established, the court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the corporation all its remaining property and assets.

10-19.1-121. Decree of dissolution.

1. In an involuntary or supervised voluntary dissolution after the costs and expenses of the proceedings and all

debts, obligations, and liabilities of the corporation have been paid or discharged and all of its remaining property and assets have been distributed to its shareholders or, if its property and assets are not sufficient to satisfy and discharge the costs, expenses, debts, obligations, and liabilities, when all the property and assets have been applied so far as they will go to their payment according to the priorities set forth in section 10-19.1-116, the court shall enter a decree dissolving the corporation.

2. When the decree dissolving the corporation has been entered, the corporation is dissolved.

10-19.1-122. Filing decree. After the court enters a decree dissolving a corporation, the clerk of court shall cause a certified copy of the decree to be filed with the secretary of state. The secretary of state may not charge a fee for filing the decree.

10-19.1-123. Deposit with state treasurer of amount due certain shareholders - Appropriation. Upon dissolution of a corporation, the portion of the assets distributable to a shareholder who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive the distributive portion, must be reduced to money and deposited with the state treasurer for disposition pursuant to chapter 47-30. The amount deposited is appropriated to the state treasurer and must be paid over to the shareholder or a legal representative, upon proof satisfactory to the state treasurer of a right to payment.

10-19.1-124. Claims barred - Exceptions.

1. A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal proceeding within the time provided in section 10-19.1-111, 10-19.1-114, 10-19.1-115, or 10-19.1-119, or has not initiated a legal proceeding before the commencement of the dissolution proceedings, and all those claiming through or under the creditor or claimant, are forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.
2. At any time within one year after articles of dissolution have been filed with the secretary of state, or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:
 - a. Against the corporation to the extent of undistributed assets; or

- b. If the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability is limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder.
3. All debts, obligations, and liabilities incurred during dissolution proceedings shall be paid by the corporation before the distribution of assets to a shareholder. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy against the officers, directors, and shareholders of the corporation before the expiration of the applicable statute of limitations. This subsection does not apply to dissolution under the supervision or order of a court.

10-19.1-125. Right to sue or defend after dissolution. After a corporation has been dissolved, any of its former officers, directors, or shareholders may assert or defend, in the name of the corporation, any claim by or against the corporation.

10-19.1-126. Omitted assets. Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to shareholders may be transferred by a court in this state.

10-19.1-127. Extension after duration expired.

1. A corporation whose period of duration as provided in the articles has expired and which has continued to do business despite that expiration may reinstate its articles and extend the period of corporate duration, including making the duration perpetual, within one year after the date of expiration by filing an amendment to the articles as set forth in this section.
2. An amendment to the articles is approved by the affirmative vote of a majority of the directors present and must include:
- a. The date on which the period of duration expired under the articles;
- b. A statement that the period of duration will be perpetual or, if some shorter period is to be provided, the date to which the period of duration is extended; and
- c. A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration.

3. The amendment to the articles must be presented, after notice, to a meeting of the shareholders. The amendment is adopted when approved by the shareholders pursuant to section 10-19.1-19.
4. Articles of amendment, together with any fees and delinquent filings and reports, conforming to section 10-19.1-21 must be filed with the secretary of state.

10-19.1-128. Effect of extension. Filing with the secretary of state of articles of amendment extending the period of duration of a corporation:

1. Relates back to the date of expiration of the original period of duration of the corporation as provided in the articles;
2. Validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and
3. Restores to the corporation all the assets and rights of the corporation to the extent they were held by the corporation before expiration of its original period of duration, except those sold or otherwise distributed after that time.

10-19.1-129. Service of process on corporation and nonresident directors.

1. The registered agent must be an agent of the corporation and any nonresident director upon whom any process, notice, or demand required or permitted by law to be served on the corporation or director may be served. Acceptance of a directorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
2. A process, notice, or demand required or permitted by law to be served upon a corporation may be served either upon the registered agent of the corporation, or upon an officer of the corporation, or upon the secretary of state as provided in this section.
3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person who is not a party, that no registered agent or officer can be found at the registered office must be provided to the

secretary of state. Service on the secretary of state of any process, notice, or demand is deemed personal service upon the corporation and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand, along with the fees provided in chapter 10-23. The secretary of state shall immediately forward, by registered mail, addressed to the corporation at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

4. A record of all processes, notices, and demands served upon the secretary of state under this section, including the date of service and the action taken with reference to it must be maintained in the office of the secretary of state.
5. Nothing in this section limits the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

10-19.1-130. State interested - Proceedings. If it appears at any stage of a proceeding in a court in this state that the state is, or is likely to be, interested therein, or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general in the same manner prescribed for serving a summons in a civil action. The attorney general shall intervene in a proceeding when the attorney general determines that the public interest requires it, whether or not the attorney general has been served.

10-19.1-131. Foreign trade zones.

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

c. "Public corporation" means this state; a political subdivision of this state, any municipality of this state; any public agency of this state, of any political subdivision of this state, or any municipality of this state, or any other corporate instrumentality of this state.

2. Any private corporation or public corporation has the power to apply to the proper authorities of the United States for a grant of the privilege of establishing, operating, and maintaining foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation, and maintenance of such zones, all in accordance with the Act of Congress and other applicable laws and rules.

* SECTION 4. AMENDMENT. Section 10-22-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-01. Admission of foreign corporation. No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in this state any business which a corporation organized under chapters ~~10-19 through 10-19.1, 10-22, and 10-23~~ is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in chapters ~~10-19 through 10-19.1, 10-22, and 10-23~~ shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation. Any corporation which submits a bid or offer to construct any part or portion of a public or private building, road, airport, or other installation, shall file a notice of intention to do business in the state with the secretary of state.

Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of chapters ~~10-19 through 10-19.1, 10-22, and 10-23~~ only, by reason of carrying on in this state any one or more of the following activities:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.
2. Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.

* NOTE: Section 10-22-01 was also amended by section 1 of Senate Bill No. 2107, chapter 148.

3. Maintaining bank accounts.
4. Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.
5. Effecting sales through independent contractors.
6. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.
7. Creating evidences of debt, mortgages, or liens on real or personal property.
8. Securing or collecting debts or enforcing any rights in property securing the same.
9. Transacting any business in interstate commerce.
10. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

This section does not establish a standard for activities which may or may not subject a foreign corporation to taxation or service of process.

*** SECTION 5. AMENDMENT.** Section 10-22-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-02. Powers of foreign corporation. A foreign corporation which shall have received a certificate of authority shall, until a certificate of revocation or withdrawal shall have been issued, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued. Except as otherwise provided in chapters ~~10-19~~ through 10-19.1, 10-22, and 10-23 otherwise provided, a foreign corporation shall be subject to the same duties, restrictions, penalties, and liabilities now or hereafter imposed upon a domestic corporation of like character.

**** SECTION 6. AMENDMENT.** Section 10-22-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-03. Corporate name of foreign corporation. No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

1. Shall contain the word "corporation", "company", "incorporated", or "limited", or shall contain an abbreviation of one of such words, or such corporation

*** NOTE:** Section 10-22-02 was also amended by section 2 of Senate Bill No. 2107, chapter 148.

**** NOTE:** Section 10-22-03 was also amended by section 3 of Senate Bill No. 2107, chapter 148.

shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof.

2. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance.
3. Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in chapter ~~10-19~~ 10-19.1, or the name of a corporation which has in effect a registration of its name.

* SECTION 7. AMENDMENT. Section 10-22-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-05. Application for certificate of authority. A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall apply to the secretary of state. The application shall set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
2. If the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited", or does not contain an abbreviation of one of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state.
3. The date of incorporation and the period of duration of the corporation.
4. The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.
5. The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at such address.
6. The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state.
7. The names and respective addresses of the directors and officers of the corporation.

* NOTE: Section 10-22-05 was also amended by section 5 of Senate Bill No. 2107, chapter 148.

8. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
9. A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
10. A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in chapter ~~10-19~~ 10-19.1.
11. An estimate, expressed in dollars, of the value of all property to be owned by the corporation for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this state during such year, and an estimate, expressed in dollars, of the gross amount of business which will be transacted by the corporation during such year, and an estimate of the gross amount thereof which will be transacted by the corporation at or from places of business in this state during such year.
12. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine the fees payable as prescribed in chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23 prescribed.

Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary.

* SECTION 8. AMENDMENT. Section 10-22-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-06. Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a certificate of good standing duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as prescribed in chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23 prescribed:

1. Endorse on each of such documents the word "filed" and the month, day, and year of the filing thereof.

* NOTE: Section 10-22-06 was also amended by section 6 of Senate Bill No. 2107, chapter 148.

2. File in his office one of such duplicate originals of the application and the certificate of good standing.
3. Issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

* SECTION 9. AMENDMENT. Section 10-22-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-07. Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23.

** SECTION 10. AMENDMENT. Section 10-22-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-15. Filing of application for withdrawal. Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of section 10-22-14, he shall, when all fees have been paid as prescribed in chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23 prescribed:

1. Endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof.
2. File one of such duplicate originals in his office.
3. Issue a certificate of withdrawal to which he shall affix the other duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

*** SECTION 11. AMENDMENT. Section 10-22-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-16. Revocation of certificate of authority. The certificate of authority of a foreign corporation to transact business in this

- * NOTE: Section 10-22-07 was also amended by section 7 of Senate Bill No. 2107, chapter 148.
- ** NOTE: Section 10-22-15 was also amended by section 14 of Senate Bill No. 2107, chapter 148.
- *** NOTE: Section 10-22-16 was also amended by section 15 of Senate Bill No. 2107, chapter 148.

state may be revoked by the secretary of state upon any of the following conditions:

1. The corporation has failed to file its annual report within the time required, or has failed to pay any fees or penalties prescribed by chapters ~~10-19~~ through 10-19.1, 10-22, and 10-23 when they have become due and payable.
2. The corporation has failed to appoint and maintain a registered agent in this state as required by section 10-22-08.
3. The corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by section 10-22-09.
4. The corporation has failed to file in the office of the secretary of state any certificate of amendment to its articles of incorporation or any certificate of merger within the time as prescribed by section 10-19-62 10-19.1-23.
5. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to chapters ~~10-19~~ through 10-19.1, 10-22, and 10-23.

No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless (1) he shall have given the corporation not less than sixty days' notice thereof by mail addressed to its registered office in this state, and (2) the corporation shall fail prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement of change of registered agent or registered office, or file such certificate of amendment or certificate of merger, or correct such misrepresentation.

* SECTION 12. AMENDMENT. Section 10-22-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-18. Application to corporations heretofore authorized to transact business in this state. Foreign corporations which are duly authorized to transact business in this state, for a purpose or purposes for which a corporation might secure such authority under the provisions of this chapter, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under chapters ~~10-19~~ through 10-19.1, 10-22, and 10-23, and from the time chapters ~~10-19~~ through 10-19.1, 10-22, and 10-23 take effect such corporations shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations

* NOTE: Section 10-22-18 was repealed by section 18 of Senate Bill No. 2107, chapter 148.

procuring certificates of authority to transact business in this state.

SECTION 13. AMENDMENT. Section 10-23-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-09. Interrogatories by secretary of state. The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23 applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the secretary of state, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary, or assistant secretary thereof. The secretary of state need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23.

SECTION 14. AMENDMENT. Section 10-23-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-11. Powers of secretary of state. The secretary of state shall have the power and authority reasonably necessary to enable him to administer ~~the provisions of~~ chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23 efficiently and to perform the duties therein imposed upon him.

SECTION 15. AMENDMENT. Section 10-23-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-12. Appeal from secretary of state. If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23 to be approved by the secretary of state before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the district court of the county in which the registered office of such corporation is, or is proposed to be,

situated by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state. The matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

If the secretary of state shall revoke the certificate of authority to transact business in this state of any foreign corporation, pursuant to the provisions of section 10-22-16, such foreign corporation may likewise appeal to the district court of the county where the registered office of such corporation in this state is situated by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state. The matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

SECTION 16. AMENDMENT. Section 10-23-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-13. Certificates and certified copies to be received in evidence. All certificates issued by the secretary of state and all copies of documents filed in his office in accordance with ~~the provisions of chapters 10-19 through 10-19.1, 10-22, and 10-23,~~ when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

SECTION 17. AMENDMENT. Section 10-23-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-14. Forms to be furnished by secretary of state. All reports required by chapters ~~10-19 through 10-19.1, 10-22, and 10-23~~ to be filed in the office of the secretary of state shall be made on forms which shall be prescribed and furnished by the secretary of state. Forms for all other documents to be filed in the office of the secretary of state shall be furnished by the secretary of state on request therefor, but the use thereof, unless otherwise specifically provided by law, shall not be mandatory.

SECTION 18. AMENDMENT. Section 10-23-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-15. Application of chapters. All foreign and domestic corporations for profit are governed by chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23, except profit corporations governed by special statutes, such as public utility, insurance, banking, cooperative, building and loan, annuity, safe deposit, surety, and trust companies, which are subject to the provisions of those special statutes except insofar as reference is made to the general law governing corporations or to provisions of this title. Where such reference exists, chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23 shall govern in that respect.

SECTION 19. AMENDMENT. Section 10-23-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-16. Application to foreign and interstate commerce. ~~The provisions of chapters 10-19 through~~ Chapters 10-19.1, 10-22, and 10-23 ~~shall~~ apply to commerce with foreign nations and among the several states only insofar as the same may be permitted under the provisions of the Constitution of the United States.

SECTION 20. AMENDMENT. Section 10-23-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-17. Reservation of legislative power. The legislative assembly shall at all times have power to prescribe such regulations, provisions, and limitations as it may deem advisable, which regulations, provisions, and limitations shall be binding upon any and all corporations subject to ~~the provisions of~~ chapters 10-19 through 10-19.1, 10-22, and 10-23, and the legislative assembly shall have power to amend, repeal, or modify chapters ~~10-19 through~~ 10-19.1, 10-22, and 10-23.

Every grant of corporate power is subject to alteration, suspension, or repeal in the discretion of the legislative assembly, and any statute of this state relating to corporations may be repealed or amended, and all corporations organized under this title may be dissolved by the legislative assembly at any time. Such alteration, suspension, amendment, or repeal, or the dissolution of any corporation, shall not take away or impair any remedy given against any such corporation, its stockholders, or officers for any liability which has been previously incurred.

