

Fifty-sixth  
Legislative Assembly  
of North Dakota

**ENGROSSED SENATE BILL NO. 2271**

Introduced by

Senators W. Stenehjem, Krebsbach

1 A BILL for an Act to create and enact a new subsection to section 10-19.1-10, a new  
2 subsection to section 10-19.1-65, a new subsection to section 10-19.1-87, a new subsection to  
3 section 10-32-13, a new subsection to section 10-33-06, a new subsection to section 10-33-17,  
4 a new subsection to section 45-10.1-04, sections 45-10.1-04.1, 45-10.1-51.1, 45-10.1-54.1,  
5 45-10.1-58.1, 45-13-04.1, 45-13-04.2, 45-15-03.1, 45-15-03.2, 45-22-08.1, 45-22-21.1, and  
6 chapter 45-23 of the North Dakota Century Code, relating to business corporations, nonprofit  
7 corporations, limited partnerships, general partnerships, limited liability partnerships, and  
8 limited liability limited partnerships; to amend and reenact sections 10-06.1-12, 10-06.1-13,  
9 10-06.1-17, 10-06.1-27, 10-19.1-01, subsection 2 of section 10-19.1-05, section 10-19.1-11,  
10 subsection 1 of section 10-19.1-13, section 10-19.1-23, subsection 2 of section 10-19.1-30,  
11 section 10-19.1-61, subsection 5 of section 10-19.1-61.1, subsection 1 of section 10-19.1-63,  
12 subsection 4 of section 10-19.1-64, section 10-19.1-66, subsection 2 of section 10-19.1-68,  
13 subsection 2 of section 10-19.1-70, subsection 1 of section 10-19.1-73.2, subsection 1 of  
14 section 10-19.1-76.2, subsection 3 of section 10-19.1-83, subsection 1 of section 10-19.1-84,  
15 subsection 3 of section 10-19.1-88, sections 10-19.1-91, 10-19.1-96, 10-19.1-97, 10-19.1-98,  
16 10-19.1-99, 10-19.1-100, 10-19.1-101, 10-19.1-102, 10-19.1-103, subsection 2 of section  
17 10-19.1-106, subsection 1 of section 10-19.1-108, subsection 3 of section 10-19.1-112,  
18 subsection 1 of section 10-19.1-113.1, sections 10-19.1-129, 10-19.1-137, 10-19.1-139,  
19 subsection 1 of section 10-19.1-146, sections 10-19.1-147, 10-30-05, 10-30.1-04, subsection 1  
20 of section 10-31-02.1, subsection 2 of section 10-31-11, sections 10-31-13, 10-32-02,  
21 10-32-06, 10-32-07, subsection 1 of section 10-32-10, subsection 5 of section 10-32-11,  
22 sections 10-32-17, 10-32-22, 10-32-23, 10-32-28, 10-32-30, 10-32-31, 10-32-32, subsection 2  
23 of section 10-32-35, sections 10-32-36, 10-32-37, 10-32-38, 10-32-39, subsection 3 of section  
24 10-32-40, sections 10-32-40.1, 10-32-42, subsection 1 of section 10-32-43, section 10-32-43.1,  
25 subsection 1 of section 10-32-44, section 10-32-48, subsection 2 of section 10-32-48.1,

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1 sections 10-32-49, 10-32-50, subdivision d of subsection 1 of section 10-32-51, sections  
2 10-32-54, 10-32-55, 10-32-56, 10-32-57, subsection 7 of section 10-32-58, sections 10-32-59,  
3 10-32-60, 10-32-61, 10-32-62, subdivision c of subsection 1 of section 10-32-64, subsection 1  
4 of section 10-32-66, subsection 2 of section 10-32-67, sections 10-32-68, 10-32-70, 10-32-71,  
5 10-32-72, 10-32-74, 10-32-75, 10-32-76, subsection 1 of section 10-32-78, subdivision a of  
6 subsection 1 of section 10-32-78.1, subsection 1 of section 10-32-79, sections 10-32-80,  
7 10-32-81, 10-32-82, 10-32-83, subsection 1 of section 10-32-84, subsection 2 of section  
8 10-32-85, section 10-32-86, subdivision b of subsection 2 of section 10-32-87, sections  
9 10-32-88, 10-32-89, 10-32-94, 10-32-95, 10-32-99, 10-32-100, subdivision b of subsection 1 of  
10 section 10-32-101, section 10-32-102, subsection 1 of section 10-32-103, sections 10-32-104,  
11 10-32-105, subdivision a of subsection 2 of section 10-32-106, sections 10-32-107, 10-32-109,  
12 paragraph 1 of subdivision b of subsection 1 of section 10-32-112, subdivision b of  
13 subsection 3 of section 10-32-113, sections 10-32-114, 10-32-119, subsection 2 of section  
14 10-32-122, sections 10-32-131, 10-32-140, 10-32-142, subsection 2 of section 10-32-149,  
15 subsection 1 of section 10-32-150, section 10-33-01, subsection 1 of section 10-33-10,  
16 subsection 4 of section 10-33-13, section 10-33-49, subsection 3 of section 10-33-50,  
17 subsection 3 of section 10-33-54, section 10-33-84, subsection 2 of section 10-33-87, sections  
18 10-33-95, 10-33-130, 34-09-06, 45-10.1-01, subsection 1 of section 45-10.1-02, sections  
19 45-10.1-08, 45-10.1-09, 45-10.1-10, 45-10.1-11, 45-10.1-14, 45-10.1-15, 45-10.1-36,  
20 45-10.1-51, 45-10.1-52, 45-10.1-53, 45-10.1-55, 45-10.1-58, 45-11-08.2, 45-13-01,  
21 subsection 2 of section 45-13-03, sections 45-13-05, 45-13-06, 45-14-01, subsection 1 of  
22 section 45-15-03, subsection 1 of section 45-15-06, sections 45-22-01, 45-22-03, 45-22-04,  
23 45-22-05, 45-22-06, 45-22-07, 45-22-10, 45-22-11, 45-22-12, 45-22-13, 45-22-14, 45-22-15,  
24 45-22-16, 45-22-17, 45-22-18, 45-22-20, subsection 1 of section 45-22-21, sections 45-22-22,  
25 45-22-23, subsection 2 of section 45-22-24, sections 45-22-25, 45-22-26, subdivision b of  
26 subsection 1 of section 45-22-27, subsection 6 of section 47-22-02, sections 47-25-03, and  
27 61-13-03.1 of the North Dakota Century Code, relating to farm corporations, business  
28 corporations, development corporations, venture capital corporations, professional  
29 associations, limited liability companies, nonprofit corporations, labor unions, limited  
30 partnerships, fictitious partnership names, general partnerships, limited liability partnerships,  
31 trademarks, trade names, and the organization of corporations for irrigation purposes; and to

1 repeal sections 45-10.1-54 and 45-22-08 of the North Dakota Century Code, relating to the  
2 names of foreign limited partnership and piercing the limited liability shield of limited liability  
3 partnerships.

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

5 **SECTION 1. AMENDMENT.** Section 10-06.1-12 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **10-06.1-12. Corporation or limited liability company allowed to engage in the**  
8 **business of farming or ranching - Requirements.** This chapter does not prohibit a domestic  
9 corporation or a domestic limited liability company from owning real estate and engaging in the  
10 business of farming or ranching, if the corporation or limited liability company meets all the  
11 requirements of chapter 10-19.1, ~~10-23~~, or 10-32 which are not inconsistent with this chapter.

12 The following requirements also apply:

- 13 1. If a corporation, the corporation must not have more than fifteen shareholders. If a  
14 limited liability company, the limited liability company must not have more than  
15 fifteen members.
- 16 2. Each shareholder or member must be related to each of the other shareholders or  
17 members within one of the following degrees of kinship or affinity: parent, son,  
18 daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, brother,  
19 sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first  
20 cousin, or the spouse of a person so related.
- 21 3. Each shareholder or member must be an individual or one of the following:
  - 22 a. A trust for the benefit of an individual or a class of individuals who are related  
23 to every shareholder of the corporation or member of the limited liability  
24 company within the degrees of kinship or affinity specified in this section.
  - 25 b. An estate of a decedent who was related to every shareholder of the  
26 corporation or member of the limited liability company within the degrees of  
27 kinship or affinity specified in this section.
- 28 4. A trust or an estate may not be a shareholder or member if the beneficiaries of the  
29 trust or the estate together with the other shareholders or members are more than  
30 fifteen in number.

- 1           5. Each individual who is a shareholder or member must be a citizen of the United  
2           States or a permanent resident alien of the United States.
- 3           6. If a corporation, the officers and directors of the corporation must be shareholders  
4           who are actively engaged in operating the farm or ranch and at least one of ~~its~~ the  
5           corporation's shareholders must be an individual residing on or operating the farm  
6           or ranch. If a limited liability company, the governors and managers of the limited  
7           liability company must be members who are actively engaged in operating the farm  
8           or ranch and at least one of its members must be an individual residing on or  
9           operating the farm or ranch.
- 10          7. An annual average of at least sixty-five percent of the gross income of the  
11          corporation or limited liability company over the previous five years, or for each  
12          year of its existence, if less than five years, must have been derived from farming  
13          or ranching operations.
- 14          8. The income of the corporation or limited liability company from nonfarm rent,  
15          nonfarm royalties, dividends, interest, and annuities cannot exceed twenty percent  
16          of the gross income of the corporation or limited liability company.

17           **SECTION 2. AMENDMENT.** Section 10-06.1-13 of the North Dakota Century Code is  
18 amended and reenacted as follows:

19           **10-06.1-13. Applicability of North Dakota Business Corporation Act.** ~~Chapters~~  
20 Chapter 10-19.1 and ~~10-23 are applicable~~ applies to farming or ranching corporations, which  
21 have the powers and privileges and are subject to the duties, restrictions, and liabilities of other  
22 business corporations except ~~when~~ if inconsistent with the intent of this chapter. This chapter  
23 takes precedence in the event of any conflict with ~~the provisions of chapters~~ chapter 10-19.1  
24 and ~~10-23~~.

25           **SECTION 3. AMENDMENT.** Section 10-06.1-17 of the 1997 Supplement to the North  
26 Dakota Century Code is amended and reenacted as follows:

27           **10-06.1-17. Annual report - Contents - Filing requirements.** Before April ~~fifteenth~~  
28 sixteenth of each year, every corporation engaged in farming or ranching after June 30, 1981,  
29 and every limited liability company engaged in farming or ranching shall file with the secretary  
30 of state a an annual report executed by ~~its~~ the corporation's or limited liability company's  
31 president, a vice president, secretary, or treasurer ~~containing all of~~. An annual report in a

1 sealed envelope postmarked by the United States postal service before the date provided in  
2 this section or an annual report in a sealed packet with a verified shipment date by any other  
3 carrier service before the date provided in this section meets the filing date requirement. An  
4 annual report must include the following information with respect to the preceding calendar  
5 year:

- 6 1. The name of the corporation or limited liability company.
- 7 2. The address of the registered office of the corporation or limited liability company  
8 in this state and the name of ~~its~~ the corporation's or limited liability company's  
9 registered agent in this state at that address.
- 10 3. With respect to each corporation:
  - 11 a. A statement of the aggregate number of shares the corporation has authority  
12 to issue, itemized by classes, par value of shares, shares without par value,  
13 and series, if any, within a class.
  - 14 b. A statement of the aggregate number of issued shares, itemized by classes,  
15 par value of shares, shares without par value, and services, if any, within a  
16 class.
- 17 4. With respect to each shareholder or member:
  - 18 a. The name and address of each, including the names and addresses and  
19 relationships of beneficiaries of trusts and estates which own shares or  
20 membership interests;
  - 21 b. The number of shares or membership interests or percentage of shares or  
22 membership interests owned by each;
  - 23 c. The relationship of each;
  - 24 d. A statement of whether each is a citizen or permanent resident alien of the  
25 United States; and
  - 26 e. A statement of whether at least one is an individual residing on or operating  
27 the farm or ranch.
- 28 5. With respect to management:
  - 29 a. If a corporation, then the names and addresses of the officers and members  
30 of the board of directors; or



1 the disposition of ~~such~~ the membership interest must be determined by this section upon the  
2 withdrawal of the member. Any member who desires to withdraw from the limited liability  
3 company shall first offer the membership interest for sale to the remaining members in  
4 proportion to the membership interests owned by ~~them~~ the remaining members. If not all of the  
5 members wish to purchase the membership interest, any one member can purchase all of the  
6 membership interest of the withdrawing member. If no member desires to purchase the  
7 membership interest of the withdrawing member, ~~then~~ the limited liability company ~~itself~~ may  
8 purchase the membership interest. If the limited liability company chooses not to purchase the  
9 membership interest of the withdrawing member, ~~then~~ the withdrawing member may sell the  
10 membership interest to any other person eligible to be a member. If the withdrawing member is  
11 unable to sell the membership interest to any other person eligible to become a member, ~~then~~  
12 the withdrawing member may bring an action in district court to terminate the limited liability  
13 company. Upon a finding that the withdrawing member cannot sell the membership interest at  
14 a fair price, the court shall enter an order directing that the limited liability company ~~itself~~ or any  
15 of the remaining members pro rata or otherwise, ~~shall~~ have twelve months from the date of the  
16 court's order to purchase the membership interest of the withdrawing member at a fair price as  
17 determined by the court and that if the membership interest of the withdrawing member is not  
18 completely purchased at ~~said~~ the fair price, the limited liability company ~~shall~~ must be dissolved  
19 and the assets of the limited liability company ~~shall~~ must be first used to pay all liabilities of the  
20 limited liability company with the remaining net assets to be distributed pro rata to the members  
21 in proportion to ~~their~~ the member's membership interest ownership. For the purpose of this  
22 section, a fair price for the membership interest of the withdrawing member must be determined  
23 as though the membership interest was being valued for federal gift tax purposes under the  
24 Internal Revenue Code.

25 **SECTION 5. AMENDMENT.** Section 10-19.1-01 of the 1997 Supplement to the North  
26 Dakota Century Code is amended and reenacted as follows:

27 **10-19.1-01. Definitions.** For the purposes of this chapter, unless the context clearly  
28 indicates ~~that~~ a different meaning is intended:

29 1. "Acquiring corporation" means the domestic or foreign corporation that acquires  
30 the shares of a corporation in an exchange.

- 1           2.   "Acquiring organization" means the corporation, foreign corporation, or domestic or  
2                   foreign limited liability company acquiring in an exchange the shares of a  
3                   corporation or foreign corporation or the membership interests of a domestic or  
4                   foreign limited liability company.
- 5           3.   "Address" means:
- 6                   a.   In the case of a registered office or principal executive office, the mailing  
7                   address, including a zip code of the actual office location, which may not be  
8                   only a post-office box; and
- 9                   b.   In any other case, the mailing address, including a zip code.
- 10       ~~3.~~ 4.   "Articles" means:
- 11                   a.   In the case of a corporation incorporated under or governed by this chapter,  
12                   articles of incorporation, articles of amendment, a resolution of election to  
13                   become governed by this chapter, a demand retaining the two-thirds majority  
14                   for shareholder approval of certain transactions, a statement of change of  
15                   registered office, registered agent, or name of registered agent, a statement  
16                   establishing or fixing the rights and preferences of a class or series of shares,  
17                   a statement of cancellation of authorized shares, articles of merger, articles of  
18                   abandonment, and articles of dissolution.
- 19                   b.   In the case of a foreign corporation, the term includes all documents serving a  
20                   similar function required to be filed with the secretary of state or other officer  
21                   of the corporation's state of incorporation.
- 22       ~~4.~~ 5.   "Board" or "board of directors" means the board of directors of a corporation.
- 23       ~~5.~~ 6.   "Board member" means:
- 24                   a.   An individual serving on the board of directors in the case of a corporation;  
25                   and
- 26                   b.   An individual serving on the board of governors in the case of a limited liability  
27                   company.
- 28       ~~6.~~ 7.   "Bylaws" means the code adopted for the regulation or management of the internal  
29                   affairs of a corporation, regardless of how that code is designated.





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- 1    ~~45.~~ 17. "Foreign corporation" means a corporation organized for profit which is  
2                    incorporated under laws other than the laws of this state for a purpose for which a  
3                    corporation may be incorporated under this chapter.
- 4    ~~46.~~ 18. "Foreign limited liability company" means a limited liability company organized for  
5                    profit ~~that~~ which is organized under laws other than the laws of this state for a  
6                    purpose for which a limited liability company may be organized under chapter  
7                    10-32.
- 8    ~~47.~~ 19. "Good faith" means honesty in fact in the conduct of an act or transaction.
- 9    ~~48.~~ 20. "Intentionally" means that the person referred to ~~either~~ has a purpose to do or fail  
10                   to do the act or cause the result specified or believes that the act or failure to act, if  
11                   successful, will cause that result. A person "intentionally" violates a statute if the  
12                   person intentionally does the act or causes the result prohibited by the statute, or if  
13                   the person intentionally fails to do the act or cause the result required by the  
14                   statute, even though the person may not know of the existence or constitutionality  
15                   of the statute or the scope or meaning of the terms used in the statute.
- 16   ~~49.~~ 21. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A  
17                   person does not "know" or have "knowledge" of a fact merely because the person  
18                   has reason to know of the fact.
- 19   ~~20.~~ 22. "Legal representative" means a person empowered to act for another person,  
20                   including an agent, a manager, an officer, a partner, or an associate of an  
21                   organization; a trustee of a trust; a personal representative; a trustee in  
22                   bankruptcy; and a receiver, guardian, custodian, or conservator.
- 23   ~~24.~~ 23. "Limited liability company" means a limited liability company, other than a foreign  
24                   limited liability company, organized under chapter 10-32.
- 25   ~~22.~~ 24. "Nonprofit corporation" means a corporation, whether domestic or foreign,  
26                   incorporated under or governed by chapter 10-33.
- 27   ~~23.~~ 25. "Notice" is given by a shareholder of a corporation to the corporation or an officer  
28                   of the corporation when in writing and mailed or delivered to the corporation or the  
29                   officer at the registered office or principal executive office of the corporation.
- 30                   a.    In all other cases, "notice" is given to a person:

- 1                   (1) When mailed to the person at an address designated by the person or  
2                   at the ~~last known~~ last-known address of the person; or
- 3                   (2) When handed to the person; or
- 4                   (3) When left at the office of the person with a clerk or other person in  
5                   charge of the office; or
- 6                   (a) If there is no one in charge, when left in a conspicuous place in  
7                   the office; or
- 8                   (b) If the office is closed or the person to be notified has no office,  
9                   when left at the dwelling house or usual place of abode of the  
10                  person with some person of suitable age and discretion then  
11                  residing there.
- 12                  b. Notice is given by mail when deposited in the United States mail with  
13                  sufficient postage affixed.
- 14                  c. Notice is deemed received when it is given.
- 15   ~~24.~~ 26. "Officer" means an individual who is eighteen years of age or more who is elected,  
16                  appointed, or otherwise designated as an officer by the board, or deemed elected  
17                  as an officer pursuant to section 10-19.1-56.
- 18   ~~25.~~ 27. "Organization" means, whether domestic or foreign, a corporation incorporated in  
19                  or authorized to do business in this state under this or another chapter of this code,  
20                  limited liability company, partnership, limited partnership, limited liability  
21                  partnership, joint venture, association, business trust, estate, trust, enterprise, and  
22                  any other legal or commercial entity.
- 23   ~~26.~~ 28. "Outstanding shares" means all shares duly issued and not reacquired by a  
24                  corporation.
- 25   ~~27.~~ 29. "Owners" means:
- 26                  a. Shareholders in the case of a corporation; and
- 27                  b. Members in the case of a limited liability company or a nonprofit corporation.
- 28   ~~28.~~ 30. "Ownership interests" means:
- 29                  a. Shares in the case of a corporation;
- 30                  b. Membership interests in the case of a nonprofit corporation or limited liability  
31                  company; and

- 1 c. Similar interests in other organizations.
- 2 ~~29.~~ 31. "Parent" of a specified corporation means a corporation or limited liability company  
3 that directly, or indirectly through related corporations or limited liability companies,  
4 owns more than fifty percent of the voting power of the shares entitled to vote for  
5 directors of the specified corporation.
- 6 ~~30.~~ 32. "Principal executive office" means an office where the elected or appointed  
7 president of a corporation has an office, or if the corporation has no elected or  
8 appointed president, then the registered office of the corporation.
- 9 ~~31.~~ 33. "Registered office" means the place in this state designated in the articles as the  
10 registered office of the corporation.
- 11 ~~32.~~ 34. "Related organization" means an organization that controls, is controlled by, or is  
12 under common control with another organization with control existing if an  
13 organization:
- 14 a. Owns, directly or indirectly, at least fifty percent of the shares, membership  
15 interests, or other ownership interests of another organization;
- 16 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or  
17 more of the voting members of the governing body of another organization; or
- 18 c. Has the power, directly or indirectly, to direct or cause the direction of the  
19 management and policies of another organization, whether through the  
20 ownership of voting interests, by contract, or otherwise.
- 21 ~~33.~~ 35. "Security" has the meaning given in section 10-04-02.
- 22 ~~34.~~ 36. "Series" means a category of shares, within a class of shares authorized or issued  
23 by a corporation by or pursuant to ~~its~~ a corporation's articles, that have some of  
24 the same rights and preferences as other shares within the same class, but that  
25 differ in designation or one or more rights and preferences from another category  
26 of shares within that class.
- 27 ~~35.~~ 37. "Share" means one of the units, however designated, into which the shareholders'  
28 proprietary interests in a corporation are divided.
- 29 ~~36.~~ 38. "Shareholder" means a person registered on the books or records of a corporation  
30 or ~~its~~ the corporation's transfer agent or registrar as the owner of whole or  
31 fractional shares of the corporation.

- 1    ~~37.~~ 39. "Signed" means that the signature of a person ~~has been~~ is placed on a document,  
2                    as provided in subsection 39 of section 41-01-11, and:
- 3                    a.    With respect to a document required by this chapter to be filed with the  
4                    secretary of state, means that the document ~~has been~~ is signed by a person  
5                    authorized to do so by this chapter, the articles or bylaws, or a resolution  
6                    approved by ~~the affirmative vote of the required proportion or number of the~~  
7                    directors as required under section 10-19.1-46 or the ~~holders of the required~~  
8                    ~~proportion or number of the voting power of the shares present and entitled to~~  
9                    ~~vote~~ shareholders as required under section 10-19.1-74; and
- 10                    b.    With respect to a document not required by this chapter to be filed with the  
11                    secretary of state, the signature may be a facsimile affixed, engraved, printed,  
12                    placed, stamped with indelible ink, transmitted by facsimile  
13                    telecommunication or electronically, or in any other manner reproduced on  
14                    the document.
- 15    ~~38.~~ 40. "Subscriber" means a person who subscribes for shares in a corporation, whether  
16                    before or after incorporation.
- 17    ~~39.~~ 41. "Subsidiary" of a specified corporation means:
- 18                    a.    A corporation having more than fifty percent of the voting power of ~~its~~ the  
19                    corporation's shares entitled to vote for directors owned directly, or indirectly  
20                    through related corporations or limited liability companies, by the specified  
21                    corporation; or
- 22                    b.    A limited liability company having more than fifty percent of the voting power  
23                    of ~~its~~ the limited liability company's membership interests entitled to vote for  
24                    governors owned directly, or indirectly through related limited liability  
25                    companies or corporations, by the specified limited liability company.
- 26    ~~40.~~ 42. "Surviving corporation" means the domestic or foreign corporation resulting from a  
27                    merger.
- 28                    43. "Surviving organization" means the corporation or foreign corporation or domestic  
29                    or foreign limited liability company resulting from a merger.
- 30    ~~41.~~ 44. "Vote" includes authorization by written action.

1     ~~42.~~ 45. "Written action" means a written document signed by all of the persons required to  
2                   take the action, or the counterparts of a written document signed by any of the  
3                   persons taking the action described. Each counterpart constitutes the action of the  
4                   person signing ~~it~~; and all the counterparts, taken together, constitute one written  
5                   action by all of the persons signing ~~them~~ the counterparts.

6             **SECTION 6. AMENDMENT.** Subsection 2 of section 10-19.1-05 of the North Dakota  
7 Century Code is amended and reenacted as follows:

8             2. A shareholder or shareholders holding more than one-third of the voting power of  
9                   the shares entitled to vote for dissolution of a corporation described in section  
10                   10-19.1-02 or 10-19.1-03 may, by signed written demand filed in duplicate original  
11                   with the secretary of state, along with the fees provided ~~in chapter 10-23~~ for under  
12                   section 10-19.1-147, amend the articles of the corporation to include a provision  
13                   requiring the approval of the holders of two-thirds of the voting power of all the  
14                   shares for the authorization of the dissolution of the corporation, notwithstanding  
15                   the provisions of section 10-19.1-107. Notice that the demand ~~has been~~ was filed  
16                   must be given by the shareholder to an officer of the corporation, but failure to give  
17                   the notice does not invalidate the demand.

18            **SECTION 7.** A new subsection to section 10-19.1-10 of the 1997 Supplement to the  
19 North Dakota Century Code is created and enacted as follows:

20                   Subsection 5 does not limit the right of the board, by resolution, to take an action  
21                   that the bylaws may authorize under this section without including the authorization  
22                   in the bylaws, unless the authorization is required to be included in the bylaws by  
23                   another provision of this chapter.

24            **SECTION 8. AMENDMENT.** Section 10-19.1-11 of the North Dakota Century Code is  
25 amended and reenacted as follows:

26            **10-19.1-11. Filing of articles of incorporation.** An original of the articles of  
27 incorporation must be filed with the secretary of state. If the secretary of state finds that the  
28 articles of incorporation conform to law and ~~that~~ all fees ~~have been~~ are paid under ~~chapter~~  
29 ~~10-23~~ section 10-19.1-147, the secretary of state shall issue a certificate of incorporation to the  
30 incorporators or ~~their~~ the incorporators' representative.

1           **SECTION 9. AMENDMENT.** Subsection 1 of section 10-19.1-13 of the 1997  
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 3           1. The corporate name:
- 4           a. Must be in the English language or in any other language expressed in  
5           English letters or characters.
- 6           b. Must contain the word "company", "corporation", "incorporated", "limited", or  
7           an abbreviation of one or more of these words.
- 8           c. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~  
9           implying the corporation may not be incorporated under this chapter.
- 10          d. May not contain the words "limited liability company", "limited partnership",  
11          "limited liability partnership", "limited liability limited partnership", or any  
12          abbreviation of these words.
- 13          e. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~  
14          implying the corporation is incorporated for a purpose other than a legal  
15          business purpose for which a corporation may be incorporated under this  
16          chapter.
- 17          e- f. May not be the same as, or deceptively similar to:
- 18               (1) The name, whether foreign and authorized to do business in this state,  
19               or domestic, unless there is filed with the articles a document ~~which~~  
20               that complies with subsection ~~2~~ 7 of this section, of:
- 21                   (a) Another corporation;
- 22                   (b) A corporation incorporated or authorized to do business in this  
23                   state under another chapter of this code;
- 24                   (c) A limited liability company;
- 25                   (d) A limited partnership; ~~or~~
- 26                   (e) A limited liability partnership; or
- 27                   (f) A limited liability limited partnership;
- 28               (2) A name the right to which is, at the time of incorporation, reserved in  
29               the manner provided in section 10-19.1-14, 10-32-11, 10-33-11,  
30               45-10.1-03, or 45-22-05;
- 31               (3) A fictitious name registered in the manner provided in chapter 45-11; or

1 (4) A trade name registered in the manner provided in chapter 47-25.

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

4 **10-19.1-23. Filing articles of amendment.** An original of the articles of amendment  
5 must be filed with the secretary of state. If the secretary of state finds that the articles of  
6 amendment conform to law and ~~that~~ all fees have been paid as provided in ~~chapter 10-23~~  
7 under section 10-19.1-147, ~~then~~ the articles of amendment must be recorded in the office of the  
8 secretary of state. A corporation that amends ~~its~~ the corporate name and is the owner of a  
9 trademark or trade name, is a general partner named in a fictitious name certificate, or is a  
10 general partner in a limited partnership ~~which~~ that is on file with the secretary of state, must  
11 change or amend ~~its~~ the corporation's name in each registration when ~~it~~ the corporation files an  
12 amendment.

13 **SECTION 11. AMENDMENT.** Subsection 2 of section 10-19.1-30 of the 1997  
14 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15 2. After the issuance of the certificate of incorporation, the incorporators or the  
16 directors named in the articles shall, within a reasonable time, ~~either~~ hold an  
17 organizational meeting at the call of a majority of the incorporators or of the  
18 directors named in the articles; or take written action, for the purposes of  
19 transacting business and taking actions necessary or appropriate to complete the  
20 organization of the corporation, including amending the articles; electing  
21 directors; adopting bylaws; electing officers; adopting banking resolutions;  
22 authorizing or ratifying the purchase, lease, or other acquisition of suitable space,  
23 furniture, furnishings, supplies, and materials; approving a corporate seal;  
24 approving forms of certificates ~~or transaction statements~~ for shares of the  
25 corporation; adopting a fiscal year for the corporation; accepting subscriptions for  
26 and issuing shares of the corporation; and making any appropriate tax elections.  
27 If a meeting is held, the person or persons calling the meeting shall give at least  
28 three days' notice of the meeting to each incorporator or director named, stating  
29 the date, time, and place of the meeting. Incorporators and directors may waive  
30 notice of an organizational meeting in the same manner ~~that~~ a director may waive



1 notice of meetings of the board ~~pursuant to~~ under subsection 5 of section  
2 10-19.1-43.

3 **SECTION 12. AMENDMENT.** Section 10-19.1-61 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **10-19.1-61. Authorized shares.**

- 6 1. Subject to any restrictions in the articles, a corporation may issue securities and  
7 rights to purchase securities only when authorized by the board.
- 8 2. All ~~the~~ shares of a corporation:
- 9 a. Must be of one class and one series, unless the articles establish; or  
10 authorize the board to establish; more than one class or series;
- 11 b. Must be common shares entitled to vote and ~~shall~~ have equal rights and  
12 preferences in all matters not otherwise provided for by the board, unless and  
13 to the extent ~~that~~ the articles have created nonvoting shares or have fixed the  
14 relative rights and preferences of different classes and series; and
- 15 c. Must have, unless a different par value is specified in the articles, a par value  
16 of one cent per share.
- 17 3. Subject to any restrictions in the articles, the power granted in subsection 2 may  
18 be exercised by a resolution approved by ~~the affirmative vote of a majority of the~~  
19 ~~directors present~~ as required under section 10-19.1-46 establishing a class or  
20 series, setting forth the designation of the class or series, and fixing the relative  
21 rights and preferences of the class or series. Any of the rights and preferences of  
22 a class or series established in the articles or by resolution of the directors:
- 23 a. May be made dependent upon facts ascertainable outside the articles; or  
24 outside the resolution or resolutions establishing the class or series, provided  
25 that the manner in which the facts operate upon the rights and preferences of  
26 the class or series is clearly and expressly set forth in the articles or in the  
27 resolution or resolutions establishing the class or series; and
- 28 b. May incorporate by reference ~~some or all~~ any of the terms of any  
29 agreements, contracts, or other arrangements entered into by the issuing  
30 corporation in connection with the establishment of the class or series if the  
31 corporation retains at ~~its~~ the principal executive office, a copy of the

1                   agreements, contracts, or other arrangements or portions incorporated by  
2                   reference.

3           4.   A statement executed by an officer setting forth the name of the corporation and  
4           the text of the resolution and certifying the adoption of the resolution and the date  
5           of adoption must be filed with the secretary of state, together with the fees  
6           provided in ~~chapter 10-23~~ under section 10-19.1-147, before the issuance of any  
7           shares for which the resolution creates rights or preferences not set forth in the  
8           articles. The resolution is effective when the statement ~~has been~~ is filed with the  
9           secretary of state unless the statement specifies a later effective date within thirty  
10          days of filing the statement with the secretary of state.

11          5.   Without limiting the authority granted ~~in~~ under this section, a corporation may issue  
12          shares of a class or series which:

- 13           a.   ~~Subject~~ Are subject to the right of the corporation to redeem any of those  
14           shares at the price fixed for ~~their~~ the shares' redemption by the articles or by  
15           the board;
- 16           b.   ~~Entitling~~ Entitle the shareholders to cumulative, partially cumulative, or  
17           noncumulative distributions;
- 18           c.   ~~Having~~ Have preference over any class or series of shares for the payment of  
19           distributions of any or all kinds;
- 20           d.   ~~Convertible~~ Convert into shares of any other class or any series of the same  
21           or another class; or
- 22           e.   ~~Having~~ Have full, partial, or no voting rights, except as provided ~~in~~ under  
23           section 10-19.1-20.

24           **SECTION 13. AMENDMENT.** Subsection 5 of section 10-19.1-61.1 of the North  
25          Dakota Century Code is amended and reenacted as follows:

26           5.   If a division or combination that includes an amendment of the articles is effected  
27           under subsection 4, ~~then~~ articles of amendment must be prepared that contain the  
28           information required by section 10-19.1-21 and a statement that the amendment  
29           will not adversely affect ~~the rights~~ any right or ~~preferences~~ preference of ~~the~~  
30           ~~holders~~ any holder of outstanding shares of any class or series and will not result  
31           in the percentage of authorized shares ~~that~~ of any class or series which remains

1 unissued after the division or combination exceeding the percentage of authorized  
2 shares ~~that~~ of that class or series which were unissued before the division or  
3 combination.

4 **SECTION 14. AMENDMENT.** Subsection 1 of section 10-19.1-63 of the North Dakota  
5 Century Code is amended and reenacted as follows:

6 1. Subject to any restrictions in the articles:

7 a. The consideration for the issuance of shares may be paid, in whole or in part,  
8 in money<sub>;i</sub>; in other property, tangible or intangible<sub>;i</sub>; or in labor or services  
9 actually performed for the corporation. When payment of the consideration  
10 for which shares are to be issued ~~has been~~ is received by the corporation, the  
11 shares ~~must be~~ are considered fully paid and nonassessable. Neither  
12 promissory notes nor future services constitute payment or part payment for  
13 shares of a corporation.

14 b. ~~Upon authorization in accordance with section 10-19.1-61.1, the corporation~~  
15 ~~may, without~~ Without any new or additional consideration, a corporation may  
16 issue its the corporation's own shares in exchange for or in conversion of ~~its~~  
17 the corporation's outstanding shares, or may, subject to authorization of share  
18 dividends, divisions, and combinations according to section 10-19.1-61.1,  
19 issue its the corporation's own shares pro rata to its the corporation's  
20 shareholders or the shareholders of one or more classes or series, to  
21 effectuate share dividends, divisions, or combinations. No shares Shares of  
22 a class or series, shares of which are then outstanding, may not be issued to  
23 the holders of shares of another class or series, except in exchange for or in  
24 conversion of outstanding shares of the other class or series, unless the  
25 issuance ~~either~~ is expressly provided for in the articles or is approved at a  
26 meeting by the affirmative vote of the holders of a majority of the voting power  
27 of all shares of the same class or series as the shares to be issued.

28 **SECTION 15. AMENDMENT.** Subsection 4 of section 10-19.1-64 of the North Dakota  
29 Century Code is amended and reenacted as follows:

1           4.    The instrument or written agreement evidencing the right to purchase must set  
2                    forth in full, summarize, or incorporate by reference all the terms, provisions, and  
3                    conditions applicable to the right to purchase.

4           **SECTION 16.** A new subsection to section 10-19.1-65 of the North Dakota Century  
5 Code is created and enacted as follows:

6                    A denial or limitation of preemptive rights otherwise provided under this section  
7                    does not limit the power of the corporation to grant first refusal rights or other rights  
8                    to purchase from the corporation shares or other securities of the corporation to  
9                    shareholders, subscribers, or other persons before the shares or other securities  
10                   are offered to or acquired by any other person.

11           **SECTION 17. AMENDMENT.** Section 10-19.1-66 of the 1997 Supplement to the North  
12 Dakota Century Code is amended and reenacted as follows:

13           **10-19.1-66. Share certificates - Issuance and contents - Uncertificated shares.**

14           1.    The shares of a corporation must be certificated shares or uncertificated shares.  
15                    Each holder of certificated shares issued in compliance with section 10-19.1-63 is  
16                    entitled to a certificate of shares.

17           2.    The shares of a corporation must be represented by certificates signed by the  
18                    president; ~~or by~~ a vice president, and by the secretary, or by an assistant secretary  
19                    of the corporation.

20           ~~2.~~ 3.    If a person signs or has a facsimile signature placed upon a certificate while an  
21                    officer, transfer agent, or registrar of a corporation, the certificate may be issued by  
22                    the corporation; even if the person ~~has ceased to have~~ ceases having that  
23                    capacity before the certificate is issued, with the same effect as if the person had  
24                    that capacity at the date of ~~its~~ the certificate's issue.

25           ~~3.~~ 4.    Every certificate representing shares issued by a corporation ~~which~~ that is  
26                    authorized to issue shares of more than one class must set forth upon the face or  
27                    back of the certificate, or must state that the corporation will furnish to any  
28                    shareholders upon request and without charge, a full or summary statement of the  
29                    designations, preferences, limitations, and relative rights of the shares of each  
30                    class authorized to be issued and, if the corporation is authorized to issue any  
31                    preferred or special class or series, the variations in the relative rights and

1 preferences between the shares of each ~~such~~ of the series so far as to the extent  
2 the ~~same~~ relative rights and preferences have been fixed and determined and the  
3 authority of the board to fix and determine the relative rights and preferences of  
4 subsequent series. Each certificate representing shares must state upon its face:

- 5 a. The name of the corporation.
- 6 b. That the corporation is organized under the laws of this state.
- 7 c. The name of the person to whom issued.
- 8 d. The number and class of shares, and the designation of the series, if any,  
9 ~~which such~~ the certificate represents.
- 10 e. The par value of ~~such~~ any share represented by ~~such~~ the certificate; or a  
11 statement ~~that~~ the shares are without par value.

12 ~~4.~~ 5. A certificate signed as provided ~~in~~ under subsection 1 is prima facie evidence of  
13 the ownership of the shares referred to in the certificate.

14 ~~5.~~ 6. Unless uncertificated shares are prohibited by the articles or bylaws, a resolution  
15 approved by the affirmative vote of a majority of the directors present may provide  
16 that some or all of any or all classes and series of ~~its~~ the corporation's shares will  
17 be uncertificated shares.

18 a. The resolution does not apply to shares represented by a certificate until the  
19 certificate is surrendered to the corporation.

20 b. Within a reasonable time after the issuance or transfer of uncertificated  
21 shares, the corporation shall send to the new shareholder the information  
22 required by this section to be stated on certificates.

23 c. The information required under this section is not required to be sent to the  
24 new shareholder by a publicly held corporation that adopted a system of  
25 issuance, recordation, and transfer of the corporation's shares by electronic or  
26 other means not involving the issuance of certificates if the system complies  
27 with federal law.

28 d. Except as otherwise expressly provided by statute, the rights and obligations  
29 of the holders of certificated and uncertificated shares of the same class and  
30 series are identical.

1           **SECTION 18. AMENDMENT.** Subsection 2 of section 10-19.1-68 of the North Dakota  
2 Century Code is amended and reenacted as follows:

3           2. A corporation may not pay money for fractional shares if that action would result in  
4 the cancellation of more than twenty percent of the outstanding shares of a class  
5 or series. A determination by the board of the fair value of fractions of a share is  
6 conclusive in the absence of fraud. A ~~certificate for a~~ certificated or uncertificated  
7 ~~fractional share does, but, and any scrip or warrants do not unless they provide~~  
8 ~~otherwise, entitle~~ warrants if expressly provided, entitles the shareholder to  
9 exercise voting rights or to receive distributions. The board may cause scrip or  
10 warrants to be issued subject to the condition ~~that they~~ the scrip or warrants  
11 become void if not exchanged for full shares before a specified date, or that the  
12 shares for which scrip or warrants are exchangeable may be sold by the  
13 corporation and the proceeds distributed to the holder of the scrip or warrants, or  
14 to any other condition or set of conditions the board may impose.

15           **SECTION 19. AMENDMENT.** Subsection 2 of section 10-19.1-70 of the North Dakota  
16 Century Code is amended and reenacted as follows:

17           2. A written restriction on the transfer or registration of transfer of securities of a  
18 corporation ~~that~~ which is not manifestly unreasonable under the circumstances  
19 and is noted conspicuously on the face or back of the certificate or included in  
20 information sent to the holders of uncertificated shares in accordance with  
21 subsection 6 of section 10-19.1-66 may be enforced against the holder of the  
22 restricted securities or a successor or transferee of the holder, including a pledgee  
23 or a legal representative. Unless noted conspicuously on the face or back of the  
24 certificate or included in information sent to holders of uncertificated shares in  
25 accordance with subsection 6 of section 10-19.1-66, a restriction, even though  
26 permitted by this section, is ineffective against a person without knowledge of the  
27 restriction. A restriction under this section is deemed to be noted conspicuously  
28 and is effective if the existence of the restriction is stated on the certificate and  
29 reference is made to a separate document creating or describing the restriction.