The legislative assembly, or either branch thereof, may examine into the affairs and condition of any corporation in this state at all times. For that purpose, any committee appointed by the said assembly, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of a corporation, and may examine them on oath in relation to its affairs and condition, and may examine the safes, books, papers, and documents belonging to such corporation or pertaining to its affairs and condition and compel the production of all keys, books, papers,

and documents by summary process to be issued on application to any district court or any judge thereof under such rules and regulations as the court may prescribe.

SECTION 21. AMENDMENT. Section 10-30-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30-05. Business Corporation Act to apply. The provisions of chapters ~~10-19 through 10-19.1, 10-22, and 10-23~~ shall apply to state development corporations as they may be applicable and not inconsistent with this chapter.

SECTION 22. AMENDMENT. Subsection 12 of section 25-03.1-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12. "Private treatment facility" means any facility established pursuant to chapters ~~10-19 through 10-19.1, 10-22, and 10-24~~ and licensed pursuant to chapter ~~23-16 or 23-17.1~~.

SECTION 23. AMENDMENT. Subsection 4 of section 38-08.1-03.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. Upon filing the bond required by this section and presenting a certificate of authority to transact business in this state issued pursuant to chapter 10-22, a certificate of incorporation issued pursuant to chapter ~~10-19 10-19.1~~, or some other certificate issued by the secretary of state showing the name of the person designated as resident agent for service of process, the industrial commission shall issue to the person desiring to engage in geophysical exploration a certificate showing that the bond has been filed and showing the name of the person designated resident agent for service of process.

SECTION 24. REPEAL. Chapters 10-19, 10-20, and 10-21 of the North Dakota Century Code are hereby repealed.

SECTION 25. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 4, 1985

CHAPTER 148

SENATE BILL NO. 2107
(Olson)

FOREIGN CORPORATIONS

AN ACT to amend and reenact sections 10-22-01, 10-22-02, 10-22-03, 10-22-04, 10-22-05, 10-22-06, 10-22-07, 10-22-08, 10-22-09, 10-22-10, 10-22-12, 10-22-13, 10-22-14, 10-22-15, 10-22-16, 10-22-17, and 10-22-19 of the North Dakota Century Code, relating to foreign corporations; to repeal section 10-22-18 of the North Dakota Century Code, relating to foreign corporations; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Section 10-22-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-01. Admission of foreign corporation. No foreign corporation shall have the right to may transact business in this state until it ~~shall have~~ has procured a certificate of authority ~~so to do~~ from the secretary of state. No foreign corporation ~~shall be entitled to~~ may procure a certificate of authority under this chapter to transact in this state any business which is prohibited a corporation organized under chapters ~~10-19~~ 10-19.1 through 10-23 is not permitted to transact. A foreign corporation shall may not be denied a certificate of authority by reason of the fact that because the laws of the state or country under which such where the corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in chapters ~~10-19~~ 10-19.1 through 10-23 shall be construed to authorize authorizes this state to regulate the organization or the internal affairs of such a foreign corporation. Any corporation which submits a bid or offer to construct any part or portion of a public or private building, road, airport, or other installation, shall file a notice of intention to do business in the state with the secretary of state.

Without excluding other activities which may not constitute transacting business in this state, a A foreign corporation shall is not be considered to be transacting business in this state, for the purposes of chapters ~~10-19~~ 10-19.1 through 10-23 only, by reason of carrying on in this state any one or more of the following

* NOTE: Section 10-22-01 was also amended by section 4 of Senate Bill No. 2041, chapter 147.

activities which do not constitute transacting business in this state, including:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting ~~the a settlement thereof or the settlement of claims or disputes of any claim or dispute.~~
2. Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs.
3. Maintaining bank accounts.
4. Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.
5. Effecting sales through independent contractors.
6. Soliciting or procuring orders, ~~whether by mail or through employees or agents or otherwise, through any means where such the orders require acceptance without outside~~ this state before becoming binding contracts.
7. Creating evidences of debt, mortgages, or liens on real or personal property.
8. Securing or collecting debts or enforcing any rights in property ~~securing the same a debt or right.~~
9. Transacting any business in interstate commerce.
10. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

This section does not establish a standard for activities which may or may not subject a foreign corporation to affect the taxation of or service of process on foreign corporations.

* SECTION 2. AMENDMENT. Section 10-22-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-02. Powers of foreign corporation. A foreign corporation which ~~shall have has~~ received a certificate of authority ~~shall,~~ until a certificate notice of revocation or certificate of withdrawal shall have been is issued, enjoy enjoys the same, ~~but no greater,~~ rights and privileges as a domestic corporation organized for the purposes set forth in the application ~~pursuant to which such for a certificate of authority is issued. Except as in chapters 10-19 through 10-23 otherwise provided in chapter 10-19.1,~~ a foreign corporation ~~shall be is~~ subject to the same duties, restrictions,

* NOTE: Section 10-22-02 was also amended by section 5 of Senate Bill No. 2041, chapter 147.

penalties, and liabilities ~~now or hereafter~~ imposed upon a similar domestic corporation of like character.

* SECTION 3. AMENDMENT. Section 10-22-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-03. Corporate name of foreign corporation. No A certificate of authority shall may not be issued to a foreign corporation unless the ~~corporate corporation's~~ name of such ~~corporation:~~

1. ~~Shall contain~~ Contains the word "corporation", "company", "incorporated", or "limited", or ~~shall contain~~ an abbreviation of one of ~~such those~~ words, or ~~such the~~ corporation ~~shall may~~, for use in this state, add at the end of its name one of ~~such those~~ words or an abbreviation thereof.
2. ~~Shall Does~~ Does not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance.
3. ~~Shall Is~~ Is not be the same as, or deceptively similar to, the name of any domestic corporation or domestic limited partnership existing under the laws of this state or any foreign corporation or foreign limited partnership authorized to transact business in this state, or a name the exclusive right to which is, ~~at the time,~~ reserved in the manner provided in chapter ~~10-19~~ 10-19.1, or a fictitious name registered with the office of the secretary of state in the manner provided in chapter 45-11, or a trade name registered with the secretary of state in the manner provided in chapter 47-25, or the name of a corporation which has in effect a registration of its name as provided in this chapter, except that this provision does not apply if the foreign corporation applying for a certificate of authority files with the secretary of state:
 - a. A resolution of its board of directors adopting a trade name for use in transacting business in this state if the trade name is not deceptively similar to the name of any domestic corporation or of any foreign corporation authorized to transact business in this state, or to any name reserved or registered as provided in this chapter, registered as a trade name under chapter 47-25, or as a fictitious name under title 45;
 - b. Written consent of the corporation or other holder of a reserved or registered name to use the name or a deceptively similar name, when words are added to make

* NOTE: Section 10-22-03 was also amended by section 6 of Senate Bill No. 2041, chapter 147.

the new name distinguishable from the previously established name; or

- c. A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this state.

SECTION 4. AMENDMENT. Section 10-22-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-04. Change of name by foreign corporation. Whenever ~~When~~ a foreign corporation ~~which is~~ authorized to transact business in this state ~~shall attempts to~~ change its name to ~~one under which a certificate of authority would not be granted to it on application therefor a name unavailable under the laws of this state,~~ the certificate of authority of ~~such the~~ corporation ~~shall be is~~ suspended and ~~it shall the corporation may not thereafter~~ transact any business in this state until it has changed its name to a name ~~which is available to it under the laws of this state or has otherwise complied with this chapter.~~

* SECTION 5. AMENDMENT. Section 10-22-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-05. Application for certificate of authority. A foreign corporation, ~~in order to may~~ procure a certificate of authority to transact business in this state, ~~shall apply by applying~~ to the secretary of state. The application ~~shall must~~ set forth:

1. The name of the corporation and the state or country ~~under the laws of which where~~ it is incorporated.
2. ~~if the~~ The name of the corporation ~~does not contain,~~ containing the word "corporation", "company", "incorporated", or "limited", or ~~does not contain~~ an abbreviation of one of ~~such these~~ words, ~~then or~~ the name of the corporation with the word or abbreviation which it elects to add ~~thereto~~ for use in this state.
3. The date of incorporation and the period of duration of the corporation.
4. The address of the principal executive office of the corporation in the state or country ~~under the laws of which where~~ it is incorporated.
5. The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state ~~at such address.~~

* NOTE: Section 10-22-05 was also amended by section 7 of Senate Bill No. 2041, chapter 147.

6. The purpose or purposes of the corporation which it proposes to pursue in through the transaction of business in this state.
7. The names and respective addresses of the directors and officers of the corporation.
8. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
9. A statement of the aggregate number of issued shares itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
10. A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in chapter 10-19.
11. An estimate, expressed in dollars, of the value of all property to be owned by the corporation for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this state during such year, and an estimate, expressed in dollars, of the gross amount of business which will be transacted by the corporation during such year, and an estimate of the gross amount thereof which will be transacted by the corporation at or from places of business in this state during such year.
12. Such Any additional information as may be which is necessary or appropriate in order to enable the secretary of state to determine whether such the corporation is entitled to a certificate of authority to transact business in this state and to determine the fees payable as in chapters 10-19 through 10-23 prescribed in chapter 10-23.

Such The application shall must be made on forms prescribed and furnished by the secretary of state and shall must be executed in duplicate by the corporation by its corporation's president or a vice president and by its secretary or an assistant secretary.

* SECTION 6. AMENDMENT. Section 10-22-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-06. Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority shall must be delivered to the secretary of state, together with a certificate of good standing duly authenticated by the proper officer of the state or country under the laws of which it where the corporation is incorporated and the consent of the

* NOTE: Section 10-22-06 was also amended by section 8 of Senate Bill No. 2041, chapter 147.

designated registered agent for service of process to serve in that capacity.

If the The secretary of state finds that such shall, upon determining that the application conforms to law, he shall, when and that all fees have been paid as in chapters 10-19 through prescribed in chapter 10-23 prescribed:

1. Endorse on each of such documents document the word "filed" and the month, day, and year of the filing thereof.
2. File in his office one of such the duplicate originals of the application and, the certificate of good standing, and the consent of the registered agent.
3. Issue to the corporation or its representative a certificate of authority to transact business in this state to which he shall affix with the other duplicate original application affixed.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative:

* SECTION 7. AMENDMENT. Section 10-22-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-07. Effect of certificate of authority. Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be is authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in chapters 10-19 through 10-23 until the certificate is suspended or revoked as provided by law.

SECTION 8. AMENDMENT. Section 10-22-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-08. Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

1. A registered office which may or may not be the same as its place of business in this state.
2. A registered agent, which agent who may be an individual resident in this state and whose business office is identical with such at the same location as the corporation's registered office, a domestic corporation, or a foreign corporation authorized to transact business in this state having a business office identical with such at the same location as the principal corporation's registered office.

* NOTE: Section 10-22-07 was also amended by section 9 of Senate Bill No. 2041, chapter 147.

SECTION 9. AMENDMENT. Section 10-22-09 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-09. Change of registered office or registered agent of foreign corporation.

1. A foreign corporation authorized to transact business in this state may change its registered office or ~~change~~ its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:
 - a. The name of the corporation.
 - b. The address of its then registered office.
 - c. ~~If the address of its registered office be changed~~ When changing the address of its registered office, the address to which the registered office is to be changed.
 - d. The name of its ~~then~~ current registered agent.
 - e. ~~If~~ When changing its registered agent ~~be changed,~~ the name of its successor registered agent.
 - f. That the address ~~addresses~~ of its registered office and ~~the address of~~ the business office of its registered agent, as changed, will be identical.
 - g. That ~~such~~ the change was authorized by resolution duly adopted by its board of directors.

~~Such~~ The statement ~~shall~~ must be executed by the corporation by its president or a vice president and delivered to the secretary of state. If the registered agent is changed, the consent of the successor agent to act in that capacity must accompany the filing. If a registered agent changes ~~his or~~ its business address to a place within the same county ~~he or~~ it may change such address and the address of the registered office of any corporations of which ~~he or~~ it is the registered agent by filing a statement as required above with one copy ~~thereof~~ for each corporation listed on the certificate, except that it need be signed only by the registered agent, need not be responsive to subdivision e or g and must recite that a copy of the statement has been mailed to each ~~such~~ listed corporation. If the secretary of state finds that ~~such~~ the statement conforms ~~to the provisions of~~ with this section, ~~he~~ the secretary of state shall file ~~such~~ the statement ~~in his office,~~ and upon ~~such~~ the filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, ~~shall become~~ becomes effective.

2. Any registered agent of a foreign corporation may resign as ~~such agent~~ upon filing a written notice ~~thereof~~ executed in duplicate, with the secretary of state, who shall ~~forthwith~~ mail a copy thereof to the foreign corporation at its ~~registered office~~ principal executive office. The appointment of ~~such~~ the agent shall ~~terminate~~ terminate upon the expiration of thirty days after receipt of ~~such~~ the notice by the secretary of state.

SECTION 10. AMENDMENT. Section 10-22-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-10. Service of process on foreign corporation. The A registered agent ~~so~~ appointed by a foreign corporation authorized to transact business in this state shall ~~be is~~ be an agent of ~~such~~ the corporation upon whom for service of any process, notice, or demand required or permitted by law to be served upon the corporation may be served.

Whenever a foreign corporation authorized to transact business in this state shall ~~fail~~ fails to appoint or maintain a registered agent in this state, ~~or whenever~~ any ~~such~~ registered agent cannot with reasonable diligence be found at the registered office, or ~~whenever~~ the certificate of authority of a foreign corporation shall ~~be is~~ be suspended or revoked, ~~then~~ the secretary of state shall ~~be is~~ be an agent of ~~such~~ the corporation upon whom any such for service of process, notice, or demand may be served. Service on the secretary of state of any ~~such~~ process, notice, or demand shall ~~must~~ must be made by delivering to and leaving with ~~him~~ the secretary of state, or with any clerk having charge of the ~~secretary of state's~~ secretary of state's corporation department of ~~his office~~, duplicate the original and two copies of such the process, notice, or demand, together with the required fee and the return of the sheriff, or an affidavit of a person who is not a party, that no registered agent or officer can be found. In the event Upon service of any such process, notice, or demand ~~is served on~~, the secretary of state, he shall immediately cause ~~one of such copies~~ a copy thereof to be forwarded by registered ~~or certified~~ mail addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Any service so had on the secretary of state shall ~~must~~ must be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices, and demands served ~~upon him~~ under this section, and shall record therein the ~~time~~ date of ~~such~~ service and ~~his~~ any action ~~with reference thereto~~ taken.