30           **SECTION 20. AMENDMENT.** Subsection 1 of section 10-19.1-73.2 of the 1997  
31 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1           1. The board may fix or authorize an officer to fix a date not more than fifty days, or a  
2 shorter time period provided in the articles or bylaws, before the date of a meeting  
3 of shareholders as the date for the determination of the holders of shares entitled  
4 to notice of and entitled to vote at the meeting. ~~When~~ If a date is fixed, only  
5 shareholders on that date are entitled to notice of and permitted to vote at that  
6 meeting of shareholders.

7           **SECTION 21. AMENDMENT.** Subsection 1 of section 10-19.1-76.2 of the 1997  
8 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9           1. At or before the meeting for which the appointment is to be effective, a shareholder  
10 may cast or authorize the casting of a vote by filing a written appointment of a  
11 proxy which is signed by the shareholder, with an officer authorized to tabulate  
12 votes.

13           a. ~~A written~~ Before the meeting, a shareholder may cast or authorize the casting  
14 of a vote by a proxy by transmitting to the corporation or the corporation's duly  
15 authorized agent an appointment of a proxy ~~may be signed by the~~  
16 ~~shareholder or authorized by the shareholder by transmission of a telegram,~~  
17 ~~cablegram, or other means of electronic transmission, provided the~~  
18 ~~corporation has no reason to believe the telegram, cablegram, or other~~  
19 ~~electronic transmission was not authorized by the shareholder~~ by means of  
20 telegram, cablegram, or any other form of electronic transmission, including  
21 telephonic transmission, whether or not accompanied by written instructions  
22 of the shareholders. An electronic transmission must set forth or be  
23 submitted with information indicating the appointment is authorized by the  
24 shareholder. If it is determined a telegram, cablegram, or other electronic  
25 transmission is valid, the inspectors of election or, if there are no inspectors,  
26 the other persons making that determination of validity shall specify the  
27 information upon which they relied to make that determination.

28           b. ~~Any~~ A copy, facsimile telecommunication, or other reproduction of the original  
29 writing or transmission may be substituted or used in lieu of the original  
30 writing or transmission for any purpose for which the original writing or  
31 transmission could be used; if the copy, facsimile, telecommunication, or

1                   other reproduction is a complete and legible reproduction of the entire original  
2                   writing or transmission.

3                   c. An appointment of a proxy for shares held jointly by two or more shareholders  
4                   is valid if signed by any one of ~~them~~ the shareholders, unless the corporation  
5                   receives from any ~~one~~ of those shareholders written notice ~~either~~ denying the  
6                   authority of that person to appoint a proxy or appointing a different proxy.

7                   **SECTION 22. AMENDMENT.** Subsection 3 of section 10-19.1-83 of the 1997  
8 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9                   3. The written agreement is enforceable by the persons described in subsection 1  
10                  who are parties to ~~it~~ the agreement and is binding upon and enforceable against  
11                  only ~~those~~ the persons described in subsection 1 and other persons having with  
12                  knowledge of the existence of the agreement. A signed original of the written  
13                  agreement must be filed with the corporation. The existence and location of a  
14                  copy of the written agreement must be noted conspicuously on the face or back of  
15                  each certificate for shares issued by the corporation and ~~on each transaction~~  
16                  ~~statement~~ included in information sent to the holders of uncertificated shares  
17                  according to subsection 6 of section 10-19.1-66. A shareholder, a beneficial owner  
18                  of shares, or another person having with a security interest in shares ~~has the right~~  
19                  may obtain upon written demand ~~to obtain~~ a copy of the agreement from the  
20                  corporation at the expense of the corporation.

21                  **SECTION 23. AMENDMENT.** Subsection 1 of section 10-19.1-84 of the North Dakota  
22 Century Code is amended and reenacted as follows:

23                  1. A corporation shall keep at ~~its~~ the corporation's principal executive office; or at  
24                  another place or places within the United States determined by the board, a share  
25                  register not more than one year old, containing the ~~names~~ name and ~~addresses~~  
26                  address of the shareholders each shareholder and the number and classes of  
27                  shares held by each shareholder. A corporation shall also keep; at ~~its~~ the  
28                  corporation's principal executive office; or at another place or places within the  
29                  United States determined by the board, a record of the dates on which ~~certificates~~  
30                  certificated or uncertificated shares were issued.



1           **SECTION 24.** A new subsection to section 10-19.1-87 of the 1997 Supplement to the  
2 North Dakota Century Code is created and enacted as follows:

3           If a date is fixed according to subsection 1 of section 10-19.1-73.2 for the  
4           determination of shareholders entitled to receive notice of and to vote on an action  
5           described under subsection 1, only shareholders as of the date fixed and beneficial  
6           owners as of the date fixed who hold through shareholders, as provided in  
7           subsection 2, may exercise dissenter's rights.

8           **SECTION 25. AMENDMENT.** Subsection 3 of section 10-19.1-88 of the North Dakota  
9 Century Code is amended and reenacted as follows:

10           3. If the proposed action must be approved by the shareholders, a shareholder who  
11           is entitled to dissent under section 10-19.1-87 and who wishes to exercise  
12           dissenter's rights ~~must~~ shall file with the corporation before the vote on the  
13           proposed action a written notice of intent to demand the fair value of the shares  
14           owned by the shareholder and ~~must~~ may not vote the shares in favor of the  
15           proposed action.

16           **SECTION 26. AMENDMENT.** Section 10-19.1-91 of the 1997 Supplement to the North  
17 Dakota Century Code is amended and reenacted as follows:

18           **10-19.1-91. Indemnification.**

19           1. For purposes of this section:

- 20           a. "Corporation" includes a domestic or foreign corporation that was the  
21           predecessor of the corporation referred to in this section in a merger or other  
22           transaction in which the predecessor's existence ceased upon consummation  
23           of the transaction.
- 24           b. "Official capacity" means:
- 25           (1) With respect to a director, the position of director in a corporation;
- 26           (2) With respect to a person other than a director, the elective or appointive  
27           office or position held by an officer, member of a committee of the  
28           board, or the employment relationship undertaken by an employee of  
29           the corporation; and
- 30           (3) With respect to a director, officer, or employee of the corporation who,  
31           while a director, officer, or employee of the corporation, is or was

- 1 serving at the request of the corporation or whose duties in that position  
2 involve or involved service as a director, officer, manager, partner,  
3 trustee, employee, or agent of another organization or employee  
4 benefit plan, the position of that person as a director, officer, manager,  
5 partner, trustee, employee, or agent, as the case may be, of the other  
6 organization or employee benefit plan.
- 7 c. "Proceeding" means a threatened, pending, or completed civil, criminal,  
8 administrative, arbitration, or investigative proceeding, including a proceeding  
9 by or in the right of the corporation.
- 10 d. "Special legal counsel" means counsel who has not represented the  
11 corporation or a related organization, or a director, officer, member of a  
12 committee of the board, or employee whose indemnification is in issue.
- 13 2. Subject to subsection 5, a corporation shall indemnify a person made or  
14 threatened to be made a party to a proceeding by reason of the former or present  
15 official capacity of the person against judgments, penalties, fines including excise  
16 taxes assessed against the person with respect to an employee benefit plan,  
17 settlements, and reasonable expenses, including attorneys' fees and  
18 disbursements, incurred by the person in connection with the proceeding, if, with  
19 respect to the acts or omissions of the person complained of in the proceeding, the  
20 person:
- 21 a. Has not been indemnified by another organization or employee benefit plan  
22 for the same judgments, penalties, fines including excise taxes assessed  
23 against the person with respect to an employee benefit plan, settlements, and  
24 reasonable expenses, including attorneys' fees and disbursements, incurred  
25 by the person in connection with the proceeding with respect to the same acts  
26 or omission;
- 27 b. Acted in good faith;
- 28 c. Received no improper personal benefit and section 10-19.1-51, if applicable,  
29 has been satisfied;
- 30 d. In the case of a criminal proceeding, had no reasonable cause to believe the  
31 conduct was unlawful; and

- 1 e. In the case of acts or omissions occurring in the official capacity described in  
2 paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that  
3 the conduct was in the best interests of the corporation, or in the case of acts  
4 or omissions occurring in the official capacity described in paragraph 3 of  
5 subdivision b of subsection 1, reasonably believed that the conduct was not  
6 opposed to the best interests of the corporation. If the person's acts or  
7 omissions complained of in the proceeding relate to conduct as a director,  
8 officer, trustee, employee, or agent of an employee benefit plan, the conduct  
9 is not considered to be opposed to the best interests of the corporation if the  
10 person reasonably believed that the conduct was in the best interests of the  
11 participants or beneficiaries of the employee benefit plan.
- 12 3. The termination of a proceeding by judgment, order, settlement, conviction, or  
13 upon a plea of nolo ~~contendere~~ contendere or ~~its~~ an equivalent plea does not, of  
14 itself, establish that the person did not meet the criteria set forth in subsection 2.
- 15 4. Subject to subsection 5, if a person is made or threatened to be made a party to a  
16 proceeding, the person is entitled, upon written request to the corporation, to  
17 payment or reimbursement by the corporation of reasonable expenses, including  
18 attorneys' fees and disbursements, incurred by the person in advance of the final  
19 disposition of the proceeding:
- 20 a. Upon receipt by the corporation of a written affirmation by the person of a  
21 good faith belief that the criteria for indemnification set forth in subsection 2  
22 have been satisfied and a written undertaking by the person to repay all  
23 amounts so paid or reimbursed by the corporation, if ~~it~~ the ultimate  
24 determination is ~~ultimately determined~~ that the criteria for indemnification  
25 have not been satisfied; and
- 26 b. After a determination that the facts then known to those making the  
27 determination would not preclude indemnification under this section.
- 28 The written undertaking required by subdivision a is an unlimited general obligation  
29 of the person making it, but need not be secured and shall be accepted without  
30 reference to financial ability to make the repayment.

- 1           5. The articles or bylaws ~~either~~ may prohibit indemnification or advances of expenses  
2 otherwise required ~~by~~ under this section or may impose conditions on  
3 indemnification or advances of expenses in addition to the conditions contained in  
4 subsections 2, 3, and 4 including monetary limits on indemnification or advances  
5 for expenses, if the prohibitions or conditions apply equally to all persons or to all  
6 persons within a given class. A prohibition or limit on indemnification or advances  
7 may not apply to or affect the right of a person to indemnification or advances of  
8 expenses with respect to any ~~acts~~ act or ~~omissions~~ omission of the person  
9 occurring ~~prior to~~ before the effective date of a provision in the articles or the date  
10 of adoption of a provision in the bylaws establishing the prohibition or limit on  
11 indemnification or advances.
- 12           6. This section does not require, or limit the ability of, a corporation to reimburse  
13 expenses, including attorneys' fees and disbursements, incurred by a person in  
14 connection with an appearance as a witness in a proceeding at a time when the  
15 person has not been made or threatened to be made a party to a proceeding.
- 16           7. All determinations whether indemnification of a person is required because the  
17 criteria provided in subsection 2 have been satisfied and whether a person is  
18 entitled to payment or reimbursement of expenses in advance of the final  
19 disposition of a proceeding as provided in subsection 4 must be made:
- 20           a. By the board by a majority of a quorum, if the directors who are at the time  
21 parties to the proceeding are not counted for determining either a majority or  
22 the presence of a quorum;
- 23           b. If a quorum under subdivision a cannot be obtained, by a majority of a  
24 committee of the board, consisting solely of two or more directors not at the  
25 time parties to the proceeding, duly designated to act in the matter by a  
26 majority of the full board including directors who are parties;
- 27           c. If a determination is not made under subdivision a or b, by special legal  
28 counsel, selected either by a majority of the board or a committee by vote  
29 pursuant to subdivision a or b or, if the requisite quorum of the full board  
30 cannot be obtained and the committee cannot be established, by a majority of  
31 the full board including directors who are parties;

- 1           d. If a determination is not made under subdivisions a, b, and c, by the  
2           shareholders, other than the shareholders who are a party to the proceeding;  
3           or  
4           e. If an adverse determination is made under subdivisions a through d, or under  
5           subsection 8, or if no determination is made under subdivisions a through d,  
6           or under subsection 8, within sixty days after:
- 7           (1) The later to occur of the termination of a proceeding or a written  
8           request for indemnification to the corporation; or  
9           (2) A request for an advance of expenses, as the case may be, by a court  
10          in this state, which may be the same court in which the proceeding  
11          involving the person's liability took place, upon application of the person  
12          and any notice the court requires.
- 13          The person seeking indemnification or payment or reimbursement of  
14          expenses pursuant to this subdivision has the burden of establishing that the  
15          person is entitled to indemnification or payment or reimbursement of  
16          expenses.
- 17          8. With respect to a person who is not, and who was not at the time of the acts or  
18          omissions complained of in the proceedings, a director, officer, or person  
19          possessing, directly or indirectly, the power to direct or cause the direction of the  
20          management or policies of the corporation, the determination whether  
21          indemnification of this person is required because the criteria set forth in  
22          subsection 2 have been satisfied and whether this person is entitled to payment or  
23          reimbursement of expenses in advance of the final disposition of a proceeding as  
24          provided in subsection 4 may be made by an annually appointed committee of the  
25          board, having at least one member who is a director. The committee shall report  
26          at least annually to the board concerning its actions.
- 27          9. A corporation may purchase and maintain insurance on behalf of a person in that  
28          person's official capacity against any liability asserted against and incurred by the  
29          person in or arising from that capacity, whether or not the corporation would have  
30          been required to indemnify the person against the liability under the provisions of  
31          this section.

- 1           10. A corporation that indemnifies or advances expenses to a person in accordance  
2                   with this section in connection with a proceeding by or on behalf of the corporation  
3                   shall report to the shareholders in writing the amount of the indemnification or  
4                   advance and to whom and on whose behalf ~~the indemnification or advance~~ was  
5                   paid not later than the next meeting of shareholders.
- 6           11. ~~Nothing in this~~ This section may be construed to ~~does not~~ limit the power of the  
7                   corporation to indemnify ~~other~~ persons other than a director, officer, employee, or  
8                   member of a committee of the board by contract or otherwise.

9           **SECTION 27. AMENDMENT.** Section 10-19.1-96 of the North Dakota Century Code is  
10           amended and reenacted as follows:

11           **10-19.1-96. Merger - Exchange - Transfer.**

- 12           1. ~~Any two or more corporations~~ With or without a business purpose, a corporation  
13                   may merge, ~~resulting in a single corporation, with or without a business purpose,~~  
14                   ~~pursuant to a plan of merger approved in the manner provided in sections~~  
15                   ~~10-19.1-97 through 10-19.1-103.~~ with:
- 16                   a. Another domestic corporation under a plan of merger approved in the manner  
17                   provided in sections 10-19.1-97 through 10-19.1-103.
- 18                   b. A limited liability company under a plan of merger approved in the manner  
19                   provided in sections 10-32-101 through 10-32-106.
- 20                   c. A foreign corporation or foreign limited liability company under a plan of  
21                   merger in the manner provided in section 10-19.1-103.
- 22           2. ~~A corporation may acquire all of the outstanding shares of one or more classes or~~  
23                   ~~series of another corporation pursuant~~ With respect to a plan of an exchange  
24                   ~~approved in the manner provided in sections 10-19.1-97 through 10-19.1-99 and~~  
25                   ~~sections 10-19.1-101 through 10-19.1-103.;~~
- 26                   a. A corporation may acquire all the ownership interests of one or more classes  
27                   or series of another domestic corporation under a plan of exchange approved  
28                   in the manner provided in sections 10-19.1-97 through 10-19.1-103.
- 29                   b. A corporation may acquire all the ownership interests of one or more classes  
30                   or series of a limited liability company under a plan of exchange approved in  
31                   the manner provided in sections 10-32-101 through 10-32-106.

- 1           c. A limited liability company may acquire all the ownership interests of one or  
2           more classes or series of a corporation under a plan of exchange approved in  
3           the manner provided in sections 10-19.1-97 through 10-19.1-103 and chapter  
4           10-32.
- 5           d. A foreign corporation or foreign limited liability company may acquire all the  
6           ownership interests of one or more classes or series of a corporation under a  
7           plan of exchange approved in the manner provided in section 10-19.1-103.
- 8           3. A corporation may sell, lease, transfer, or otherwise dispose of all or substantially  
9           all of ~~its~~ the corporation's property and assets in the manner provided in section  
10           10-19.1-104.
- 11           4. A corporation may participate in a merger or exchange with a ~~domestic~~ limited  
12           liability company ~~pursuant to chapter 10-32~~. The dissenter's rights for  
13           shareholders of a corporation are governed by this chapter.

14           **SECTION 28. AMENDMENT.** Section 10-19.1-97 of the North Dakota Century Code is  
15           amended and reenacted as follows:

16           **10-19.1-97. Plan of merger or exchange.**

- 17           1. A plan of merger or exchange must contain:
- 18           a. ~~The names~~ name of the ~~corporations~~ corporation and of each other  
19           constituent organization proposing to merge or participate in an exchange  
20           and:
- 21           (1) In the case of a merger, the name of the surviving ~~corporation~~  
22           organization; or
- 23           (2) In the case of an exchange, the name of the acquiring ~~corporation~~  
24           organization;
- 25           b. The terms and conditions of the proposed merger or exchange;
- 26           c. ~~With respect to the~~ The manner and basis of conversion for converting or  
27           exchange exchanging ownership interests:
- 28           (1) In the case of a merger, the manner and basis of converting the ~~shares~~  
29           ownership interests of the constituent ~~corporations~~ organizations into  
30           securities of the surviving ~~corporation~~ organization or of any other

- 1                   ~~corporation~~ organization or, in whole or in part, into money or other  
2                   property; or
- 3                   (2)    In the case of an exchange, the manner and basis of exchanging the  
4                   ~~shares~~ ownership interests to be acquired for securities of the acquiring  
5                   ~~corporation~~ organization or any other ~~corporation~~ organization or, in  
6                   whole or in part, into money or other property;
- 7                   d.    In the case of a merger, a statement of any amendments to the articles of  
8                   incorporation or articles of organization of the surviving ~~corporation~~  
9                   organization proposed as part of the merger; and
- 10                  e.    Any other provisions with respect to the proposed merger or exchange ~~that~~  
11                  which are deemed necessary or desirable.
- 12                  2.    ~~The procedure authorized by this~~ This section does not limit the power of a  
13                  corporation to acquire all or part of the ~~shares~~ ownership interests of one or more  
14                  classes or series of another ~~corporation~~ organization through a negotiated  
15                  agreement with the ~~shareholders~~ owners or otherwise.

16                  **SECTION 29. AMENDMENT.** Section 10-19.1-98 of the North Dakota Century Code is  
17 amended and reenacted as follows:

18                  **10-19.1-98. Plan approval.**

- 19                  1.    A resolution containing the plan of merger or exchange must be approved by the  
20                  ~~affirmative vote of a majority of the directors present at a meeting of the governing~~  
21                  board as required by section 10-19.1-46 or 10-32-83 of each constituent  
22                  ~~corporation~~ organization and must then be submitted at a regular or special  
23                  meeting to the ~~shareholders~~ owners of:
- 24                  a.    ~~Each~~ each constituent ~~corporation~~ organization, in the case of a plan of  
25                  merger; ~~and~~
- 26                  b.    ~~The corporation~~ or the constituent organization whose ~~shares~~ ownership  
27                  interests will be acquired by the acquiring ~~corporation~~ constituent organization  
28                  in the exchange, in the case of a plan of exchange. If ~~shareholders holding~~  
29                  owners owning any class or series of ~~stock of the corporation~~ ownership  
30                  interests in a constituent organization are entitled to vote on the plan of  
31                  merger or exchange ~~pursuant to~~ under this subsection, written notice must be



1 given to every ~~shareholder~~ owner of that constituent organization, whether or  
2 not entitled to vote at the meeting, ~~no fewer~~ not less than fourteen days nor  
3 more than sixty days before the meeting, in the manner provided in section  
4 10-19.1-73 for notice of meetings of shareholders in the case of a domestic  
5 corporation and in the manner provided in section 10-32-40 in the case of a  
6 limited liability company. The written notice must state that a purpose of the  
7 meeting is to consider the proposed plan of merger or exchange. A copy or  
8 short description of the plan of merger or exchange must be included in or  
9 enclosed with the notice.

10 2. At the meeting a vote of the ~~shareholders~~ owners must be taken on the proposed  
11 plan. The plan of merger or exchange is adopted when approved by the  
12 affirmative vote of the holders of a majority of the voting power of all ~~shares~~  
13 ownership interests entitled to vote. Except as provided in subsection 3, a class or  
14 series of shares of the corporation is entitled to vote as a class or series if any  
15 provision of the plan would, if contained in a proposed amendment to the articles  
16 of incorporation, entitle the class or series of ~~shares~~ ownership interests to vote as  
17 a class or series and, in the case of an exchange, if the class or series is included  
18 in the exchange.

19 3. A class or series of ~~shares~~ ownership interests of the ~~corporation~~ constituent  
20 organization is not entitled to vote as a class or series solely because the plan of  
21 merger affects a cancellation of ~~shares~~ ownership interests of the class or series if  
22 the plan of merger or exchange affects a cancellation of all ~~shares~~ ownership  
23 interests of the ~~corporation~~ constituent organization of all classes and series that  
24 are outstanding immediately ~~prior to~~ before the merger or exchange and  
25 ~~shareholders~~ owners of ~~shares~~ ownership interests of that class or series are  
26 entitled to obtain payment for the fair value of their ~~shares~~ ownership interests  
27 under section 10-19.1-87 or 10-32-54 in the event of the merger.

28 4. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange  
29 to a vote at a meeting of ~~shareholders~~ owners of a surviving ~~corporation~~  
30 constituent organization is not required if:

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

- 1           b. Each ~~holder owner~~ of shares of ownership interests in the corporation that  
2           constituent organization which were outstanding immediately before the  
3           effective date of the transaction will hold the same number of ~~shares~~  
4           ownership interests with identical rights immediately ~~thereafter~~ after the  
5           effective date;
- 6           c. The voting power of the outstanding ~~shares~~ ownership interests of the  
7           ~~corporation~~ constituent organization entitled to vote immediately after the  
8           merger or exchange, plus the voting power of the ~~shares~~ ownership interests  
9           of the ~~corporation~~ constituent organization entitled to vote issuable on  
10          conversion of, or on the exercise of rights to purchase, securities issued in the  
11          transaction, will not exceed by more than twenty percent the voting power of  
12          the outstanding ~~shares~~ ownership interests of the ~~corporation~~ constituent  
13          organization entitled to vote immediately before the transaction; and
- 14          d. The number of participating ~~shares~~ ownership interests of the ~~corporation~~  
15          constituent organization immediately after the merger, plus the number of  
16          participating ~~shares~~ ownership interests of the ~~corporation~~ constituent  
17          organization issuable on conversion of, or on the exercise of rights to  
18          purchase, securities issued in the merger, will not exceed by more than  
19          twenty percent the number of participating ~~shares~~ ownership interests of the  
20          ~~corporation~~ constituent organization immediately before the merger.  
21          "Participating ~~shares~~ ownership interests" are outstanding ~~shares~~ ownership  
22          interests of the ~~corporation that~~ constituent organization which entitle their  
23          ~~holders~~ owners to participate without limitation in distributions by the  
24          ~~corporation~~ constituent organization.
- 25          5. If the merger or exchange is with a domestic limited liability company, the plan of  
26          merger or exchange must also be approved in the manner provided in chapter  
27          10-32.

28           **SECTION 30. AMENDMENT.** Section 10-19.1-99 of the North Dakota Century Code is  
29   amended and reenacted as follows:

30           **10-19.1-99. Articles of merger - Certificate.**

- 1           1. Upon receiving the approval required by section 10-19.1-98, articles of merger  
2           must be prepared which contain:
  - 3           a. The plan of merger; and
  - 4           b. A statement that the plan ~~has been~~ is approved by each ~~corporation pursuant~~  
5           to constituent organization under chapter 10-19.1 or chapter 10-32.
- 6           2. The articles of merger must be signed on behalf of each constituent ~~corporation~~  
7           organization and filed with the secretary of state, together with the fees provided in  
8           ~~chapter 10-23~~ section 10-19.1-147.
- 9           3. The secretary of state shall issue a certificate of merger to the surviving  
10           ~~corporation constituent organization~~ or ~~its~~ the surviving constituent organization's  
11           legal representative. The certificate must contain the effective date of merger.

12           **SECTION 31. AMENDMENT.** Section 10-19.1-100 of the North Dakota Century Code  
13 is amended and reenacted as follows:

14           **10-19.1-100. Merger of subsidiary into parent.**

- 15           1. A parent owning at least ninety percent of the outstanding ~~shares ownership~~  
16           interests of each class and series of a subsidiary directly, or indirectly through  
17           related corporations; or limited liability companies may merge the subsidiary into  
18           ~~itself~~ the parent or into any other subsidiary at least ninety percent of the  
19           outstanding ~~shares ownership interests~~ of each class and series of which is owned  
20           by the parent directly, or indirectly through related corporations or limited liability  
21           companies, without a vote of the ~~shareholders owners~~ of ~~itself~~ the parent or any  
22           subsidiary; or may merge ~~itself the parent~~, or ~~itself the parent~~ and one or more  
23           subsidiaries into one of the subsidiaries under this section.
- 24           2. A resolution approved by ~~the affirmative vote of a majority of the present~~ directors  
25           of the parent as required by section 10-19.1-46 or of the present governors of the  
26           parent required by section 10-32-83 must set forth a plan of merger that contains:
  - 27           a. The name of the subsidiary or subsidiaries, the name of the parent, and the  
28           name of the surviving ~~corporation~~ constituent organization;
  - 29           b. The manner and basis of converting the ~~shares ownership interests~~ of the  
30           subsidiary or subsidiaries or the parent into securities of the parent,

- 1 subsidiary, or of another ~~corporation~~ organization; or, in whole or in part, into  
2 money or other property;
- 3 c. If the parent is a constituent ~~corporation~~ organization but is not the surviving  
4 ~~corporation~~ constituent organization in the merger, a provision for the pro rata  
5 issuance of ~~shares~~ ownership interests of the surviving ~~corporation~~  
6 constituent organization to the ~~holders~~ owners of ~~shares~~ ownership interests  
7 of the parent on surrender of any ~~certificates for shares~~ ownership interests of  
8 the parent; and
- 9 d. If the surviving ~~corporation~~ constituent organization is a subsidiary, a  
10 statement of any amendments to the articles of the surviving ~~corporation~~  
11 constituent organization that will be part of the merger.
- 12 ~~3.~~ 3. If the parent is a constituent ~~corporation~~ organization but is not the surviving  
13 ~~corporation~~ constituent organization in a merger, the resolution is not effective  
14 unless ~~it~~ the resolution is also approved by the affirmative vote of the holders of a  
15 majority of the voting power of all ~~shares~~ ownership interests of the parent entitled  
16 to vote at a regular or special meeting held in accordance with section 10-19.1-98  
17 if the parent is a domestic corporation, section 10-32-102 if the parent is a limited  
18 liability company, or in accordance with the laws of the jurisdiction under which ~~it~~  
19 the parent is incorporated or organized if the parent is a foreign corporation or  
20 foreign limited liability company.
- 21 ~~2.~~ 4. A copy of the plan of merger must be mailed to each ~~shareholder~~ owner, other  
22 than the parent and any subsidiary, of each subsidiary that is a constituent  
23 ~~corporation~~ organization in the merger.
- 24 ~~3.~~ 5. Articles of merger must be prepared which contain:
- 25 a. The plan of merger;
- 26 b. The number of outstanding ~~shares~~ ownership interests of each class and  
27 series of the subsidiary that is a constituent ~~corporation~~ organization in the  
28 merger and the number of ~~shares~~ ownership interests of each class and  
29 series owned by the parent directly, or indirectly through related ~~corporations~~  
30 constituent organizations;

- 1 c. The date a copy of the plan of merger was mailed to ~~shareholders~~ owners,  
2 other than the parent or a subsidiary, of each subsidiary that is a constituent  
3 ~~corporation~~ organization in the merger; and
- 4 d. A statement that the plan of merger ~~has been~~ is approved by the parent  
5 under this section.
- 6 4. ~~6.~~ Within thirty days after a copy of the plan of merger is mailed to ~~shareholders~~  
7 owners of each subsidiary that is a constituent ~~corporation~~ organization to the  
8 merger; or upon waiver of the mailing by the ~~holders~~ owners of all outstanding  
9 ~~shares~~ ownership interests of each subsidiary that is a constituent ~~corporation~~  
10 organization to the merger, the articles of merger must be signed on behalf of the  
11 parent and filed with the secretary of state, ~~along~~ with the fees provided in ~~chapter~~  
12 ~~40-23~~ section 10-19.1-147.
- 13 5. ~~7.~~ The secretary of state shall issue a certificate of merger to the ~~parent~~ surviving  
14 constituent organization or ~~its~~ the surviving constituent organization's legal  
15 representative or, if the parent is a constituent corporation but is not the surviving  
16 ~~corporation in a merger, to the surviving corporation or its legal representative.~~  
17 The certificate must contain the effective date of the merger.
- 18 6. ~~8.~~ If all of the ~~shares~~ ownership interests of one or more domestic subsidiaries that is  
19 a constituent ~~party~~ organization to a merger under this section are not owned by  
20 the parent directly, or indirectly through related ~~corporations~~ constituent  
21 organizations, immediately ~~prior to~~ before the merger, the ~~shareholders~~ owners of  
22 each domestic subsidiary have dissenter's rights under section 10-19.1-87 or  
23 10-32-54, without regard to subsection 3 of section 10-19.1-87 ~~and section~~  
24 ~~40-19.1-88~~ or subsection 2 of section 10-32-54. If the parent is a constituent  
25 ~~corporation~~ organization but is not the surviving ~~corporation~~ organization in the  
26 merger, ~~and~~ the articles of incorporation or articles of organization of the surviving  
27 ~~corporation~~ organization immediately after the merger differ from the articles of  
28 incorporation or articles of organization of the parent immediately ~~prior to~~ before  
29 the merger in a manner that would entitle ~~a shareholder~~ an owner of the parent to  
30 dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87 or  
31 under subdivision a of subsection 1 of section 10-32-54, if ~~and~~ the articles of

1            incorporation or articles of organization of the surviving ~~corporation~~ constituent  
2            organization constitute an amendment to the articles of ~~the corporation~~  
3            incorporation or articles of organization of the parent, that ~~shareholder~~ owner of  
4            the parent has dissenter's rights as provided under sections 10-19.1-87 ~~and~~  
5            ~~40-19.1-88~~ or 10-32-54. Except as provided in this subsection, sections  
6            10-19.1-87 and ~~40-19.1-88~~ 10-32-54 do not apply to any merger affected under  
7            this section.

8            ~~7.~~ 9. A merger among a parent and one or more subsidiaries or among two or more  
9            subsidiaries of a parent may be accomplished under sections 10-19.1-97 through  
10           10-19.1-99 instead of this section, in which case this section does not apply.

11           **SECTION 32. AMENDMENT.** Section 10-19.1-101 of the North Dakota Century Code  
12 is amended and reenacted as follows:

13           **10-19.1-101. Abandonment of plan of merger or exchange.**

14           1. After a plan of merger or exchange ~~has been~~ is approved by the ~~shareholders~~  
15           owners entitled to vote on the approval of the plan as provided in section  
16           10-19.1-98 and before the effective date of the plan, it ~~is~~ the plan may be  
17           abandoned:

18           a. With respect to the approval of the abandonment:

19           (1) If the ~~shareholders~~ owners of the ownership interests of each of the  
20           constituent ~~corporations~~ organizations entitled to vote on the approval  
21           of the plan as provided in section 10-19.1-98 ~~have~~ approved the  
22           abandonment at a meeting by the affirmative vote of the ~~holders~~  
23           owners of a majority of the voting power of the ~~shares~~ ownership  
24           interests entitled to vote ~~and, if:~~

25           (2) If the ~~shareholders~~ owners of a constituent ~~corporation~~ organization  
26           are not entitled to vote on the approval of the plan under section  
27           10-19.1-98, the governing board ~~of directors~~ of the constituent  
28           ~~corporation~~ organization has approved the abandonment by the  
29           affirmative vote ~~of a majority of the directors present~~ required by  
30           section 10-19.1-46 or by section 10-32-83; and

1                   (3) If the merger or exchange is with a foreign corporation or limited liability  
2                   company, if abandonment is approved in the manner as may be  
3                   required by the laws of the jurisdiction under which the corporation is  
4                   incorporated or the limited liability company is organized.

5                   b. If the plan itself provides for abandonment and all conditions for abandonment  
6                   set forth in the plan are met; or

7                   c. Pursuant to subsection 2.

8                   2. If articles of merger ~~have~~ are not ~~been~~ filed with the secretary of state and the plan  
9                   is to be abandoned; or if a plan of exchange is to be abandoned before the  
10                   effective date of the plan, a resolution abandoning the plan of merger or exchange  
11                   may be approved by the affirmative vote of ~~a majority of the directors present~~ the  
12                   governing board required by section 10-19.1-46 or 10-32-83, subject to the  
13                   contract rights of any other person under the plan.

14                   3. If articles of merger ~~have been~~ are filed with the secretary of state, ~~the board but~~  
15                   are not yet effective, the constituent organizations, in the case of abandonment  
16                   under paragraph 1 of subdivision a of subsection 1, the constituent organization or  
17                   any one of them under paragraph 2 of subdivision a of subsection 1, as the  
18                   abandoning constituent organization in the case of abandonment under  
19                   subsection 2, shall file with the secretary of state, ~~together~~ with the fees provided  
20                   in ~~chapter 10-23~~ section 10-19.1-147, articles of abandonment that contain:

21                   a. The ~~name~~ names of the constituent ~~corporations~~ organizations;

22                   b. The provision of this section under which the plan is abandoned; and

23                   c. The text of the resolution approved by the affirmative vote of a majority of the  
24                   directors present abandoning the plan.

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

27                   **SECTION 33. AMENDMENT.** Section 10-19.1-102 of the North Dakota Century Code  
28 is amended and reenacted as follows:

29                   **10-19.1-102. Effective date of merger or exchange - Effect.**

- 1           1. A merger is effective when the articles of merger are filed with the secretary of  
2           state or on a later date specified in the articles of merger. An exchange is effective  
3           on the date specified in the plan of exchange.
- 4           2. When a merger becomes effective:
- 5           a. The constituent ~~corporations~~ organizations become a single ~~corporation~~  
6           entity, the surviving corporation or the surviving limited liability company, as  
7           the case may be.
- 8           b. The separate existence of all constituent ~~corporations~~ organizations except  
9           the surviving ~~corporation~~ organization ceases.
- 10          c. As to any corporation that was a constituent organization and is not the  
11          surviving constituent organization, the articles of merger serve as articles of  
12          termination, and unless previously filed, the notice of dissolution.
- 13          d. As to rights, privileges, powers, duties, and liabilities:
- 14            (1) If the surviving organization is a limited liability company, the surviving  
15            limited liability company has all the rights, privileges, immunities, and  
16            powers and is subject to all of the duties and liabilities of a domestic  
17            limited liability company.
- 18            (2) ~~The~~ If the surviving ~~corporation~~ organization is a corporation, the  
19            surviving corporation has all the rights, privileges, immunities, and  
20            powers, and is subject to all the duties and liabilities, of a corporation  
21            incorporated under this chapter.
- 22          e. e. The surviving ~~corporation~~ organization possesses all the rights, privileges,  
23          immunities, and franchises, of a public as well as of a private nature, of each  
24          of the constituent ~~corporations~~ organizations.
- 25            (1) All property, ~~real, personal, and mixed~~, and all debts due on any  
26            account, including subscriptions to shares; and all other choses in  
27            action, and every other interest of or belonging to or due to each of the  
28            constituent ~~corporations~~ organizations vests in the surviving  
29            ~~corporation~~ organization without any further act or deed.
- 30            (2) Confirmatory deeds, assignments, or similar instruments to accomplish  
31            that vesting may be signed and delivered at any time in the name of a



1 constituent ~~corporation~~ organization by ~~its~~ the organization's current  
2 officers or managers, as the case may be, or, if the ~~corporation~~  
3 organization no longer exists, by ~~its~~ the organization's last officers or  
4 managers.

5 (3) The title to any real estate or any interest ~~therein~~ vested in any of the  
6 constituent ~~corporations~~ organizations does not revert nor in any way  
7 become impaired by reason of the merger.

8 e- f. The surviving ~~corporation~~ organization is responsible and liable for all the  
9 liabilities and obligations of each of the constituent ~~corporations~~  
10 organizations.

11 (1) A claim of or against or a pending proceeding by or against a  
12 constituent ~~corporation~~ organization may be prosecuted as if the  
13 merger ~~had~~ did not taken take place, or the surviving ~~corporation~~  
14 organization may be substituted in the place of the constituent  
15 ~~corporation~~ organization.

16 (2) Neither the rights of creditors nor any liens upon the property of a  
17 constituent ~~corporation~~ organization are impaired by the merger.

18 f- g. The articles of incorporation or articles of organization, as the case may be, of  
19 the surviving ~~corporation~~ organization are deemed to be amended to the  
20 extent that changes in its articles, if any, are contained in the plan of merger.

21 3. When a merger or exchange becomes effective, the ~~shares of the corporation or~~  
22 ~~corporations~~ ownership interests to be converted or exchanged under the terms of  
23 the plan cease to exist in the case of a merger, or are deemed to be exchanged in  
24 the case of an exchange. The ~~holders~~ owners of those ~~shares~~ ownership interests  
25 are entitled only to the securities, money, or other property into which those ~~shares~~  
26 ownership interests have been converted or for which those ~~shares~~ ownership  
27 interests have been exchanged in accordance with the plan, subject to any  
28 dissenter's rights under section 10-19.1-87 or 10-32-54.

29 **SECTION 34. AMENDMENT.** Section 10-19.1-103 of the North Dakota Century Code  
30 is amended and reenacted as follows:

1           **10-19.1-103. Merger or exchange with foreign corporation or foreign limited**  
2 **liability company.**

3           1. A domestic corporation may merge with or participate in an exchange with a  
4 foreign corporation or foreign limited liability company by following the procedures  
5 set forth in this section, if:

6           a. With respect to a merger, the merger is permitted by the laws of the ~~state~~  
7 jurisdiction under which the foreign corporation or foreign limited liability  
8 company is incorporated; ~~and~~ or organized.

9           b. With respect to an exchange, the ~~corporation whose shares~~ constituent  
10 organization whose ownership interests will be acquired is a domestic  
11 corporation or limited liability company, regardless of whether ~~or not~~ the  
12 exchange is permitted by the laws of the ~~state~~ jurisdiction under which the  
13 foreign corporation or foreign limited liability company is incorporated or  
14 organized.

15           2. Each domestic corporation shall comply with the provisions of sections 10-19.1-96  
16 through 10-19.1-103 with respect to the merger or exchange of ~~shares of~~  
17 ~~corporations~~ ownership interests and each foreign corporation or foreign limited  
18 liability company shall comply with the applicable provisions of the laws of the  
19 jurisdiction under which it was incorporated or organized or by which it is  
20 governed.

21           3. If the surviving ~~corporation~~ organization in a merger will be a domestic corporation,  
22 ~~it~~ the organization shall comply with this chapter.

23           4. If the surviving ~~corporation~~ organization in a merger will be a foreign corporation or  
24 foreign limited liability company and will transact business in this state, ~~it~~ the  
25 organization shall comply with the provisions of this chapter ~~40-22~~ with respect to  
26 foreign corporations or chapter 10-32 with respect to foreign limited liability  
27 companies. In every case the surviving foreign corporation or foreign limited  
28 liability company shall file with the secretary of state:

29           a. An agreement that it may be served with process in this state in a proceeding  
30 for the enforcement of an obligation of a constituent ~~corporation~~ organization  
31 and in a proceeding for the enforcement of the rights of a dissenting

- 1                   ~~shareholder~~ owner of an ownership interest of a constituent ~~corporation~~  
2                   organization against the surviving foreign corporation or foreign limited liability  
3                   company;
- 4                   b. An irrevocable appointment of the secretary of state as ~~is~~ the organization's  
5                   agent to accept service of process in any proceeding, and an address to  
6                   which process may be forwarded; and
- 7                   c. An agreement that ~~it~~ the organization will promptly pay to the dissenting  
8                   ~~shareholders~~ owners of ownership interests of each domestic constituent  
9                   corporation and domestic constituent limited liability company the amount, if  
10                   any, to which they are entitled under section ~~40-19.1-87~~ 10-19.1-88 or  
11                   10-32-55.