Whenever a claim shall ~~arise~~ arises out of business transacted in this state by a foreign corporation transacting business without a certificate of authority, service of process may be made upon any person who shall ~~be is~~ be found within this state acting as an agent of, or doing business for, such corporation, or by mailing a copy thereof to the defendant corporation by registered ~~or certified~~ mail at its last known post-office address.

~~Nothing herein contained shall~~ This section does not limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

SECTION 11. AMENDMENT. Section 10-22-12 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-12. Merger of foreign corporation authorized to transact business in this state. Whenever a foreign corporation authorized to transact business in this state ~~shall be~~ is a party to a statutory merger permitted by the laws of the state or country ~~of~~ under which it is incorporated, and ~~such the~~ such corporation ~~shall be~~ is not the surviving corporation, ~~it~~ the surviving corporation shall, within thirty days after ~~such the~~ the merger becomes effective, file with the secretary of state a ~~copy of the certificate~~ certified statement of merger duly authenticated by the proper officer of the state or country ~~under~~ the laws of which such where the statutory merger was effected. It ~~shall~~ is not be necessary for ~~such any~~ any foreign corporation, ~~which is~~ a surviving corporation in a merger to procure either a new or amended certificate of authority to transact business in this state unless the name of ~~such the~~ such corporation ~~be~~ is changed thereby or unless the corporation desires to pursue in this state ~~other or~~ additional purposes ~~other~~ than those which it is ~~then~~ authorized to transact in this state.

SECTION 12. AMENDMENT. Section 10-22-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-13. Amended certificate of authority. A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority ~~in the event it when the~~ the corporation changes its corporate name, or desires to pursue in this state other or additional when purposes other than those set forth in its ~~prior~~ last application for a certificate of authority ~~are~~ sought, by making application ~~therefor~~ therefor to the secretary of state. The application, together with the required fee, must be filed within thirty days of the corporate action necessitating the filing.

The requirements ~~in respect to~~ for the form and contents of ~~such the~~ such application, the manner of its execution, the filing of duplicate originals ~~thereof~~ thereof with the secretary of state, the issuance of an amended certificate of authority, and the effect ~~thereof,~~ shall be of the amended certificate are the same as ~~in the~~ in the case of ~~an the~~ an original application for a certificate of authority.

An application must be accompanied by a certified statement of amendment duly authenticated by the proper officer of the state or country where the corporation is incorporated.

* SECTION 13. AMENDMENT. Section 10-22-14 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

* NOTE: Section 10-22-14 was also amended by section 16 of Senate Bill No. 2086, chapter 82.

10-22-14. **Withdrawal of foreign corporation.** A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure ~~such~~ a certificate of withdrawal, ~~such~~ a foreign corporation shall deliver to the secretary of state an application for withdrawal, which ~~shall set~~ sets forth:

1. The name of the corporation and the state or country ~~under the laws of which~~ where it is incorporated.
2. That the corporation is not transacting business in this state.
3. That the corporation surrenders its authority to transact business in this state.
4. That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation by service ~~thereof~~ on the secretary of state.
5. A post-office address to which the secretary of state may mail a copy of any process against the corporation that may be served on him.
6. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of such application.
7. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of such application.
8. A statement, expressed in dollars, of the amount of stated capital of the corporation, as of the date of such application.
9. ~~Such~~ Any additional information ~~as may be~~ necessary or appropriate ~~in order~~ to enable the secretary of state to determine and assess any unpaid fees payable by ~~such~~ the foreign corporation.

The application for withdrawal ~~shall~~ must be made on forms prescribed and furnished by the secretary of state and ~~shall~~ must be executed by the corporation by its president or vice president and by its secretary or ~~an~~ assistant secretary or, if the corporation is

in the hands of a receiver or trustee, ~~shall~~ must be executed on behalf of the corporation by ~~such~~ the receiver or trustee.

* SECTION 14. AMENDMENT. Section 10-22-15 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-15. Filing of application for withdrawal. Duplicate originals of such application for withdrawal ~~shall~~, together with the required fee, must be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of section 10-22-14, he the secretary of state shall, when all fees have been paid as in chapters 10-19 through 10-23 prescribed in chapter 10-23 have been paid:

1. Endorse on each of such duplicate originals the word "filed" and the month, day, and year of the filing thereof.
2. File Retain one of ~~such~~ the duplicate originals ~~in his office.~~
3. Issue to the corporation or its representative a certificate of withdrawal ~~to which he shall affix~~ with the other duplicate original affixed.

~~The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such a certificate of withdrawal, the authority of the corporation to transact business in this state shall cease ceases.~~

** SECTION 15. AMENDMENT. Section 10-22-16 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-16. Revocation of certificate of authority. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon any of the following conditions:

1. The corporation has failed to file its annual report within the time required, or has failed to pay any fees or penalties prescribed by ~~chapters 10-19 through~~ chapter 10-23 when ~~they have become~~ due and payable.
2. The corporation has failed to appoint and maintain a registered agent in this state as required by section 10-22-08.
3. The corporation has failed, after change of its registered office or registered agent, to file ~~in the office of the secretary of state~~ a statement of such change as required by section 10-22-09.

* NOTE: Section 10-22-15 was also amended by section 10 of Senate Bill No. 2041, chapter 147.

** NOTE: Section 10-22-16 was also amended by section 11 of Senate Bill No. 2041, chapter 147.

4. The corporation has failed to file in the office of the secretary of state any certificate of amendment to its articles of incorporation or any certificate of merger within the time prescribed by section 10-19-62 a certified statement required to be filed with the secretary of state under sections 10-22-12 and 10-22-13.
5. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to chapters 10-19 through 10-22 and 10-23.

No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless (1) he shall have the secretary of state has given the corporation not less than sixty days' notice thereof by mail addressed to its registered office in this state, and (2) the corporation shall fail fails prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement of change of registered agent or registered office, or file such certificate of amendment or certificate of merger, or correct such misrepresentation the expiration of the sixty days to remedy the condition to the satisfaction of the secretary of state. If a notice of resignation of the registered agent has been filed with the secretary of state, the notice required by this section must be sent to the principal executive office.

SECTION 16. AMENDMENT. Section 10-22-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-17. Issuance of certificate of revocation. Upon revoking any such certificate of authority, the secretary of state shall-

- 1- ~~Issue a certificate of revocation in duplicate-~~
- 2- ~~File one of such certificates in his office-~~
- 3- Mail to such corporation at its registered office in this state a notice of such revocation accompanied by one of such certificates issue a notice of revocation to the corporation. The notice must be mailed as required by section 10-22-16.

Upon the issuance of such certificate the notice of revocation, the authority of the corporation to transact business in this state ~~shall cease ceases.~~

SECTION 17. AMENDMENT. Section 10-22-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-19. Transacting business without certificate of authority. No foreign corporation transacting business in this state without a certificate of authority ~~shall be permitted to~~ may maintain any action, suit, or proceeding in any court of this state, until such

~~the corporation shall have~~ has obtained a certificate of authority. ~~Now shall any~~ No action, suit, or proceeding may be maintained in any court of this state by any successor or assignee of ~~such a~~ corporation on any right, claim, or demand arising out of the transaction of business by ~~such the~~ corporation in this state, until a certificate of authority ~~shall have~~ has been obtained by ~~such the~~ corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to transact business in this state ~~shall does~~ not impair the validity of any contract or act of ~~such the~~ corporation, and ~~shall does~~ not prevent ~~such the~~ corporation from defending any action, suit, or proceeding in any court of this state.

A foreign corporation which transacts business in this state without a certificate of authority ~~shall be is~~ liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed upon ~~such the~~ foreign corporation had it duly applied for and received a certificate of authority to transact business in this state, together with any penalties for nonpayment of ~~such~~ fees.

The attorney general shall bring proceedings to recover all amounts due this state under ~~the provisions of~~ this section.

* SECTION 18. REPEAL. Section 10-22-18 of the North Dakota Century Code is hereby repealed.

SECTION 19. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 4, 1985

* NOTE: Section 10-22-18 was amended by section 12 of Senate Bill No. 2041, chapter 147.

CHAPTER 149

SENATE BILL NO. 2251
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

BUSINESS CORPORATION ACT CHANGES

AN ACT to create and enact two new sections to chapter 10-23 of the North Dakota Century Code, relating to the Business Corporation Act, or in the alternative to amend and reenact sections 10-21-13.1, 10-21-13.2, 10-23-01, 10-23-02, 10-23-03, 10-23-04, 10-23-05, and 10-23-06 of the North Dakota Century Code, relating to the Business Corporation Act; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

Failure to file annual report - Notice by secretary of state. The secretary of state shall notify any corporation failing to file its annual report within three months after the date required under section 10-23-02 that its certificate of incorporation is not in good standing and that it may be dissolved pursuant to section 2 of this Act. Notice by the secretary of state shall be mailed to the corporation's last registered agent at the last registered office of record. If, however, the corporation files its annual report after the notice, together with the annual report filing fee as prescribed by section 10-23-04 and the late filing penalty fee as prescribed by section 10-23-02, its certificate of incorporation must be restored to good standing by the secretary of state.

SECTION 2. A new section to chapter 10-23 of the North Dakota Century Code is hereby created and enacted to read as follows:

Involuntary dissolution for failure to file annual report. A corporation that fails to file its annual report along with those statutory filing and penalty fees within one year after the date required by section 10-23-02, ceases to exist and is considered involuntarily dissolved by operation of law. The secretary of state shall note the dissolution of the corporation's certificate of incorporation on the records of the secretary of state and shall give notice of the action to the dissolved corporation. Notice by

the secretary of state must be mailed to the corporation's last registered agent at the last registered office of record.

SECTION 3. AMENDMENT. If Senate Bill No. 2041 of the forty-ninth legislative assembly does not become effective, section 10-21-13.1 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-21-13.1. Failure to file annual report - Notice by secretary of state. The secretary of state shall notify any corporation failing to file its annual report within three months after the date required under section 10-23-02 that its certificate of incorporation may be terminated is not in good standing and that it may be dissolved pursuant to section 10-21-13.2. Notice by the secretary of state shall be mailed to the corporation's last registered agent at the last registered office of record. If, however, such the corporation shall file its annual report within three months after such the notice, together with a fee of twenty dollars; the annual report filing fee as prescribed by section 10-23-04 and the late filing penalty fee as prescribed by section 10-23-02, its certificate of incorporation shall be reinstated restored to good standing by the secretary of state. Such certificate of incorporation may be reinstated by the district court of the county where such corporation has its registered office, upon petition filed within one year after the date required by section 10-23-02 and upon condition that it file the annual report required together with a fee of thirty dollars.

SECTION 4. AMENDMENT. If Senate Bill No. 2041 of the forty-ninth legislative assembly does not become effective, section 10-21-13.2 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-21-13.2. Involuntary dissolution for failure to file annual report. A corporation which fails to file its annual report along with those statutory filing and penalty fees which are applicable, within one year after the date required by section 10-23-02, ceases to exist and is considered involuntarily dissolved by operation of law. The secretary of state shall note the termination dissolution of the corporation's certificate of incorporation on the records of the secretary of state and shall give notice of such the action to the dissolved corporation. Notice by the secretary of state shall be mailed to the corporation's last registered agent at the last registered office of record.

SECTION 5. AMENDMENT. Section 10-23-01 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-01. Annual report of domestic and foreign corporations. Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall file, within the time prescribed by section sections 10-23-02 and 10-23-03, an annual report setting forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
2. The address of the registered office of the corporation in this state, and the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.
3. A brief statement of the character of the business in which the corporation is actually engaged in this state.
4. The names and respective addresses of the directors and officers of the corporation.
5. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
6. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
7. A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in section 10-19-02. "Stated capital" means, at any particular time, the sum of the following:
 - a. The par value of all shares of the corporation having a par value, which have been issued.
 - b. The amount of the consideration received by the corporation for all shares of the corporation without par value, which have been issued, except such part of the consideration thereof as may have been allocated to capital surplus in a manner permitted by law.
 - c. Such amounts not included in subdivisions a and b as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation must be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees and other charges imposed by chapters 10-19.1 through 10-23.

8. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the twelve months ending on the thirty-first day of December preceding the date herein provided for the filing of the annual report and the gross amount thereof transacted by the corporation at or from places of business in this state. If, on the thirty-first day of December preceding the time herein provided for the filing of such report, the corporation had not been in existence for a period of twelve months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve months, the statement with respect to business transacted shall be furnished for the period between the date of incorporation or the date of its authorization to transact business in this state, as the case may be, and such thirty-first day of December.
9. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess the proper amount of fees payable by such corporation.

Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report, except as to the information required by subsections 7, 8, and 9 which shall be given as of the close of business on the thirty-first day of December next preceding the date herein provided for the filing of such report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary, or treasurer or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation. The secretary of state may destroy all the annual reports provided for in this section after they have been on file for six years.

SECTION 6. AMENDMENT. Section 10-23-02 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-02. Filing of annual report of domestic and foreign corporations - Penalty for late filing. The annual report for the preceding year of a domestic corporation shall be delivered to the secretary of state on or before the first day of August of each year, except that the first annual report of a domestic corporation shall be filed on or before the first day of August of the year next succeeding the calendar year in which its certificate of incorporation ~~or its certificate of authority, as the case may be,~~ was issued by the secretary of state. The annual

report for the preceding year of a foreign corporation shall be delivered to the secretary of state on or before the first day of April of each year, except that the first annual report of a foreign corporation shall be filed on or before the first day of April of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to on or before the first day of August or April, as the case may be, such report was deposited in postmarked by the United States mail postal service, or other carrier service, in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds that such report conforms to the requirements of section 10-23-01, he shall file the same the report shall be filed. If he finds that it the report does not so conform, he it shall promptly return the same be returned to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for the failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of section 10-23-01 and returned to the secretary of state on or before thirty days after such corporation received the annual report for corrections. The secretary of state may extend the filing date for the annual report of any corporation, if a corporation applies for an extension before the filing deadline, whenever in his discretion he considers such an extension of time advisable and proper written application for an extension is received before the filing deadline.