12                   **SECTION 35. AMENDMENT.** Subsection 2 of section 10-19.1-106 of the North  
13                   Dakota Century Code is amended and reenacted as follows:

- 14                   2. The articles of dissolution must be filed with the secretary of state, together with  
15                   the fees provided for in ~~chapter 10-23~~ section 10-19.1-147.

16                   **SECTION 36. AMENDMENT.** Subsection 1 of section 10-19.1-108 of the North  
17                   Dakota Century Code is amended and reenacted as follows:

- 18                   1. If dissolution of the corporation is approved pursuant to subsections 1 and 2 of  
19                   section 10-19.1-107, the corporation shall file with the secretary of state, together  
20                   with the fees provided in ~~chapter 10-23~~ section 10-19.1-147, a notice of intent to  
21                   dissolve. The notice must contain:
- 22                   a. The name of the corporation;
- 23                   b. The date and place of the meeting at which the resolution was approved  
24                   pursuant to subsections 1 and 2 of section 10-19.1-107; and
- 25                   c. A statement that the requisite vote of the shareholders was received or that  
26                   all shareholders entitled to vote signed a written action.

27                   **SECTION 37. AMENDMENT.** Subsection 3 of section 10-19.1-112 of the North  
28                   Dakota Century Code is amended and reenacted as follows:

- 29                   3. Revocation of dissolution proceedings is effective when a notice of revocation is  
30                   filed with the secretary of state, together with the fees provided in ~~chapter 10-23~~

1            section 10-19.1-147. The corporation may ~~thereafter~~ resume business after this  
2            revocation.

3            **SECTION 38. AMENDMENT.** Subsection 1 of section 10-19.1-113.1 of the North  
4            Dakota Century Code is amended and reenacted as follows:

5            1. An original of the articles of dissolution must be filed with the secretary of state. If  
6            the secretary of state ~~finds that~~ determines the articles of dissolution conform to  
7            law and ~~that~~ all fees have been paid under ~~chapter 10-23~~ section 10-19.1-147, the  
8            secretary of state shall issue a certificate of dissolution.

9            **SECTION 39. AMENDMENT.** Section 10-19.1-129 of the 1997 Supplement to the  
10           North Dakota Century Code is amended and reenacted as follows:

11           **10-19.1-129. Service of process on corporation and nonresident directors.**

12           1. The registered agent must be an agent of the corporation and any nonresident  
13           director upon whom any process, notice, or demand required or permitted by law  
14           to be served on the corporation or director may be served. Acceptance of a  
15           directorship includes the appointment of the secretary of state as an agent for  
16           personal service of legal process, notice, or demand.

17           2. A process, notice, or demand required or permitted by law to be served upon a  
18           corporation may be served either upon the registered agent of the corporation, or  
19           upon an officer of the corporation, or upon the secretary of state as provided in this  
20           section.

21           3. If neither the corporation's registered agent nor an officer of the corporation can be  
22           found at the registered office, or if a corporation fails to maintain a registered agent  
23           in this state and an officer of the corporation cannot be found at the registered  
24           office, then the secretary of state is the agent of the corporation upon whom the  
25           process, notice, or demand may be served. The return of the sheriff, or the  
26           affidavit of a person who is not a party, that no registered agent or officer can be  
27           found at the registered office must be provided to the secretary of state. Service  
28           on the secretary of state of any process, notice, or demand is deemed personal  
29           service upon the corporation and must be made by filing with the secretary of state  
30           an original and two copies of the process, notice, or demand, along with the fees  
31           provided in ~~chapter 10-23~~ section 10-19.1-147. The secretary of state shall

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

5 4. Process, notice, or demand may be served on a dissolved corporation as provided  
6 in this subsection. The court shall determine if service is proper. If a corporation  
7 has voluntarily dissolved or a court has entered a decree of dissolution, service  
8 may be made according to subsection 2 so long as claims are not finally barred  
9 under section 10-19.1-124. If a corporation has been involuntarily dissolved  
10 pursuant to section ~~10-23-02-2~~ 10-19.1-146, service may be made according to  
11 subsection 2.

12 5. A record of all processes, notices, and demands served upon the secretary of  
13 state under this section, including the date of service and the action taken with  
14 reference to it must be maintained in the office of the secretary of state.

15 6. Nothing in this section limits the right to serve any process, notice, or demand  
16 required or permitted by law to be served upon a corporation in any other manner  
17 permitted by law.

18 **SECTION 40. AMENDMENT.** Section 10-19.1-137 of the 1997 Supplement to the  
19 North Dakota Century Code is amended and reenacted as follows:

20 **10-19.1-137. Foreign corporation - Amendments to the certificate of authority.** If  
21 any statement in the application for a certificate of authority by a foreign corporation ~~was~~ is  
22 false when made or ~~any arrangements or other facts described have changed, making the~~  
23 ~~application inaccurate in any respect~~ the foreign corporation changes the foreign corporation's  
24 name or purposes sought in this state, the foreign corporation ~~shall~~ promptly shall file with the  
25 secretary of state an application for an amended certificate of authority executed by an  
26 authorized person correcting the statement and, in the case of a change in ~~its~~ the foreign  
27 corporation's name, a certificate to that effect authenticated by the proper officer of the  
28 jurisdiction under the laws of which the foreign corporation is incorporated.

29 1. In the case of a dissolution, a foreign corporation need not file an application for an  
30 amended certificate of authority but shall promptly file with the secretary of state a

1 certificate to that effect authenticated by the proper officer of the jurisdiction under  
2 the laws of which the foreign corporation is incorporated.

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

11 **SECTION 41. AMENDMENT.** Section 10-19.1-139 of the 1997 Supplement to the  
12 North Dakota Century Code is amended and reenacted as follows:

13 **10-19.1-139. Foreign corporation - Merger of foreign corporation authorized to**  
14 **transact business in this state.** ~~Whenever~~ If a foreign corporation authorized to transact  
15 business in this state is a party to a statutory merger permitted by the laws of the jurisdiction  
16 under which ~~the foreign corporation~~ is incorporated, and the foreign corporation is not the  
17 surviving organization, the surviving organization shall, within thirty days after the merger  
18 becomes effective, file with the secretary of state a certified statement of merger duly  
19 authenticated by the proper officer of the state or country where the statutory merger was  
20 effected. Any foreign organization ~~which~~ that is the surviving organization in a merger and  
21 which will continue to transact business in this state; shall procure a ~~new~~ certificate of authority  
22 if not previously authorized to transact business in the state.

23 **SECTION 42. AMENDMENT.** Subsection 1 of section 10-19.1-146 of the 1997  
24 Supplement to the North Dakota Century Code is amended and reenacted as follows:

25 1. Each corporation and each foreign corporation authorized to transact business in  
26 this state; shall file, within the time prescribed by subsection 3, an annual report  
27 setting forth:  
28 a. The name of the corporation or foreign corporation and the state or country  
29 under the laws of which ~~the corporation or foreign corporation~~ is  
30 incorporated.

- 1           b. The address of the registered office of the corporation or foreign corporation  
2           in this state, the name of ~~its~~ the corporation's or foreign corporation's  
3           registered agent in this state at that address, and the address of ~~its~~ the  
4           corporation's or foreign corporation's principal executive office.
- 5           c. A brief statement of the character of the business in which the corporation or  
6           foreign corporation is actually engaged in this state.
- 7           d. The names and respective addresses of the officers and directors of the  
8           corporation or foreign corporation.
- 9           e. A statement of the aggregate number of shares the corporation or foreign  
10          corporation has authority to issue, itemized by classes, par value of shares,  
11          shares without par value, and series, if any, within a class.
- 12          f. A statement of the aggregate number of issued shares, itemized by classes,  
13          par value of shares, shares without par value, and series, if any, within a  
14          class.
- 15          g. ~~A statement, expressed in dollars, of the amount of shareholders' equity in~~  
16          ~~the corporation or foreign corporation. Shareholders' equity is the net~~  
17          ~~difference between total assets and total liabilities and may include the sum of~~  
18          ~~the following:~~
- 19             ~~(1) Consideration received for issued shares;~~  
20             ~~(2) Additional paid-in capital;~~  
21             ~~(3) Capital surplus;~~  
22             ~~(4) Undivided profits;~~  
23             ~~(5) Retained earnings or retained deficit;~~  
24             ~~(6) Unrealized holding gains or losses;~~  
25             ~~(7) Consideration paid for treasury shares; and~~  
26             ~~(8) Any other amounts the corporation has transferred to shareholders'~~  
27             ~~equity.~~
- 28          h. ~~Irrespective of the manner of its designation by the laws under which a~~  
29          ~~foreign corporation is incorporated, the shareholders' equity of a foreign~~  
30          ~~corporation must be determined on the same basis and in the same manner~~

- 1 ~~as the shareholders' equity of a domestic corporation, for the purpose of~~  
2 ~~computing fees and other charges imposed by this chapter.~~
- 3 i. A statement, expressed in dollars, of the value of all the property owned by  
4 the corporation, wherever located, and the value of the property of the  
5 corporation located within this state, and a statement, expressed in dollars, of  
6 the total gross income of the corporation for the twelve months ending on  
7 December thirty-first preceding the date ~~herein~~ provided under this section for  
8 the filing of the annual report and the gross amount ~~thereof~~ accumulated by  
9 the corporation at or from places of business in this state. If, on December  
10 thirty-first preceding the time ~~herein~~ provided under this section for the filing  
11 of the report, the corporation had not been in existence for a period of twelve  
12 months, or, in the case of a foreign corporation, had not been authorized to  
13 transact business in this state for a period of twelve months, ~~then~~ the  
14 statement with respect to total gross income must be furnished for the period  
15 between the date of incorporation or the date of ~~its~~ the corporation's  
16 authorization to transact business in this state and December thirty-first.
- 17 j. h. Any additional information ~~as may be~~ necessary or appropriate ~~in order~~ to  
18 enable the secretary of state to determine and assess the proper amount of  
19 fees payable by the corporation.

20 **SECTION 43. AMENDMENT.** Section 10-19.1-147 of the 1997 Supplement to the  
21 North Dakota Century Code is amended and reenacted as follows:

22 **10-19.1-147. Fees for filing documents - Issuing certificates - License fees.** The  
23 secretary of state shall charge and collect for:

- 24 1. Filing articles of incorporation and issuing a certificate of incorporation, thirty  
25 dollars.
- 26 2. Filing articles of amendment, twenty dollars.
- 27 3. Filing restated articles of incorporation, thirty dollars.
- 28 4. Filing articles of merger or consolidation and issuing a certificate of merger or  
29 consolidation, fifty dollars.
- 30 5. Filing articles of abandonment of merger, fifty dollars.
- 31 6. Filing an application to reserve a corporate name, ten dollars.



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- 1           7.    Filing a notice of transfer of a reserved corporate name, ten dollars.
- 2           8.    Filing a cancellation of reserved corporate name, ten dollars.
- 3           9.    Filing a consent to use of name, ten dollars.
- 4           10.   Filing a statement of change of address of registered office or change of registered  
5           agent, or both, ten dollars.
- 6           11.   Filing a statement of change of address of registered office by registered agent,  
7           ten dollars for each corporation affected by such change.
- 8           12.   Filing a registered agent's consent to serve in such capacity, ten dollars.
- 9           13.   Filing a resignation as registered agent, ten dollars.
- 10          14.   Filing a statement of the establishment of a series of shares, twenty dollars.
- 11          15.   Filing a statement of cancellation of shares, twenty dollars.
- 12          16.   Filing a statement of reduction of stated capital, twenty dollars.
- 13          17.   Filing a statement of intent to dissolve, ten dollars.
- 14          18.   Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
- 15          19.   Filing articles of dissolution, twenty dollars.
- 16          20.   Filing an application of a foreign corporation for a certificate of authority to transact  
17          business in this state and issuing a certificate of authority, forty dollars.
- 18          21.   Filing an application of a foreign corporation for an amended certificate of authority  
19          to transact business in this state and issuing an amended certificate of authority,  
20          forty dollars.
- 21          22.   Filing a certificate of fact stating a merger or consolidation of a foreign corporation  
22          holding a certificate of authority to transact business in this state, fifty dollars.
- 23          23.   Filing an application for withdrawal of a foreign corporation and issuing a certificate  
24          of withdrawal, twenty dollars.
- 25          24.   Filing an annual report of a corporation or foreign corporation, twenty-five dollars.  
26          The secretary of state shall charge and collect additional fees for late filing of the  
27          annual report as follows:  
28           a.    Within ninety days after the date provided in subsection 3 of section  
29                10-19.1-146, twenty dollars;  
30           b.    Thereafter, sixty dollars; and

- 1           c. After the involuntary dissolution of a corporation, or the revocation of the  
2           certificate of authority of a foreign corporation, the reinstatement fee of one  
3           hundred thirty-five dollars.
- 4           25. Filing any process, notice, or demand for service, twenty-five dollars.
- 5           26. Furnishing a certified copy of any document, instrument, or paper relating to a  
6           corporation, one dollar for every four pages or fraction thereof and fifteen dollars  
7           for the certificate and affixing the seal thereto.
- 8           27. License fee of fifty dollars for the first fifty thousand dollars of a corporation's  
9           authorized shares, or fraction thereof, and the further sum of ten dollars if paid at  
10          the time of authorization, or twelve dollars if paid after authorized shares are  
11          issued, for every additional ten thousand dollars of its authorized shares, or  
12          fraction thereof, in excess of fifty thousand dollars.
- 13          a. A license fee is payable by a corporation at the time of:
- 14               (1) Filing articles of incorporation;
- 15               (2) Filing articles of amendment increasing the number or value of  
16               authorized shares; or
- 17               (3) Filing articles of merger or consolidation increasing the number or value  
18               of authorized shares a surviving or new corporation will have authority  
19               to issue above the aggregate number or value of shares the constituent  
20               corporations had authority to issue.
- 21          b. A license fee payable on an increase in authorized shares must be imposed  
22          only on the additional shares, but the amount of previously authorized shares  
23          must be taken into account in determining the rate applicable to the additional  
24          authorized shares.
- 25          c. For the purposes of this subsection, shares without par value are considered  
26          worth one dollar per share.
- 27          d. The minimum sum of fifty dollars must be paid for authorized shares at the  
28          time of filing articles of incorporation.
- 29          e. A corporation increasing authorized shares by articles of amendment or  
30          articles of merger must have previously paid for a minimum of fifty thousand  
31          dollars of authorized shares. Thereafter, a corporation may postpone the

1 payment for any additional amount until the filing of an annual report after the  
2 unpaid shares are issued. Any additional amount must be paid in increments  
3 of ten thousand dollars of ~~its~~ authorized shares.

4 f. The provisions of this subsection do not apply to a building and loan or  
5 savings and loan association.

6 28. License fee of eighty-five dollars from each foreign corporation at the time of filing  
7 an application for a certificate of authority to transact business in this state.

8 Thereafter, the secretary of state shall fix the license fee for each foreign  
9 corporation as follows:

10 a. The secretary of state shall first ascertain the license fee which a newly  
11 organized corporation would be required to pay if it had authorized shares of  
12 the same kind and amount as the issued or allotted shares of the reporting  
13 foreign corporation shown by its filed annual report.

14 b. Said amount must be multiplied by a fraction, the numerator of which must be  
15 the sum of the value of the property of the foreign corporation located in this  
16 state and the gross receipts of the foreign corporation derived from ~~its~~ that  
17 foreign corporation's business transacted within this state, and the  
18 denominator of which must be the sum of the value of all of ~~its~~ that foreign  
19 corporation's property wherever located and the gross receipts of the foreign  
20 corporation derived from ~~its~~ that foreign corporation's business wherever  
21 transacted. The amounts used in determining the numerator and  
22 denominator must be determined from the foreign corporation's filed annual  
23 report.

24 c. From the product of such multiplication, there must be deducted the  
25 aggregate amount of license fee previously paid by the foreign corporation,  
26 and the remainder, if any, must be the amount of additional fee to be paid by  
27 the foreign corporation.

28 The secretary of state shall enter the amount of any additional license fee in the  
29 records of the foreign corporation in the secretary of state's office and shall mail a  
30 notice of the amount of additional license fee due to the foreign corporation at ~~its~~  
31 the foreign corporation's principal office. The additional license fee must be paid

1 by the foreign corporation before the annual report may be filed by the secretary of  
2 state. Amounts less than five dollars are not collected.

3 29. Any document submitted for approval before the actual time of submission for  
4 filing, one-half of the fee provided in this section for filing the document.

5 30. Filing any other statement of a corporation or foreign corporation, ten dollars.

6 **SECTION 44. AMENDMENT.** Section 10-30-05 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **10-30-05. Business Corporation Act to apply.** The provisions of ~~chapters~~ chapter  
9 10-19.1, 10-22, and 10-23 apply to state development corporations as ~~they may be~~ applicable  
10 and not inconsistent with this chapter.

11 **SECTION 45. AMENDMENT.** Section 10-30.1-04 of the North Dakota Century Code is  
12 amended and reenacted as follows:

13 **10-30.1-04. Venture capital corporation - Incorporation.**

- 14 1. To carry out the purposes of this chapter, a ~~venture capital corporations~~  
15 organization may be formed under ~~chapters~~ chapter 10-19.1 ~~through 10-23~~ if a  
16 corporation, or under chapter 10-32 if a limited liability company. The articles of  
17 incorporation or articles of organization of a ~~venture capital corporation~~  
18 organization must comply with subsections 2 through 9.
- 19 2. The purpose of a venture capital corporation or limited liability company must be  
20 solely to raise funds to be used to make investments in, and provide financing to,  
21 qualified entities in a manner that will encourage capital investment in the state,  
22 encourage the establishment or expansion of business and industry, provide  
23 additional jobs within the state, and encourage research and development  
24 activities in the state.
- 25 3. Each director ~~or governor~~ of a venture capital corporation or each governor of a  
26 venture capital limited liability company must be a North Dakota resident, and must  
27 have a minimum investment in the venture capital corporation or limited liability  
28 company of one thousand dollars.
- 29 4. A venture capital corporation ~~will~~ or limited liability company shall provide financing  
30 to qualified entities to be used solely for the purpose of enhancing the production  
31 capacity of the qualified entity or the ability of the qualified entity to do business in

1           this state. The venture capital corporation or limited liability company may  
2           establish and regulate terms and conditions, consistent with this chapter, with  
3           respect to the financing. The financing may include any combination of equity  
4           investments, loans, guarantees, and commitments for financing, but no more than  
5           twenty percent of the stated capital of a venture capital corporation or limited  
6           liability company may be invested in any one qualified entity. For purposes of this  
7           chapter, "one qualified entity" means a single entity or a group of affiliated entities  
8           that are engaged in a unitary business.

9           5. ~~No business~~ Business may not be transacted or indebtedness incurred by the  
10          venture capital corporation or limited liability company, except such as is incidental  
11          to the venture capital corporation's or limited liability company's organization or to  
12          obtaining subscriptions to or payment for ~~its~~ the venture capital corporation's or  
13          limited liability company's shares or membership interests, until the venture capital  
14          corporation or limited liability company receives consideration for such shares or  
15          membership interests equal to at least five hundred thousand dollars, which  
16          amount ~~will be~~ is the initial stated capital of the venture capital corporation or  
17          limited liability company.

18          6. All consideration received from the sale of shares or membership interests must be  
19          placed in an interest-bearing escrow account in the Bank of North Dakota, except  
20          ~~that~~ up to ten percent of the proceeds may be withheld for use in activities  
21          incidental to the venture capital corporation's or limited liability company's  
22          organization or to obtaining subscriptions to or payment for ~~its~~ the venture capital  
23          corporation's or limited liability company's shares or membership interests.

24          7. If at any time within one year of the issuance of the certificate of incorporation ~~or~~  
25          ~~certificate of organization~~ of the venture capital corporation ~~its~~ or certificate of  
26          organization of the limited liability company, the venture capital corporation's or  
27          limited liability company's stated capital equals at least five hundred thousand  
28          dollars, or such greater amount established by the articles of incorporation ~~or~~  
29          ~~bylaws of,~~ the articles of organization ~~and operating agreement of the venture~~  
30          ~~capital corporation,~~ or bylaws, the funds held in escrow pursuant to subsection 6  
31          must be released to the venture capital corporation or limited liability company for

- 1 use and disposition according to ~~its~~ the venture capital corporation's or limited  
2 liability company's articles of incorporation ~~and bylaws or the~~, articles of  
3 organization ~~and operating agreement~~, or the bylaws.
- 4 8. If within one year of the issuance of the certificate of incorporation ~~or certificate of~~  
5 ~~organization~~ of the venture capital corporation ~~its~~ or the certificate of organization  
6 of the venture capital limited liability company, the venture capital corporation's or  
7 limited liability company's stated capital has not at any time equaled at least five  
8 hundred thousand dollars, or such greater amount established by the articles of  
9 incorporation ~~or bylaws or by~~, the articles of organization ~~and operating agreement~~  
10 ~~of the venture capital corporation~~, or the bylaws, ~~its~~ the venture capital  
11 corporation's or limited liability company's certificate of incorporation or certificate  
12 of organization ~~will be terminated~~, ~~the venture capital corporation~~ must be  
13 dissolved or terminated, and all funds held in escrow pursuant to subsection 6, and  
14 all other remaining funds, must be returned to the investors in proportion to ~~their~~  
15 the investor's investments.
- 16 9. ~~Prior to~~ Before any investment in a venture capital corporation or limited liability  
17 company, the venture capital corporation ~~must~~ or limited liability company shall  
18 make written disclosure of the provisions contained in subsections 5 through 8 to  
19 the potential investor.
- 20 10. If a venture capital corporation or limited liability company does not invest or  
21 provide financing with eighty percent of the funds received from investors within  
22 two years of receiving the funds, the venture capital corporation or limited liability  
23 company must be dissolved or terminated and all funds held by the corporation or  
24 limited liability company must be returned to the investors in proportion to ~~their~~ the  
25 investor's investments.

26 **SECTION 46. AMENDMENT.** Subsection 1 of section 10-31-02.1 of the 1997

27 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 28 1. ~~Two~~ One or more individuals may organize a professional organization in the form  
29 of a limited liability company for the practice of a profession by filing articles of  
30 organization with the secretary of state. The articles of organization must meet the  
31 requirements of chapter 10-32; and must contain the following:

- 1           a. The profession to be practiced through the professional limited liability  
2           company; and  
3           b. The ~~names~~ name and residence ~~addresses~~ address of ~~all of the~~ each original  
4           ~~members~~ member of the professional limited liability company who will  
5           practice the profession in this state.

6           **SECTION 47. AMENDMENT.** Subsection 2 of section 10-31-11 of the North Dakota  
7 Century Code is amended and reenacted as follows:

- 8           2. With respect to a professional organization in the form of a limited liability  
9           company:
- 10          a. The articles of organization may provide for the purchase or redemption of the  
11          membership interest of any member upon the death or disqualification of the  
12          member, or the same may be provided for in the ~~operating agreement~~  
13          bylaws, in the member-control agreement, or by private agreement. In the  
14          absence of a provision for the same in the articles of organization, in the  
15          ~~operating agreement~~ bylaws, in the member-control agreement, or by private  
16          agreement, the limited liability company has an option to purchase the  
17          membership interest of a deceased member or a member no longer qualified  
18          to own a membership interest in the limited liability company within six  
19          months after the death or disqualification of the member.
- 20          b. The option price for such membership interest must be the book value as of  
21          the end of the month immediately preceding the death or disqualification of  
22          the member unless otherwise specified in the articles of organization, in the  
23          ~~operating agreement~~ bylaws, in the member-control agreement, or by private  
24          agreement. Book value must be determined from the books and records of  
25          the limited liability company in accordance with the regular method of  
26          accounting used by the limited liability company.
- 27          c. If the limited liability company fails to exercise the option, the membership  
28          interest of the deceased or disqualified member may be sold to any individual  
29          licensed or otherwise legally authorized to render the same professional  
30          service as that for which the limited liability company was organized.

- 1           d. A disqualified member, or the estate of a deceased member, may continue to  
2           hold a membership interest in the limited liability company during the option  
3           period and for a reasonable period thereafter, pending transfer to another  
4           licensed or otherwise legally authorized individual, but may not participate in  
5           any decisions concerning the performance of professional service.

6           **SECTION 48. AMENDMENT.** Section 10-31-13 of the 1997 Supplement to the North  
7           Dakota Century Code is amended and reenacted as follows:

8           **10-31-13. Professional organizations - Annual reports - Renewal.**

- 9           1. With respect to a professional organization in the form of a corporation:
- 10           a. Each corporation incorporated under this chapter shall file with the secretary  
11           of state an annual report at the time specified for the filing of the report by  
12           chapter 10-19.1 giving the name and residence ~~addresses~~ address of ~~all~~  
13           ~~officers~~ each officer, ~~directors~~ director, and ~~shareholders~~ shareholder of the  
14           corporation ~~as of at the thirtieth day of June next preceding the time of filing~~  
15           of the report. With respect to shares, the report ~~shall~~ must include:
- 16           (1) A statement of the aggregate number of shares the corporation has  
17           authority to issue, itemized by classes, par value of shares, shares  
18           without par value, and series, if any, within a class; and
- 19           (2) A statement of the aggregate number of issued shares, itemized by  
20           classes, par value of shares, shares without par value, and series, if  
21           any, within a class.
- 22           b. The report must include a statement that all directors and shareholders of  
23           voting shares who practice in this state are licensed to render the same  
24           specific professional services as those for which the corporation was  
25           incorporated. The report must be:
- 26           (1) Made on a form as prescribed and furnished by the secretary of state;  
27           (2) Signed by the president or vice president of the corporation; and  
28           (3) Accompanied by the filing fee prescribed in chapter 10-19.1.
- 29           c. A copy of the report must be filed at the same time with the regulatory board  
30           that licenses the shareholders described in the report. No filing fee may be  
31           charged by the regulatory board.



- 1           d. A regulatory board issuing a license under section 10-31-01 shall issue a  
2           certificate required in section 10-31-02. The certificate must be on a form  
3           prescribed and furnished by the secretary of state. The regulatory board may  
4           charge and collect a fee not to exceed twenty dollars per individual certified to  
5           be licensed by the regulating board.
- 6           2. With respect to a professional organization in the form of a limited liability  
7           company:
- 8           a. Each limited liability company organized under this chapter shall file with the  
9           secretary of state an annual report at the time specified for the filing of the  
10          report by chapter 10-32 giving the name and residence address of all  
11          managers, governors, and members of the organization as of the thirtieth day  
12          of June next preceding the filing of the report.
- 13          b. The report must include a statement that all governors and members holding  
14          voting membership interests who practice in this state are licensed to render  
15          the same specific professional services as those for which the limited liability  
16          company was organized. This report must be:
- 17               (1) Made on a form as prescribed and furnished by the secretary of state;  
18               (2) Signed by the president or vice president of the limited liability  
19               company; and  
20               (3) Accompanied by the filing fee prescribed in section 10-32-180.
- 21          c. A copy of the report must be filed at the same time with the regulatory board  
22          that licenses the members described in the report. No filing fee may be  
23          charged by the regulatory board.
- 24          d. A regulatory board issuing a license under section 10-31-01 shall issue a  
25          certificate required in section 10-31-02. The certificate must be on a form  
26          prescribed and furnished by the secretary of state. The regulatory board may  
27          charge and collect a fee not to exceed twenty dollars per individual certified to  
28          be licensed by the regulatory board.
- 29          3. With respect to a professional organization in the form of a limited liability  
30          partnership:

- 1           a. The ~~renewal registration~~ annual report filed with the secretary of state  
2           ~~pursuant to~~ at the time specified for the filing of the report by chapter 45-22  
3           must include the name and residence address of ~~all partners~~ each partner of  
4           the organization ~~as of the thirtieth day of June next preceding the~~ at the time  
5           of filing of the ~~renewal registration~~ annual report.
- 6           b. The ~~renewal registration~~ annual report must include a statement that ~~all~~  
7           ~~partners~~ each partner holding voting partnership interests who ~~practice~~  
8           practices in this state ~~are~~ is licensed to render the same specific professional  
9           services as those for which the limited liability partnership was registered.  
10          The ~~renewal registration shall~~ annual report must be:
- 11           (1) Made on a form prescribed and furnished by the secretary of state;  
12           (2) Signed by a managing partner of the limited liability partnership; and  
13           (3) Accompanied by the filing fee prescribed in section 45-22-22.
- 14          c. A copy of the ~~renewal registration~~ annual report must be filed at the same  
15          time with the regulatory board that licenses the partners described in the  
16          ~~renewal registration~~ annual report. ~~No~~ A filing fee may ~~not~~ be charged by the  
17          regulatory board.
- 18          d. A regulatory board issuing a license under section 10-31-01 shall issue a  
19          certificate required in section 10-31-02. The certificate must be on a form  
20          prescribed and furnished by the secretary of state. The regulatory board may  
21          charge and collect a fee not ~~to exceed~~ exceeding twenty dollars per individual  
22          certified to be licensed by the regulating board.

23           **SECTION 49. AMENDMENT.** Section 10-32-02 of the 1997 Supplement to the North  
24          Dakota Century Code is amended and reenacted as follows:

25           **10-32-02. Definitions.** For ~~the~~ purposes of this chapter, unless the ~~language or~~  
26          context ~~clearly indicates that a different meaning is intended~~ otherwise requires:

- 27           1. "Acquiring organization" means the foreign or domestic limited liability company or  
28           foreign or domestic corporation that acquires in an exchange the shares of a  
29           domestic or foreign corporation or the membership interests of a limited liability  
30           company.
- 31           2. "Address" means:

- 1           a. In the case of a registered office or principal executive office, the mailing  
2           address, including a zip code, of the actual office location which may not be  
3           only a post-office box; and
- 4           b. In all other cases, the mailing address, including a zip code.
- 5        3. ~~"Agreement to give dissolution avoidance consent" means a member control~~  
6        ~~agreement under section 10-32-50, or a part of a member control agreement,~~  
7        ~~under which the members agree in advance that if, in the future, the continued~~  
8        ~~membership of any member is terminated through an event covered in the~~  
9        ~~agreement, then each remaining member shall give dissolution avoidance consent.~~
- 10       4. "Articles" or "articles of organization" means:
- 11       a. In the case of a limited liability company organized under this chapter, articles  
12       of organization, articles of amendment, a statement of change of registered  
13       office, registered agent, or name of registered agent, a statement establishing  
14       or fixing the rights and preferences of a class or series of membership  
15       interests, articles of merger, articles of abandonment, and articles of  
16       termination.
- 17       b. In the case of a foreign limited liability company, the term includes all  
18       documents serving a similar function required to be filed with the secretary of  
19       state or other state office of the limited liability company's state of  
20       organization.
- 21       ~~5.~~ 4. "Board" or "board of governors" means the board of governors of a limited liability  
22       company.
- 23       ~~6.~~ 5. "Board member" means:
- 24       a. An individual serving on the board of governors in the case of a limited liability  
25       company; and
- 26       b. An individual serving on the board of directors in the case of a corporation.
- 27       7. ~~"Business continuation agreement" means a member control agreement under~~  
28       ~~section 10-32-50, or a part of a member control agreement, made before or after~~  
29       ~~the limited liability company has incurred an event of dissolution, under which the~~  
30       ~~members:~~

- 1           a. ~~Agree that, despite any dissolution, winding up and termination of the limited~~  
2            liability company as a legal entity, its business will be continued in a  
3            successor organization through a merger, transfer of assets, transfer of  
4            membership interests, or otherwise; and
- 5           b. ~~Specify the terms and conditions under which the business continuation will~~  
6            occur.
- 7           6. "Bylaws" means any rule, resolution, or other provision, regardless how  
8            designated, that:
- 9            a. Relates to the management of the business or the regulation of the affairs of  
10           the limited liability company; and
- 11           b. Was expressly part of the bylaws by the action, taken from time to time under  
12            section 10-32-68, by the board of governors or the members.
- 13       ~~8.~~ 7. "Class", when used with reference to membership interests, means a category of  
14           membership interests which differs in one or more rights or preferences from  
15           another category of membership interests of the limited liability company.
- 16       ~~9.~~ 8. "Closely held limited liability company" means a limited liability company that does  
17           not have more than thirty-five members.
- 18       ~~10.~~ 9. "Constituent organization" means a limited liability company or a domestic or  
19           foreign corporation that is a party to a merger or an exchange.
- 20       ~~11.~~ 10. "Contribution agreement" means an agreement between a person and a limited  
21           liability company under which:
- 22           a. The person agrees to make a contribution in the future; and
- 23           b. The limited liability company agrees that, at the time specified for the  
24           contribution in the future, the limited liability company will accept the  
25           contribution and reflect the contribution in the required records.
- 26       ~~12.~~ 11. "Contribution allowance agreement" means an agreement between a person and a  
27           limited liability company under which:
- 28           a. The person has the right, but not the obligation, to make a contribution in the  
29           future; and

- 1           b. The limited liability company agrees that, if the person makes the specified  
2           contribution at the time specified in the future, the limited liability company will  
3           accept the contribution and reflect the contribution in the required records.
- 4   ~~43.~~ 12. "Dissolution" means that the limited liability company ~~has~~ incurred an event under  
5           subsection 1 of section 10-32-109, subject only to sections 10-32-116 and  
6           10-32-124, that obligates the limited liability company to wind up ~~its~~ the limited  
7           liability company's affairs and to terminate ~~its~~ the limited liability company's  
8           existence as a legal entity.
- 9   ~~44.~~ 13. "Dissolution avoidance consent" means the consent of all remaining members:  
10          a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after  
11          the occurrence of any event that terminates the continued membership of a  
12          member in the limited liability company; and  
13          b. That the limited liability company must be continued as a legal entity without  
14          dissolution.
- 15   ~~45.~~ 14. "Distribution" means a direct or indirect transfer of money or other property, other  
16          than its own membership interests, with or without consideration, or an incurrence  
17          or issuance of indebtedness, by a limited liability company to any of ~~its~~ the limited  
18          liability company's members in respect of membership interests. A distribution  
19          may be in the form of an interim distribution or a termination distribution, or as  
20          consideration for the purchase, redemption, or other acquisition of its membership  
21          interests, or otherwise.
- 22   ~~46.~~ 15. "Domestic corporation" means a corporation other than a foreign corporation  
23          organized for profit and incorporated under or governed by chapter 10-19.1.
- 24   ~~47.~~ 16. "Filed with the secretary of state" means except as otherwise permitted by law or  
25          rule:  
26          a. That either of the following has been delivered to the secretary of state and  
27          has been determined by the secretary of state to conform to law:  
28               (1) A signed original or a legible facsimile ~~copy~~ telecommunication of a  
29               signed original of a request for reserved name; or

- 1                   (2) A signed original of all other documents, meeting the applicable  
2                   requirements of this chapter, together with the fees provided in section  
3                   ~~10-33-144~~ 10-32-150.
- 4                   b. That the secretary of state shall then:
- 5                   (1) Endorse on the original the word "filed" and the month, day, and year;  
6                   and
- 7                   (2) Record the document in the office of the secretary of state.
- 8   ~~18.~~ 17. "Financial rights" means a member's rights:
- 9                   a. To share in profits and losses as provided in section 10-32-36;  
10                  b. To share in distributions as provided in section 10-32-60;  
11                  c. To receive interim distributions as provided in section 10-32-61; and  
12                  d. To receive termination distributions as provided in subdivision c of  
13                  subsection 1 of section 10-32-131.
- 14   ~~19.~~ 18. "Foreign corporation" means a corporation organized for profit that is incorporated  
15                  under laws other than the laws of this state for a purpose for which a corporation  
16                  may be incorporated under chapter 10-19.1.
- 17   ~~20.~~ 19. "Foreign limited liability company" means a limited liability company organized for  
18                  profit which is organized under laws other than the laws of this state for a purpose  
19                  for which a limited liability company may be organized under this chapter.
- 20   ~~21.~~ 20. "Good faith" means honesty in fact in the conduct of the act or transaction  
21                  concerned.
- 22   ~~22.~~ 21. "Governance rights" means all of a member's rights as a member in the limited  
23                  liability company other than financial rights and the right to assign financial rights.
- 24   ~~23.~~ 22. "Governing board" means:
- 25                  a. The board of governors in the case of a limited liability company; and  
26                  b. The board of directors in the case of a corporation.
- 27   ~~24.~~ 23. "Governor" means an individual serving on the board of governors.
- 28   ~~25.~~ 24. "Intentionally" means that the person referred to either has a purpose to do or fail  
29                  to do the act or cause the result specified or believes that the act or failure to act, if  
30                  successful, will cause that result. A person "intentionally" violates a statute:

- 1 a. If the person intentionally does the act or causes the result prohibited by the  
2 statute; or
- 3 b. If the person intentionally fails to do the act or cause the result required by the  
4 statute, even though the person may not know of the existence or  
5 constitutionality of the statute or the scope or meaning of the terms used in  
6 the statute.
- 7 ~~26.~~ 25. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A  
8 person does not "know" or have "knowledge" of a fact merely because the person  
9 has reason to know of the fact.
- 10 ~~27.~~ 26. "Legal representative" means a person empowered to act for another person,  
11 including an agent, manager, officer, partner, or associate of an organization; a  
12 trustee of a trust; a personal representative; a trustee in bankruptcy; and a  
13 receiver, guardian, custodian, or conservator.
- 14 ~~28.~~ 27. "Limited liability company" means a limited liability company, other than a foreign  
15 limited liability company, organized under this chapter.
- 16 ~~29.~~ 28. "Manager" means:
- 17 a. An individual who is eighteen years of age or more and who is elected,  
18 appointed, or otherwise designated as a manager by the board of governors;  
19 and
- 20 b. An individual considered elected as a manager pursuant to section 10-32-92.
- 21 ~~30.~~ 29. "Member" means a person reflected in the required records of a limited liability  
22 company as the owner of ~~some governance rights~~ of a membership interest ~~of~~ in  
23 the limited liability company.
- 24 ~~34.~~ 30. "Membership interest" means a member's interest in a limited liability company  
25 consisting of:
- 26 a. A member's ~~interest in a limited liability company consisting of~~ a member's  
27 financial rights;
- 28 b. A member's right to assign financial rights as provided in section 10-32-31;
- 29 c. A member's governance rights, if any; and
- 30 d. A member's right to assign any governance rights owned as provided in  
31 section 10-32-32.

- 1    ~~32.~~ 31. "Notice" is given by a member of a limited liability company to the limited liability  
2                    company or a manager of a limited liability company when in writing and mailed or  
3                    delivered to the limited liability company or the manager at the registered office or  
4                    principal executive office of the limited liability company.
- 5                    a. In all other cases, notice is given to a person:
- 6                    (1) When mailed to the person at an address designated by the person or  
7                    at the ~~last known~~ last-known address of the person;
- 8                    (2) When handed to the person; or
- 9                    (3) When left at the office of the person with a clerk or other person in  
10                    charge of the office; or
- 11                    (a) If there is no one in charge, when left in a conspicuous place in  
12                    the office; or
- 13                    (b) If the office is closed or the person to be notified has no office,  
14                    when left at the dwelling house or usual place of abode of the  
15                    person with some person of suitable age and discretion who is  
16                    residing there.
- 17                    b. Notice by mail is given when deposited in the United States mail with  
18                    sufficient postage affixed.
- 19                    c. Notice is considered received when it is given.
- 20    ~~33.~~ "~~Operating agreement~~" means ~~rules, resolutions, or other provisions, regardless~~  
21                    ~~how designated, that:~~
- 22                    a. ~~Relate to the management of the business or the regulation of the affairs of~~  
23                    ~~the limited liability company; and~~
- 24                    b. ~~Have been made expressly part of the operating agreement by the action,~~  
25                    ~~taken from time to time under section 10-32-69, by the board of governors or~~  
26                    ~~the members.~~
- 27    ~~34.~~ 32. "Organization" means, whether domestic or foreign, a limited liability company,  
28                    corporation, partnership, limited partnership, limited liability partnership, joint  
29                    venture, association, business trust, estate, trust, enterprise, and any other legal or  
30                    commercial entity.
- 31    ~~35.~~ 33. "Owners" means:



- 1 a. Members in the case of a limited liability company; and
- 2 b. Shareholders in the case of a corporation.
- 3 ~~36.~~ 34. "Ownership interests" means:
- 4 a. Membership interests in the case of a limited liability company; and
- 5 b. Shares in the case of a corporation.
- 6 ~~37.~~ 35. "Parent" of a specified limited liability company means a limited liability company or
- 7 corporation that directly or indirectly owns more than fifty percent of the voting
- 8 power of the membership interests entitled to vote for governors of the specified
- 9 limited liability company.
- 10 ~~38.~~ 36. "Pertains" means a contribution "pertains":
- 11 a. To a particular series when the contribution is made in return for a
- 12 membership interest in that particular series.
- 13 b. To a particular class when the class has no series and the contribution is
- 14 made in return for a membership interest in the class.
- 15 A contribution that pertains to a series does not pertain to the class of which the
- 16 series is a part.
- 17 ~~39.~~ 37. "Principal executive office" means:
- 18 a. If the limited liability company has an elected or appointed president, an office
- 19 where the elected or appointed president of the limited liability company has
- 20 an office; or
- 21 b. If the limited liability company has no elected or appointed president, the
- 22 registered office of the limited liability company.
- 23 ~~40.~~ 38. "Registered office" means the place in this state designated in the articles as the
- 24 registered office of the limited liability company.
- 25 ~~41.~~ 39. "Related organization" means an organization that controls, is controlled by, or is
- 26 under common control with another organization with control existing if an
- 27 organization:
- 28 a. Owns, directly or indirectly, at least fifty percent of the shares, membership
- 29 interests, or other ownership interests of another organization;
- 30 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
- 31 more of the voting members of the governing body of another organization; or

- 1 c. Has the power, directly or indirectly, to direct or cause the direction of the  
2 management and policies of another organization, whether through the  
3 ownership of voting interests, by contract, or otherwise.
- 4 ~~42.~~ 40. "Required records" are those records required to be maintained under section  
5 10-32-51.
- 6 ~~43.~~ 41. "Security" has the meaning given it in subsection 13 of section 10-04-02.
- 7 ~~44.~~ 42. "Series" means a category of membership interests, within a class of membership  
8 interests, that has some of the same rights and preferences as other membership  
9 interests within the same class, but that differ in one or more rights and  
10 preferences from another category of membership interests within that class.
- 11 ~~45.~~ 43. "Signed" means ~~that~~ the signature of a person has been placed on a document, as  
12 provided in subsection 39 of section 41-01-11, and, with respect to a document:
- 13 a. Required by this chapter to be filed with the secretary of state, means ~~that~~ the  
14 document has been signed by a person authorized to do so by this chapter,  
15 the articles of organization, a member-control agreement, or ~~operating~~  
16 ~~agreement~~ the bylaws or a resolution approved by the ~~affirmative vote of the~~  
17 ~~required proportion or number of~~ governors as required by section 10-32-83  
18 or the members as required ~~proportion of the voting power of membership~~  
19 ~~interests present and entitled to vote~~ by section 10-32-42; and
- 20 b. Not required by this chapter to be filed with the secretary of state, the  
21 signature may be a facsimile affixed, engraved, printed, placed, stamped with  
22 indelible ink, transmitted by facsimile telecommunication or electronically, or  
23 in any other manner reproduced on the document.
- 24 ~~46.~~ 44. "Subsidiary" of a specified limited liability company means:
- 25 a. A limited liability company having more than fifty percent of the voting power  
26 of its membership interests entitled to vote for governors owned directly or  
27 indirectly by the specified limited liability company; or
- 28 b. A corporation having more than fifty percent of the voting power of its shares  
29 entitled to vote for directors owned directly or indirectly by the specified  
30 limited liability company.

1 ~~47.~~ 45. "Successor organization" means an organization that, pursuant to a business  
2 continuation agreement or an order of the court under subsection 6 of section  
3 10-32-119, continues the business of the dissolved and terminated limited liability  
4 company.

5 ~~48.~~ 46. "Surviving organization" means the foreign or domestic limited liability company or  
6 domestic or foreign corporation resulting from a merger.

7 ~~49.~~ 47. "Termination" means the end of a limited liability company's existence as a legal  
8 entity and occurs when a notice of termination is:

9 a. Filed with the secretary of state under section 10-32-117 together with the  
10 fees provided in section 10-32-150; or

11 b. Is considered filed with the secretary of state under subdivision c of  
12 subsection 2 of section 10-32-106 together with the fees provided in section  
13 10-32-150.

14 ~~50.~~ 48. "Vote" includes authorization by written action.

15 ~~54.~~ 49. "Winding up" means the period triggered by dissolution during which the limited  
16 liability company ceases to carry on ~~its~~ business, except to the extent necessary  
17 for concluding ~~its~~ affairs, and ~~disposes~~ disposing of ~~its~~ assets under section  
18 10-32-131.

19 ~~52.~~ 50. "Written action" means a written document signed by ~~all of the persons~~ every  
20 person required to take the action described. ~~The term also means~~ and the  
21 counterparts of a written document signed by any ~~of the persons~~ person taking the  
22 action described. Each counterpart constitutes the action of the persons signing it,  
23 and all the counterparts, taken together, constitute one written action by all of the  
24 persons signing them.

25 **SECTION 50. AMENDMENT.** Section 10-32-06 of the 1997 Supplement to the North  
26 Dakota Century Code is amended and reenacted as follows:

27 **10-32-06. ~~Two-member requirement~~ Number of members required.** ~~Unless~~  
28 ~~otherwise provided in the articles of organization, a~~ A limited liability company must have ~~two~~  
29 one or more members ~~at the time of its formation. Unless a one-member limited liability~~  
30 ~~company is authorized in the articles of organization, a limited liability company must be~~  
31 ~~dissolved under subdivision c of subsection 1 of section 10-32-109 whenever the limited liability~~

1 ~~company ceases to have at least two members unless the remaining member admits a new~~  
2 ~~member within ninety days of the termination of the continued membership of the former~~  
3 ~~member.~~

4 **SECTION 51. AMENDMENT.** Section 10-32-07 of the 1997 Supplement to the North  
5 Dakota Century Code is amended and reenacted as follows:

6 **10-32-07. Articles of organization.**

- 7 1. The articles of organization must contain:
- 8 a. The name of the limited liability company;
  - 9 ~~b. The address of the principal executive office;~~
  - 10 e. The address of the registered office of the limited liability company and the  
11 name of ~~its~~ the limited liability company's registered agent at that address;
  - 12 ~~c.~~ c. The name and address of each organizer;
  - 13 ~~e.~~ d. The effective date of organization:
    - 14 (1) If a later date than that on which the certificate of
    - 15 organization is issued by the secretary of state; and
    - 16 (2) Which may not be later than ninety days after the date on which the
    - 17 certificate of organization is issued; and
  - 18 ~~f.~~ e. A If the articles of organization are filed with the secretary of state:
    - 19 (1) Before July 1, 1999, a statement stating in years that the ~~limited~~ period  
20 of existence for the limited liability company must be a period of thirty  
21 years ~~or less~~ from the date the articles of organization are filed with the  
22 secretary of state, unless the articles of organization expressly  
23 authorize a shorter or longer period of duration; which may be  
24 perpetual.
    - 25 (2) After June 30, 1999, a statement stating in years the period of  
26 existence of the limited liability company, if other than perpetual.
  - 27 ~~g. A statement as to whether upon the occurrence of any event under~~  
28 ~~subdivision e of subsection 1 of section 10-32-109 that terminates the~~  
29 ~~continued membership of a member in the limited liability company, the~~  
30 ~~remaining members will have the power to avoid dissolution by giving~~  
31 ~~dissolution avoidance consent;~~

- 1           h. ~~A statement as to whether the members have the power to enter into a~~  
2           ~~business continuation agreement; and~~
- 3           i. ~~A statement as to whether fewer than two members shall be permitted.~~
- 4           2. The following provisions govern a limited liability company unless modified in the  
5           articles of organization or a ~~member-central~~ member-control agreement under  
6           section 10-32-50:
- 7           a. A limited liability company has general business purposes as provided in  
8           section 10-32-04;
- 9           b. A limited liability company has certain powers as provided in section  
10           10-32-23;
- 11           c. The power to adopt, amend, or repeal the ~~operating agreement~~ bylaws is  
12           vested in the board of governors as provided in section 10-32-68;
- 13           d. A limited liability company must allow cumulative voting for governors as  
14           provided in section 10-32-76;
- 15           e. The affirmative vote of the greater of a majority of governors present ~~or a~~  
16           majority of the minimum number of governors constituting a quorum is  
17           required for an action of the board of governors as provided in section  
18           10-32-83;
- 19           f. A written action by the board of governors taken without a meeting must be  
20           signed by all governors as provided in section 10-32-84;
- 21           g. The board may accept contributions, make contribution agreements, and  
22           make contribution allowance agreements as provided in subsection 1 of  
23           section 10-32-56 and sections 10-32-58 and 10-32-59;
- 24           h. All membership interests are ordinary membership interests entitled to vote  
25           and are of one class with no series as provided in subdivisions a and b of  
26           subsection 5 of section 10-32-56;
- 27           i. All membership interests have equal rights and preferences in all matters not  
28           otherwise provided for by the board of governors as provided in subdivision b  
29           of subsection 5 of section 10-32-56;

- 1           j.    The ~~restatement of~~ value of previous contributions ~~is to~~ must be determined  
2           according to a specified process restated when a new contribution is  
3           accepted as provided in subsections 3 and 4 of section 10-32-57;
- 4           k.    A member has certain preemptive rights, unless otherwise provided by the  
5           board of governors as provided in section 10-32-37;
- 6           l.    The affirmative vote of the greater of the owners of a majority of the voting  
7           power of the membership interests present and entitled to vote at a duly held  
8           meeting or a majority of the voting power of the membership interests with  
9           voting rights constituting the minimum voting power needed for a quorum for  
10          the transaction of business is required for an action of the members, except  
11          ~~where~~ if this chapter requires the affirmative vote of a majority of the voting  
12          power of all membership interests entitled, to vote as provided in subsection 1  
13          of section ~~10-32-43~~ 10-32-42;
- 14          m.    The voting power of each membership interest is in proportion to the value  
15          reflected in the required records of the contributions of the members as  
16          provided in section ~~10-32-45~~ 10-32-40.1;
- 17          n.    Members share in distributions in proportion to the value reflected in the  
18          required records of the contributions of members as provided in section  
19          10-32-60;
- 20          o.    Members share profits and losses in proportion to the value reflected in the  
21          required records of the contributions of members as provided in section  
22          10-32-36;
- 23          p.    A written action by the members taken without a meeting must be signed by  
24          all members as provided in section 10-32-43;
- 25          q.    Members have no right to receive distributions in kind and the limited liability  
26          company has only limited rights to make distributions in kind as provided in  
27          section 10-32-62;
- 28          r.    A member is not subject to expulsion as provided in subsection 2 of section  
29          10-32-30;

- 1 s. Unanimous consent is required for the transfer of governance rights to a  
2 person not already a member as provided in subsection 2 of section  
3 10-32-32;
- 4 t. Unanimous consent is required to avoid dissolution as provided in  
5 subdivision e of subsection 1 of section 10-32-109; ~~and~~
- 6 u. ~~A limited liability company dissolves upon an occurrence of an event that~~  
7 ~~terminates the continued membership of any member as provided in~~  
8 ~~subsection 1 of section 10-32-109. The termination of a person's~~  
9 ~~membership interest has specified consequences as provided in section~~  
10 ~~10-32-30; and~~
- 11 v. Restrictions apply to the assignment of governance rights as provided in  
12 section 10-32-32.
- 13 3. The following provisions govern a limited liability company unless modified ~~either~~ in  
14 the articles of organization, a ~~member-control~~ member-control agreement under  
15 section 10-32-50, or in the ~~operating agreement~~ bylaws:
- 16 a. Governors serve for an indefinite term that expires at the next regular meeting  
17 of members as provided in section 10-32-72;
- 18 b. The compensation of governors is fixed by the board of governors as  
19 provided in section 10-32-74;
- 20 c. A certain method must be used for removal of governors as provided in  
21 section 10-32-78;
- 22 d. A certain method must be used for filling board of governor vacancies as  
23 provided in section 10-32-79;
- 24 e. If the board of governors fails to select a place for a board meeting, it must be  
25 held at the principal executive office as provided in subsection 1 of section  
26 10-32-80;
- 27 f. The notice of a board of governors meeting need not state the purpose of the  
28 meeting as provided in subsection 3 of section 10-32-80;
- 29 g. A majority of the board of governors is a quorum for a board meeting as  
30 provided in section 10-32-82;

- 1 h. A committee consists of one or more individuals, who need not be governors,  
2 appointed by affirmative vote of a majority of the governors present as  
3 provided in subsection 2 of section 10-32-85;
- 4 i. The board may establish a special litigation committee as provided in section  
5 10-32-85;
- 6 j. The president and treasurer have specified duties, until the board of  
7 governors determines otherwise as provided in section 10-32-89;
- 8 k. Managers may delegate some or all of their duties and powers, if not  
9 prohibited by the board of governors from doing so as provided in section  
10 10-32-95;
- 11 l. Regular meetings of members need not be held, unless demanded by a  
12 member under certain conditions as provided in section 10-32-38;
- 13 m. In all instances where a specific minimum notice period has not otherwise  
14 been fixed by law, not less than ten days' notice is required for a meeting of  
15 members as provided in subsection 2 of section 10-32-40;
- 16 n. For a quorum at a members' meeting there is required a majority of the voting  
17 power of the membership interests entitled to vote at the meeting as provided  
18 in section 10-32-44;
- 19 o. The board of governors may fix a date up to fifty days before the date of a  
20 members' meeting as the date for the determination of the members entitled  
21 to notice of and entitled to vote at the meeting as provided in ~~subsection 1 of~~  
22 ~~section 10-32-45~~ 10-32-40.1;
- 23 p. Indemnification of certain persons is required as provided in section 10-32-99;
- 24 q. The board of governors may authorize, and the limited liability company may  
25 make, distributions not prohibited, limited, or restricted by an agreement as  
26 provided in subsection 1 of section 10-32-64; and
- 27 r. Members have no right to interim distributions except as provided through the  
28 ~~operating agreement~~ bylaws or an act of the board of governors as provided  
29 in section 10-32-61.
- 30 4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of  
31 organization or a member-control agreement under section 10-32-50. The



1 following provisions relating to the management of the business or the regulation  
2 of the affairs of a limited liability company in subdivisions b to f, h, i, j, k, l, m, n,  
3 and q may be included either in the articles of organization, in a member-central  
4 member-control agreement under section 10-32-50, or, except for naming persons  
5 to serve as the first board of governors, fixing a greater than majority governor or  
6 member vote, establishing the rights and priorities for distributions and the rights to  
7 share in profits and losses, or giving or prescribing the manner of giving voting  
8 rights to persons other than members otherwise than pursuant to the articles of  
9 organization, or eliminating or limiting a governor's personal liability, in the  
10 operating agreement bylaws:

- 11 a. The persons to serve as the first board of governors may be named in the  
12 articles of organization as provided in subsection 1 of section 10-32-69;
- 13 b. A manner for increasing or decreasing the number of governors may be  
14 provided as provided in section 10-32-70;
- 15 c. Additional qualifications for governors may be imposed as provided in section  
16 10-32-71;
- 17 d. Governors may be classified as provided in section 10-32-75;
- 18 e. The date, time, and place of board of governors meetings may be fixed as  
19 provided in subsection 1 of section 10-32-80;
- 20 f. Absent governors may be permitted to give written consent or opposition to a  
21 proposal as provided in section 10-32-81;
- 22 g. A larger than majority vote may be required for board of governor action as  
23 provided in section 10-32-83;
- 24 h. Authority to sign and deliver certain documents may be delegated to a  
25 manager or agent of the limited liability company other than the president as  
26 provided in section 10-32-89;
- 27 i. Additional managers may be designated as provided in section 10-32-88;
- 28 j. Additional powers, rights, duties, and responsibilities may be given to  
29 managers as provided in section 10-32-89;
- 30 k. A method for filling vacant offices may be specified as provided in  
31 subsection 3 of section 10-32-94;

- 1           l.    The date, time, and place of regular member meetings may be fixed as  
2                    provided in subsection 3 of section 10-32-38;
- 3           m.   Certain persons may be authorized to call special meetings of members as  
4                    provided in subsection 1 of section 10-32-39;
- 5           n.    Notices of member meetings may be required to contain certain information  
6                    as provided in subsection 3 of section 10-32-40;
- 7           o.    A larger than majority vote may be required for member action as provided in  
8                    section 10-32-42;
- 9           p.    Voting rights may be granted in or pursuant to the articles of organization to  
10                   persons who are not members as provided in subsection 3 of section  
11                   ~~40-32-45~~ 10-32-40.1;
- 12           q.    Limited liability company actions giving rise to dissenter rights may be  
13                    designated as provided in subdivision d of subsection 1 of section 10-32-55;  
14                    and
- 15           r.    A governor's personal liability to the limited liability company or ~~its~~ the limited  
16                    liability company's members for monetary damages for breach of fiduciary  
17                    duty as a governor may be eliminated or limited in the articles as provided in  
18                    subsection 4 of section 10-32-86.
- 19        5.    Subsection 4 does not limit the right of the board, by resolution, to take an action  
20            the bylaws may authorize under this subsection without including the authorization  
21            in the bylaws, unless the authorization is required to be included in the bylaws by  
22            another provision of this chapter.
- 23        6.   The articles of organization may contain other provisions not inconsistent with law  
24                    relating to the management of the business or the regulation of the affairs of the  
25                    limited liability company.
- 26        ~~6.~~ 7.   It is not necessary to set forth in the articles of organization any of the limited  
27                    liability company powers granted by this chapter.

28           **SECTION 52. AMENDMENT.** Subsection 1 of section 10-32-10 of the 1997

29 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 30           1.    The limited liability company name:

- 1           a. Must be in the English language or in any other language expressed in  
2           English letters or characters;
- 3           b. Must contain the words "limited liability company", or must contain the  
4           abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation  
5           may be used interchangeably for all purposes authorized by this chapter  
6           including real estate matters, contracts, and filings with the secretary of state;
- 7           c. May not contain a word or phrase that indicates or implies that it may not be  
8           organized under this chapter;
- 9           d. May not contain the word "corporation" ~~or~~, "incorporated" ~~and may not~~  
10          ~~contain the~~, "limited partnership", "limited liability partnership", "limited liability  
11          limited partnership", or any abbreviation of ~~either or both of~~ these words;
- 12          e. May not contain a word or phrase that indicates or implies that it is organized  
13          for a purpose other than a legal business purpose for which a limited liability  
14          company may be organized under this chapter; and
- 15          f. May not be the same as, or deceptively similar to:
- 16           (1) The name, whether foreign and authorized to do business in this state;  
17           or domestic, unless there is filed with the articles a document which  
18           complies with subsection ~~2~~ 3 of this section, of:
- 19           (a) Another limited liability company;
- 20           (b) A corporation;
- 21           (c) A limited partnership; ~~or~~
- 22           (d) A limited liability partnership; or
- 23           (e) A limited liability limited partnership;
- 24           (2) A name, the right of which is, at the time of organization, reserved in  
25           the manner provided in section 10-19.1-14, 10-32-11, 10-33-11,  
26           45-10.1-03, or 45-22-05;
- 27           (3) A fictitious name registered in the manner provided in chapter 45-11; or
- 28           (4) A trade name registered in the manner provided in chapter 47-25.

29           **SECTION 53. AMENDMENT.** Subsection 5 of section 10-32-11 of the 1997

30 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1           5. The secretary of state may accept for filing a legible facsimile ~~copy~~  
2           telecommunication of the signed original of any request for reserved name.

3           **SECTION 54.** A new subsection to section 10-32-13 of the 1997 Supplement to the  
4 North Dakota Century Code is created and enacted as follows:

5           The fee prescribed in section 10-32-150 for change of address of registered office  
6           must be refunded when the secretary of state determines a change of address of  
7           registered office results from rezoning or postal reassignment.

8           **SECTION 55. AMENDMENT.** Section 10-32-17 of the 1997 Supplement to the North  
9 Dakota Century Code is amended and reenacted as follows:

10           **10-32-17. Class or series voting on amendments.** The owners of the outstanding  
11 membership interests of a class or series are entitled to vote as a class or series upon a  
12 proposed amendment to the articles of organization, whether or not entitled to vote on the  
13 amendment by the provisions of the articles of organization, if the amendment would:

- 14           1. Effect an exchange, reclassification, or cancellation of all or part of the  
15           membership interests of the class or series;
- 16           2. Effect an exchange, or create a right of exchange, of all or any part of the  
17           membership interests of another class or series for the membership interests of  
18           the class or series;
- 19           3. Change the rights or preferences of the membership interests of the class or  
20           series;
- 21           4. Change the membership interests of the class or series into the same or a different  
22           number of membership interests of another class or series;
- 23           5. Create a new class or series of membership interests having rights and  
24           preferences prior and superior to the membership interests of that class or series,  
25           or increase the rights and preferences or the number of membership interests, of a  
26           class or series having rights and preferences prior or superior to the membership  
27           interests of that class or series;
- 28           6. Divide the membership interests of the class into series and determine the  
29           designation of each series and the variations in the relative rights and preferences  
30           between the membership interests of each series or authorize the board of  
31           governors to do so;

- 1           7.    Limit or deny any existing preemptive rights of the membership interests of the  
2                    class or series; or  
3           8.    Cancel or otherwise affect distributions on the membership interests of the class or  
4                    series.

5           **SECTION 56. AMENDMENT.** Section 10-32-22 of the 1997 Supplement to the North  
6 Dakota Century Code is amended and reenacted as follows:

7           **10-32-22. Amendment of articles of organization in court-supervised**  
8 **reorganization.**

- 9           1.    Whenever a plan of reorganization of a limited liability company has been  
10                   confirmed by decree or order of a court of competent jurisdiction in proceedings for  
11                   the reorganization of the limited liability company, pursuant to the provisions of any  
12                   applicable statute of the United States relating to reorganization of limited liability  
13                   companies, the articles may be amended, in the manner provided in this section, in  
14                   as many respects as may be necessary to carry out the plan and to put it into  
15                   effect, so long as the articles as amended contain only provisions which might be  
16                   lawfully contained in original articles of organization at the time of making the  
17                   amendment. In particular, and without limitation upon any general power of  
18                   amendment, the articles may be amended to:
- 19           a.    Change the limited liability company name, period of duration, or  
20                   organizational purposes of the limited liability company.
- 21           b.    Repeal, alter, or amend the ~~operating agreement~~ bylaws of the limited liability  
22                   company.
- 23           c.    Change the preferences, limitations, relative rights in respect of all or any part  
24                   of the membership interests of the limited liability company, and classify,  
25                   reclassify, or cancel all or any part thereof.
- 26           d.    Authorize the issuance of bonds, debentures, or other obligations of the  
27                   limited liability company, whether convertible into membership interests of any  
28                   class or bearing warrants or other evidence of optional rights to purchase or  
29                   subscribe for membership interests of any class, and fix the terms and  
30                   conditions thereof.

- 1 e. Constitute or reconstitute and classify or reclassify the board of governors  
2 and appoint governors and managers in place of or in addition to all or any of  
3 the governors or managers then in office.
- 4 2. Amendments to the articles pursuant to subsection 1 must be made in the  
5 following manner:
- 6 a. Articles of amendment approved by decree or order of the court must be  
7 ~~executed~~ signed and verified in duplicate by the person or persons  
8 designated or appointed by the court for that purpose and must set forth the  
9 name of the limited liability company, the amendments of the articles  
10 approved by the court, the date of the decree or order approving the articles  
11 of amendment, the title of the proceedings in which the decree or order was  
12 entered by a court having jurisdiction of the proceedings for the  
13 reorganization of the limited liability company pursuant to the provisions of an  
14 applicable statute of the United States.
- 15 b. An original of the articles of amendment must be filed with the secretary of  
16 state. If the secretary of state finds that the articles of amendment conform to  
17 law, and that all fees have been paid as provided in section 10-32-150, then  
18 the articles of amendment must be recorded in the office of the secretary of  
19 state.
- 20 3. The articles of amendment become effective upon their acceptance by the  
21 secretary of state or at any other time within thirty days after their acceptance if the  
22 articles of amendment so provide.
- 23 4. The articles are deemed to be amended accordingly, without any action by the  
24 governors or members of the limited liability company and with the same effect as  
25 if the amendment had been adopted by the unanimous action of the governors and  
26 members.

27 **SECTION 57. AMENDMENT.** Section 10-32-23 of the 1997 Supplement to the North  
28 Dakota Century Code is amended and reenacted as follows:

29 **10-32-23. General powers.**

- 1           1. A limited liability company has the powers set forth in this section, subject to any  
2           limitations provided in any other statute of this state or in its articles of  
3           organization.
- 4           2. A limited liability company with articles of organization filed with the secretary of  
5           state:
  - 6           a. Before July 1, 1999, has a ~~limited~~ duration of thirty years from the date the  
7           articles of organization are filed with the secretary of state, unless the articles  
8           of organization state a shorter or longer duration, which may be perpetual.
  - 9           b. After June 30, 1999, has perpetual duration.
- 10          3. A limited liability company may sue and be sued, and complain, defend, and  
11          participate as a party or otherwise in any legal, administrative, or arbitration  
12          proceeding in its limited liability company name.
- 13          4. A limited liability company may purchase, lease, or otherwise acquire, own, hold,  
14          improve, use, and otherwise deal in and with real or personal property, or any  
15          interest in property, wherever situated.
- 16          5. A limited liability company may sell, convey, mortgage, create a security interest in,  
17          encumber, assign, lease, exchange, transfer, or otherwise dispose of all or any  
18          part of its real or personal property, or any interest in this property, wherever  
19          situated.
- 20          6. A limited liability company may purchase, subscribe for, or otherwise acquire, own,  
21          hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest  
22          in, or otherwise dispose of, use and deal in and with, securities or other interests  
23          in, or obligations of, a person or direct or indirect obligations of any domestic or  
24          foreign government or instrumentality.
- 25          7. A limited liability company may make contracts and incur liabilities, borrow money,  
26          and secure any of its obligations by mortgage of or creation of a security interest in  
27          or other encumbrance or assignment of all or any of its property, franchises, and  
28          income.
- 29          8. A limited liability company may invest and reinvest its funds.

- 1           9.    A limited liability company may take and hold real and personal property, whether  
2                    or not of a kind sold or otherwise dealt in by the limited liability company, as  
3                    security for the payment of money loaned, advanced, or invested.
- 4           10.   A limited liability company may conduct its business, carry on its operations, have  
5                    offices, and exercise the powers granted by this chapter anywhere in the universe.
- 6           11.    Except as otherwise prohibited by law, a limited liability company may make  
7                    donations, irrespective of limited liability company benefit, for:
- 8                    a.    The public welfare;
- 9                    b.    Social, community, charitable, religious, educational, scientific, civic, literary,  
10                    and testing for public safety purposes and for similar or related purposes;
- 11                  c.    The purpose of fostering national or international amateur sports competition;  
12                    and
- 13                  d.    The prevention of cruelty to children and animals.
- 14           12.    A limited liability company may pay pensions, retirement allowances, and  
15                    compensation for past services and establish employee or incentive benefit plans,  
16                    trusts, and provisions for the benefit of its and its related organizations' officers,  
17                    managers, directors, governors, employees, and agents and, in the case of a  
18                    related organization that is a limited liability company, members who provide  
19                    services to the limited liability company, and the families, dependents, and  
20                    beneficiaries of any of them. It may indemnify and purchase and maintain  
21                    insurance for a fiduciary of any of these employee benefit and incentive plans,  
22                    trusts, and provisions.
- 23           13.    A limited liability company may participate in any capacity in the promotion,  
24                    organization, ownership, management, and operation of any organization or in any  
25                    transaction, undertaking, or arrangement that the participating limited liability  
26                    company would have power to conduct by itself, whether or not the participation  
27                    involves sharing or delegation of control.
- 28           14.    A limited liability company may provide for its benefit life insurance and other  
29                    insurance with respect to the services of its members, managers, governors,  
30                    employees, and agents, or on the life of a member for the purpose of acquiring at



- 1 the death of the member any or all membership interests in the limited liability  
2 company owned by the member.
- 3 15. A limited liability company may have, alter at its pleasure, and use a limited liability  
4 company seal as provided in section 10-32-24.
- 5 16. A limited liability company may adopt, amend, and repeal ~~an operating agreement~~  
6 the bylaws relating to the management of the business or the regulation of the  
7 affairs of the limited liability company as provided in section 10-32-68.
- 8 17. A limited liability company may establish committees of the board of governors,  
9 elect or appoint persons to the committees, and define their duties as provided in  
10 section 10-32-85 and fix their compensation.
- 11 18. A limited liability company may elect or appoint managers, employees, and agents  
12 of the limited liability company and define their duties and fix their compensation.
- 13 19. A limited liability company may accept contributions under section 10-32-56 and  
14 may enter into contribution agreements under section 10-32-58 and contribution  
15 allowance agreements under section 10-32-59.
- 16 20. A limited liability company may lend money to, guarantee an obligation of, become  
17 a surety for, or otherwise financially assist persons as provided in section  
18 10-32-97.
- 19 21. A limited liability company may make advances as provided in section 10-32-98.
- 20 22. A limited liability company shall indemnify those persons against certain expenses  
21 and liabilities only as provided in section 10-32-99.
- 22 23. A limited liability company may conduct all or part of its business under one or  
23 more trade names.
- 24 24. A limited liability company may acquire an ownership interest in another  
25 organization.
- 26 25. A limited liability company may have and exercise all other powers necessary or  
27 convenient to effect any or all of the business purposes for which the limited  
28 liability company is organized.

29 **SECTION 58. AMENDMENT.** Section 10-32-28 of the 1997 Supplement to the North  
30 Dakota Century Code is amended and reenacted as follows:

31 **10-32-28. Nature of a membership interest and statement of interest owned.**

- 1           1. A membership interest is personal property. A member has no interest in specific  
2           limited liability company property. All property of the limited liability company is  
3           property of the limited liability company itself.
- 4           2. At the request of any member, the limited liability company shall state in writing the  
5           particular membership interest owned by that member as of the moment the  
6           limited liability company makes the statement.
- 7           a. The statement must describe the member's right to vote, if any, to share in  
8           profits and losses, and to share in distributions, restrictions on assignments of  
9           financial rights under subsection 3 of section 10-32-31, or governance rights  
10          under subsection 6 of section 10-32-32, then in effect, as well as any  
11          assignment of the member's rights then in effect other than a security interest.
- 12          b. ~~The statement is not a certificated security, is not a negotiable instrument,~~  
13          ~~and may not serve as a vehicle by which a transfer of any membership~~  
14          ~~interest may be effected.~~
- 15          3. ~~Notwithstanding any other provision of law, for~~ For the purpose of any law relating  
16          to security interests, a membership interest, governance rights, and financial rights  
17          are each ~~a general intangible, as defined in section 41-09-06, and not a certificated~~  
18          ~~security as defined in section 41-08-02, an uncertificated security as defined in~~  
19          ~~section 41-08-02, chattel paper as defined in section 41-09-05, an instrument as~~  
20          ~~defined in section 41-09-05, or an account as defined in section 41-09-06~~ to be  
21          characterized as provided in subsection 3 of section 41-08-03.

22           **SECTION 59. AMENDMENT.** Section 10-32-30 of the North Dakota Century Code is  
23 amended and reenacted as follows:

24           **10-32-30. Termination of a membership interest.**

- 25           1. The continued membership of a member in a limited liability company is terminated  
26           by:
- 27           a. The member's death;
- 28           b. The member's retirement;
- 29           c. The member's resignation;
- 30           d. The redemption of the member's complete membership interest;

- 1           e. An assignment of the member's governance rights under section 10-32-32  
2           which leaves the assignor with no governance rights;
- 3           f. A buyout of a member's membership interest under section 10-32-119 which  
4           leaves that member with no governance rights;
- 5           g. The member's expulsion;
- 6           h. The member's bankruptcy;
- 7           i. The dissolution of a member that is an organization; or
- 8           j. The occurrence of any other event terminating the continued membership of a  
9           member in the limited liability company.
- 10        2. A member always has the power, though not necessarily the right, to terminate ~~its~~  
11        ~~the member's~~ membership by resigning or retiring at any time. ~~A member's~~  
12        ~~resignation or retirement, whether rightful or wrongful, causes dissolution under~~  
13        ~~subdivision e of subsection 1 of section 10-32-109 unless dissolution is avoided~~  
14        ~~under that subdivision. A member has no power to transfer all or part of the~~  
15        ~~member's membership interest, except as provided in sections 10-32-31 and~~  
16        ~~10-32-32.~~
- 17        ~~2.~~ 3. Unless otherwise provided in the articles of organization or in a member-control  
18        agreement, a member may not be expelled.
- 19        ~~3.~~ 4. If for any reason the continued membership of a member is terminated and:  
20        a. ~~If dissolution under subdivision e of subsection 1 of section 10-32-109 is~~  
21        ~~avoided under that subdivision~~ the termination does not result in the  
22        dissolution of the limited liability company, then subject to the articles of  
23        organization and any member-control agreement, the member whose  
24        membership has terminated loses all governance rights and will be  
25        considered merely an assignee of the financial rights owned before the  
26        termination of membership; or
- 27        b. ~~If dissolution under subdivision e of subsection 1 of section 10-32-109 is not~~  
28        ~~avoided under that subdivision~~ the termination does result in the dissolution of  
29        the limited liability company, subject to the articles of organization and any  
30        member-control agreement, the member whose continued membership has  
31        terminated retains all governance rights and financial rights owned before the

1                    termination of the membership and may exercise those rights through the  
2                    winding up and termination of the limited liability company.

3        4. ~~5.~~ If a member resigns or retires in contravention of the articles of organization or a  
4                    member-control agreement, ~~then:~~

5                    a. ~~If dissolution avoidance consent is obtained,~~ the member who has wrongfully  
6                    resigned or retired is liable to the limited liability company to the extent  
7                    damaged by the wrongful resignation or retirement; ~~and~~

8                    b. ~~If dissolution avoidance consent is not obtained, section 10-32-131 applies.~~

9                    **SECTION 60. AMENDMENT.** Section 10-32-31 of the 1997 Supplement to the North  
10                    Dakota Century Code is amended and reenacted as follows:

11                    **10-32-31. Assignment of financial rights.**

12                    1. Except as provided in subsection 3, a member's financial rights are transferable in  
13                    whole or in part.

14                    2. An assignment of a member's financial rights entitles the assignee to receive, to  
15                    the extent assigned, only the share of profits and losses and the distributions to  
16                    which the assignor would otherwise be entitled.

17                    a. An assignment of a member's financial rights does not dissolve the limited  
18                    liability company and does not entitle or empower the assignee to become a  
19                    member, to exercise any governance rights, to receive any notices from the  
20                    limited liability company, or to cause dissolution.

21                    b. The assignment may not allow the assignee to control the member's exercise  
22                    of governance rights.

23                    3. A restriction on the assignment of financial rights may be imposed in the articles, in  
24                    a member-control agreement, in the ~~operating agreement~~ bylaws, by a resolution  
25                    adopted by the members, or by an agreement among or other written action by  
26                    members or among them and the limited liability company. A restriction is not  
27                    binding with respect to financial rights reflected in the required records before the  
28                    adoption of the restriction, unless the owners of those financial rights are parties to  
29                    the agreement or voted in favor of the restriction.

30                    4. Subject to subsection 5, a written restriction on the assignment of financial rights  
31                    that is not manifestly unreasonable under the circumstances and is noted

1 conspicuously in the required records may be enforced against the owner of the  
2 restricted financial rights or a successor or transferee of the owner, including a  
3 pledgee or a legal representative. Unless noted conspicuously in the required  
4 records, a restriction, even though permitted by this section, is ineffective against a  
5 person without knowledge of the restriction.

6 5. With regard to restrictions on the assignment of financial rights, a would-be  
7 assignee of financial rights is entitled to rely on a statement of membership interest  
8 issued by the limited liability company under section 10-32-28. A restriction on the  
9 assignment of financial rights, which is otherwise valid and in effect at the time of  
10 the issuance of a statement of membership interest but which is not reflected in  
11 that statement, is ineffective against an assignee who takes an assignment in  
12 reliance on the statement.

13 6. Notwithstanding any provision of law, articles of organization, member-control  
14 agreement, ~~operating agreement~~ bylaws, other agreement, resolution, or action to  
15 the contrary, a security interest in a member's financial rights may be foreclosed  
16 and otherwise enforced, and a secured party may assign a member's financial  
17 rights in accordance with title 41 without the consent or approval of a member  
18 whose financial rights are subject to the security interest.

19 **SECTION 61. AMENDMENT.** Section 10-32-32 of the 1997 Supplement to the North  
20 Dakota Century Code is amended and reenacted as follows:

21 **10-32-32. Assignment of governance rights.**

22 1. A member's governance rights are assignable, in whole or in part, only as provided  
23 in this section.

24 2. Subject to subsection 6, a member may, without the consent of any other member,  
25 assign governance rights, in whole or in part, to another person already a member  
26 at the time of the assignment.

27 a. Except as otherwise provided in the articles of organization or a  
28 member-control agreement, any other assignment of any governance rights is  
29 effective only if all the members, other than the member seeking to make the  
30 assignment, approve the assignment by unanimous written consent.

- 1           b. ~~Subject to subsection 6, a member may grant a security interest in a complete~~  
2           ~~membership interest or governance rights without obtaining the consent~~  
3           ~~required by this subsection.~~
- 4           (1) ~~However, a secured party may not take or assign ownership of~~  
5           ~~governance rights without first obtaining the consent required by this~~  
6           ~~subsection.~~
- 7           (2) ~~If a secured party has a security interest in both a member's financial~~  
8           ~~rights and governance rights, including a security interest in a complete~~  
9           ~~membership interest, this subsection's requirement that the secured~~  
10          ~~party obtain consent applies only to taking or assigning ownership of~~  
11          ~~the governance rights and does not apply to taking or assigning~~  
12          ~~ownership of the financial rights.~~
- 13          3. When an assignment of governance rights is effective under subsection 2:
- 14           a. If the assignment is not a security interest, the assignee becomes a member,  
15           if not already a member; and
- 16           b. If the assignor does not retain any governance rights, the assignor ceases to  
17           be a member, ~~and the written consent required under subsection 2, also~~  
18           ~~constitutes the dissolution avoidance consent necessary to avoid dissolution~~  
19           ~~that would otherwise ensue under subdivision e of subsection 1 of section~~  
20           ~~10-32-109 on account of the assignor ceasing to be a member if the consent~~  
21           ~~required to avoid dissolution is not greater than the consent required under~~  
22           ~~subsection 2.~~
- 23          4. When an assignment other than a security interest is effective under subsection 2,  
24          unless the written consent under subsection 2 otherwise provides:
- 25           a. The assignee is liable in proportion to the interest assigned for the obligations  
26           of the assignor under section 10-32-56, including liability for unperformed  
27           promises that have been reflected as contributions in the required records,  
28           and section 10-32-65 existing at the time of transfer, except to the extent that,  
29           at the time the assignee became a member, the liability was unknown to the  
30           assignee, and could not be ascertained from the required records; and

- 1           b. The assignor is not released from liability to the limited liability company for  
2           obligations of the assignor existing at the time of transfer under sections  
3           10-32-56 and 10-32-65.
- 4           5. If any purported or attempted assignment of governance rights is ineffective for  
5           failure to obtain the consent required in subsection 2:
- 6           a. The purported or attempted assignment is ineffective in its entirety; and  
7           b. Any assignment of financial rights that accompanied the purported or  
8           attempted assignment of governance rights is void.
- 9           6. Restrictions on the transfer of governance rights may be imposed following the  
10          same procedures and under the same conditions as stated in subsections 3 and 4  
11          of section 10-32-31 for restricting the transfer of financial rights.
- 12          7. Subject to subsection 6, a member may grant a security interest in a complete  
13          membership interest or governance rights without obtaining the consent required  
14          by this subsection. However, a secured party may not take or assign ownership of  
15          governance rights without first obtaining the consent required by this subsection. If  
16          a secured party has a security interest in a member's financial rights and  
17          governance rights, including a security interest in a complete membership interest,  
18          this subsection's requirement that the secured party obtain consent applies only to  
19          taking or assigning ownership of the governance rights and does not apply to  
20          taking or assigning ownership of the financial rights.
- 21          8. Notwithstanding any provision of law, articles of organization, member-control  
22          agreement, ~~operating agreement~~ bylaws, other agreement, resolution, or action to  
23          the contrary, a security interest in a member's full membership interest or  
24          governance rights may be foreclosed and otherwise enforced, and a secured party  
25          may assign a member's complete membership interest or governance rights in  
26          accordance with title 41, all without the consent or approval of the member whose  
27          full membership interest or governance rights are the subject of the security  
28          interest.