Each domestic corporation that fails or refuses to file its annual report for any year within the time prescribed by this section shall be subject to a penalty of twenty dollars if filed within ninety days after the due date, or fifty dollars if filed thereafter. A corporation which fails to file its annual report along with those statutory filing and penalty fees within one year after the date required by this section ceases to exist and is considered involuntarily dissolved by operation of law.

SECTION 7. AMENDMENT. Section 10-23-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-03. Penalties imposed upon corporations Filing of annual report of foreign corporations - Penalty for late filing.

The annual report for the preceding year of a foreign corporation shall be delivered to the secretary of state on or before the first day of April of each year, except that the first annual report of a foreign corporation shall be filed on or before the first day of April of the year next succeeding the calendar year in which its certificate of authority was issued by the secretary of state. Proof to the satisfaction of the secretary of state that on or before the first day of April such report was postmarked by the United States postal service, or other carrier service, in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds

that such report conforms to the requirements of section 10-23-01, the report shall be filed. If the report does not so conform, it shall promptly be returned to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for the failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of section 10-23-01 and returned to the secretary of state on or before thirty days after such corporation received the annual report for corrections. The secretary of state may extend the filing date for the annual report of any corporation, if a written application for an extension is received before the filing deadline.

Each ~~corporation, domestic or foreign,~~ corporation that fails or refuses to file its annual report for any year within the time prescribed by this section ~~10-23-02~~ shall be subject to a penalty of ten percent of the license fee which would be payable if it were filing its articles of incorporation at the time such annual report was to have been filed twenty dollars.

Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by section 10-23-09 interrogatories propounded by the secretary of state, shall be deemed to be guilty of an infraction.

SECTION 8. AMENDMENT. Section 10-23-04 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-04. Fees for filing documents and issuing certificates. The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, ~~twenty-five~~ thirty dollars.
2. Filing articles of amendment and issuing a certificate of amendment, ~~twenty-five~~ twenty dollars.
3. Filing restated articles of incorporation, ~~twenty-five~~ thirty dollars.
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, ~~twenty-five~~ thirty dollars.
5. Filing an application to reserve a corporate name, ~~seven ten~~ ten dollars and ~~fifty~~ cents.
6. Filing a notice of transfer of a reserved corporate name, ~~seven ten~~ ten dollars and ~~fifty~~ cents.
7. Filing a statement of change of address of registered office or change of registered agent, or both, ~~seven ten~~ ten dollars and ~~fifty~~ cents.

8. Filing a statement of the establishment of a series of shares, fifteen dollars. Filing statement of change of address of registered office by registered agent, ten dollars for each corporation affected by such change.
9. Filing a statement of cancellation of shares, fifteen dollars. Filing a registered agent's consent to serve in such capacity, ten dollars.
10. Filing a statement of reduction of stated capital, fifteen dollars. Filing a resignation as registered agent, ten dollars.
11. Filing a statement of intent to dissolve, seven dollars and fifty cents. Filing a statement of the establishment of a series of shares, twenty dollars.
12. Filing a statement of revocation of voluntary dissolution proceedings, seven dollars and fifty cents. Filing a statement of cancellation of shares, twenty dollars.
13. Filing articles of dissolution, seven dollars and fifty cents. Filing a statement of reduction of stated capital, twenty dollars.
14. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, thirty-seven dollars and fifty cents. Filing a statement of intent to dissolve, ten dollars.
15. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, thirty-seven dollars and fifty cents. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
16. Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, fifteen dollars. Filing articles of dissolution, twenty dollars.
17. Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, fifteen dollars. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, forty dollars.
18. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, fifteen dollars. Filing an application of a foreign

corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, forty dollars.

19. Filing annual report of domestic corporation, ten dollars; of foreign corporation, twenty dollars; any other statement or report of either, four dollars. Filing a certificate of fact stating a merger of a foreign corporation holding a certificate of authority to transact business in this state, twenty dollars.
20. Filing statement of change of address of registered office by registered agent, seven dollars and fifty cents for each corporation affected by such change. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
21. Filing annual report of domestic corporation, twenty dollars; of foreign corporation, twenty dollars; any other statement or report of either, ten dollars.
22. Filing any process, notice, or demand for service, twenty dollars.
23. Filing articles of abandonment of merger, thirty dollars.
24. Filing a consent to use of name, ten dollars.

SECTION 9. AMENDMENT. Section 10-23-05 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-05. Miscellaneous charges. The secretary of state shall charge and collect:

1. For furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar for every four pages, or fraction thereof, and five ten dollars for the certificate and affixing the seal thereto.
2. At the time of any service of process on him as resident agent of a corporation, ten dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

SECTION 10. AMENDMENT. Section 10-23-06 of the 1983 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-06. License fees payable by domestic corporations - Exempting building and loan and savings and loan associations. The secretary of state shall charge and collect from each domestic corporation license fees, based upon the value of its authorized shares, at the time of:

1. Filing articles of incorporation.
2. Filing articles of amendment increasing the number or value of authorized shares.
3. Filing articles of merger or consolidation increasing the number or value of authorized shares which the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number or value of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

The license fees shall be the sum of fifty dollars for the first fifty thousand dollars of its authorized shares, or fraction thereof, and the further sum of ten dollars for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of fifty thousand dollars.

The license fees payable on an increase in authorized shares shall be imposed only on the additional shares, but the amount of previously authorized shares shall be taken into account in determining the rate applicable to the additional authorized shares.

For the purposes of this section, shares without par value shall be considered worth ~~one dollar~~ ten cents per share.

The provisions of this section shall not apply to a building and loan or savings and loan association.

SECTION 11. EMERGENCY. This Act is hereby declared to be an emergency measure and is in effect from and after its passage and approval.

Approved April 4, 1985

CHAPTER 150

SENATE BILL NO. 2281
(Senators Lips, Satrom, Mushik)
(Representatives Martinson, Kelly)

VENTURE CAPITAL CORPORATIONS

AN ACT to provide for the creation of venture capital corporations and to provide for income tax credits; and to create and enact a new subsection to section 10-04-05 and a new subsection to section 10-04-06 of the North Dakota Century Code, relating to exempt securities and transactions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this Act, unless the context otherwise requires, the term:

1. "Qualified entity" means a business that:
 - a. Is a small business concern as defined under Public Law No. 85-536, § 2[3], 72 Stat. 384; 15 U.S.C. 632, as amended; and
 - b. Is doing business within this state.
2. "Taxpayer" includes any individual, corporation, or fiduciary subject to a tax or a duty to file a tax return imposed by chapter 57-38.
3. "Venture capital corporation" means a corporation which is organized for the specific purposes and under the specific conditions provided for in sections 1 through 10 of this Act.

SECTION 2. Certification - Investment reporting by venture capital corporations. At the request of a venture capital corporation, the Bank of North Dakota shall certify whether a business meets the requirements of a qualified entity as defined in section 1 of this Act. The Bank of North Dakota shall establish the necessary forms and procedures for certifying qualified entities. Within fourteen days of making any investment, a venture capital corporation must give notice of the investment to the Bank of North Dakota. The notice must contain the name of the business in which the venture

capital corporation invested, the dollar amount of the investment, and the date on which the investment was made.

SECTION 3. Unqualified investment - Civil penalties enforcement. The Bank of North Dakota shall notify the attorney general of any investment made by a venture capital corporation in a business not certified as a qualified entity under section 2 of this Act. The attorney general shall assess a civil penalty for the investment and collect such civil penalty by a civil proceeding in any appropriate court. The civil penalty is twenty-five percent of the amount invested by the venture capital corporation in the business not certified as a qualified entity.

SECTION 4. Venture capital corporation - Incorporation.

1. To carry out the purposes of this Act, venture capital corporations may be formed under chapters 10-19 through 10-23. The articles of incorporation of a venture capital corporation must comply with subsections 2 through 9.
2. The purpose of a venture capital corporation must be solely to raise funds to be used to make investments in, and provide financing to qualified entities in a manner that will encourage capital investment in the state, encourage the establishment or expansion of business and industry, provide additional jobs within the state, and encourage research and development activities in the state.
3. Each director of a venture capital corporation must be a North Dakota resident, and must have a minimum investment in the venture capital corporation of one thousand dollars.
4. A venture capital corporation will provide financing to qualified entities to be used solely for the purpose of enhancing the production capacity of the qualified entity or the ability of the qualified entity to do business in this state. The venture capital corporation may establish and regulate terms and conditions, consistent with sections 1 through 10 of this Act, with respect to the financing. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing, but no more than twenty percent of the stated capital of a venture capital corporation may be invested in any one qualified entity.
5. No business may be transacted or indebtedness incurred by the venture capital corporation, except such as is incidental to the venture capital corporation's organization or to obtaining subscriptions to or payment for its shares, until the venture capital corporation receives consideration for such shares equal to at least

- five hundred thousand dollars, which amount will be the initial stated capital of the venture capital corporation.
6. All consideration received from the sale of shares must be placed in an interest-bearing escrow account in the Bank of North Dakota, except that up to ten percent of the proceeds may be withheld for use in activities incidental to the venture capital corporation's organization or to obtaining subscriptions to or payment for its shares.
 7. If at any time within one year of the issuance of the certificate of incorporation of the venture capital corporation its stated capital equals at least five hundred thousand dollars, or such greater amount established by the articles of incorporation or bylaws of the venture capital corporation, the funds held in escrow pursuant to subsection 6 must be released to the venture capital corporation for use and disposition according to its articles of incorporation and bylaws.
 8. If within one year of the issuance of the certificate of incorporation of the venture capital corporation its stated capital has not at any time equaled at least five hundred thousand dollars, or such greater amount established by the articles of incorporation or bylaws of the venture capital corporation, its certificate of incorporation will be terminated, the venture capital corporation must be dissolved, and all funds held in escrow pursuant to subsection 6, and all other remaining funds, must be returned to the investors in proportion to their investments.
 9. Prior to any investment in a venture capital corporation, the venture capital corporation must make written disclosure of the provisions contained in subsections 5 through 8 to the potential investor.

SECTION 5. Tax credit.

1. Subject to sections 6, 7, and 8 of this Act, a taxpayer is entitled to a credit against any state income tax liability which may be imposed on the taxpayer for a particular taxable year that begins after December 31, 1984, if the taxpayer makes an investment in a venture capital corporation. Tax credits under this Act are not subject to payment of interest as provided in section 57-38-35.1.
2. The state tax commissioner shall administer sections 5 through 10 of this Act. The state tax commissioner may adopt rules, in accordance with chapter 28-32, consistent with and necessary for the administration of sections 5 through 10 of this Act.

SECTION 6. Amount of tax credit. Subject to sections 7 and 8 of this Act, the maximum amount of tax credit a taxpayer may receive is equal to twenty-five percent of the taxpayer's investment in any venture capital corporations, up to a total tax credit of two hundred fifty thousand dollars under sections 1 through 10 of this Act.

SECTION 7. Taxable year for credit.

1. The tax credit must be credited against the taxpayer's income tax liability for the taxable year in which full consideration for the investment in the venture capital corporation is received by the venture capital corporation. If the amount of the tax credit exceeds the taxpayer's tax liability for that taxable year, the amount of the credit which exceeds the tax liability may be carried back or carried forward, to the extent not already used as a credit pursuant to this section, as a credit against the taxpayer's state income tax liability for the three taxable years preceding and the seven taxable years following the taxable year in which full consideration for the investment is received.
2. A taxpayer is eligible for a tax credit under sections 1 through 10 of this Act on the date the venture capital corporation receives full consideration for the investment purchased by the taxpayer in the venture capital corporation. In the event the venture capital corporation must return the taxpayer's investment pursuant to subsection 8 of section 4 of this Act, any tax credit taken by a taxpayer for the investment under this Act plus penalty and interest as provided in section 57-38-45 must be paid to the state tax commissioner; however, the taxpayer is entitled to retain a percentage of the tax credit equal to the percentage of the taxpayer's investment not returned by the venture capital corporation, up to a maximum percentage of ten percent.

SECTION 8. Tax credit limits. The total amount of investments for which tax credits are allowed for all taxpayers under this Act for the period beginning on the effective date of this Act and ending December 31, 1986, is four million dollars, and for each two-year period thereafter is four million dollars plus up to one million dollars of any investments available for tax credits from the previous two-year period. If investments in venture capital corporations reported to the state tax commissioner pursuant to section 10 of this Act exceed the limits on investments for tax credit imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in the venture capital corporations as determined from the forms provided for in section 10 of this Act.

SECTION 9. Tax credit - Procedure. To receive the tax credit provided by sections 1 through 10 of this Act, a taxpayer must claim

the tax credit on the taxpayer's annual state income tax return in the manner prescribed by the state tax commissioner and file with the taxpayer's annual state tax return a copy of the form issued by the venture capital corporation as to the taxpayer's investment in the venture capital corporation pursuant to section 10 of this Act. The tax credit provided for in this Act, including carrybacks and carryforwards, may not be claimed by taxpayers filing income tax returns pursuant to the provisions of section 57-38-30.3.

SECTION 10. Investment reporting forms. Within thirty days of the date on which an investment in a venture capital corporation is purchased the venture capital corporation shall file with the state tax commissioner and provide to the investor completed forms prescribed by the state tax commissioner which show as to each investment in the venture capital corporation the following:

1. The name, address, and identification number of the taxpayer who purchased the investment;
2. The dollar amount paid for the investment by the taxpayer; and
3. The date on which full consideration was received by the venture capital corporation for the investment.

SECTION 11. A new subsection to section 10-04-05 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Securities issued by a venture capital corporation organized under sections 1 through 10 of this Act.

SECTION 12. A new subsection to section 10-04-06 of the 1983 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

The sale of capital stock of a venture capital corporation organized under sections 1 through 10 of this Act.

Approved March 29, 1985