29           **SECTION 62. AMENDMENT.** Subsection 2 of section 10-32-35 of the North Dakota  
30 Century Code is amended and reenacted as follows:

1           2. If an event referred to in subsection 1 causes the termination of a member's  
2           membership interest and the termination does not result in dissolution is avoided  
3           ~~under subdivision c of subsection 1 of section 10-32-109, then subject to the~~  
4           articles of organization and any member-control agreement:

5           a. As provided in subsection 3 of section 10-32-30, the terminated member's  
6           interest will be considered to be merely that of an assignee of the financial  
7           rights owned before the termination of membership; and

8           b. The rights to be exercised by the legal representative of the terminated  
9           member will be limited accordingly.

10           **SECTION 63. AMENDMENT.** Section 10-32-36 of the North Dakota Century Code is  
11           amended and reenacted as follows:

12           **10-32-36. Sharing of profits and losses.** Unless otherwise provided in the articles of  
13           organization, in a member-control agreement, or by the board of governors under subsections  
14           5 and 6 of section 10-32-56, the profits and losses of a limited liability company ~~are to~~ must be  
15           allocated among the members, and among classes and series of members, in proportion to the  
16           value of the contributions of the members reflected in the required records.

17           **SECTION 64. AMENDMENT.** Section 10-32-37 of the 1997 Supplement to the North  
18           Dakota Century Code is amended and reenacted as follows:

19           **10-32-37. Preemptive rights.**

20           1. To the extent allowed by section 9 of article XII of the Constitution of North Dakota,  
21           a member of a limited liability company has the preemptive rights provided in this  
22           section, unless denied or limited in the articles of organization, in a member-control  
23           agreement, or by the board of governors pursuant to subdivision b of subsection 5  
24           of section 10-32-56.

25           2. A preemptive right is the right of a member to make contributions of a certain  
26           amount or to make a contribution allowance agreement specifying future  
27           contributions of a certain amount before the limited liability company may accept  
28           new contributions from other persons or to make contribution allowance  
29           agreements with other persons.

30           3. A member has a preemptive right whenever the limited liability company proposes  
31           to accept contributions from other persons, or to make contribution allowance



- 1 agreements with other persons, pertaining to membership interests of the same  
2 series or class as the series or class owned by the member.
- 3 4. Unless otherwise provided in the articles of organization or a member-control  
4 agreement, no preemptive rights pursuant to this section arise as to contributions  
5 to be accepted from others or as to contribution allowance agreements to be made  
6 with others when the contribution is:
- 7 a. To be made in a form other than money;
- 8 b. To be made or reflected pursuant to a plan of merger;
- 9 c. To be made or reflected pursuant to an employee or incentive benefit plan  
10 approved at a meeting by the affirmative vote of the owners of a majority of  
11 the voting power of all membership interests entitled to vote;
- 12 d. To be made pursuant to a previously made contribution allowance  
13 agreement; or
- 14 e. To be made or reflected pursuant to a plan of reorganization approved by a  
15 court of competent jurisdiction pursuant to a statute of this state or of the  
16 United States.
- 17 5. The extent to which each member may make a new contribution, or obtain the right  
18 to make a new contribution under a contribution allowance agreement, by exercise  
19 of a preemptive right as to any class or series is the ratio that the value of that  
20 member's contributions, as reflected in the required records as pertaining to that  
21 class or series before the contribution, bears to the total value of all members'  
22 contributions reflected in the required records as pertaining to that class or series  
23 before the new contribution.
- 24 6. A member may waive a preemptive right in writing. The waiver is binding upon the  
25 member whether or not consideration has been given for the waiver. Unless  
26 otherwise provided in the waiver, a waiver of preemptive rights is effective only for  
27 the proposed contribution or contribution allowance agreement described in the  
28 waiver.
- 29 7. When proposing to accept new contributions, or to make contribution allowance  
30 agreements, with respect to which members have preemptive rights under this  
31 section, the board of governors shall cause notice to be given to each member

- 1 entitled to preemptive rights. The notice must be given at least ten days before the  
2 date by which the member must exercise a preemptive right and must contain:
- 3 a. The extent of the member's preemptive right, being:
- 4 (1) In the case of a preemptive right to make a contribution, the amount of  
5 the contribution to be made; and
- 6 (2) In the case of a preemptive right to make a contribution allowance  
7 agreement, the amount of the contribution to be allowed under that  
8 contribution allowance agreement;
- 9 b. The method used to determine the extent of the member's preemptive right;
- 10 c. The terms and conditions upon which the member may make a contribution  
11 or make a contribution allowance agreement; and
- 12 d. The time within which and the method by which the member must exercise  
13 the right.
- 14 8. If a member does not exercise preemptive rights to make a contribution or to make  
15 a contribution allowance agreement, then for a period not exceeding one year after  
16 the date fixed by the board of governors for the exercise of those preemptive rights  
17 and to the extent of the preemptive rights not exercised, the board of governors  
18 may accept contributions or make contribution allowance agreements on terms no  
19 less favorable to the limited liability company than those offered to the member.
- 20 9. If the members of a limited liability company are entitled to cumulative voting in the  
21 election of governors, no amendment to the articles of organization ~~that~~ or a  
22 member-control agreement which has the effect of denying, limiting, or modifying  
23 the preemptive rights provided in this section may be adopted if the votes of a  
24 proportion of the voting power sufficient to elect a governor at an election of the  
25 entire board of governors under cumulative voting are cast against the  
26 amendment.
- 27 10. A denial or limitation of preemptive rights otherwise provided in this section does  
28 not limit the power of a limited liability company to grant first refusal rights,  
29 contribution allowance rights, or other rights to make contributions to the limited  
30 liability company, to members, to persons who have entered into contribution

1           agreements, or to other persons before accepting contributions or before making  
2           allowance agreements with any other person.

3           **SECTION 65. AMENDMENT.** Section 10-32-38 of the 1997 Supplement to the North  
4 Dakota Century Code is amended and reenacted as follows:

5           **10-32-38. Regular meetings of members.**

- 6           1. Regular meetings of members may be held on an annual or other less frequent  
7           periodic basis, but need not be held unless required by the articles of organization  
8           or ~~operating agreement~~, a member-control agreement, the bylaws, or by  
9           subsection 2.
- 10          2. If a regular meeting of members has not been held within the earlier of six months  
11          after the fiscal yearend of the corporation or fifteen months after its last meeting:
- 12           a. A member or members owning five percent or more of the voting power of all  
13           members entitled to vote may demand a regular meeting of members by  
14           written notice of demand given to the president or the secretary of the limited  
15           liability company.
- 16           b. Within thirty days after receipt of the demand by one of those managers, the  
17           board of governors shall cause a regular meeting of members to be called  
18           and held on notice no later than ninety days after receipt of the demand.
- 19           c. If the board of governors fails to cause a regular meeting to be called and  
20           held as required by this subsection, the member or members making the  
21           demand may call the regular meeting by giving notice as required by section  
22           10-32-40.
- 23           d. All necessary expenses of the notice and the meeting must be paid by the  
24           limited liability company.
- 25          3. A regular meeting, if any, must be held on the date and at the time and place fixed  
26          by, or in a manner authorized by, the articles, a member-control agreement, or  
27          ~~operating agreement~~ the bylaws, except ~~that~~ a meeting called by or at the demand  
28          of a member pursuant to subsection 2 must be held in the county where the  
29          principal executive office of the limited liability company is located.
- 30          4. At each regular meeting of members:

- 1           a.    There must be an election of qualified successors for governors who serve for
- 2                    an indefinite term or whose terms have expired or are due to expire within six
- 3                    months after the date of the meeting.
- 4           b.    No other particular business is required to be transacted at a regular meeting.
- 5           c.    Any business appropriate for action by the members may be transacted at a
- 6                    regular meeting.

7           **SECTION 66. AMENDMENT.** Section 10-32-39 of the 1997 Supplement to the North  
8 Dakota Century Code is amended and reenacted as follows:

9           **10-32-39. Special meetings of members.**

- 10          1.    Special meetings of the members may be called for any purpose or purposes at
- 11                    any time, by:
- 12                  a.    The president;
- 13                  b.    Two or more governors;
- 14                  c.    A person authorized in the articles, a member-control agreement, or
- 15                    ~~operating agreement~~ the bylaws to call special meetings; or
- 16                  d.    A member or members owning ten percent or more of the voting power of all
- 17                    membership interests entitled to vote.
- 18          2.    A member or members owning ten percent or more of the voting power of all
- 19                    membership interests entitled to vote, may demand a special meeting of members
- 20                    by written notice of demand given to the president or secretary of the limited
- 21                    liability company and containing the purposes of the meeting.
- 22                  a.    Within thirty days after receipt of the demand by one of those managers, the
- 23                    board of governors shall cause a special meeting of members to be called
- 24                    and held on notice no later than ninety days after receipt of the demand, all at
- 25                    the expense of the limited liability company.
- 26                  b.    If the board of governors fails to cause a special meeting to be called and
- 27                    held as required by this subsection, the member or members making the
- 28                    demand may call the meeting by giving notice as required by section
- 29                    10-32-40.
- 30                  c.    All necessary expenses of the notice and the meeting must be paid by the
- 31                    limited liability company.

1           3. Special meetings must be held on the date and at the time and place fixed by the  
2           president, the board of governors, or a person authorized by the articles, a  
3           member-control agreement, or ~~operating agreement~~ the bylaws to call a meeting,  
4           except ~~that~~ a special meeting called by or at the demand of a member or members  
5           pursuant to subsection 2 must be held in the county where the principal executive  
6           office is located.

7           4. The business transacted at a special meeting is limited to the purposes stated in  
8           the notice of the meeting. Any business transacted at a special meeting that is not  
9           included in those stated purposes is voidable by or on behalf of the limited liability  
10          company, unless all of the members have waived notice of the meeting in  
11          accordance with subsection 4 of section 10-32-40.

12           **SECTION 67. AMENDMENT.** Subsection 3 of section 10-32-40 of the 1997  
13 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14          3. The notice:

15           a. In all instances where a specific minimum notice period has not otherwise  
16           been fixed by law, must be given at least ten days before the date of the  
17           meeting, or a shorter time provided in the articles of organization, a  
18           member-control agreement, or ~~operating agreement~~ the bylaws, and not  
19           more than fifty days before the date of the meeting;

20           b. ~~The notice must~~ Must contain the date, time, and place of the meeting;

21           c. Must contain the information with respect to ~~dissenter's~~ dissenters' rights  
22           required by subsection 2 of section 10-32-55, if applicable;

23           d. Must inform members if proxies are permitted at the meeting and, if so, state  
24           the procedure for appointing proxies;

25           e. Must contain a statement of the purpose of the meeting, in the case of a  
26           special meeting;

27           f. Must contain any other information:

28           (1) Required by the articles of organization, ~~operating agreement~~ any  
29           member-control agreement, the bylaws, or this chapter;

30           (2) Considered necessary or desirable by the board of governors; and

- 1           g.    May contain any other information considered necessary or desirable by the  
2                    person or persons calling the meeting.

3           **SECTION 68. AMENDMENT.** Section 10-32-40.1 of the 1997 Supplement to the North  
4 Dakota Century Code is amended and reenacted as follows:

5           **10-32-40.1. Voting rights.**

- 6           1.    The board of governors may fix or authorize a manager to fix a date not more than  
7                    fifty days, or a shorter time period provided in the articles of organization, a  
8                    member-control agreement, or ~~operating agreement~~ the bylaws, before the date of  
9                    a meeting of members as the date for the determination of the owners of  
10                   membership interests entitled to notice of and entitled to vote at the meeting.  
11                   When a date is so fixed, only members on that date are entitled to notice of and  
12                   permitted to vote at that meeting of members.
- 13           2.    A determination of the owners of membership interests entitled to notice and to  
14                   vote at a meeting of members is effective for an adjournment of the meeting unless  
15                   the board of governors fixes a new date for determining the right to notice and to  
16                   vote, which it must do if the meeting is adjourned to a date more than fifty days  
17                   after the record date for determining members entitled to notice of the original  
18                   meeting.
- 19           3.    If a court orders a meeting adjourned to a date more than one hundred twenty  
20                   days after the date fixed for the original meeting:
- 21                   a.    It must provide the original record date for notice and voting continues in  
22                        effect; or
- 23                   b.    It may fix a new record date for notice and voting.
- 24           4.    A resolution approved by the affirmative vote of a majority of the governors present  
25                   may establish a procedure whereby a member may certify in writing to the limited  
26                   liability company that all or a portion of the membership interest registered in the  
27                   name of the member are held for the account of one or more beneficial owners.  
28                   Upon receipt by the limited liability company of the writing, the persons specified  
29                   as beneficial owners, rather than the actual member, are deemed the members for  
30                   the purposes specified in the writing.

- 1           5. Unless otherwise provided in the articles, in a member-control agreement, or by  
2           the board of governors under subsections 5 and 6 of section 10-32-56, members  
3           have voting power in proportion to the value of the contributions of the members as  
4           reflected in the required records.
- 5           6. The articles of organization or a member-control agreement may give or prescribe  
6           the manner of giving a creditor, securityholder, or other person a right to vote  
7           under this section, ~~but no prescription under this subsection may have the effect of~~  
8           ~~transferring from an assignor of financial rights to the assignee the assignor's~~  
9           ~~voting rights.~~
- 10          7. Membership interests owned by two or more members may be voted by any one of  
11          them unless the limited liability company receives written notice from any one of  
12          them denying the authority of that person to vote those membership interests.
- 13          8. Except as provided in subsection 7, an owner of a membership interest entitled to  
14          vote may vote any portion of the membership interest in any way the member  
15          chooses. If a member votes without designating the proportion voted in a  
16          particular way, the member is considered to have voted all of the membership  
17          interest in that way.

18           **SECTION 69. AMENDMENT.** Section 10-32-42 of the 1997 Supplement to the North  
19    Dakota Century Code is amended and reenacted as follows:

20           **10-32-42. Act of members.** Unless this chapter or the articles of organization require  
21    a greater vote or voting by class or series:

- 22          1. The members shall take action by the affirmative vote of the owners of the greater  
23          of a majority of the voting power of the membership interests present and entitled  
24          to vote on that item of business or a majority of the voting power of the  
25          membership interests with voting rights that would constitute the minimum voting  
26          power needed for a quorum for the transaction of business at a meeting, except if  
27          this chapter, the articles of organization, or a member-control agreement require a  
28          larger proportion. If the articles or a member-control agreement require a larger  
29          proportion than is required by this chapter for a particular action, the articles or  
30          member-control agreement control.

- 1           2. In any case where a class or series of membership interests is entitled by this  
2           chapter, the articles of organization, ~~the operating a member-control~~ agreement, or  
3           the terms of the membership interests to vote as a class or series, the matter being  
4           voted upon must also receive the affirmative vote of the owners of the same  
5           proportion of the membership interests as is required pursuant to subsection 1,  
6           unless the articles of organization or a member-control agreement requires a  
7           larger proportion.
- 8           3. Unless otherwise provided in the ~~article~~ articles of organization, a member-control  
9           agreement, or operating agreement ~~the bylaws~~, members may take action at a  
10          meeting by voice or ballot, action without a meeting pursuant to section 10-32-43,  
11          written ballot pursuant to section 10-32-43.1, or by electronic communication  
12          pursuant to section 10-32-43.2.

13           **SECTION 70. AMENDMENT.** Subsection 1 of section 10-32-43 of the 1997

14 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 15          1. An action required or permitted to be taken at a meeting of the members may be  
16          taken without a meeting by written action signed by all of the members entitled to  
17          vote on that action. If the articles or a member-control agreement ~~so provide~~  
18          provides, any action may be taken by written action signed by the members who  
19          own voting power equal to the voting power that would be required to take the  
20          same action at a meeting of the members at which all members were present.

21           **SECTION 71. AMENDMENT.** Section 10-32-43.1 of the 1997 Supplement to the North

22 Dakota Century Code is amended and reenacted as follows:

23           **10-32-43.1. Action by written ballot.**

- 24          1. Except as provided in subsection 5, and unless prohibited or limited by the articles  
25          or ~~operating agreement~~ the bylaws, an action that may be taken at a regular or  
26          special meeting of members may be taken without a meeting if the limited liability  
27          company mails or delivers a written ballot to every member entitled to vote on the  
28          matter.
- 29          2. A written ballot must set forth each proposed action and provide an opportunity to  
30          vote for or against each proposed action.
- 31          3. Approval by written ballot under this section is valid only if:



- 1 a. The number of votes cast by ballot equals or exceeds the quorum required to
- 2 be present at a meeting authorizing the action; and
- 3 b. The number of approvals equals or exceeds the number of votes that would
- 4 be required to approve the matter at a meeting at which the total number of
- 5 votes cast was the same as the number of votes cast by ballot.
- 6 4. Solicitations for votes by written ballot must:
  - 7 a. Indicate the number of responses needed to meet the quorum requirements;
  - 8 b. State the percentage of approvals necessary to approve each matter other
  - 9 than election of governors; and
  - 10 c. Specify the time by which a ballot must be received by the limited liability
  - 11 company in order to be counted.
- 12 5. Except as otherwise provided in the articles or ~~operating agreement~~ the bylaws, a
- 13 written ballot may not be revoked.

14 **SECTION 72. AMENDMENT.** Subsection 1 of section 10-32-44 of the 1997  
15 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 16 1. A quorum for a meeting of members is the owners of a majority of the voting power
- 17 of the membership interests entitled to vote at the meeting, unless a different
- 18 proportion is provided in the articles of organization, a member-control agreement,
- 19 or the bylaws.

20 **SECTION 73. AMENDMENT.** Section 10-32-48 of the 1997 Supplement to the North  
21 Dakota Century Code is amended and reenacted as follows:

22 **10-32-48. Proxies.**

- 23 1. A member may cast or authorize the casting of a vote by filing a written
- 24 appointment of a proxy with a manager of the limited liability company at or before
- 25 the meeting at which the appointment is to be effective.
  - 26 a. A written appointment of a proxy may be signed by the member or authorized
  - 27 by the member by transmission of a telegram, cablegram, or other means of
  - 28 electronic transmission, provided the limited liability company has no reason
  - 29 to believe that the telegram, cablegram, or other electronic transmission was
  - 30 not authorized by the member.

- 1           b. Any copy, facsimile telecommunication, or other reproduction of the original  
2           writing or transmission may be substituted or used in lieu of the original  
3           writing or transmission for any purpose for which the original transmission  
4           could be used, if the copy, facsimile telecommunication, or other reproduction  
5           is a complete and legible reproduction of the entire original writing or  
6           transmission.
- 7           c. An appointment of a proxy for membership interests owned jointly by two or  
8           more members is valid if signed or otherwise authorized by any one of them,  
9           unless the limited liability company receives from any one of those members  
10          written notice either denying the authority of that person to appoint a proxy or  
11          appointing a different proxy.
- 12          2. The appointment of a proxy is valid for eleven months, unless a longer period is  
13          expressly provided in the appointment. No appointment is irrevocable ~~and any~~  
14          ~~agreement purporting to grant an irrevocable proxy is void~~ unless the appointment  
15          is coupled with an interest in the membership interests of the limited liability  
16          company. A member who revokes a proxy is not liable in any way for damages,  
17          ~~restitution, or other claim.~~
- 18          3. An appointment may be revoked at will unless the appointment is coupled with an  
19          interest, in which case the appointment may not be terminated except in  
20          accordance with the terms of an agreement, if any, between the parties to the  
21          appointment. Appointment of a proxy is revoked by the person appointing the  
22          proxy by attending a meeting and voting in person or signing and delivering to the  
23          manager or agent authorized to tabulate proxy votes either a writing stating that  
24          the appointment of the proxy is revoked or a later appointment. Revocation in  
25          either manner revokes all prior proxy appointments and is effective when filed with  
26          a manager of the limited liability company.
- 27          4. The death or incapacity of a person appointing a proxy does not revoke or affect  
28          the right of the limited liability company to accept the authority of the proxy, unless  
29          written notice of the death or incapacity is received by a manager authorized to  
30          tabulate votes before the proxy exercises the authority under that appointment.

- 1           5. Unless the appointment specifically provides otherwise, if two or more persons are  
2           appointed as proxies for a member:
- 3           a. Any one of them may vote the membership interests on each item of business  
4           in accordance with specific instructions contained in the appointment; and
- 5           b. If no specific instructions are contained in the appointment with respect to  
6           voting the membership interests on a particular item of business, the  
7           membership interests must be voted as a majority of the proxies determine. If  
8           the proxies are equally divided, the membership interests must not be voted.
- 9           6. Subject to section 10-32-48.1 and an express restriction, limitation, or specific  
10          reservation of authority of the proxy appearing in the appointment, the limited  
11          liability company may accept a vote or action by the proxy as the action of the  
12          member. The vote of a proxy is final, binding, and not subject to challenge, but the  
13          proxy is liable to the member for damages resulting from a failure to exercise the  
14          proxy or from an exercise of the proxy in violation of the authority granted in the  
15          appointment.
- 16          7. If a proxy is given authority by a member to vote on less than all items of business  
17          considered at a meeting of members, the member is considered to be present and  
18          entitled to vote by the proxy for purposes of subsection 1 of section 10-32-42 only  
19          with respect to those items of business for which the proxy has authority to vote. A  
20          proxy who is given authority by a member who abstains with respect to an item of  
21          business is considered to have authority to vote on the item of business for  
22          purposes of this subsection.
- 23          ~~8. A member may not grant any proxy to any person who is an assignee of any~~  
24          ~~member's financial rights and who is not also a member.~~

25           **SECTION 74. AMENDMENT.** Subsection 2 of section 10-32-48.1 of the 1997

26 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 27           2. Unless the articles, a member-control agreement, or ~~operating agreement~~ the  
28           bylaws provide otherwise, if the name signed on a vote, consent, waiver, or proxy  
29           appointment does not correspond to the record name of a member, the limited  
30           liability company, if acting in good faith, may accept the vote, consent waiver, or  
31           proxy appointment and give it effect as the act of the member if:

- 1           a.    The member is an organization and the name signed purports to be that of an  
2                   officer, manager, or agent of the organization;
- 3           b.    The name signed purports to be that of an administrator, guardian, or  
4                   conservator representing the member and, if the limited liability company  
5                   requests, evidence of fiduciary status acceptable to the limited liability  
6                   company has been presented with respect to the vote, consent, waiver, or  
7                   proxy appointment;
- 8           c.    The name signed purports to be that of a receiver or trustee in bankruptcy of  
9                   the member, and, if the limited liability company requests, evidence of this  
10                  status acceptable to the limited liability company has been presented with  
11                  respect to the vote, consent, waiver, or proxy appointment;
- 12          d.    The name signed purports to be that of a pledgee, beneficial owner, or  
13                  attorney-in-fact of the member and if the limited liability company requests,  
14                  evidence acceptable to the limited liability company of the signatory's  
15                  authority to sign for the member has been presented with respect to the vote,  
16                  consent, waiver, or proxy appointment; or
- 17          e.    Two or more persons hold the membership interests as cotenants or  
18                  fiduciaries and the name signed purports to be the name of at least one of the  
19                  coholders and the person signing appears to be acting on behalf of all the  
20                  coholders.

21           **SECTION 75. AMENDMENT.** Section 10-32-49 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23           **10-32-49. Member voting agreements.**

- 24           ~~1. Except as provided in subsection 2, a~~ A written agreement among persons who  
25                   are then members or who have signed contribution agreements, relating to the  
26                   voting of their membership interests, is valid and specifically enforceable by and  
27                   against the parties to the agreement. The agreement may override the provisions  
28                   of ~~subsections 1 through 7~~ of section 10-32-48 regarding proxies.
- 29           ~~2. Any assignee of any member's financial rights may not be a party to an agreement~~  
30                   under subsection 1, ~~unless that assignee is also a member. A voting agreement~~  
31                   ~~may not relate to the consents referred to in subsection 2 of section 10-32-32,~~

1           ~~subsection 5 of section 10-32-58, subsection 3 of section 10-32-59, or~~  
2           ~~subdivision e of subsection 1 of section 10-32-109.~~

3           **SECTION 76. AMENDMENT.** Section 10-32-50 of the 1997 Supplement to the North  
4 Dakota Century Code is amended and reenacted as follows:

5           **10-32-50. Member-control agreements.**

6           1. ~~A written agreement among persons who are then members or who have signed~~  
7           ~~contribution agreements, relating to the control of any phase of the business and~~  
8           ~~affairs of the limited liability company, its liquidation, dissolution, and termination,~~  
9           ~~or the relations among members or persons who have signed contribution~~  
10           ~~agreements is valid as provided in subsection 2~~ member-control agreement  
11           relating to any phase or aspect of the business and affairs of a limited liability  
12           company is valid as provided in subsection 2 and enforceable as provided in  
13           subsection 3.

14           a. ~~When this chapter provides that a particular result may or must be obtained~~  
15           ~~through a provision in the articles of organization, other than a provision~~  
16           ~~required by subsection 1 of section 10-32-07 to be contained in the articles, or~~  
17           ~~in the operating agreement, the same result can be accomplished through a A~~  
18           ~~member-control agreement valid under this section or through a procedure~~  
19           ~~established by a member-control agreement valid under this section.~~

20           subsection 2 may relate to, without limitation, the:

- 21           (1) Management of the limited liability company's business;  
22           (2) Declaration and payment of distributions;  
23           (3) Sharing of profits and losses;  
24           (4) Election of governors or managers;  
25           (5) Employment of members and others by the limited liability company;  
26           (6) Relations among members and persons who have signed contribution  
27           agreements, including the termination of continued membership;  
28           (7) Dissolution, termination, and liquidation of the limited liability company,  
29           including the continuation of the limited liability company's business  
30           through a successor organization or individual; and  
31           (8) Arbitration of disputes.

- 1           b. ~~A member control agreement may waive, in whole or in part, a member's~~  
2           ~~dissenting rights under sections 10-32-54 and 10-32-55, but may not waive~~  
3           ~~dissenters' rights under subdivision a of subsection 2 of section 10-32-131. If~~  
4           ~~this chapter provides that a particular result may or must be obtained through~~  
5           ~~a provision in the articles of organization, other than a provision required by~~  
6           ~~subsection 1 of section 10-32-07 to be contained in the articles; in the bylaws;~~  
7           ~~or by an act of the board, the same result may be accomplished through a~~  
8           ~~member-control agreement valid under this section or through a procedure~~  
9           ~~established by a member-control agreement valid under this section.~~
- 10          c. ~~A member-control agreement may not include an agreement to give transfer~~  
11          ~~consent:~~
- 12           (1) ~~Allocate to the members authority ordinarily exercised by the board of~~  
13           ~~governors;~~
- 14           (2) ~~Allocate to the board of governors authority ordinarily exercised by the~~  
15           ~~members; or~~
- 16           (3) ~~Structure the governance of the limited liability company in any agreed~~  
17           ~~fashion and may waive, in whole or in part, a member's dissenting~~  
18           ~~rights under sections 10-32-54 and 10-32-55.~~
- 19          d. ~~A member control agreement may include a business continuation agreement~~  
20          ~~only if the articles of organization grant the members the power to enter into~~  
21          ~~business continuation agreements.~~
- 22          2. ~~A written agreement among persons described in subsection 1 that relates to the~~  
23          ~~control of or the liquidation, dissolution, and termination of the limited liability~~  
24          ~~company, the relations among them, or any phase of the business and affairs of~~  
25          ~~the limited liability company, including, without limitation, the management of its~~  
26          ~~business, the declaration and payment of distributions, the sharing of profits and~~  
27          ~~losses, the election of governors or managers, the employment of members by the~~  
28          ~~limited liability company, or the arbitration of disputes, is valid, if the agreement is~~  
29          ~~signed by all persons who are then the members of the limited liability company,~~  
30          ~~whether or not the members all have voting power, and all those who have signed~~  
31          ~~contribution agreements, regardless of whether those signatories will, when~~

1           ~~members, have voting power. An agreement authorized under this section may~~  
2           ~~allocate to the members authority ordinarily exercised by the board of governors,~~  
3           ~~allocate to the board of governors authority ordinarily exercised by the members,~~  
4           ~~or structure the governance of the limited liability company in any agreed fashion.~~

5           With respect to the validity of a member-control agreement:

- 6           a. A member-control agreement described in subsection 1 is valid if the  
7           agreement is in writing and is signed by the persons who, on the date the  
8           agreement first becomes effective, comprise:
- 9                 (1) All members of the limited liability company, regardless of voting power;  
10                and  
11                (2) All persons who are parties to contribution agreements that on that date  
12                have not yet been fully performed, regardless of whether those parties  
13                will, when members, have voting power.
- 14           b. A member-control agreement may also include as parties persons who are  
15           neither members nor parties to a contribution agreement.
- 16           c. A member-control agreement may provide for amendment of the  
17           member-control agreement through nonunanimous means.
- 18           3. ~~AN~~ A member-control agreement valid under subsections 1 and 2 is enforceable  
19           by and against persons who are parties to ~~it~~ the member-control agreement and is  
20           also binding upon and enforceable against ~~only those persons and other persons~~  
21           who acquire an interest in a membership interest or in a contribution agreement  
22           having knowledge of the existence of the member-control agreement. A signed  
23           original of the member-control agreement must be filed with the limited liability  
24           company.
- 25           a. The limited liability company shall note in ~~its~~ the limited liability company's  
26           required records that the members' interests are governed by a  
27           member-control agreement entered into under this section.
- 28           b. A member or any assignee of financial rights has the right upon written  
29           demand to obtain a copy of any member-control agreement from the limited  
30           liability company at the company's expense.

- 1           4. A member-control agreement valid under subsections 1 and 2 is specifically  
2           enforceable.
- 3           5. ~~A member control agreement may waive dissenters' rights, subject to subsection 3~~  
4           ~~of section 10-32-131.~~
- 5           6. A member or any assignee of financial rights has the right upon written demand to  
6           obtain a copy of any member-control agreement from the limited liability company  
7           at the company's expense.
- 8        7. ~~6.~~ If ~~an~~ a member-control agreement authorized under this section takes away from  
9           any person any of the authority and responsibility ~~which~~ that the person would  
10          otherwise possess under this chapter, the effect of the member-control agreement  
11          is also to relieve that person of liability imposed by law for acts and omissions in  
12          the possession or exercise of that authority and responsibility and to impose that  
13          liability on the person or persons possessing the authority and responsibility under  
14          the agreement.
- 15        8. ~~7.~~ This section does not apply to, limit, or restrict agreements otherwise valid, ~~nor is~~  
16          and the procedure set forth in this section is not the exclusive method of  
17          agreement among members or between the members and the limited liability  
18          company with respect to any of the matters described.

19           **SECTION 77. AMENDMENT.** Subdivision d of subsection 1 of section 10-32-51 of the  
20 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 21           d. Copies of any currently effective written ~~operating agreement~~ bylaws;

22           **SECTION 78. AMENDMENT.** Section 10-32-54 of the 1997 Supplement to the North  
23 Dakota Century Code is amended and reenacted as follows:

24           **10-32-54. Rights of dissenting members.**

- 25           1. Subject to a member-control agreement under section 10-32-50, a member of a  
26           limited liability company may dissent from, and obtain payment for the fair value of  
27           the member's membership interests in the event of, any of the following limited  
28           liability company actions:
- 29           a. An amendment of the articles of organization ~~that~~, but not an amendment to a  
30           member-control agreement, which materially and adversely affects the rights



- 1 or preferences of the membership interests of the dissenting member in that  
2 it:
- 3 (1) Alters or abolishes a preferential right of the membership interests;
  - 4 (2) Creates, alters, or abolishes a right in respect of the redemption of the  
5 membership interests, including a provision respecting a sinking fund  
6 for the redemption or repurchase of the membership interests;
  - 7 (3) Alters or abolishes a preemptive right of the owner of the membership  
8 interests to make a contribution;
  - 9 (4) Excludes or limits the right of a member to vote on a matter, or to  
10 cumulate votes, except as the right may be excluded or limited through  
11 the acceptance of contributions or the making of contribution  
12 agreements pertaining to membership interests with similar or different  
13 voting rights;
  - 14 (5) Changes a member's right to resign or retire; or
  - 15 (6) Establishes or changes the conditions for or consequences of  
16 expulsion;
  - 17 ~~(7) Changes the statement required under subdivision f of subsection 1 of~~  
18 ~~section 10-32-07; or~~
  - 19 ~~(8) Changes the statement required under subdivision g of subsection 1 of~~  
20 ~~section 10-32-07;~~
- 21 b. A sale, lease, transfer, or other disposition of all or substantially all of the  
22 property and assets of the limited liability company, but not including a  
23 transaction permitted without member approval under section 10-32-108, a  
24 disposition in dissolution described in subsection 4 of section 10-32-113, a  
25 disposition pursuant to an order of a court, or a disposition for cash on terms  
26 requiring that all or substantially all of the net proceeds of disposition be  
27 distributed to the members in accordance with their respective membership  
28 interests within one year after the date of disposition;
- 29 c. A plan of merger to which the limited liability company is a party, ~~except as~~  
30 ~~provided in paragraph 1 of subdivision a of subsection 2 of section 10-32-131~~  
31 ~~and subject to subsection 3 of section 10-32-131;~~

- 1 d. A plan of exchange to which the limited liability company is a party as the  
2 organization whose ownership interests will be acquired by the acquiring  
3 organization, if the membership interests being acquired are entitled to be  
4 voted on the plan; or
- 5 e. Any other limited liability company action taken pursuant to a member vote  
6 with respect to which the articles of organization, a member-control  
7 agreement, the ~~operating agreement~~ bylaws, or a resolution approved by the  
8 board of governors directs that dissenting members may obtain payment for  
9 ~~their~~ the dissenting members' membership interests; ~~or~~
- 10 f. ~~A resolution of the board of governors under subsection 2 of section~~  
11 ~~10-32-131 to implement a business continuation agreement.~~
- 12 2. The members of a limited liability company who have a right under this section to  
13 obtain payment for their membership interests do not have a right at law or in  
14 equity to have a limited liability company action described in subsection 1 set aside  
15 or rescinded, except when the limited liability company action is fraudulent with  
16 regard to the complaining member or the limited liability company.
- 17 3. If a date is fixed according to subsection 1 of section 10-32-40.1 for the  
18 determination of members entitled to receive notice of and to vote on an action  
19 described in subsection 1, only members as of the date fixed may exercise  
20 dissenters' rights.

21 **SECTION 79. AMENDMENT.** Section 10-32-55 of the 1997 Supplement to the North  
22 Dakota Century Code is amended and reenacted as follows:

23 **10-32-55. Procedures for asserting dissenters' rights.**

- 24 1. For purposes of this section:
- 25 a. ~~"Limited liability company" means a limited liability company whose members~~  
26 ~~have obtained rights to dissent under subsection 1 of section 10-32-54 and~~  
27 ~~includes any successor by merger.~~
- 28 b. "Fair value of the membership interests" means the value of the membership  
29 interests of a limited liability company immediately before the effective date of  
30 the limited liability company action referred to in subsection 1 of section  
31 10-32-54.

- 1 e. b. "Interest" means interest beginning five days after the effective date of the  
2 limited liability company action referred to in subsection 1 of section 10-32-54,  
3 up to and including the date of payment, calculated at the rate provided in  
4 section 28-20-34 for interest on verdicts and judgments.
- 5 c. "Limited liability company" means a limited liability company whose members  
6 have obtained rights to dissent under subsection 1 of section 10-32-54 and  
7 includes any successor by merger.
- 8 d. "Member" includes a former member when dissenters' rights exist because:  
9 (1) The membership of that former member ~~has~~ terminated causing  
10 dissolution; and  
11 (2) The dissolved limited liability company ~~has~~ then ~~either~~ entered into a  
12 winding-up merger under subsection 3 of section 10-32-112 ~~or has~~  
13 ~~disposed of its assets pursuant to a business continuation agreement~~  
14 ~~under subsection 2 of section 10-32-131.~~
- 15 2. If a limited liability company calls a member meeting at which any action described  
16 in subsection 1 of section 10-32-54 is to be voted upon, the notice of the meeting  
17 must inform each member of the right to dissent and must include a copy of  
18 section 10-32-54 and this section ~~and, if applicable, subsections 2 and 3 of section~~  
19 ~~10-32-134.~~ For members who have assigned some or all of their financial rights,  
20 the description must also include the procedures under subsection 8.
- 21 3. If the proposed action must be approved by the members, a member who is  
22 entitled to dissent under section 10-32-54 and who wishes to exercise dissenters'  
23 rights ~~must~~ shall file with the limited liability company before the vote on the  
24 proposed action a written notice of intent to demand the fair value of the  
25 membership interests owned by the member and ~~must~~ may not vote the  
26 membership interests in favor of the proposed action.
- 27 4. After the proposed action ~~has been~~ is approved by the board of governors and, if  
28 necessary, the members, the limited liability company shall send to all members  
29 who ~~have~~ complied with subsection 3 and to all members entitled to dissent if no  
30 member vote was required, a notice that contains:

- 1           a.    The address to which a demand for payment must be sent in order to obtain  
2                    payment and the date by which the demand must be received;
- 3           b.    A form to be used to certify the date on which the member acquired the  
4                    membership interests and to demand payment; and
- 5           c.    A copy of section 10-32-54; and this section ~~and, if applicable, subsections 2~~  
6                    ~~and 3 of section 10-32-131.~~
- 7           5.    In order to receive the fair value of the membership interests, a dissenting member  
8                    must demand payment within thirty days after the notice required by subsection 4  
9                    was given, but the dissenter retains all other rights of a member until the proposed  
10                  action takes effect.
- 11          6.    After the limited liability company action takes effect, or after the limited liability  
12                  company receives a valid demand for payment, whichever is later, the limited  
13                  liability company shall remit to each dissenting member who has complied with  
14                  subsections 3, 4, and 5, the amount the limited liability company estimates to be  
15                  the fair value of the membership interests, plus interest, accompanied by:
- 16           a.    The limited liability company's closing balance sheet and statement of income  
17                    for a fiscal year ending not more than sixteen months before the effective  
18                    date of the limited liability company action, together with the latest available  
19                    interim financial statements;
- 20           b.    An estimate by the limited liability company of the fair value of the  
21                    membership interests and a brief description of the method used to reach the  
22                    estimate; and
- 23           c.    A copy of section 10-32-54; and this section ~~and, if applicable, subsections 2~~  
24                    ~~and 3 of section 10-32-131.~~
- 25          7.    The limited liability company may withhold the remittance described in  
26                  subsection 6 from a person who was not a member on the date the action  
27                  dissented from was first announced to the public. If the dissenter has complied  
28                  with subsections 3, 4, and 5, the limited liability company shall forward to the  
29                  dissenter the materials described in subsection 6, a statement of the reason for  
30                  withholding the remittance, and an offer to pay to the dissenter the amount listed in  
31                  the materials if the dissenter agrees to accept that amount in full satisfaction. The

1           dissenter may decline the offer and demand payment under subsection 8. Failure  
2           to do so entitles the dissenter only to the amount offered. If the dissenter makes  
3           demand, subsections 9 and 10 apply.

4           8. If a dissenter believes that the amount remitted under subsections 5, 6, and 7 is  
5           less than the fair value of the membership interests plus interest, the dissenter  
6           may give written notice to the limited liability company of the dissenter's own  
7           estimate of the fair value of the membership interests, plus interest, within thirty  
8           days after the limited liability company mails the remittance under subsections 5, 6,  
9           and 7, and demand payment of the difference. Otherwise, a dissenter is entitled  
10          only to the amount remitted by the limited liability company.

11          9. If the limited liability company receives a demand under subsection 8, it shall,  
12          within sixty days after receiving the demand, either pay to the dissenter the amount  
13          demanded or agreed to by the dissenter after discussion with the limited liability  
14          company or file in court a petition requesting that the court determine the fair value  
15          of the membership interests, plus interest. The petition must be filed in the county  
16          in which the registered office of the limited liability company is located, except that  
17          a surviving foreign corporation that receives a demand relating to the membership  
18          interests of a constituent limited liability company shall file the petition in the county  
19          in this state in which the last registered office of the constituent limited liability  
20          company was located. The petition must name as parties all dissenters who have  
21          demanded payment under subsection 8 and who have not reached agreement  
22          with the limited liability company. The limited liability company shall, after filing the  
23          petition, serve all parties with a summons and copy of the petition under the rules  
24          of civil procedure. Nonresidents of this state may be served by registered or  
25          certified mail or by publication as provided by law. Except as otherwise provided,  
26          the rules of civil procedure apply to this proceeding. The jurisdiction of the court is  
27          plenary and exclusive. The court may appoint appraisers, with powers and  
28          authorities the court considers proper, to receive evidence on and recommend the  
29          amount of the fair value of the membership interests. The court shall determine  
30          whether the member or members in question have fully complied with the  
31          requirements of this section and shall determine the fair value of the membership

- 1 interests, taking into account any and all factors the court finds relevant, computed  
2 by any method or combination of methods that the court, in its discretion, sees fit  
3 to use, whether or not used by the limited liability company or by a dissenter. The  
4 fair value of the membership interests as determined by the court is binding on all  
5 members, wherever located. A dissenter is entitled to judgment for the amount by  
6 which the fair value of the membership interests as determined by the court, plus  
7 interest, exceeds the amount, if any, remitted under subsections 5, 6, and 7, but is  
8 not liable to the limited liability company for the amount, if any, by which the  
9 amount, if any, remitted to the dissenter under subsection 5 exceeds the fair value  
10 of the membership interests as determined by the court, plus interest.
- 11 10. The court shall determine the costs and expenses of a proceeding under  
12 subsection 9, including the reasonable expenses and compensation of any  
13 appraisers appointed by the court, and shall assess those costs and expenses  
14 against the limited liability company, except that the court may assess part or all of  
15 those costs and expenses against a dissenter whose action in demanding  
16 payment is found to be arbitrary, vexatious, or not in good faith.
- 17 11. If the court finds that the limited liability company has failed to comply substantially  
18 with this section, the court may assess all fees and expenses of any experts or  
19 attorneys as the court considers equitable. These fees and expenses may also be  
20 assessed against a person who has acted arbitrarily, vexatiously, or not in good  
21 faith in bringing the proceeding, and may be awarded to a party injured by those  
22 actions.
- 23 12. The court may award, in its discretion, fees and expenses to an attorney for the  
24 dissenters out of the amount awarded to the dissenters, if any.
- 25 13. When an assignment of some or all of the financial rights of a membership interest  
26 is in effect, then as to that membership interest the provisions of subsections 1  
27 through 12 must be followed subject to the following revisions:
- 28 a. All rights to be exercised and actions to be taken by a member under  
29 subsection 2 must be taken by the member and not by any assignee of the  
30 member's financial rights. As between the limited liability company and the  
31 assignees, the actions taken or omitted by the member bind the assignees.

- 1           b. Instead of remitting a payment under subsection 6, the limited liability  
2           company shall forward to the dissenter member:
- 3           (1) An offer to pay the fair value of the membership interests with that  
4           amount to be allocated among and paid to the member and the  
5           assignees of financial rights according to the terms of the assignments  
6           reflected in the required records; and
- 7           (2) A statement of that allocation.
- 8           c. If the dissenter member accepts the amount of the offer made under  
9           subdivision b but disputes the allocation, the dissenter shall promptly so notify  
10          the limited liability company and promptly after the notification bring an action  
11          to determine the proper allocation. The suit must be filed in the county in  
12          which the registered office of the limited liability company is located, or in the  
13          case of a surviving foreign corporation that is complying with this section  
14          following a merger or an exchange with a constituent limited liability company  
15          the suit must be filed in the county in this state in which the last registered  
16          office of the constituent limited liability company was located. The suit must  
17          name as parties the member, the limited liability company, and all assignees  
18          of the member's financial rights. Upon being served with the action, the  
19          limited liability company shall promptly pay into the court the amount offered  
20          under subdivision b and shall then be dismissed from the action.
- 21          d. If the dissenter considers the amount offered under subdivision b inadequate,  
22          the dissenter may decline the offer and demand payment under subsection 8.  
23          If the dissenter makes demand, subsections 9 and 10 apply, with the court  
24          having jurisdiction also to determine the correctness of the allocation.
- 25          e. If the member fails to take action under either subdivision c or d, then:
- 26          (1) As to the limited liability company, both the member and the assignees  
27          of the member's financial rights are limited to the amount and allocation  
28          offered under subdivision b; and
- 29          (2) The limited liability company discharges its obligation of payment by  
30          making payment according to the amount and allocation offered under  
31          subdivision b.

1           **SECTION 80. AMENDMENT.** Section 10-32-56 of the 1997 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **10-32-56. Authorization, form, and acceptance of contributions.**

- 4           1. Subject to any restrictions in the articles of organization or a member-control  
5 agreement and only when authorized by the board of governors or pursuant to a  
6 member-control agreement, a limited liability company may accept contributions  
7 under subsections 2 and 3, make contribution agreements under section 10-32-58,  
8 and make contribution allowance agreements under section 10-32-59.
- 9           2. A person may make a contribution to a limited liability company by paying money  
10 or transferring the ownership of an interest in property to the limited liability  
11 company for rendering services to or for the benefit of the limited liability company.
- 12           3. No purported contribution is to be treated or considered as a contribution, unless:
- 13           a. The board of governors accepts the contribution on behalf of the limited  
14 liability company and in that acceptance describes the contribution and states  
15 the value being accorded to the contribution; and
- 16           b. The fact of contribution and the contribution's accorded value are both  
17 reflected in the required records of the limited liability company.
- 18           4. The determinations of the board of governors as to the amount or fair value or the  
19 fairness to the limited liability company of the contribution accepted or to be  
20 accepted by the limited liability company or the terms of payment or performance,  
21 including under a contribution agreement in section 10-32-58, and a contribution  
22 allowance agreement in section 10-32-59, are presumed to be proper if they are  
23 made in good faith and on the basis of accounting methods, or a fair valuation or  
24 other method, reasonable in the circumstances. Governors who are present and  
25 entitled to vote, and who, intentionally or without reasonable investigation, fail to  
26 vote against approving a consideration that is unfair to the limited liability company,  
27 or overvalue property or services received or to be received by the limited liability  
28 company as a contribution, are jointly and severally liable to the limited liability  
29 company for the benefit of the then members who did not consent to and are  
30 damaged by the action, to the extent of the damages of those members. A  
31 governor against whom a claim is asserted pursuant to this subsection, except in



- 1 case of knowing participation in a deliberate fraud, is entitled to contribution on an  
2 equitable basis from other governors who are liable under this subsection.
- 3 5. All the membership interests of a limited liability company must:
- 4 a. Be of one class, without series, unless a member-control agreement or the  
5 articles of organization establish, or authorize the board of governors to  
6 establish, more than one class or series within classes;
- 7 b. Be ordinary membership interests entitled to vote as provided in section  
8 ~~10-32-45~~ 10-32-40.1, and have equal rights and preferences in all matters not  
9 otherwise provided for by the board of governors unless and to the extent ~~that~~  
10 the articles of organization ~~have fixed~~ or a member-control agreement fixes  
11 the relative rights and preferences of different classes and series; and
- 12 c. Share profits and losses as provided in section 10-32-36 and be entitled to  
13 distributions as provided in sections 10-32-60 and 10-32-61 and subdivision c  
14 of subsection 1 of section 10-32-131.
- 15 6. Subject to any restrictions in the articles of organization or a member-control  
16 agreement, the power granted in subsection 5 may be exercised by a resolution  
17 approved by the affirmative vote of a majority of the directors present establishing  
18 a class or series, setting forth the designation of the class or series, and fixing the  
19 relative rights and preferences of the class or series established in the articles of  
20 organization, in a member-control agreement, or by resolution of the board of  
21 governors.
- 22 7. A statement ~~executed~~ signed by a manager setting forth the name of the limited  
23 liability company and the text of the resolution and certifying the adoption of the  
24 resolution and the date of adoption must be filed with the secretary of state  
25 together with the fees provided in section 10-32-150 before the acceptance of any  
26 contributions for which the resolution creates rights or preferences not set forth in  
27 the articles of organization or a member-control agreement. The resolution is  
28 effective when the statement has been filed with the secretary of state unless the  
29 statement specifies a later effective date within thirty days of filing the statement  
30 with the secretary of state.

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

13           **SECTION 81. AMENDMENT.** Section 10-32-57 of the North Dakota Century Code is  
14 amended and reenacted as follows:

15           **10-32-57. Restatement of value of previous contributions.**

- 16          1. As used in this section, an "old" contribution is a contribution reflected in the  
17          required records of a limited liability company before the time the limited liability  
18          company accepts a new contribution.
- 19          2. Whenever a limited liability company accepts a new contribution, the board of  
20          governors shall restate, as required by this section, the value of all old  
21          contributions.
- 22          3. Unless otherwise provided in the articles of organization or a member-control  
23          agreement, this subsection states the method of restating the value of old  
24          contributions that pertain to the same series or class to which the new contribution  
25          pertains:
- 26           a. State the value the limited liability company has accorded to the new  
27           contribution under subdivision a of subsection 3 of section 10-32-56;
- 28           b. Determine what percentage the value stated under subdivision a will  
29           constitute, after the restatement required by this subsection, of the total value  
30           of all contributions that pertain to the particular series or class to which the  
31           new contribution pertains;

- 1 c. Divide the value stated under subdivision a by the percentage determined  
2 under subdivision b, yielding the total value, after the restatement required by  
3 this subsection, of all contributions pertaining to the particular series or class;  
4 d. Subtract the value stated under subdivision a from the value determined  
5 under subdivision c, yielding the total value, after the restatement required by  
6 this subsection, of all the old contributions pertaining to the particular series or  
7 class;  
8 e. Subtract the value, as reflected in the required records before the restatement  
9 required by this subsection, of the old contributions from the value determined  
10 under subdivision d, yielding the value to be allocated among and added to  
11 the old contributions pertaining to the particular series or class; and  
12 f. Allocate the value determined under subdivision e proportionally among the  
13 old contributions pertaining to the particular series or class, add the allocated  
14 values to those old contributions, and change the required records  
15 accordingly.

16 The values determined under subdivision e and allocated and added under  
17 subdivision f may be positive, negative, or zero.

- 18 4. Unless otherwise provided in the articles of organization or a member-control  
19 agreement, this subsection states the method of restating the value of old  
20 contributions that do not pertain to the same series or class to which the new  
21 contribution pertains:  
22 a. Determine the percentage by which the restatement under subsection 3 has  
23 changed the total contribution value reflected in the required records for the  
24 series or class to which the new contribution pertains; and  
25 b. As to each old contribution that does not pertain to the same series or class to  
26 which the new contribution pertains, change the value reflected in the  
27 required records by the percentage determined under subdivision a. The  
28 percentage determined under subdivision a may be positive, negative, or  
29 zero.  
30 5. If a limited liability company accepts more than one contribution pertaining to the  
31 same series or class at the same time, then for the purpose of the restatement

1 required by this section the limited liability company may consider all those new  
2 contributions as if they were a single contribution.

3 **SECTION 82. AMENDMENT.** Subsection 7 of section 10-32-58 of the 1997

4 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5 7. A Unless otherwise provided in the articles of organization or a member-control  
6 agreement, a would-be contributor's rights under a contribution agreement may not  
7 be assigned, in whole or in part, to a person who was not a member at the time of  
8 the assignment, unless all the members approve the assignment by unanimous  
9 written consent.

10 **SECTION 83. AMENDMENT.** Section 10-32-59 of the North Dakota Century Code is  
11 amended and reenacted as follows:

12 **10-32-59. Contribution allowance agreements.**

- 13 1. Subject to any restrictions in the articles of organization or a member-control  
14 agreement, a limited liability company may enter into contribution allowance  
15 agreements under the terms, provisions, and conditions fixed by the board of  
16 governors.
- 17 2. Any contribution allowance agreement must be in writing, and the writing must  
18 state in full, summarize, or incorporate by reference all of the agreement's terms,  
19 provisions, and conditions.
- 20 3. A Unless otherwise provided in the articles of organization or a member-control  
21 agreement, a would-be contributor's rights under a contribution allowance  
22 agreement may not be assigned in whole or in part to a person who was not a  
23 member at the time of the assignment, unless all of the members approve the  
24 assignment by unanimous written consent.

25 **SECTION 84. AMENDMENT.** Section 10-32-60 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27 **10-32-60. Sharing of distributions.** Unless otherwise provided in the articles of  
28 organization, in a member-control agreement, or by the board of governors under  
29 subsections 5 through 7 of section 10-32-56, distributions of cash or other assets of a limited  
30 liability company, including distributions on termination of the limited liability company, must be

1 allocated in proportion to the value of the contributions of the members reflected in the required  
2 records.

3 **SECTION 85. AMENDMENT.** Section 10-32-61 of the North Dakota Century Code is  
4 amended and reenacted as follows:

5 **10-32-61. Interim distributions.** Except as provided in the articles of organization or a  
6 member-control agreement, a member is entitled to receive distributions before the limited  
7 liability company's termination only as specified in the ~~operating agreement~~ bylaws or by the  
8 act of the board of governors.

9 **SECTION 86. AMENDMENT.** Section 10-32-62 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **10-32-62. Distribution in kind.** Except as provided in the articles of organization or a  
12 member-control agreement, a member, regardless of the nature of the member's contribution,  
13 has no right to demand and receive any distribution from a limited liability company in any form  
14 other than cash. Except as provided in the articles of organization, a member may not be  
15 compelled to accept a distribution of any asset in kind from a limited liability company to the  
16 extent ~~that~~ the percentage of the asset distributed to the member exceeds a percentage of that  
17 asset that is equal to the percentage in which the member shares in distributions from the  
18 limited liability company.

19 **SECTION 87. AMENDMENT.** Subdivision c of subsection 1 of section 10-32-64 of the  
20 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21 c. The right of the board of governors to authorize, and the limited liability  
22 company to make, distributions may be prohibited, limited, or restricted by the  
23 articles of organization ~~or operating agreement~~, a member-control agreement,  
24 the bylaws, or an agreement.

25 **SECTION 88. AMENDMENT.** Subsection 1 of section 10-32-66 of the 1997  
26 Supplement to the North Dakota Century Code is amended and reenacted as follows:

27 1. In addition to any other liabilities, a governor who is present at a meeting and fails  
28 to vote against, or who consents in writing to, a distribution made in violation of  
29 ~~subsections~~ subsection 1 or 4 of section 10-32-64 or a restriction contained in the  
30 articles of organization ~~or operating agreement~~, a member-control agreement, the  
31 bylaws, or an agreement, and fails to comply with the standard of conduct provided

1 in section 10-32-86, is liable to the limited liability company, ~~its~~ the limited liability  
2 company's receiver, or any other person winding up ~~its~~ the limited liability  
3 company's affairs, jointly and severally with all other governors so liable and to  
4 other governors under subsection 3, but only to the extent that the distribution  
5 exceeded the amount that properly could have been paid under section 10-32-64.

6 **SECTION 89. AMENDMENT.** Subsection 2 of section 10-32-67 of the 1997

7 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8 2. After the issuance of the certificate of organization, the organizers or the governors  
9 named in the articles of organization shall ~~either~~ hold an organizational meeting at  
10 the call of a majority of the organizers or of the governors named in the articles, or  
11 take written action, for the purposes of transacting business and taking actions  
12 necessary or appropriate to complete the organization of the limited liability  
13 company, including, without limitation, amending the articles, electing governors,  
14 adopting ~~an operating agreement~~ the bylaws, electing managers, adopting banking  
15 resolutions, authorizing or ratifying the purchase, lease, or other acquisition of  
16 suitable space, furniture, furnishings, supplies, and materials, approving a limited  
17 liability company seal, adopting a fiscal year for the limited liability company,  
18 contracting to receive and accept contributions, and making any appropriate tax  
19 elections.

20 a. If a meeting is held, the person or persons calling the meeting shall give at  
21 least three ~~days~~ days' notice of the meeting to each organizer or governor  
22 named, stating the date, time, and place of the meeting.

23 b. Organizers and governors may waive notice of an organizational meeting in  
24 the same manner ~~that~~ a governor may waive notice of meetings of the board  
25 of governors under subsection 5 of section 10-32-80.

26 **SECTION 90. AMENDMENT.** Section 10-32-68 of the 1997 Supplement to the North  
27 Dakota Century Code is amended and reenacted as follows:

28 **10-32-68. ~~Operating agreement~~ Bylaws.**

29 1. A limited liability company may, ~~but need not,~~ have bylaws, which may be known  
30 as an operating agreement. The ~~operating agreement~~ bylaws may contain any  
31 provision relating to the management of the business or the regulation of the

1           affairs of the limited liability company not inconsistent with law or the articles of  
2           organization. An act of the board under subsection 2 and of the members under  
3           subsection 3 will be considered part of the ~~operating agreement~~ bylaws only if the  
4           act expressly states that it is intended to constitute or revise the ~~operating~~  
5           ~~agreement~~ bylaws.

6           2. ~~An initial operating agreement~~ Initial bylaws may be adopted pursuant to section  
7           10-32-67 by the organizers or by the first board of governors. Unless reserved by  
8           the articles of organization or a member-control agreement to the members, the  
9           power to adopt, amend, or repeal the ~~operating agreement~~ bylaws is vested in the  
10          board of governors. The power of the board of governors is subject to the power  
11          of the members, exercisable in the manner provided in subsection 3, to adopt,  
12          amend, or repeal the ~~operating agreement~~ bylaws adopted, amended, or repealed  
13          by the board of governors. After the adoption of the initial ~~operating agreement~~  
14          bylaws, the board of governors may not adopt, amend, or repeal ~~an operating~~  
15          ~~agreement~~ a bylaw provision fixing a quorum for meetings of members, prescribing  
16          procedures for removing governors or filling vacancies in the board of governors,  
17          or fixing the number of governors or ~~their~~ the governors' classifications,  
18          qualifications, or terms of office, but may adopt or amend ~~an operating agreement~~  
19          a bylaw provision to increase the number of governors.

20          3. Unless the articles or ~~operating agreement~~ provides bylaws provide otherwise,  
21          members owning five percent or more of the voting power of the members entitled  
22          to vote may propose a resolution for action by the members to adopt, amend, or  
23          repeal ~~operating agreement provisions~~ the bylaws adopted, amended, or repealed  
24          by the board of governors and the resolution must set forth the provision or  
25          provisions proposed for adoption, amendment, or repeal, the limitations and  
26          procedures for submitting, considering, and adopting the resolution are the same  
27          as provided in subsections 2 through 4 of section 10-32-16, for amendment of the  
28          articles of organization. The articles or ~~operating agreement~~ bylaws may impose  
29          different or additional requirements for the members to adopt, amend, or repeal the  
30          ~~operating agreement~~ bylaws.

1           **SECTION 91. AMENDMENT.** Section 10-32-70 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3           **10-32-70. Number.** The board of governors consists of one or more governors. The  
4 number of governors must be fixed by or in the manner provided in the articles of organization,  
5 a member-control agreement, or the ~~operating agreement~~ bylaws. The number of governors  
6 may be increased or, subject to section 10-32-78, decreased at any time by amendment to or in  
7 the manner provided in the articles or ~~operating agreement~~ bylaws.

8           **SECTION 92. AMENDMENT.** Section 10-32-71 of the North Dakota Century Code is  
9 amended and reenacted as follows:

10          **10-32-71. Qualifications and election.** Governors must be individuals. The method  
11 of election and any additional qualifications for governors may be imposed by or in the manner  
12 provided in the articles, a member-control agreement, or ~~operating agreement~~ the bylaws.

13          **SECTION 93. AMENDMENT.** Section 10-32-72 of the 1997 Supplement to the North  
14 Dakota Century Code is amended and reenacted as follows:

15          **10-32-72. Terms.**

16          1. With respect to length of terms:

17           a. Unless fixed terms are provided for in the articles, a member-control  
18 agreement, or ~~operating agreement~~ the bylaws, a governor serves for an  
19 indefinite term that expires at the next regular meeting of the members.

20           (1) A fixed term of a governor, other than an ex officio governor, must not  
21 exceed five years.

22           (2) An ex officio governor serves as long as the governor holds the office  
23 or position designated in the articles or ~~operating agreement~~ bylaws.

24           b. Unless the articles, the bylaws, or ~~operating agreement~~ a member-control  
25 agreement provides otherwise, a governor holds office until expiration of the  
26 term for which the governor was elected or appointed and until a successor is  
27 elected and has qualified or until the earlier death, resignation, removal, or  
28 disqualification of the governor.

29           c. A decrease in the number of governors or term of office does not shorten an  
30 incumbent ~~director's~~ governor's term.



1           d. Except as provided in the articles, a member-control agreement, or ~~operating~~  
2           ~~agreement~~ the bylaws, the term of a governor filling a vacancy expires at the  
3           end of the unexpired term that the ~~director~~ governor is filling.

4           2. The articles, a member-control agreement, or ~~operating agreement~~ the bylaws  
5           may provide for staggering the terms of governors by dividing the total number of  
6           governors into groups.

7           **SECTION 94. AMENDMENT.** Section 10-32-74 of the North Dakota Century Code is  
8           amended and reenacted as follows:

9           **10-32-74. Compensation.** Subject to any limitations in the articles, a member-control  
10          agreement, or ~~operating agreement~~ the bylaws, the board of governors may fix the  
11          compensation of governors.

12          **SECTION 95. AMENDMENT.** Section 10-32-75 of the North Dakota Century Code is  
13          amended and reenacted as follows:

14          **10-32-75. Classification of governors.** Governors may be divided into classes as  
15          provided in the articles, a member-control agreement, or ~~operating agreement~~ the bylaws.

16          **SECTION 96. AMENDMENT.** Section 10-32-76 of the North Dakota Century Code is  
17          amended and reenacted as follows:

18          **10-32-76. Cumulative voting for governors.**

19          1. ~~Each~~ Unless the articles of organization or a member-control agreement provides  
20          that there is no cumulative voting, ~~each~~ member entitled to vote for governors has  
21          the right to cumulate voting power in the election of governors by giving written  
22          notice of intent to cumulate voting power to any manager of the limited liability  
23          company before the meeting, or to the presiding manager at the meeting at which  
24          the election is to occur at any time before the election of governors at the meeting,  
25          in which case:

26          a. The presiding manager at the meeting shall announce, before the election of  
27          governors, that members shall cumulate their voting power; and

28          b. Each member shall cumulate that voting power either by casting for one  
29          candidate the amount of voting power equal to the number of governors to be  
30          elected multiplied by the voting power represented by the membership

1 interests owned by that member, or by distributing all of that voting power on  
2 the same principle among any number of candidates.

3 2. ~~No~~ An amendment to the articles, a member-control agreement, or ~~operating~~  
4 ~~agreement that~~ the bylaws which has the effect of denying, limiting, or modifying  
5 the right to cumulative voting for members provided in this section may not be  
6 adopted if the votes of a proportion of the voting power sufficient to elect a  
7 governor at an election of the entire board of governors under cumulative voting  
8 are cast against the amendment.

9 **SECTION 97. AMENDMENT.** Subsection 1 of section 10-32-78 of the 1997  
10 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11 1. The provisions of this section apply unless modified by the articles of organization,  
12 a member-control agreement, or the ~~operating agreement~~ bylaws.

13 **SECTION 98. AMENDMENT.** Subdivision a of subsection 1 of section 10-32-78.1 of  
14 the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15 a. The governor engaged in fraudulent, dishonest conduct, ~~or~~ gross abuse of  
16 authority; ~~or~~ discretion with respect to the limited liability company or a final  
17 judgment has been entered finding ~~that~~ the governor ~~has~~ violated section  
18 ~~10-33-86~~ 10-32-86; and

19 **SECTION 99. AMENDMENT.** Subsection 1 of section 10-32-79 of the 1997  
20 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

23 a. Vacancies on the board of governors resulting from the death, resignation,  
24 removal, or disqualification of a governor may be filled by the affirmative vote  
25 of a majority of the remaining governors, even though less than a quorum;  
26 and

27 b. Vacancies on the board of governors resulting from newly created  
28 governorships may be filled by the affirmative vote of a majority of the  
29 governors serving at the time of the increase.

30 **SECTION 100. AMENDMENT.** Section 10-32-80 of the 1997 Supplement to the North  
31 Dakota Century Code is amended and reenacted as follows:

1           **10-32-80. Board of governors meetings.**

- 2           1. Meetings of the board of governors may be held from time to time as provided in  
3           the articles of organization, a member-control agreement, or ~~operating agreement~~  
4           the bylaws at any place within or without the state that the board of governors may  
5           select or by any means described in subsection 2. If the articles, ~~operating~~  
6           ~~agreement~~ bylaws, or board of governors fails to select a place for a meeting, the  
7           meeting must be held at the principal executive office, unless the articles, a  
8           member-control agreement, or ~~operating agreement~~ the bylaws provide otherwise.
- 9           2. A board of governors meeting may be conducted by:
- 10          a. A conference among governors using any means of communication through  
11          which the governors may simultaneously hear each other during the  
12          conference constitutes a board of governors meeting, if the same notice is  
13          given of the conference as would be required by subsection 3 for a meeting,  
14          and if the number of governors participating in the conference is a quorum.  
15          Participation in a meeting by this means constitutes personal presence at the  
16          meeting; or
- 17          b. By any means of communication through which the governor, other governors  
18          so participating, and all governors physically present at the meeting may  
19          simultaneously hear each other during the meeting. Participation in a  
20          meeting by this means constitutes personal presence at the meeting.
- 21          3. Unless the articles of organization, a member-control agreement, or ~~operating~~  
22          ~~agreement~~ the bylaws provide for a different time period, a governor may call a  
23          board meeting by giving at least ten days' notice or, in the case of organizational  
24          meetings under subsection 2 of section 10-32-67, at least three days' notice to all  
25          governors of the date, time, and place of the meeting. The notice need not state  
26          the purpose of the meeting unless the articles, a member-control agreement, or  
27          ~~operating agreement~~ the bylaws otherwise require it.
- 28          4. If the date, time, and place of a board of governors meeting ~~have been~~ are  
29          provided in the articles or ~~operating agreement~~ bylaws, or announced at a  
30          previous meeting of the board of governors, ~~no~~ notice is not required. Notice of an

1 adjourned meeting need not be given other than by announcement at the meeting  
2 at which adjournment is taken.

3 5. A governor may waive notice of a meeting of the board of governors. A waiver of  
4 notice by a governor entitled to notice is effective whether given before, at, or after  
5 the meeting, and whether given in writing, or by attendance. Attendance by a  
6 governor at a meeting is a waiver of notice of that meeting, except where the  
7 governor objects at the beginning of the meeting to the transaction of business  
8 because the meeting is not lawfully called or convened and does not participate in  
9 the meeting after the objection.

10 **SECTION 101. AMENDMENT.** Section 10-32-81 of the 1997 Supplement to the North  
11 Dakota Century Code is amended and reenacted as follows:

12 **10-32-81. Absent governors.** If the articles of organization, a member-control  
13 agreement, or ~~operating agreement~~ the bylaws so provide, a governor may give advance  
14 written consent or opposition to a proposal to be acted on at a board of governors meeting. If  
15 the governor is not present at the meeting, consent or opposition to a proposal does not  
16 constitute presence for purposes of determining the existence of a quorum, but consent or  
17 opposition must be counted as the vote of a governor present at the meeting in favor of or  
18 against the proposal and must be entered in the minutes or other record of action at the  
19 meeting, if the proposal acted on at the meeting is substantially the same or has substantially  
20 the same effect as the proposal to which the governor has consented or objected.

21 **SECTION 102. AMENDMENT.** Section 10-32-82 of the North Dakota Century Code is  
22 amended and reenacted as follows:

23 **10-32-82. Quorum.** A majority, or a larger or smaller proportion or number provided in  
24 the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws,  
25 of the governors currently holding office is a quorum for the transaction of business. In the  
26 absence of a quorum, a majority of the governors present may adjourn a meeting from time to  
27 time until a quorum is present. If a quorum is present when a duly called or held meeting is  
28 convened, the governors present may continue to transact business until adjournment, even  
29 though the withdrawal of a number of governors originally present leaves less than the  
30 proportion or number otherwise required for a quorum.

1           **SECTION 103. AMENDMENT.** Section 10-32-83 of the 1997 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **10-32-83. Act of the board of governors.** The board of governors shall take action by  
4 the affirmative vote of the greater of a majority of governors present at a duly held meeting at  
5 the time the action is taken or a majority of the minimum proportion or number of governors that  
6 would constitute a quorum for the transaction of business at a meeting, except ~~where~~ if this  
7 chapter, a member-control agreement, or the articles require the affirmative vote of a larger  
8 proportion or number. If a member-control agreement or the articles require a larger proportion  
9 or number than is required by this chapter for a particular action, the member-control  
10 agreement or the articles control.

11           **SECTION 104. AMENDMENT.** Subsection 1 of section 10-32-84 of the 1997  
12 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13           1. An action required or permitted to be taken at a board of governors meeting may  
14 be taken by written action signed by all of the governors. If the articles or a  
15 member-control agreement so provide, any action, other than an action requiring  
16 member approval, may be taken by written action signed by the number of  
17 governors ~~that~~ which would be required to take the same action at a meeting of the  
18 board of governors at which all governors were present.

19           **SECTION 105. AMENDMENT.** Subsection 2 of section 10-32-85 of the 1997  
20 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21           2. Committee members must be individuals. Unless the articles, a member-control  
22 agreement, or ~~operating agreement~~ the bylaws provide for a different membership  
23 or manner of appointment, a committee consists of one or more ~~persons~~  
24 individuals, who need not be governors, appointed by the board.

25           **SECTION 106. AMENDMENT.** Section 10-32-86 of the 1997 Supplement to the North  
26 Dakota Century Code is amended and reenacted as follows:

27           **10-32-86. Standard of conduct for governors.**

28           1. A governor shall discharge the duties of the position of governor in good faith, in a  
29 manner the governor reasonably believes to be in the best interests of the limited  
30 liability company, and with the care an ordinarily prudent person in a like position  
31 would exercise under similar circumstances. A person who so performs those

- 1                   duties is not liable by reason of being or having been a governor of the limited  
2                   liability company.
- 3           2.   A governor is entitled to rely on information, opinions, reports, or statements,  
4                   including financial statements and other financial data, in each case prepared or  
5                   presented by:
- 6                   a.   One or more managers or employees of the limited liability company whom  
7                   the governor reasonably believes to be reliable and competent in the matters  
8                   presented;
- 9                   b.   Counsel, public accountants, or other persons as to matters that the governor  
10                   reasonably believes are within the person's professional or expert  
11                   competence; or
- 12                   c.   A committee of the board of governors upon which the governor does not  
13                   serve, duly established in accordance with section 10-32-85, as to matters  
14                   within its designated authority, if the governor reasonably believes the  
15                   committee to merit confidence.
- 16           3.   Subsection 2 does not apply to a governor who has knowledge concerning the  
17                   matter in question that makes the reliance otherwise permitted by subsection 2  
18                   unwarranted.
- 19           4.   A governor who is present at a meeting of the board of governors when an action  
20                   is approved by the affirmative vote of a majority of the governors present is  
21                   presumed to have assented to the action approved, unless the governor:
- 22                   a.   Objects at the beginning of the meeting to the transaction of business  
23                   because the meeting is not lawfully called or convened and does not  
24                   participate in the meeting after the objection, in which case the governor is  
25                   not considered to be present at the meeting for any purpose of this chapter;
- 26                   b.   Votes against the action at the meeting; or
- 27                   c.   Is prohibited from voting on the action by the articles; by the ~~operating~~  
28                   ~~agreement~~ bylaws; as the result of the decision to approve, ratify, or authorize  
29                   a transaction pursuant to section 10-32-87; or by a conflict of interest policy  
30                   adopted by the board.

- 1           5. A governor's personal liability to the limited liability company or its members for  
2           monetary damages for breach of fiduciary duty as a governor may be eliminated or  
3           limited in the articles of organization or a member-control agreement. ~~The~~ Neither  
4           the articles nor a member-control agreement may ~~not~~ eliminate or limit the liability  
5           of a governor:
- 6           a. For any breach of the governor's duty of loyalty to the limited liability company  
7           or its members;
- 8           b. For acts or omissions not in good faith or that involve intentional misconduct  
9           or a knowing violation of law;
- 10          c. Under section 10-32-66;
- 11          d. For any transaction from which the governor derived an improper personal  
12          benefit; or
- 13          e. For any act or omission occurring before the date when the provision in the  
14          articles of organization eliminating or limiting liability becomes effective.
- 15          6. In discharging the duties of the position of governor, a governor may, in  
16          considering the best interests of the limited liability company, consider the interests  
17          of the limited liability company's employees, customers, suppliers, and creditors,  
18          the economy of the state and nation, community and societal considerations, and  
19          the long-term as well as short-term interests of the limited liability company and its  
20          members including the possibility that these interests may be best served by the  
21          continued independence of the limited liability company.

22           **SECTION 107. AMENDMENT.** Subdivision b of subsection 2 of section 10-32-87 of  
23 the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 24           b. The material facts as to the contract or transaction and as to the ~~manager's~~  
25           governor's interest are fully disclosed or known to the members and the  
26           contract or transaction is approved in good faith by:
- 27           (1) The owners of two-thirds of the voting power of membership interests  
28           entitled to vote ~~that~~ which are owned by persons other than the  
29           interested governor; or
- 30           (2) The unanimous affirmative vote of all members, whether or not entitled  
31           to vote;

1           **SECTION 108. AMENDMENT.** Section 10-32-88 of the 1997 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **10-32-88. Managers.** A limited liability company must consist of one or more  
4 individuals eighteen years of age or more, ~~and~~ exercising the functions of the offices, however  
5 designated, of president and treasurer and may have one or more vice presidents and a  
6 secretary, as may be provided in the ~~operating agreement~~ bylaws. Any other managers,  
7 assistant managers, and agents, as necessary, may be elected or appointed by the board of  
8 governors or chosen in such other manner as may be provided in the ~~operating agreement~~  
9 bylaws.

10           **SECTION 109. AMENDMENT.** Section 10-32-89 of the 1997 Supplement to the North  
11 Dakota Century Code is amended and reenacted as follows:

12           **10-32-89. Duties of managers and agents.** Unless otherwise provided by the articles  
13 of organization, a member-control agreement, ~~operating agreement~~ the bylaws, or a resolution  
14 adopted by the board of governors ~~and~~ which is not inconsistent with the articles, a  
15 member-control agreement, or ~~operating agreement, provides otherwise~~ the bylaws, the  
16 managers ~~shall~~ have the following duties:

- 17           1. The president shall:
- 18               a. Have general active management for the business of the limited liability  
19               company;
- 20               b. When present, preside at all meetings of the board of governors and of the  
21               members;
- 22               c. See that all orders and resolutions of the board of governors are carried into  
23               effect;
- 24               d. Sign and deliver in the name of the limited liability company any deeds,  
25               mortgages, bonds, contracts, or other instruments pertaining to the business  
26               of the limited liability company, ~~except in cases in which~~ if the authority to sign  
27               and deliver is required by law to be exercised by another person or is  
28               expressly delegated by the articles ~~or operating agreement~~, the bylaws, or the  
29               board of governors to some other manager or agent of the limited liability  
30               company;



- 1 e. Maintain records of and, whenever necessary, certify all proceedings of the
- 2 board of governors and members; and
- 3 f. Perform other duties prescribed by the board of governors.
- 4 2. The vice president, if any, or if there is more than one, the vice presidents in the
- 5 order determined by the board of governors shall:
- 6 a. In the absence or disability of the president, perform the duties and exercise
- 7 the powers of the president; and
- 8 b. Perform other duties and have other powers as the board of governors may
- 9 from time to time prescribe.
- 10 3. The treasurer shall:
- 11 a. Keep accurate financial records for the limited liability company;
- 12 b. Deposit all money, drafts, and checks in the name of and to the credit of the
- 13 limited liability company in the banks and depositories designated by the
- 14 board of governors;
- 15 c. Endorse for deposit all notes, checks, and drafts received by the limited
- 16 liability company as ordered by the board of governors, making proper
- 17 vouchers for them;
- 18 d. Disburse limited liability company funds and issue checks and drafts in the
- 19 name of the limited liability company, as ordered by the board of governors;
- 20 e. Give to the president and the board of governors, whenever requested, an
- 21 account of all transactions by the treasurer and of the financial condition of
- 22 the limited liability company; and
- 23 f. Perform other duties prescribed by the board of governors or by the
- 24 president.
- 25 4. The secretary, if any, shall:
- 26 a. Attend all meetings of the board of governors, all meetings of the members,
- 27 and, when required, all meetings of standing committees;
- 28 b. Record all proceedings of the meetings;
- 29 c. Give, or cause to be given, notice of all meetings of the members and
- 30 meetings of the board of governors; and
- 31 d. Perform other duties prescribed by the board of governors.

1           5. Any other managers and agents of the limited liability company, as between  
2           ~~themselves~~ the managers and agents and the limited liability company, ~~have the~~  
3           ~~authority and~~ shall perform the duties in the management of the limited liability  
4           company as may be provided in the articles, a member-control agreement, or the  
5           ~~operating agreement~~ bylaws, or as may be determined by resolution of the board  
6           not inconsistent with the articles, a member control agreement, or the ~~operating~~  
7           ~~agreement~~ bylaws.

8           **SECTION 110. AMENDMENT.** Section 10-32-94 of the 1997 Supplement to the North  
9           Dakota Century Code is amended and reenacted as follows:

10           **10-32-94. Resignation, removal, and vacancy.**

- 11           1. A manager may resign at any time by giving written notice to the limited liability  
12           company. The resignation is effective without acceptance when the notice is given  
13           to the limited liability company, unless a later effective date is specified in the  
14           notice.
- 15           2. Except as otherwise provided in the articles or ~~operating agreement~~ bylaws, a  
16           manager may be removed at any time, with or without cause, by a resolution  
17           approved by the affirmative vote of a majority of the governors present, subject to  
18           the provisions of a member-control agreement. The removal is without prejudice  
19           to any contractual rights of the officer.
- 20           3. A vacancy in an office because of death, resignation, removal, disqualification, or  
21           other cause, may, or in the case of the president or treasurer, must be filled for the  
22           unexpired portion of the term in the manner provided in the articles, a  
23           member-control agreement, or ~~operating agreement~~, or the bylaws; in the manner  
24           determined by the board of governors; or pursuant to section 10-32-92.

25           **SECTION 111. AMENDMENT.** Section 10-32-95 of the 1997 Supplement to the North  
26           Dakota Century Code is amended and reenacted as follows:

27           **10-32-95. Delegation.** Unless prohibited by the articles ~~or operating agreement~~, a  
28           member-control agreement, the bylaws, or by a resolution adopted by the board of governors, a  
29           manager elected or appointed by the board of governors may, without the approval of the  
30           board, delegate some or all of the duties and powers of an office to other individuals. A

1 manager who delegates the duties or powers of an office remains subject to the standard of  
2 conduct for a manager with respect to the discharge of all duties and powers so delegated.

3 **SECTION 112. AMENDMENT.** Section 10-32-99 of the 1997 Supplement to the North  
4 Dakota Century Code is amended and reenacted as follows:

5 **10-32-99. Indemnification.**

6 1. For purposes of this section:

7 a. "Limited liability company" includes a domestic or foreign limited liability  
8 company that was the predecessor of the limited liability company referred to  
9 in this section in a merger or other transaction in which the predecessor's  
10 existence ceased upon consummation of the transaction.

11 b. "Official capacity" means:

12 (1) With respect to a governor, the position of governor in a limited liability  
13 company;

14 (2) With respect to a person other than a governor, the elective or  
15 appointive office or position held by a manager, member of a  
16 committee of the board of governors, the employment relationship  
17 undertaken by an employee, agent of the limited liability company, or  
18 the scope of the services provided by members of the limited liability  
19 company who provide services to the limited liability company; and

20 (3) With respect to a governor, manager, member, employee, or agent of  
21 the limited liability company who, while a governor, manager, member,  
22 or employee of the limited liability company, is or was serving at the  
23 request of the limited liability company or whose duties in that position  
24 involve or involved service as a governor, director, manager, officer,  
25 member, partner, trustee, employee, or agent of another organization  
26 or employee benefit plan, the position of that person as a governor,  
27 director, manager, officer, member, partner, trustee, employee, or  
28 agent, as the case may be, of the other organization or employee  
29 benefit plan.

- 1 c. "Proceeding" means a threatened, pending, or completed civil, criminal,  
2 administrative, arbitration, or investigative proceeding, including a proceeding  
3 by or in the right of the limited liability company.
- 4 d. "Special legal counsel" means counsel who has not represented the limited  
5 liability company or a related organization, or a governor, manager, member  
6 of a committee of the board of governors, employee, or agent whose  
7 indemnification is in issue.
- 8 2. Subject to the provisions of subsection 5, a limited liability company shall indemnify  
9 a person made or threatened to be made a party to a proceeding by reason of the  
10 former or present official capacity of the person against judgments, penalties,  
11 fines, including, without limitation, excise taxes assessed against the person with  
12 respect to an employee benefit plan, settlements, and reasonable expenses,  
13 including attorney's fees and disbursements, incurred by the person in connection  
14 with the proceeding, if, with respect to the acts or omissions of the person  
15 complained of in the proceeding, the person:
- 16 a. Has not been indemnified by another organization or employee benefit plan  
17 for the same judgments, penalties, fines, including, without limitation, excise  
18 taxes assessed against the person with respect to an employee benefit plan,  
19 settlements, and reasonable expenses, including attorney's fees and  
20 disbursements, incurred by the person in connection with the proceeding with  
21 respect to the same acts or omissions;
- 22 b. Acted in good faith;
- 23 c. Received no improper personal benefit and section 10-32-87, if applicable,  
24 has been satisfied;
- 25 d. In the case of a criminal proceeding, had no reasonable cause to believe the  
26 conduct was unlawful; and
- 27 e. In the case of acts or omissions occurring in the official capacity described in  
28 paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that  
29 the conduct was in the best interests of the limited liability company, or in the  
30 case of acts or omissions occurring in the official capacity described in  
31 paragraph 3 of subdivision b of subsection 1, reasonably believed that the

1                   conduct was not opposed to the best interests of the limited liability company.  
2                   If the person's acts or omissions complained of in the proceeding relate to  
3                   conduct as a director, officer, trustee, employee, or agent of an employee  
4                   benefit plan, the conduct is not considered to be opposed to the best interests  
5                   of the limited liability company if the person reasonably believed that the  
6                   conduct was in the best interests of the participants or beneficiaries of the  
7                   employee benefit plan.

8           3.   The termination of a proceeding by judgment, order, settlement, conviction, or  
9           upon a plea of nolo contendere or its equivalent does not, of itself, establish that  
10          the person did not meet the criteria set forth in subsection 2.

11          4.   Subject to the provisions of subsection 5, if a person is made or threatened to be  
12          made a party to a proceeding, the person is entitled, upon written request to the  
13          limited liability company, to payment or reimbursement by the limited liability  
14          company of reasonable expenses, including attorney's fees and disbursements,  
15          incurred by the person in advance of the final disposition of the proceeding:

16          a.   Upon receipt by the limited liability company of a written affirmation by the  
17          person of a good faith belief that the criteria for indemnification set forth in  
18          subsection 2 have been satisfied and a written undertaking by the person to  
19          repay all amounts so paid or reimbursed by the limited liability company, if it is  
20          ultimately determined that the criteria for indemnification have not been  
21          satisfied; and

22          b.   After a determination that the facts then known to those making the  
23          determination would not preclude indemnification under this section.

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

27          5.   The articles of organization, a member-control agreement, or ~~operating agreement~~  
28          ~~either~~ the bylaws may prohibit indemnification or advances of expenses otherwise  
29          required by this section or may impose conditions on indemnification or advances  
30          of expenses in addition to the conditions contained in subsections 2 through 4  
31          including, without limitation, monetary limits on indemnification or advances of

1 expenses, if the conditions apply equally to all persons or to all persons within a  
2 given class. A prohibition or limit on indemnification or advances may not apply to  
3 or affect the right of a person to indemnification or advances of expenses with  
4 respect to any acts or omissions of the person occurring before the effective date  
5 of a provision in the articles of organization, or a member-control agreement, or the  
6 date of adoption of a provision in the ~~operating agreement~~ bylaws establishing the  
7 prohibition or limit on indemnification or advances.

8 6. This section does not require, or limit the ability of, a limited liability company to  
9 reimburse expenses, including attorney's fees and disbursements, incurred by a  
10 person in connection with an appearance as a witness in a proceeding at a time  
11 when the person has not been made or threatened to be made a party to a  
12 proceeding.

13 7. All indemnification determinations must be made:

14 a. By the board of governors by a majority of a quorum. Governors who are, at  
15 the time, parties to the proceeding are not counted for determining either a  
16 majority or the presence of a quorum;

17 b. If a quorum under subdivision a cannot be obtained, by a majority of a  
18 committee of the board of governors, consisting solely of two or more  
19 governors not at the time parties to the proceeding, duly designated to act in  
20 the matter by a majority of the full board of governors including governors  
21 who are parties;

22 c. If a determination is not made under subdivision a or b, by special legal  
23 counsel, selected either by a majority of the board of governors or a  
24 committee by vote pursuant to subdivision a or b or, if the requisite quorum of  
25 the full board of governors cannot be obtained and the committee cannot be  
26 established, by a majority of the full board of governors including governors  
27 who are parties;

28 d. If a determination is not made under subdivisions a through c, by the  
29 members, other than the members who are a party to the proceeding; or

30 e. If an adverse determination is made under subdivisions a through d or under  
31 subsection 8, or if no determination is made under subdivisions a through d or

- 1                   under subsection 8 within sixty days after the later to occur of the termination  
2                   of a proceeding; or a written request for indemnification to the limited liability  
3                   company; or a written request for an advance of expenses, as the case may  
4                   be, by a court in this state, which may be the same court in which the  
5                   proceeding involving the person's liability took place, upon application of the  
6                   person and any notice the court requires. The person seeking indemnification  
7                   or payment or reimbursement of expenses pursuant to this clause has the  
8                   burden of establishing that the person is entitled to indemnification or  
9                   payment or reimbursement of expenses.
- 10           8.   With respect to a person who is not, and was not at the time of the acts or  
11           omissions complained of in the proceedings, a governor, manager, or person  
12           possessing, directly or indirectly, the power to direct or cause the direction of the  
13           management or policies of the limited liability company, the determination whether  
14           indemnification of this person is required because the criteria set forth in  
15           subsections 2 and 3 have been satisfied and whether this person is entitled to  
16           payment or reimbursement of expenses in advance of the final disposition of a  
17           proceeding as provided in subsection 4 may be made by an annually appointed  
18           committee of the board of governors, having at least one member who is a  
19           governor. The committee shall report at least annually to the board of governors  
20           concerning its actions.
- 21           9.   A limited liability company may purchase and maintain insurance on behalf of a  
22           person in that person's official capacity against any liability asserted against and  
23           incurred by the person in or arising from that capacity, whether or not the limited  
24           liability company would have been required to indemnify the person against the  
25           liability under the provisions of this section.
- 26           10. A limited liability company that indemnifies or advances expenses to a person in  
27           accordance with this section in connection with a proceeding by or on behalf of the  
28           limited liability company shall report to the members in writing the amount of the  
29           indemnification or advance and to whom and on whose behalf it was paid not later  
30           than the next meeting of members as part of the annual financial statements  
31           furnished to members pursuant to section 10-32-52 covering the period when the

1 indemnification or advance was paid or accrued under the accounting method of  
2 the limited liability company reflected in the financial statements.

3 11. ~~Nothing in this~~ This section may be construed to does not limit the power of the  
4 limited liability company to indemnify ~~other~~ persons other than a governor, a  
5 manager, a member, an employee, or a member of a committee of the board, by  
6 contract or otherwise.

7 **SECTION 113. AMENDMENT.** Section 10-32-100 of the 1997 Supplement to the  
8 North Dakota Century Code is amended and reenacted as follows:

9 **10-32-100. Merger - Exchange - Transfer.**

- 10 1. With or without a business purpose, a limited liability company may merge:
- 11 a. With another limited liability company ~~or a domestic corporation~~ pursuant to a  
12 plan of merger approved in the manner provided in sections 10-32-101  
13 through 10-32-106; ~~and~~.
- 14 b. With a domestic corporation under a plan of merger approved in the manner  
15 provided in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.
- 16 c. With any foreign corporation or foreign limited liability company pursuant to a  
17 plan of merger approved in the manner provided in section 10-32-107.
- 18 2. With respect to an exchange:
- 19 a. A limited liability company may acquire all of the ownership interests of one or  
20 more classes or series of another limited liability company ~~or domestic~~  
21 ~~corporation~~ pursuant to a plan of exchange approved in the manner provided  
22 in sections 10-32-101 through 10-32-106.
- 23 b. A limited liability company may acquire all of the ownership interests of one or  
24 more classes or series of a domestic corporation pursuant to a plan of  
25 exchange approved in the manner provided in sections 10-32-101 through  
26 10-32-107 and in chapter 10-19.1.
- 27 c. A domestic corporation may acquire all of the ownership interests of one or  
28 more classes or series of a limited liability company pursuant to a plan of  
29 exchange approved in the manner provided in sections 10-32-101 through  
30 10-32-106 and in chapter 10-19.1.



1 e. d. A foreign corporation or foreign limited liability company may acquire all of  
2 the ownership interests of one or more classes or series of a limited liability  
3 company pursuant to a plan of exchange approved in the manner provided in  
4 section 10-32-107.

5 3. A limited liability company may sell, lease, transfer, or otherwise dispose of all or  
6 substantially all of ~~its~~ the limited liability company's property and assets in the  
7 manner provided in section 10-32-108.

8 4. A limited liability company may participate in a merger only as permitted by this  
9 section.

10 **SECTION 114. AMENDMENT.** Subdivision b of subsection 1 of section 10-32-101 of  
11 the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

13 **SECTION 115. AMENDMENT.** Section 10-32-102 of the 1997 Supplement to the  
14 North Dakota Century Code is amended and reenacted as follows:

15 **10-32-102. Plan approval.**

16 1. A resolution containing the plan of merger or exchange must be approved by the  
17 ~~affirmative vote of a majority of the governing board members present at a~~  
18 ~~meeting of the governing board~~ as required by section 10-19.1-46 or 10-32-83 of  
19 each constituent organization and must then be submitted at a regular or special  
20 meeting to the owners of each constituent organization in the case of a plan of  
21 merger; and the constituent organization whose ownership interests will be  
22 acquired by the acquiring constituent organization in the exchange, in the case of  
23 an exchange. ~~Written~~ If owners owning any class or series of ownership interests  
24 in a constituent organization are entitled to vote on the plan of merger or exchange  
25 pursuant to this subsection, written notice must be given to every owner of that  
26 constituent organization, whether or not entitled to vote at the meeting, not less  
27 than fourteen days nor more than sixty days before the meeting, in the manner  
28 provided in section ~~40-19.1-98~~ 10-19.1-73 for notice of meetings of shareholders  
29 in the case of a domestic corporation and in the manner provided in section  
30 10-32-40 for notice of meetings of members in the case of a limited liability  
31 company. The written notice must state that a purpose of the meeting is to

- 1 consider the proposed plan of merger or exchange. A copy or short description of  
2 the plan of merger or exchange must be included in or enclosed with the notice.
- 3 2. At the meeting a vote of the owners must be taken on the proposed plan. The plan  
4 of merger is adopted when approved by the affirmative vote of the owners ~~of a~~  
5 ~~majority of the voting power of all ownership interests entitled to vote~~ as required  
6 by section 10-19.1-74 or 10-32-42. Except as provided in subsection 3, a class or  
7 series of ownership interests of the constituent organization is entitled to vote as a  
8 class or series if any provision of the plan would, if contained in a proposed  
9 amendment to the articles of organization or ~~articles of incorporation, as the case~~  
10 ~~may be~~ a member-control agreement, entitle the class or series of ownership  
11 interests to vote as a class or series and, in the case of an exchange, if the class  
12 or series is included in the exchange.
- 13 3. A class or series of ownership interests of the constituent organization is not  
14 entitled to vote as a class or series solely because the plan of merger effects a  
15 cancellation of the ownership interests of the class or series if the plan of merger  
16 effects a cancellation of all ownership interests of the constituent organization of all  
17 classes and series that are existing immediately before the merger and owners of  
18 ownership interests of that class or series are entitled to obtain payment for the fair  
19 value of their ownership interests under section 10-19.1-87 or 10-32-55, as the  
20 case may be, in the event of the merger.
- 21 4. Notwithstanding subsections 1 and 2, submission of a plan of merger to a vote at a  
22 meeting of ~~shareholders~~ owners of a surviving ~~corporation~~ constituent organization  
23 is not required if:
- 24 a. The articles ~~of the corporation~~ will not be amended in the transaction;
- 25 b. Each ~~holder~~ owner of ~~shares of the corporation that~~ ownership interests in the  
26 constituent organization which were outstanding immediately before the  
27 effective time of the transaction will hold the same number of ~~shares~~  
28 ownership interests with identical rights immediately after that time;
- 29 c. The voting power of the outstanding ~~shares~~ ownership interests of the  
30 ~~corporation~~ constituent organization entitled to vote immediately after the  
31 merger, plus the voting power of the outstanding ~~shares~~ ownership interests

- 1 of the ~~corporation~~ constituent organization entitled to vote issuable on  
2 conversion of or on the exercise of rights to purchase securities issued in the  
3 transaction, will not exceed by more than twenty percent, the voting power of  
4 the outstanding ~~shares~~ ownership interests of the ~~corporation~~ constituent  
5 organization entitled to vote immediately before the transaction; and  
6 d. The number of participating ~~shares~~ ownership interests of the ~~corporation~~  
7 constituent organization immediately after the merger, plus the number of  
8 participating ~~shares~~ ownership interests of the ~~corporation~~ constituent  
9 organization issuable on conversion, or on the exercise of rights to purchase,  
10 securities issued in the transaction, will not exceed by more than twenty  
11 percent, the number of participating ~~shares~~ ownership interests of the  
12 ~~corporation~~ constituent organization immediately before the transaction.  
13 "Participating ~~shares~~ ownership interests" are outstanding ~~shares~~ ownership  
14 interests of the ~~corporation~~ that constituent organization which entitle ~~their~~  
15 ~~holders~~ the ownership interests owners to participate without limitation in  
16 distributions by the ~~corporation~~ constituent organization.  
17 5. If the merger or exchange is with a domestic corporation, the plan of merger or  
18 exchange must also be approved in the manner provided in chapter 10-19.1.

19 **SECTION 116. AMENDMENT.** Subsection 1 of section 10-32-103 of the 1997  
20 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 21 1. Upon receiving the approval required by section 10-32-102, articles of merger  
22 must be prepared ~~that~~ which contain:  
23 a. The plan of merger; and  
24 b. ~~For each constituent organization either:~~  
25 (1) A statement that the plan has been approved by ~~a vote of the~~  
26 ~~shareholders pursuant to subsection 2 of section 10-19.1-98 or the~~  
27 ~~members~~ each constituent organization pursuant to subsection 2 or 3  
28 ~~of section 10-32-102; chapter 10-19.1 or this chapter.~~  
29 (2) ~~A statement that a vote of the shareholders is not required by virtue of~~  
30 ~~subsection 3 of section 10-19.1-98 or that a vote of the members is not~~  
31 ~~required by virtue of subsection 4 of section 10-32-102.~~

1           **SECTION 117. AMENDMENT.** Section 10-32-104 of the 1997 Supplement to the  
2 North Dakota Century Code is amended and reenacted as follows:

3           **10-32-104. Merger of subsidiary into parent.**

- 4           1. A parent owning at least ninety percent of the outstanding ownership interests of  
5 each class and series of a subsidiary directly, or indirectly through related  
6 corporations or limited liability companies:
- 7           a. May merge the subsidiary into ~~itself~~ the parent; or may merge the subsidiary  
8 into any other subsidiary at least ninety percent of the outstanding ownership  
9 interest of each class and series of which is owned by the parent directly, or  
10 indirectly through related corporations or limited liability companies, without a  
11 vote of the owners of ~~itself~~ the parent or any subsidiary; or
  - 12           b. May merge ~~itself~~ the parent, or ~~itself~~ the parent and one or more subsidiaries,  
13 into one of the subsidiaries under this section.
- 14           2. A resolution approved by the ~~affirmative vote of a majority of the~~ directors of the  
15 parent as required by section 10-19.1-46 or by the governors of the parent present  
16 as required by section 10-32-83 must set forth a plan of merger ~~that~~ which  
17 contains:
- 18           a. The name of the subsidiary or subsidiaries, the name of the parent, and the  
19 name of the surviving constituent organization;
  - 20           b. The manner and basis of converting the ownership interests of the subsidiary  
21 into ownership interests of the parent or of another organization or, in whole  
22 or in part, into money or other property;
  - 23           c. If the parent is a constituent organization but is not the surviving constituent  
24 organization in the merger, a provision for the pro rata issuance of ownership  
25 interests of the surviving constituent organization to the owners of ownership  
26 interests of the parent ~~for~~ on surrender of any ownership interests of the  
27 parent; and
  - 28           d. If the surviving constituent organization is a subsidiary, a statement of any  
29 amendments to the articles of the surviving constituent organization that will  
30 be part of the merger.

- 1           3. If the parent is a constituent organization but is not the surviving constituent  
2           organization in a merger, the resolution is not effective unless ~~the resolution~~ is  
3           also approved by the affirmative vote of the holders of a majority of the voting  
4           power of all ownership interests of the parent entitled to vote at a regular or special  
5           meeting held in accordance with section 10-19.1-98 if the parent is a corporation,  
6           section 10-32-102 if the parent is a limited liability company, or in accordance with  
7           the laws of the jurisdiction under which ~~the parent~~ is incorporated or organized if  
8           the parent is a foreign corporation or foreign limited liability company.
- 9           4. A copy of the plan of merger must be mailed to each owner, other than the parent,  
10          of each subsidiary that is a constituent organization to the merger.
- 11          5. Articles of merger must be prepared ~~that~~ which contain:
- 12           a. The plan of merger;
- 13           b. The number of outstanding ownership interests of each class and series of  
14           ~~each~~ the subsidiary that is a constituent organization and the number of  
15           ownership interests of each class and series owned by the parent directly or  
16           indirectly, through related constituent organizations;
- 17           c. The date a copy of the plan of merger was mailed to the owners, other than  
18           the parent, of each subsidiary that is a constituent organization in the merger;  
19           and
- 20           d. A statement that the plan of merger has been approved by the parent under  
21           this section.
- 22          6. Within thirty days after a copy of the plan of merger is mailed to the owners of each  
23          subsidiary that is a constituent organization to the merger, or upon waiver of the  
24          mailing by the owners of all outstanding ownership interests of each subsidiary that  
25          is a constituent organization to the merger, the articles of merger must be signed  
26          on behalf of the parent and filed with the secretary of state, together with the fees  
27          provided in section 10-32-150.
- 28          7. The secretary of state shall issue a certificate of merger to the ~~parent~~ surviving  
29          constituent organization in the merger or ~~its~~ the surviving constituent organization's  
30          legal representative. The certificate must contain the effective date of merger.

1           8. If all of the ownership interests of one or more domestic subsidiaries that are a  
2           constituent organization to a merger under this section are not owned by the  
3           parent directly, or indirectly through related constituent organizations, immediately  
4           before the merger, the owners of each domestic subsidiary have dissenter's rights  
5           under section 10-19.1-87 or under section 10-32-54, without regard to  
6           subsection 3 of section ~~40-19.1-87 and section~~ 10-19.1-88 or to subsection 2 of  
7           section 10-32-54 ~~or section 10-22-55~~. If the parent is a constituent organization  
8           but is not the surviving constituent organization in the merger, and the articles of  
9           incorporation or articles of organization of the surviving constituent organization  
10          immediately after the merger differ from the articles of incorporation or articles of  
11          organization of the parent immediately before the merger in a manner that would  
12          entitle an owner of the parent to dissenter's rights under subsection 1 of section  
13          10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54 if the articles  
14          of incorporation or articles of organization of the surviving constituent organization  
15          constitute an amendment to the articles of incorporation or articles of organization  
16          of the parent, that owner of the parent has dissenter's rights as provided under  
17          sections section 10-19.1-87 and ~~40-19.1-88~~ or under sections section 10-32-54  
18          and ~~10-32-55~~. Except as provided in this subsection, sections 10-19.1-87 and  
19          ~~40-19.1-88 and sections~~ 10-32-54 and ~~10-32-55~~ do not apply to any merger  
20          affected under this section.

21          9. A merger among a parent and one or more subsidiaries or among two or more  
22          subsidiaries of a parent may be accomplished under sections 10-32-101 through  
23          10-32-103 instead of this section, in which case this section does not apply.

24          **SECTION 118. AMENDMENT.** Section 10-32-105 of the 1997 Supplement to the  
25          North Dakota Century Code is amended and reenacted as follows:

26          **10-32-105. Abandonment of plan of merger.**

27          1. After a plan of merger ~~has been~~ is approved by the owners entitled to vote on the  
28          approval of the plan as provided in section 10-32-102, and before the effective  
29          date of the plan, ~~it~~ the plan of merger may be abandoned:

30          a. With respect to approval of the abandonment:

- 1                   (1) If the owners of ownership interests of each of the constituent  
2 organizations entitled to vote on the approval of the plan as provided in  
3 section 10-32-102 have approved the abandonment at a meeting by  
4 ~~the affirmative vote of the owners of a majority of the voting power of~~  
5 ~~the ownership interests entitled to vote and, owners as required by~~  
6 section 10-19.1-74 or 10-32-42;
- 7                   (2) ~~if~~ If the owners of a constituent organization are not entitled to vote on  
8 the approval of the plan under section 10-32-102, the governing board  
9 of that constituent organization has approved the abandonment by ~~the~~  
10 ~~affirmative vote of a majority of the board members present~~ as required  
11 by section 10-19.1-46 or 10-32-83; and
- 12                   (3) If the merger or exchange is with a foreign corporation or foreign limited  
13 liability company, if abandonment is approved in the manner required  
14 by the laws of the jurisdiction under which the corporation is  
15 incorporated or the limited liability company is organized;
- 16                   b. If the plan itself provides for abandonment and all conditions for abandonment  
17 set forth in the plan are met; or
- 18                   c. Pursuant to subsection 2.
- 19                   2. If articles of merger have not been filed with the secretary of state and the plan is  
20 to be abandoned, or if a plan of exchange is to be abandoned before the effective  
21 date of the plan, a resolution by the governing board of any constituent  
22 organization abandoning the plan of merger or exchange may be approved by the  
23 ~~affirmative vote of a majority of the board members present,~~ as required by section  
24 10-19.1-46 or 10-32-83 subject to the contract rights of any other person under the  
25 plan.
- 26                   3. If articles of merger have been filed with the secretary of state, but have not yet  
27 become effective, the constituent organizations, in the case of abandonment under  
28 subdivision a of subsection 1, the constituent organizations or any one ~~of them~~  
29 constituent organization, in the case of abandonment under subdivision b of  
30 subsection 1, or the abandoning constituent organization in the case of

1 abandonment under subsection 2, shall file with the secretary of state together with  
2 the fees provided in section 10-32-150, articles of abandonment that contain:

- 3 a. The names of the constituent organizations;  
4 b. The provision of this section under which the plan is abandoned; and  
5 c. ~~If the plan is abandoned under subsection 2, the~~ The text of the resolution  
6 ~~approved by the affirmative vote of a majority of the board members present~~  
7 abandoning the plan.

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

10 **SECTION 119. AMENDMENT.** Subdivision a of subsection 2 of section 10-32-106 of  
11 the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 12 a. The constituent organizations become a single ~~constituent organization entity,~~  
13 the surviving ~~constituent organization~~ corporation, or surviving limited liability  
14 company;

15 **SECTION 120. AMENDMENT.** Section 10-32-107 of the 1997 Supplement to the  
16 North Dakota Century Code is amended and reenacted as follows:

17 **10-32-107. Merger or exchange with foreign limited liability company or foreign**  
18 **corporation.**

19 1. A limited liability company may merge with or participate in an exchange with a  
20 foreign corporation or a foreign limited liability company by following the  
21 procedures set forth in this section, if:

- 22 a. With respect to a merger, the merger is permitted by the laws of the ~~state~~  
23 jurisdiction under which the foreign corporation or foreign limited liability  
24 company is incorporated or organized; and  
25 b. With respect to an exchange, the constituent organization ~~whose~~ of which the  
26 ownership interests will be acquired is ~~either~~ a limited liability company or a  
27 domestic corporation, regardless of whether ~~or not~~ the exchange is permitted  
28 by the laws of the ~~state~~ jurisdiction under which the foreign corporation or  
29 foreign limited liability company is incorporated or organized.

30 2. Each limited liability company shall comply with the provisions of this section and  
31 sections 10-32-100 through 10-32-106 with respect to the merger or exchange of



1 ownership interests of organizations and each foreign corporation or foreign limited  
2 liability company shall comply with the applicable provisions of the laws of the  
3 jurisdiction under which it was the foreign corporation or foreign limited liability  
4 company is incorporated or organized or by under which ~~it~~ the foreign corporation  
5 or foreign liability company is governed.

6 3. If the surviving organization in a merger will be a domestic limited liability  
7 company, ~~it~~ the surviving organization shall comply with all the provisions of this  
8 chapter.

9 4. If the surviving organization in a merger will be a foreign corporation or foreign  
10 limited liability company and will transact business in this state, ~~it~~ the surviving  
11 organization shall comply, as the case may be, with the provisions of chapter  
12 ~~10-22~~ 10-19.1 with respect to foreign corporations or with the provisions of this  
13 chapter with respect to foreign limited liability companies. In every case the  
14 surviving foreign corporation or foreign limited liability company shall file with the  
15 secretary of state:

16 a. An agreement that ~~it~~ the surviving organization may be served with process in  
17 this state in a proceeding for the enforcement of an obligation of a constituent  
18 organization and in a proceeding for the enforcement of the rights of a  
19 dissenting owner of an ownership interest of a constituent organization  
20 against the surviving foreign corporation or foreign limited liability company;

21 b. An irrevocable appointment of the secretary of state as ~~its~~ the surviving  
22 organization's agent to accept service of process in any proceeding, and an  
23 address to which process may be forwarded; and

24 c. An agreement that ~~it~~ the surviving organization promptly will ~~promptly~~ pay to  
25 the dissenting owners of ownership interests of each constituent domestic  
26 limited liability company and constituent domestic corporation the amount, if  
27 any, to which ~~they~~ the dissenting owners are entitled under section  
28 10-19.1-88 or 10-32-55, ~~as the case may be.~~

29 **SECTION 121. AMENDMENT.** Section 10-32-109 of the 1997 Supplement to the  
30 North Dakota Century Code is amended and reenacted as follows:

31 **10-32-109. Methods of dissolution.**

- 1           1. A limited liability company dissolves upon the occurrence of any of the following  
2           events:
- 3           a. When the period fixed in the articles of organization for the duration of the  
4           limited liability company expires;
- 5           b. By order of a court pursuant to sections 10-32-119 and 10-32-122;
- 6           c. By action of the organizers pursuant to section 10-32-110;
- 7           d. By action of the members pursuant to section 10-32-111;
- 8           e. For a limited liability company with articles of organization filed with the  
9           secretary of state:
- 10           (1) ~~Except~~ Before July 1, 1999, except as provided in subsection 2 and  
11           except as otherwise provided in the articles of organization or a  
12           member-control agreement, upon the occurrence of an event that  
13           terminates the continued membership of a member in the limited  
14           liability company, including:
- 15           ~~(1)~~ (a) Death of any member;
- 16           ~~(2)~~ (b) Retirement of any member;
- 17           ~~(3)~~ (c) Resignation of any member;
- 18           ~~(4)~~ (d) Redemption of a member's complete membership interest;
- 19           ~~(5)~~ (e) Assignment of a member's governance rights under section  
20           10-32-32 which leaves the assignor with no governance rights;
- 21           ~~(6)~~ (f) A buyout of a member's membership interest under section  
22           10-32-119 ~~that~~ which leaves that member with no governance  
23           rights;
- 24           ~~(7)~~ (g) Expulsion of any member;
- 25           ~~(8)~~ (h) Bankruptcy of any member;
- 26           ~~(9)~~ (i) Dissolution of any member; or
- 27           ~~(10) A merger in which the limited liability company is not the surviving~~  
28           ~~organization;~~
- 29           ~~(11) An exchange in which the limited liability company is not the acquiring~~  
30           ~~organization; or~~

- 1                   ~~(12)~~ (j) The occurrence of any other event that terminates the continued  
2 membership of a member in the limited liability company, ~~but the~~  
3 ~~limited liability company is not dissolved and is not required to be~~  
4 ~~wound up by reason of any event that terminates the continued~~  
5 ~~membership of a member if:~~
- 6                   ~~(a)~~ ~~Either there are at least two remaining members or a new~~  
7 ~~member is admitted as provided in section 10-32-06; and~~
- 8                   ~~(b)~~ ~~The existence and business of the limited liability company is~~  
9 ~~continued either by the consent of all remaining members under~~  
10 ~~a right to consent stated in the articles of organization and the~~  
11 ~~consent is obtained no later than ninety days after the~~  
12 ~~termination of the continued membership, or under a separate~~  
13 ~~right to continue stated in the articles of organization; or~~
- 14                   (2) After June 30, 1999, upon the occurrence of an event terminating the  
15 continued membership of a member in the limited liability company:
- 16                   (a) If the articles of organization or a member-control agreement  
17 specifically provide that the termination causes dissolution; or
- 18                   (b) If the membership of the last or sole member terminates and the  
19 legal representative of that last or sole member does not cause  
20 the limited liability company to admit at least one member within  
21 one hundred eighty days after the termination;
- 22                   f. A merger in which the limited liability company is not the surviving  
23 organization; or
- 24                   g. When terminated by the secretary of state pursuant to section 10-32-149.
- 25                   2. For a limited liability company with articles of organization filed with the secretary  
26 of state before July 1, 1999, the limited liability company is not dissolved and is not  
27 required to be wound up by reason of any event terminating the continued  
28 membership of a member:
- 29                   a. If there is at least one remaining member and the existence and business of  
30 the limited liability company is continued by the consent of every remaining  
31 member obtained no later than ninety days after the termination of the

- 1                   continued membership, or under a separate right to continue stated in the  
2                   articles of organization or a member-control agreement; or
- 3                   b. If the membership of the last or sole member terminates and the legal  
4                   representative of that last or sole member causes the limited liability company  
5                   to admit at least one member within one hundred eighty days after the  
6                   termination.
- 7                   3. A limited liability company dissolved by one of the dissolution events specified in  
8                   subsection 1 must be wound up and terminated under the following dissolution  
9                   provisions:
- 10                  a. When a limited liability company is dissolved under subdivision a of  
11                  subsection 1 by reason of the expiration of ~~its~~ the limited liability company's  
12                  limited period of duration, the limited liability company must be wound up and  
13                  terminated under sections 10-32-112 through 10-32-115 and sections  
14                  10-32-117, 10-32-118, and 10-32-131;
- 15                  b. When a limited liability company is dissolved under subdivision b of  
16                  subsection 1 by reason of a court order, the limited liability company must be  
17                  wound up and terminated under sections 10-32-119 through 10-32-126;
- 18                  c. When a limited liability company is dissolved under subdivision c of  
19                  subsection 1 by its organizers, the limited liability company must be wound up  
20                  and terminated under section 10-32-110 and sections 10-32-112 through  
21                  10-32-118;
- 22                  d. When a limited liability company is dissolved under subdivision d of  
23                  subsection 1 by its members, the limited liability company must be wound up  
24                  and terminated under sections 10-32-111 through 10-32-118 and section  
25                  10-32-131; and
- 26                  e. When a limited liability company is dissolved under subdivision e of  
27                  subsection 1 by reason of a termination of the continued membership of a  
28                  member, the limited liability company must be wound up and terminated  
29                  under sections 10-32-112 through 10-32-115 and sections 10-32-117,  
30                  10-32-118, and 10-32-131.

1       ~~3.~~ 4. Notwithstanding any provision of law, articles of organization, member-control  
2                   agreement, ~~operating agreement~~ bylaws, other agreement, resolution, or action to  
3                   the contrary, a limited liability company is not dissolved and is not required to be  
4                   wound up upon the granting of a security interest in a member's membership  
5                   interest, governance rights, or financial rights, or upon the foreclosure or other  
6                   enforcement of a security interest in a member's financial rights; or upon the  
7                   secured party's assignment, acceptance, or retention of a member's financial rights  
8                   in accordance with title 41.

9                   **SECTION 122. AMENDMENT.** Paragraph 1 of subdivision b of subsection 1 of section  
10 10-32-112 of the North Dakota Century Code is amended and reenacted as follows:

11                   (1) Is approved pursuant to subsection 2 of section 10-32-111, the date  
12                   and place of the meeting at which the dissolution was approved and a  
13                   statement that the requisite vote of the members was received, or that  
14                   members validly took action without a meeting; ~~and~~

15                   **SECTION 123. AMENDMENT.** Subdivision b of subsection 3 of section 10-32-113 of  
16 the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

17                   b. ~~Subject to any business continuation agreement, to~~ To collect or make  
18                   provision for the collection of all known debts due or owing to the limited  
19                   liability company, including unperformed contribution agreements; and

20                   **SECTION 124. AMENDMENT.** Section 10-32-114 of the 1997 Supplement to the  
21 North Dakota Century Code is amended and reenacted as follows:

22                   **10-32-114. Winding-up procedure for limited liability companies that give notice**  
23 **to creditors and claimants.** ~~When~~ If a notice of dissolution ~~has been~~ is filed with the  
24 secretary of state; and the business of the limited liability company is not to be wound up and  
25 terminated by merging the dissolved limited liability company into a successor organization  
26 under subsection 3 of section 10-32-112, ~~then~~ the limited liability company may give notice of  
27 the filing to each creditor of and claimant against the limited liability company known or  
28 unknown, present or future, and contingent or noncontingent.

29                   1. If notice to creditors and claimants is given, ~~#~~ the notice must be given by  
30                   publishing the notice once each week for four successive weeks in an official  
31                   newspaper as defined in chapter 46-06 in the county or counties where the

1 registered office and the principal executive office of the limited liability company  
2 are located and by giving written notice to known creditors and claimants pursuant  
3 to subsection ~~32~~ 31 of section 10-32-02.

- 4 2. The notice to creditors and claimants must contain:
- 5 a. A statement that the limited liability company ~~has~~ dissolved and is in the  
6 process of winding up ~~its~~ affairs;
  - 7 b. A statement that the limited liability company ~~has~~ filed with the secretary of  
8 state a notice of dissolution;
  - 9 c. The date of filing the notice of dissolution;
  - 10 d. The address of the office to which written claims against the limited liability  
11 company must be presented; and
  - 12 e. The date by which all claims must be received; which must be the later of  
13 ninety days after published notice or, with respect to a particular known  
14 creditor or claimant, ninety days after the date on which written notice was  
15 given to that creditor or claimant. Published notice is considered given on the  
16 date of first publication for the purpose of determining this date.

17 3. ~~If the business of the limited liability company is being continued under a business~~  
18 ~~continuation agreement, the notice to creditors may also contain all of the~~  
19 ~~following:~~

- 20 a. ~~A statement that the business of the dissolved limited liability company is~~  
21 ~~being continued by a successor organization;~~
- 22 b. ~~The name and address of the successor organization;~~
- 23 c. ~~An undertaking by the successor organization to assume all the liabilities of~~  
24 ~~the dissolved limited liability company; and~~
- 25 d. ~~A statement that creditors of the dissolved limited liability company do not~~  
26 ~~need to file claims against the limited liability company in order to preserve~~  
27 ~~their rights to enforce these claims against the successor organization.~~

28 ~~Neither the existence of a business continuation agreement nor the giving of the~~  
29 ~~information described in this subsection affects a creditor's or claimant's right to~~  
30 ~~proceed against the dissolved limited liability company.~~

- 1           4- With respect to a limited liability company that gives notice to creditors and  
2           claimants:
- 3           a. The limited liability company has thirty days from the receipt of each claim  
4           filed according to the procedures set forth by the limited liability company on  
5           or before the date set forth in the notice to accept or reject the claim by giving  
6           written notice to the person submitting ~~it~~ the notice to accept or reject. A  
7           claim not expressly rejected in this manner is considered accepted.
- 8           b. A creditor or claimant to whom notice is given and whose claim is rejected by  
9           the limited liability company has sixty days from the date of rejection, or one  
10          hundred eighty days from the date the limited liability company filed with the  
11          secretary of state the notice of dissolution, whichever is longer, to pursue any  
12          other remedies with respect to the claim.
- 13          c. A creditor or claimant to whom notice is given who fails to file a claim  
14          according to the procedures set forth by the limited liability company on or  
15          before the date set forth in the notice is barred from suing the dissolved  
16          limited liability company on that claim or otherwise realizing upon or enforcing  
17          ~~it~~ that claim against the dissolved limited liability company, except as provided  
18          in section 10-32-128. ~~If the dissolved limited liability company gave the~~  
19          ~~additional information referred to in subsection 3, nothing in this section bars~~  
20          ~~the creditor or claimant from seeking to enforce its rights against the~~  
21          ~~successor organization.~~
- 22          d. A creditor or claimant whose claim is rejected by the limited liability company  
23          under subdivision b is barred from suing on that claim or otherwise realizing  
24          upon or enforcing ~~it~~ that claim whether against the dissolved limited liability  
25          company or any successor organization, if the creditor or claimant does not  
26          initiate legal, administrative, or arbitration proceedings with respect to the  
27          claim within the time provided in subdivision b.
- 28          ~~5-~~ 4. Articles of termination for a limited liability company dissolving under this section  
29          ~~that has given~~ which gave notice to creditors and claimants under this section  
30          must be filed with the secretary of state along with the fees provided in section  
31          10-32-150 after:

- 1           a. The ninety-day period in subdivision e of subsection 2 ~~has expired~~ expires  
2                     and the payment of claims of all creditors and claimants filing a claim within  
3                     that period ~~has been~~ are made or provided for; or
- 4           b. The longest of the periods described in subdivision b of subsection 4 ~~has~~  
5                     ~~expired~~ 3 expires and there are no pending legal, administrative, or arbitration  
6                     proceedings by or against the limited liability company commenced within the  
7                     time provided in subdivision b of subsection 4 3.
- 8    ~~6-~~ 5. The articles of termination for a limited liability company that ~~has given~~ gave notice  
9                     to creditors and claimants under this section must state:
- 10           a. The last date on which the notice was given and that the payment of all  
11                     creditors and claimants filing a claim within the ninety-day period in  
12                     subdivision e of subsection 2 ~~has been~~ was made or provided for, or the date  
13                     on which the longest of the periods described in subdivision b of subsection 4  
14                     ~~expired~~ 3 expires;
- 15           b. That the remaining property, assets, and claims of the limited liability  
16                     company ~~have been~~ were distributed in accordance with section 10-32-131,  
17                     or that adequate provision ~~has been~~ was made for that distribution; and
- 18           c. That there are no pending legal, administrative, or arbitration proceedings by  
19                     or against the limited liability company commenced within the time provided in  
20                     subdivision b of subsection 4 3 or that adequate provision has been made for  
21                     the satisfaction of any judgment, order, or decree that may be entered against  
22                     ~~it~~ the limited liability company in a pending proceeding.

23           **SECTION 125. AMENDMENT.** Section 10-32-119 of the 1997 Supplement to the  
24    North Dakota Century Code is amended and reenacted as follows:

25           **10-32-119. Judicial intervention and equitable remedies, dissolution, and**  
26    **termination.**

- 27           1. A court may grant any equitable relief it considers just and reasonable in the  
28                     circumstances or may dissolve, wind up, and terminate a limited liability company:
- 29           a. In a supervised voluntary winding up and termination pursuant to section  
30                     10-32-118;
- 31           b. In an action by a member when it is established that:



- 1 (1) The governors or the persons having the authority otherwise vested in  
2 the board of governors are deadlocked in the management of the  
3 affairs of the limited liability company and the members are unable to  
4 break the deadlock;
- 5 (2) The governors or those in control of the limited liability company have  
6 acted fraudulently, illegally, or in a manner unfairly prejudicial toward  
7 one or more members in their capacities as members or governors of  
8 any limited liability company or as managers or employees of a closely  
9 held limited liability company;
- 10 (3) The members of the limited liability company are so divided in voting  
11 power that, for a period that includes the time when two consecutive  
12 regular meetings were held, they have failed to elect successors to  
13 governors whose terms have expired or would have expired upon the  
14 election and qualification of their successors;
- 15 (4) The limited liability company assets are being misapplied or wasted; or
- 16 (5) An event of dissolution has occurred under subdivision a, d, or e of  
17 subsection 1 of section 10-32-109 but the limited liability company is  
18 not acting to wind up its affairs;
- 19 c. In an action by a creditor when:
  - 20 (1) The claim of the creditor has been reduced to judgment and an  
21 execution on the judgment has been returned unsatisfied; or
  - 22 (2) The limited liability company has admitted in writing that the claim of  
23 the creditor is due and owing and it is established that the limited  
24 liability company is unable to pay its debts in the ordinary course of  
25 business; or
- 26 d. In an action by the attorney general to dissolve the limited liability company in  
27 accordance with section 10-32-122 when it is established that a decree of  
28 termination is appropriate.
- 29 2. In determining whether to order relief under this section and in determining what  
30 particular relief to order, the court shall take into consideration the financial  
31 condition of the limited liability company but may not refuse to order any particular

- 1 form of relief solely on the grounds that the limited liability company has  
2 accumulated or current operating profits.
- 3 3. In an action under subdivision b of subsection 1 in which one or more of the  
4 circumstances described in that subdivision is established, a court, upon motion of  
5 a limited liability company or a member, may order the sale by a plaintiff or a  
6 defendant of all membership interests of the limited liability company held by the  
7 plaintiff or defendant to the limited liability company or the moving members,  
8 whichever is specified in the motion, if the court determines in the court's discretion  
9 that an order is fair and equitable to all parties under all of the circumstances of the  
10 case.
- 11 a. The purchase price of any membership interest sold under this subsection is  
12 the fair value of the membership interest as of the date of the commencement  
13 of the action or as of another date found equitable by the court. If the articles  
14 of organization, a member-control agreement, or another agreement state a  
15 price for the redemption or buyout of membership interests, the court shall  
16 order the sale for the price and on the terms set forth, unless the court  
17 determines that the price or terms are unreasonable under all the  
18 circumstances of the case.
- 19 b. Within five days after entry of the order, the limited liability company shall  
20 provide each selling member with the information the limited liability company  
21 is required to provide under subsection 6 of section 10-32-55.
- 22 c. If the parties are unable to agree on fair value within forty days of entry of the  
23 order, the court shall determine the fair value of the membership interests  
24 under the provisions of subsection 9 of section 10-32-55, may allow interest  
25 or costs as provided in subsections 1 and 10 of section 10-32-55, and may  
26 allocate payment among the member whose membership interest is being  
27 sold and any assignees of the financial rights of that member.
- 28 d. The purchase price must be paid in one or more installments as agreed on by  
29 the parties or, if no agreement can be reached within forty days of entry of the  
30 order, as ordered by the court upon entry of an order for the sale of a  
31 membership interest under this subsection and provided the limited liability

1                   company or the moving members post a bond in adequate amount with  
2                   sufficient sureties or otherwise satisfy the court that any full purchase price of  
3                   the membership interest, plus the additional costs, expenses, and fees  
4                   awarded by the court, will be paid when due and payable, the selling member  
5                   no longer has any rights or status as a member, manager, or governor,  
6                   except the right to receive the fair value of the membership interest plus other  
7                   amounts as might be awarded.

8           4. In determining whether to order relief under this section and in determining what  
9           particular relief to order, the court shall take into consideration the duty that all  
10           members in a closely held limited liability company owe one another to act in an  
11           honest, fair, and reasonable manner in the operation of the limited liability  
12           company and the reasonable expectations of the members as they exist at the  
13           inception and develop during the course of the members' relationship with the  
14           limited liability company and with each other.

15       4- 5. For purposes of this section, any written agreements, including employment  
16           agreements and buy-sell agreements between or among one or more members  
17           and the limited liability company are presumed to reflect the parties reasonable  
18           expectations concerning matters dealt with in the agreements.

19       5- 6. In determining what relief to order, the court shall take into account that any relief  
20           that results in the termination of a member's membership interest ~~will~~ may cause  
21           dissolution of the limited liability company. If the court orders relief that results in  
22           dissolution of the limited liability company, the court shall make appropriate orders  
23           providing for the winding up and termination of the dissolved limited liability  
24           company.

25       6- 7. In deciding whether to order winding up through liquidation, the court shall  
26           consider whether lesser relief suggested by one or more parties, or provided in a  
27           ~~business continuation~~ member-control agreement, such as any form of equitable  
28           relief, or a buyout or partial liquidation coupled with the continuation of the  
29           business of the dissolved limited liability company through a successor  
30           organization, would be adequate to permanently relieve the circumstances  
31           established under subdivision b or c of subsection 1. Lesser relief may be ordered

1 in any case where it would be appropriate under all the facts and circumstances of  
2 the case.

3 ~~7.~~ 8. If the court finds that a party to a proceeding brought under this section has acted  
4 arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award  
5 reasonable expenses, including attorneys' fees and disbursements, to any of the  
6 other parties.

7 ~~8.~~ 9. Proceedings under this section must be brought in a court within the county in  
8 which the registered office of the limited liability company is located. It is not  
9 necessary to make members parties to the action or proceeding unless relief is  
10 sought against them personally.

11 **SECTION 126. AMENDMENT.** Subsection 2 of section 10-32-122 of the 1997  
12 Supplement to the North Dakota Century Code is amended and reenacted as follows:

13 2. An action ~~must~~ may not be commenced under this section until thirty days after  
14 notice to the limited liability company by the attorney general of the reason for the  
15 filing of the action. If the reason for filing the action is an act ~~that~~ the limited liability  
16 company has done, or omitted to do, and the act or omission may be corrected by  
17 an amendment of the articles of organization, a member-control agreement, or the  
18 ~~operating agreement~~ bylaws or by performance of or abstention from the act, the  
19 attorney general shall give the limited liability company thirty additional days in  
20 which to effect the correction before filing the action.

21 **SECTION 127. AMENDMENT.** Section 10-32-131 of the North Dakota Century Code  
22 is amended and reenacted as follows:

23 **10-32-131. Disposition of assets upon dissolution.**

24 1. Subject to subsection ~~4~~ 2, ~~except when the business of a dissolved limited liability~~  
25 ~~company is being continued under subsection 2 or when the dissolved limited~~  
26 ~~liability company is being wound up and terminated under subsection 3 of section~~  
27 ~~10-32-112~~, the assets of the dissolved limited liability company must be disposed  
28 of to satisfy liabilities according to the following priorities:

29 a. To creditors, including members who are creditors, to the extent otherwise  
30 permitted by law, in satisfaction of liabilities of the limited liability company

- 1 other than liabilities for interim distributions to members under section  
2 10-32-61 or termination distributions under section 10-32-60;
- 3 b. Unless otherwise provided in the articles of organization or a member-control  
4 agreement, to members and former members of the limited liability company  
5 in satisfaction of liabilities for distributions under section 10-32-60 or  
6 10-32-61; and
- 7 c. Unless otherwise provided in the articles of organization or a member-control  
8 agreement, to members first for a return of their contributions, as restated  
9 from time to time under section 10-32-57, and secondly respecting ~~their~~ the  
10 member's membership interests in the proportions in which the members  
11 share in distributions.
- 12 2. ~~If a business continuation agreement exists, then after dissolution the board of~~  
13 ~~governors shall resolve to implement the business continuation agreement and the~~  
14 ~~assets of the dissolved limited liability company must be disposed of according to~~  
15 ~~that agreement, except:~~
- 16 a. ~~Members and former members have dissenters' rights as provided in sections~~  
17 ~~10-32-54 and 10-32-55, but:~~
- 18 (1) ~~No dissenters' rights exist if the business of the dissolved limited liability~~  
19 ~~company is being continued pursuant to a business continuation~~  
20 ~~agreement made after the dissolution; and~~
- 21 (2) ~~Any dissenters' rights that do exist are limited by subsections 3 and 4.~~
- 22 b. ~~If the business of the dissolved limited liability company is being continued,~~  
23 ~~but not through a merger under subsection 3 of section 10-32-112, the~~  
24 ~~dissolved limited liability company shall comply with either section 10-32-114~~  
25 ~~or 10-32-115.~~
- 26 3. ~~If a person has agreed in a business continuation agreement to waive dissenters'~~  
27 ~~rights and nonetheless asserts dissenters' rights under subsection 2:~~
- 28 a. ~~Those rights must be honored; but~~
- 29 b. ~~Unless the business continuation agreement provides otherwise, including~~  
30 ~~providing for installment payments:~~

- 1                   (1) ~~In determining the fair value of the membership interest, the value of~~  
2                   ~~the goodwill of the business of the dissolved limited liability company~~  
3                   ~~must not be considered; and~~
- 4                   (2) ~~The payment due the dissenter is subject to an offset equal to:~~
- 5                   ~~(a) Any amount owed to the limited liability company by the member;~~  
6                   ~~(b) The amount of damages, if any, suffered by the limited liability~~  
7                   ~~company as a result of the dissenter's breach of the business~~  
8                   ~~continuation agreement; and~~
- 9                   ~~(c) The amount of other damages, if any, provided for in~~  
10                   ~~subsection 4.~~

11           4. A member who wrongfully resigns or retires is liable to the limited liability company  
12           for any damages caused by the member's wrongful resignation or retirement. Any  
13           member who breaches a member-control agreement is liable to the limited liability  
14           company for any damages caused by the breach. Any payment due a member  
15           under this section, including payments, if any, to dissenters due to winding up a  
16           merger under subsection 3 of section 10-32-112, is subject to offset of these  
17           damages.

18           **SECTION 128. AMENDMENT.** Section 10-32-140 of the 1997 Supplement to the  
19           North Dakota Century Code is amended and reenacted as follows:

20           **10-32-140. Foreign limited liability company - Amendments to the certificate of**  
21           **authority.**

22           1. If any statement in the application for a certificate of authority by a foreign limited  
23           liability company ~~was~~ is false when made or ~~any arrangements or other facts~~  
24           ~~described have changed, making the application inaccurate in any respect~~ the  
25           foreign limited liability company changes the foreign limited liability company's  
26           name or purposes sought in this state, the foreign limited liability company shall  
27           promptly shall file with the secretary of state an application for an amended  
28           certificate of authority executed by an authorized person correcting the statement  
29           and in the case of a change in ~~its~~ the foreign limited liability company's name, a  
30           certificate to that effect authenticated by the proper officer of the state or country  
31           under the laws of which the foreign limited liability company is organized.

1           2. In the case of a termination or merger, a foreign limited liability company that is not  
2           the surviving organization need not file an application for an amended certificate of  
3           authority but shall promptly file with the secretary of state a certificate to that effect  
4           authenticated by the proper officer of the state or country under the laws of which  
5           the foreign limited liability company is organized.

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

14           **SECTION 129. AMENDMENT.** Section 10-32-142 of the 1997 Supplement to the  
15 North Dakota Century Code is amended and reenacted as follows:

16           **10-32-142. Foreign limited liability company - Merger of foreign limited liability**  
17 **company authorized to transact business in this state.** ~~Whenever~~ If a foreign limited  
18 liability company authorized to transact business in this state is a party to a statutory merger  
19 permitted by the laws of the state or country under which ~~it~~ the foreign limited liability company  
20 is organized, and the limited liability company is not the surviving organization, the surviving  
21 organization shall, within thirty days after the merger becomes effective, file with the secretary  
22 of state a certified statement of merger duly authenticated by the proper officer of the state or  
23 country where the statutory merger was effected. Any foreign organization, which is the  
24 surviving organization in a merger and which will continue to transact business in this state,  
25 shall procure ~~either a new or amended~~ certificate of authority if not previously authorized to  
26 transact business in this state.

27           **SECTION 130. AMENDMENT.** Subsection 2 of section 10-32-149 of the 1997  
28 Supplement to the North Dakota Century Code is amended and reenacted as follows:

29           2. The annual report must be submitted on forms prescribed by the secretary of state.  
30           The information provided must be given as of the date of the execution of the  
31           report. The annual report must be signed as prescribed in subsection 46 of

1 section 10-32-02, the articles, ~~operating agreement~~ the bylaws, or a resolution  
2 approved by the affirmative vote of the required proportion or number of the  
3 governors or members entitled to vote. If the limited liability company or foreign  
4 limited liability company is in the hands of a receiver or trustee, ~~it~~ the annual report  
5 must be signed on behalf of the limited liability company or foreign limited liability  
6 company by the receiver or trustee. The secretary of state may destroy ~~all~~ any  
7 annual ~~reports~~ report provided for in this section after ~~they have been~~ the annual  
8 report is on file for six years.

9 **SECTION 131. AMENDMENT.** Subsection 1 of section 10-32-150 of the 1997  
10 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 11 1. The secretary of state shall charge and collect for:
- 12 a. Filing articles of organization and issuing a certificate of organization, one  
13 hundred twenty-five dollars.
  - 14 b. Filing articles of amendment, fifty dollars.
  - 15 c. Filing restated articles of organization, one hundred twenty-five dollars.
  - 16 d. Filing articles of merger and issuing a certificate of merger, fifty dollars.
  - 17 e. Filing abandonment of merger or exchange, fifty dollars.
  - 18 f. Filing an application to reserve a name, ten dollars.
  - 19 g. Filing a notice of transfer of a reserved name, ten dollars.
  - 20 h. Filing a cancellation of reserved name, ten dollars.
  - 21 i. Filing a consent to use of name, ten dollars.
  - 22 j. Filing a statement of change of address of registered office or change of  
23 registered agent or both, ten dollars.
  - 24 k. Filing a statement of change of address of registered office by registered  
25 agent, ten dollars for each limited liability company affected by such change.
  - 26 l. Filing a registered agent's consent to serve in such capacity, ten dollars.
  - 27 m. Filing a resignation as registered agent, ten dollars.
  - 28 n. Filing a resolution for the establishment of a class or series of membership  
29 interest, fifty dollars.
  - 30 o. Filing a notice of dissolution, ten dollars.



- 1 p. Filing a statement of revocation of voluntary dissolution proceedings, ten  
2 dollars.
- 3 q. Filing articles of dissolution and termination, twenty dollars.
- 4 r. Filing an application of a foreign limited liability company for a certificate of  
5 authority to transact business in this state and issuing a certificate of  
6 authority, one hundred twenty-five dollars.
- 7 s. Filing an amendment to the certificate of authority by a foreign limited liability  
8 company, fifty dollars.
- 9 t. Filing a certificate of fact stating a merger of a foreign limited liability company  
10 holding a certificate of authority to transact business in this state, twenty  
11 dollars.
- 12 u. Filing an application for withdrawal of a foreign limited liability company and  
13 issuing a certificate of withdrawal, twenty dollars.
- 14 v. Filing an annual report of a limited liability company or foreign limited liability  
15 company, fifty dollars. The secretary of state shall charge and collect  
16 additional fees for late filing of the annual report as follows:
- 17 (1) After the date prescribed in subsection 3 of section 10-32-149, fifty  
18 dollars; and
- 19 (2) After the termination of the limited liability company, or the revocation of  
20 the certificate of authority of a foreign limited liability company, the  
21 reinstatement fee of one hundred twenty-five dollars.
- 22 w. Filing any process, notice, or demand for service, twenty-five dollars.
- 23 x. Submitting any document for approval before the actual time of submission  
24 for filing, one-half of the fee provided in this section for filing the document.
- 25 y. Filing any other statement or report of a limited liability company or foreign  
26 limited liability company, ten dollars.

27 **SECTION 132. AMENDMENT.** Section 10-33-01 of the 1997 Supplement to the North  
28 Dakota Century Code is amended and reenacted as follows:

29 **10-33-01. Definitions.** For the purposes of this chapter, unless the context otherwise  
30 requires:

- 31 1. "Address" means:

- 1           a.    In the case of a registered office or principal executive office, the mailing  
2                    address, including a zip code, of the actual office location which may not be  
3                    only a post-office box; and
- 4           b.    In any other case, the mailing address, including a zip code.
- 5        2.    "Articles" means:
- 6           a.    In the case of a corporation incorporated under or governed by this chapter,  
7                    articles of incorporation, articles of amendment, a resolution of election to  
8                    become governed by this chapter, a statement of change of registered office,  
9                    registered agent, or name of registered agent, articles of merger, articles of  
10                   consolidation, articles of abandonment, articles of dissolution, and any annual  
11                   report in which a registered office or registered agent has been established or  
12                   changed.
- 13          b.    In the case of a foreign corporation, the term includes all documents serving a  
14                   similar function required to be filed with the secretary of state or other officer  
15                   of the corporation's state of incorporation.
- 16        3.    "Board" means the board of directors of a corporation.
- 17        4.    "Board member" means an individual serving on the board.
- 18        5.    "Bylaws" means the code adopted for the regulation or management of the internal  
19                   affairs of a corporation, regardless of how designated.
- 20        6.    "Corporation" means a corporation, other than a foreign corporation, that is  
21                   incorporated under or governed by this chapter.
- 22        7.    "Director" means a member of the board.
- 23        8.    "Filed with the secretary of state" means except as otherwise permitted by law or  
24                   rule:
- 25           a.    The following have been delivered to the secretary of state and have been  
26                   determined by the secretary of state to conform to law:
- 27                   (1)   A signed original; or a legible facsimile ~~copy~~ telecommunication of a  
28                   signed original, of a request for reserved name; or a signed original of  
29                   all other documents, meeting the applicable requirements of this  
30                   chapter; and
- 31                   (2)   The fees provided for in section 10-33-140;

- 1           b.    And the secretary of state has:
- 2                (1)    Endorsed on the original the word "filed", and the month, day, and year;
- 3                and
- 4                (2)    Recorded the document in the office of the secretary of state.
- 5           9.    "Foreign corporation" means a corporation that is formed under laws other than the
- 6                laws of this state for a purpose for which a corporation may be organized under
- 7                this chapter.
- 8           10.   "Good faith" means honesty in fact in the conduct of an act or transaction.
- 9           11.   "Intentionally" means the person referred to has a purpose to do or fail to do the
- 10               act or cause the result specified, or believes the act or failure to act, if successful,
- 11               will cause that result. A person intentionally violates a statute:
- 12               a.    If the person intentionally does the act or causes the result prohibited by the
- 13                statute; or
- 14               b.    If the person intentionally fails to do the act or cause the result required by the
- 15                statute, even though the person may not know of the existence or
- 16                constitutionality of the statute or the scope or meaning of the terms used in
- 17                the statute.
- 18           12.   "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended
- 19                from time to time, and successive federal revenue acts.
- 20           13.   "Knows" or has "knowledge" means the person has actual knowledge of a fact. A
- 21                person does not "know" or have "knowledge" of a fact merely because the person
- 22                has reason to know of the fact.
- 23           14.   "Legal representative" means a person empowered to act for another person,
- 24                including an agent, manager, officer, partner, or associate of an organization; a
- 25                trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver,
- 26                guardian, custodian, or conservator.
- 27           15.   "Member" means a person with membership rights in a corporation under its
- 28                articles or bylaws, regardless of how the person is identified.
- 29           16.   "Members with voting rights" means members or a class of members that has
- 30                voting rights with respect to the purpose or matter involved.

- 1           17. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving  
2                   pecuniary gain to any officer, director, or member, other than a member that is a  
3                   nonprofit organization or subdivision, unit, or agency of the United States or a state  
4                   or local government.
- 5           18. "Notice":
- 6                   a. Is given by a member of a corporation to the corporation or an officer of the  
7                   corporation when in writing and mailed or delivered to the corporation or the  
8                   officer at the registered office or principal executive office of the corporation;  
9                   and
- 10                  b. In all other cases, is given to a person:
- 11                   (1) When mailed to the person at an address designated by the person or  
12                   at the ~~last known~~ last-known address of the person;
- 13                   (2) When handed to the person; or
- 14                   (3) When left at the office of the person with a clerk or other person in  
15                   charge of the office; or
- 16                   (a) If there is no one in charge, when left in a conspicuous place in  
17                   the office; or
- 18                   (b) If the office is closed or the person to be notified has no office,  
19                   when left at the dwelling house or usual place of abode of the  
20                   person with some person of suitable age and discretion then  
21                   residing therein.
- 22                  c. Is given by mail when deposited in the United States mail with sufficient  
23                   postage affixed.
- 24                  d. Is deemed received when it is given.
- 25           19. "Officer" means an individual who is more than eighteen years of age and who is:
- 26                   a. Elected, appointed, or otherwise designated as an officer by the board or the  
27                   members; or
- 28                   b. Considered elected as an officer pursuant to section 10-33-52.
- 29           20. "Organization" means a corporation, whether domestic or foreign, incorporated in  
30                   or authorized to do business in this state under another chapter of this code;  
31                   limited liability company; partnership; limited partnership; limited liability

- 1 partnership; joint venture; association; business trust; estate; trust; enterprise; or  
2 any other legal or commercial entity.
- 3 21. "Principal executive office" means:
- 4 a. If the corporation has an elected or appointed president, then an office where  
5 the elected or appointed president of the corporation has an office; or  
6 b. If the corporation has no elected or appointed president, then the registered  
7 office of the corporation.
- 8 22. "Registered office" means the place in this state designated in the articles of a  
9 corporation as the registered office of the corporation.
- 10 23. "Related organization" means an organization that controls, is controlled by, or is  
11 under common control with another organization with control existing if an  
12 organization:
- 13 a. Owns, directly or indirectly, at least fifty percent of the shares, membership  
14 interests, or other ownership interests of another organization;  
15 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or  
16 more of the voting members of the governing body of another organization; or  
17 c. Has the power, directly or indirectly, to direct or cause the direction of the  
18 management and policies of another organization, whether through the  
19 ownership of voting interests, by contract, or otherwise.
- 20 24. "Signed" means ~~that~~ the signature of a person is placed on a document, as  
21 provided in subsection 39 of section 41-01-11, and:
- 22 a. With respect to a document required by this chapter to be filed with the  
23 secretary of state, means ~~that~~ the document has been signed by a person  
24 authorized to ~~do so~~ sign by this chapter, the articles, the bylaws, a resolution  
25 approved by the ~~affirmative vote of the required proportion or number of the~~  
26 ~~directors as required by section 10-33-42,~~ or the ~~required proportion or~~  
27 ~~number of~~ members with voting rights, if any, as required by section  
28 10-33-72; and
- 29 b. With respect to a document ~~that is~~ not required by this chapter to be filed with  
30 the secretary of state, the signature may be a facsimile affixed, engraved,  
31 printed, placed, stamped with indelible ink, transmitted by facsimile

1                    telecommunication or electronically, or in any other manner reproduced on  
2                    the document.

- 3            25. "Subsidiary" of a specified corporation means:  
4                    a. A corporation having more than fifty percent of the voting power of its shares  
5                    entitled to vote for directors owned directly or indirectly through related  
6                    corporations or limited liability companies, by the specified corporation; or  
7                    b. A limited liability company having more than fifty percent of the voting power  
8                    of its membership interests entitled to vote for governors owned directly, or  
9                    indirectly through related limited liability companies or corporations, by the  
10                    specified limited liability company.

11           26. "Surviving corporation" means the domestic or foreign corporation resulting from a  
12           merger.

13           27. "Vote" includes authorization by written action.

- 14           28. "Written action" means:  
15                    a. A written document signed by all of the persons required to take the action; or  
16                    b. The counterparts of a written document signed by any of the persons taking  
17                    the action. Each counterpart constitutes the action of the persons signing it,  
18                    and all the counterparts are one written action by all of the persons signing  
19                    them.

20           **SECTION 133.** A new subsection to section 10-33-06 of the 1997 Supplement to the  
21 North Dakota Century Code is created and enacted as follows:

22                    Subsection 5 does not limit the right of the board, by resolution, to take an action  
23                    that the bylaws may authorize under this subsection without including the  
24                    authorization in the bylaws, unless the authorization is required to be in the bylaws  
25                    by another provision of this chapter.

26           **SECTION 134. AMENDMENT.** Subsection 1 of section 10-33-10 of the 1997  
27 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 28           1. The corporate name:  
29                    a. Must be in the English language or in any other language expressed in  
30                    English letters or characters.

- 1           b. Need not contain the word "company", "corporation", "incorporated", "limited",  
2           or an abbreviation of one or more of these words.
- 3           c. May not contain a word or phrase that indicates or implies that it may not be  
4           incorporated under this chapter.
- 5           d. May not contain the words "limited liability company", "limited partnership",  
6           "limited liability partnership", "limited liability limited partnership", or any  
7           abbreviation of these words.
- 8           e. May not contain a word or phrase that indicates or implies that it is  
9           incorporated for a purpose other than a legal nonprofit purpose for which a  
10          corporation may be incorporated under this chapter.
- 11         e. f. Unless a document in compliance with subsection 2 of this section is filed with  
12          the articles, may not be the same as or deceptively similar to:
- 13                 (1) The name, whether foreign and authorized to do business in this state,  
14                 or domestic, of:
- 15                         (a) Another corporation;
- 16                         (b) A corporation incorporated or authorized to do business in this  
17                         state under another provision of this code;
- 18                         (c) A limited liability company;
- 19                         (d) A limited partnership; ~~or~~
- 20                         (e) A limited liability partnership; or
- 21                         (f) A limited liability limited partnership.
- 22                 (2) A name the right to which is, at the time of incorporation, reserved in  
23                 the manner provided in section 10-19.1-14, 10-32-11, 10-33-11,  
24                 45-10.1-03, or 45-22-05;
- 25                 (3) A fictitious name registered in the manner provided in chapter 45-11; or
- 26                 (4) A trade name registered in the manner provided in chapter 47-25.

27           **SECTION 135. AMENDMENT.** Subsection 4 of section 10-33-13 of the 1997

28 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 29           4. With respect to fees:

1           a. The fee prescribed in section 10-33-140 for change of registered office must  
2           be refunded ~~when~~ if in the secretary of state's opinion a change of address of  
3           registered office results from rezoning or postal reassignment.

4           b. The ~~fee~~ fees prescribed in section 10-33-140 ~~does~~ for change of registered  
5           agent, change of registered office, and consent of registered agent do not  
6           apply ~~when~~ if the registered agent or registered office is established or  
7           changed in the annual report.

8           **SECTION 136.** A new subsection to section 10-33-17 of the 1997 Supplement to the  
9           North Dakota Century Code is created and enacted as follows:

10           Assets held by a corporation, including income or fees from services, are restricted  
11           to the uses and purposes for which the property was received or held.

12           **SECTION 137. AMENDMENT.** Section 10-33-49 of the 1997 Supplement to the North  
13           Dakota Century Code is amended and reenacted as follows:

14           **10-33-49. Officers.** The officers of a corporation must be individuals who are eighteen  
15           years of age or more, and must include a president; and secretary, ~~and treasurer~~. The officers  
16           of the corporation may also include a treasurer, one or more vice presidents, and any other  
17           officers or agents as may be prescribed by the bylaws. Each officer must be elected by the  
18           board at the time and in the manner as may be provided in the bylaws unless the articles or  
19           bylaws provide ~~that~~ the members may elect the officers.

20           **SECTION 138. AMENDMENT.** Subsection 3 of section 10-33-50 of the 1997  
21           Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 22           3. The treasurer, if any, shall:
- 23           a. Keep accurate financial records for the corporation;
- 24           b. Deposit all money, drafts, and checks in the name of and to the credit of the  
25           corporation in the banks and depositories designated by the board;
- 26           c. Endorse for deposit all notes, checks, and drafts received by the corporation  
27           as ordered by the board, making proper vouchers;
- 28           d. Disburse corporate funds and issue checks and drafts in the name of the  
29           corporation, as ordered by the board;



1 e. Give to the president and the board, ~~whenever~~ when requested, an account  
2 of all transactions by the treasurer and of the financial condition of the  
3 corporation; and

4 f. Perform other duties prescribed by the board or by the president.

5 **SECTION 139. AMENDMENT.** Subsection 3 of section 10-33-54 of the 1997

6 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7 3. A vacancy in an office because of death, resignation, removal, disqualification, or  
8 other cause may, or in the case of a vacancy in the office of ~~president or treasurer,~~  
9 if any, or president, must, be filled for the unexpired part of the term in the manner  
10 provided in the articles or bylaws, ~~or~~ as determined by the board, or under section  
11 10-33-52.

12 **SECTION 140. AMENDMENT.** Section 10-33-84 of the 1997 Supplement to the North  
13 Dakota Century Code is amended and reenacted as follows:

14 **10-33-84. Indemnification.**

15 1. For purposes of this section:

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

20 b. "Official capacity" means:

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

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

26 (3) With respect to a director, officer, or employee of the corporation who,  
27 while a director, officer, or employee of the corporation, is or was  
28 serving at the request of the corporation or whose duties in that position  
29 involve or involved service as a director, governor, officer, manager,  
30 partner, trustee, employee, or agent of another organization or  
31 employee benefit plan, the position of that person as a director,

- 1                   governor, officer, manager, partner, trustee, employee, or agent, as the  
2                   case may be, of the other organization or employee benefit plan.
- 3           c. "Proceeding" means a threatened, pending, or completed civil, criminal,  
4           administrative, arbitration, or investigative proceeding, including a proceeding  
5           by or in the right of the corporation.
- 6           d. "Special legal counsel" means counsel who has not represented the  
7           corporation or a related organization, or a director, officer, member of a  
8           committee of the board, or employee whose indemnification is in issue.
- 9           2. Subject to subsection 5, a corporation shall indemnify a person made or  
10           threatened to be made a party to a proceeding by reason of the former or present  
11           official capacity of the person against judgments, penalties, fines including excise  
12           taxes assessed against the person with respect to an employee benefit plan,  
13           settlements, and reasonable expenses, including attorneys' fees and  
14           disbursements, incurred by the person in connection with the proceeding, if, with  
15           respect to the acts or omissions of the person complained of in the proceeding, the  
16           person:
- 17           a. Has not been indemnified by another organization or employee benefit plan  
18           for the same judgments, penalties, fines including excise taxes assessed  
19           against the person with respect to an employee benefit plan, settlements, and  
20           reasonable expenses, including attorneys' fees and disbursements, incurred  
21           by the person in connection with the proceeding with respect to the same acts  
22           or omissions;
- 23           b. Acted in good faith;
- 24           c. Received no improper personal benefit and section 10-33-45, if applicable,  
25           has been satisfied;
- 26           d. In the case of a criminal proceeding, had no reasonable cause to believe the  
27           conduct was unlawful; and
- 28           e. In the case of acts or omissions occurring in the official capacity described in  
29           paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that  
30           the conduct was in the best interests of the corporation, or in the case of acts  
31           or omissions occurring in the official capacity described in paragraph 3 of

1 subdivision b of subsection 1, reasonably believed that the conduct was not  
2 opposed to the best interests of the corporation. If the person's acts or  
3 omissions complained of in the proceeding relate to conduct as a director,  
4 governor, officer, manager, trustee, employee, or agent of an employee  
5 benefit plan, the conduct is not considered to be opposed to the best interests  
6 of the corporation if the person reasonably believed that the conduct was in  
7 the best interests of the participants or beneficiaries of the employee benefit  
8 plan.

9 3. The termination of a proceeding by judgment, order, settlement, conviction, or  
10 upon a plea of nolo contendere or its equivalent does not, of itself, establish that  
11 the person did not meet the criteria set forth in subsection 2.

12 4. Subject to subsection 5, if a person is made or threatened to be made a party to a  
13 proceeding, the person is entitled, upon written request to the corporation, to  
14 payment or reimbursement by the corporation of reasonable expenses, including  
15 attorneys' fees and disbursements, incurred by the person in advance of the final  
16 disposition of the proceeding:

- 17 a. Upon receipt by the corporation of a written affirmation by the person of a  
18 good faith belief that the criteria for indemnification set forth in subsection 2  
19 have been satisfied and a written undertaking by the person to repay all  
20 amounts so paid or reimbursed by the corporation, if it is ultimately  
21 determined that the criteria for indemnification have not been satisfied; and  
22 b. After a determination that the facts then known to those making the  
23 determination would not preclude indemnification under this section.

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

27 5. The articles or bylaws ~~either~~ may prohibit indemnification or advances of expenses  
28 otherwise required by this section or may impose conditions on indemnification or  
29 advances of expenses in addition to the conditions contained in subsections 2, 3,  
30 and 4 including monetary limits on indemnification or advances for expenses, if the  
31 prohibition conditions apply equally to all persons or to all persons within a given

- 1 class. A prohibition or limit on indemnification or advances may not apply to or  
2 affect the right of a person to indemnification or advances of expenses with respect  
3 to any acts or omissions of the person occurring ~~prior to~~ before the effective date  
4 of a provision in the articles or the date of adoption of a provision in the bylaws  
5 establishing the prohibition or limit on indemnification or advances.
- 6 6. This section does not require, or limit the ability of, a corporation to reimburse  
7 expenses, including attorneys' fees and disbursements, incurred by a person in  
8 connection with an appearance as a witness in a proceeding at a time when the  
9 person has not been made or threatened to be made a party to a proceeding.
- 10 7. All determinations whether indemnification of a person is required because the  
11 criteria provided in subsection 2 have been satisfied and whether a person is  
12 entitled to payment or reimbursement of expenses in advance of the final  
13 disposition of a proceeding as provided in subsection 4 must be made:
- 14 a. By the board by a majority of a quorum, if the directors who are at the time  
15 parties to the proceeding are not counted for determining either a majority or  
16 the presence of a quorum;
- 17 b. If a quorum under subdivision a cannot be obtained by a majority of a  
18 committee of the board, consisting solely of two or more directors not at the  
19 time parties to the proceeding, duly designated to act in the matter by a  
20 majority of the full board including directors who are parties;
- 21 c. If a determination is not made under subdivision a or b, by special legal  
22 counsel, selected either by a majority of the board or a committee by vote  
23 pursuant to subdivision a or b or, if the requisite quorum of the full board  
24 cannot be obtained and the committee cannot be established, by a majority of  
25 the full board including directors who are parties;
- 26 d. If a determination is not made under subdivisions a, b, and c, by the members  
27 with voting rights, other than members who are a party to the proceeding; or
- 28 e. If an adverse determination is made under subdivisions a through d, or under  
29 subsection 8, or if no determination is made under subdivisions a through d,  
30 or under subsection 8, within sixty days after:

- 1                   (1)    The later to occur of the termination of a proceeding or a written  
2   request for indemnification to the corporation; or  
3                   (2)    A request for an advance of expenses, as the case may be, by a court  
4   in this state, which may be the same court in which the proceeding  
5   involving the person's liability took place, upon application of the person  
6   and any notice the court requires.

7                   The person seeking indemnification or payment or reimbursement of  
8   expenses pursuant to this subdivision has the burden of establishing that the  
9   person is entitled to indemnification or payment or reimbursement of  
10    expenses.

11           8.    With respect to a person who is not, and who was not at the time of the acts or  
12    omissions complained of in the proceedings, a director, officer, or person  
13    possessing, directly or indirectly, the power to direct or cause the direction of the  
14    management or policies of the corporation, the determination whether  
15    indemnification of this person is required because the criteria set forth in  
16    subsection 2 have been satisfied and whether this person is entitled to payment or  
17    reimbursement of expenses in advance of the final disposition of a proceeding as  
18    provided in subsection 4 may be made by an annually appointed committee of the  
19    board, having at least one member who is a director. The committee shall report  
20    at least annually to the board concerning its actions.

21           9.    A corporation may purchase and maintain insurance on behalf of a person in that  
22    person's official capacity against any liability asserted against and incurred by the  
23    person in or arising from that capacity, whether or not the corporation would have  
24    been required to indemnify the person against the liability under this section.

25           10.   A corporation with members with voting rights that indemnifies or advances  
26    expenses to a person in accordance with this section in connection with a  
27    proceeding by or on behalf of the corporation shall report to the members in writing  
28    the amount of the indemnification or advance and to whom and on whose behalf it  
29    was paid not later than the next meeting of members.



1 corporation's name, a certificate to that effect authenticated by the proper officer of the  
2 jurisdiction under the laws of which the foreign corporation is incorporated. In the case of a  
3 dissolution or merger, a foreign corporation that is not the surviving organization need not file  
4 an application for an amended certificate of authority but shall promptly file with the secretary of  
5 state a certificate to that effect authenticated by the proper officer of the jurisdiction under the  
6 laws of which the foreign corporation is incorporated. A foreign nonprofit corporation that  
7 changes the foreign nonprofit corporation's name and applies for an amended certificate of  
8 authority and that is the owner of a trademark or trade name, a general partner named in a  
9 fictional name certificate, a general partner in a limited partnership or a limited liability limited  
10 partnership, or a managing partner in a limited liability partnership that is on file with the  
11 secretary of state shall change the foreign nonprofit corporation's name in each of the foregoing  
12 registrations that apply if the foreign nonprofit corporation files an application for an amended  
13 certificate of authority.

14       **SECTION 144. AMENDMENT.** Section 34-09-06 of the 1997 Supplement to the North  
15 Dakota Century Code is amended and reenacted as follows:

16       **34-09-06. Contracts between union and employer.** Any contract entered into  
17 between the employer and a labor union must be executed on behalf of the employer in ~~his or~~  
18 ~~its~~ the employer's true name and signed by the employer, or in case of a corporation by the  
19 proper officers authorized by law and the bylaws of ~~such~~ the corporation to execute valid and  
20 binding contracts on behalf of the corporation, or in the case of a limited liability company by  
21 the proper managers authorized by law and the ~~operating agreement~~ bylaws of ~~such~~ the  
22 limited liability company to execute valid and binding contracts on behalf of the limited liability  
23 company, and any ~~such~~ contract under this section must be executed on behalf of the labor  
24 union in the name of the labor union by the president ~~or,~~ the secretary, or other duly authorized  
25 officer of ~~such~~ the labor union. ~~Such~~ A contract under this section is equally binding as to all  
26 ~~its~~ of the contract's terms and conditions against both the employer and the labor union.

27       **SECTION 145. AMENDMENT.** Section 45-10.1-01 of the 1997 Supplement to the  
28 North Dakota Century Code is amended and reenacted as follows:

29       **45-10.1-01. (101) Definitions.** As used in this chapter, unless the context otherwise  
30 requires:

31       1. "Address" means:

- 1           a.    In the case of a registered office or principal executive office, the mailing  
2                    address, including the zip code, of the actual office location which may not be  
3                    only a post-office box; and
- 4           b.    In all other cases, the mailing address, including a zip code.
- 5           2.    "Business" includes every trade, occupation, and profession.
- 6           3.    "Certificate of limited partnership" means the certificate referred to in section  
7                    45-10.1-08, and the certificate as amended or restated.
- 8       ~~3.~~ 4.    "Contribution" means any cash, property, services rendered, or a promissory note  
9                    or other binding obligation to contribute cash or property or to perform services,  
10                   which a partner contributes to a limited partnership in ~~his~~ that partner's capacity as  
11                   a partner.
- 12           5.    "Distribution" means a transfer of money or other property from a limited  
13                    partnership to a partner in the partner's capacity as a partner or to the partner's  
14                    transferee.
- 15       4. 6.    "Event of withdrawal of a general partner" means an event that causes a person to  
16                    cease to be a general partner as provided in section 45-10.1-26.
- 17       ~~5.~~ 7.    "Filed with the secretary of state" means except as otherwise permitted by law or  
18                    rule:
- 19           a.    That ~~either:~~
- 20                    (1)   A a signed original or a legible facsimile ~~copy~~ telecommunication of a  
21                    signed original of a request for reserved name; or
- 22                    (2)   A a signed original of all other documents meeting the applicable  
23                    requirements of this chapter together with the fees provided in section  
24                    45-10.1-15 ~~has been~~ was delivered to the secretary of state and ~~has~~  
25                    ~~been~~ was determined by the secretary of state to conform to law.
- 26           b.    That the secretary of state shall then:
- 27                    (1)   Endorse on the original the word "filed" and the month, day, and year;  
28                    and
- 29                    (2)   Record the document in the office of the secretary of state.



- 1       ~~6-~~ 8. "Foreign limited partnership" means a partnership formed under the laws of any  
2                   state other than this state and having as partners one or more general partners  
3                   and one or more limited partners.
- 4       ~~7-~~ 9. "General partner" means a person who has been admitted to a limited partnership  
5                   as a general partner in accordance with the partnership agreement and named in  
6                   the certificate of limited partnership as a general partner.
- 7       10. "Jurisdiction of origin" means the jurisdiction in which the limited partnership status  
8                   of the foreign limited partnership is created.
- 9       ~~8-~~ 11. "Limited partner" means a person who has been admitted to a limited partnership  
10                  as a limited partner in accordance with the partnership agreement.
- 11      ~~9-~~ 12. "Limited partnership" and "domestic limited partnership" means a partnership  
12                  formed by two or more persons under the laws of this state and having one or  
13                  more general partners and one or more limited partners.
- 14      ~~10-~~ 13. "Notice":
- 15              a. Is given to a limited partnership or to a partner of the limited partnership when  
16                  in writing and mailed or delivered to the limited partnership or the partner at  
17                  the registered office or principal executive office of the limited partnership.
- 18              b. In all other cases, is given to a person:
- 19                  (1) When mailed to the person at an address designated by the person or  
20                      at the ~~last known~~ last-known address of the person;
- 21                  (2) When handed to the person; or
- 22                  (3) When left at the office of the person with a clerk or other person in  
23                      charge of the office; or
- 24                      (a) If there is no one in charge, when left in a conspicuous place in  
25                          the office; or
- 26                      (b) If the office is closed or the person to be notified has no office,  
27                          when left at the dwelling house or usual place of abode of the  
28                          person with some person of suitable age and discretion residing  
29                          there.
- 30              c. Is given when deposited in the United States mail with sufficient postage  
31                  affixed.

- 1 d. Is deemed received when it is given.
- 2 44. 14. "Partner" means a general or limited partner.
- 3 42. 15. "Partnership agreement" means any valid agreement, written or oral, of the  
4 partners as to the affairs of a limited partnership and the conduct of its business.
- 5 43. 16. "Partnership interest" means a partner's share of the profits and losses of a limited  
6 partnership and the right to receive distributions of partnership assets.
- 7 44. 17. "Principal executive office" means:
- 8 a. An office from which the limited partnership conducts business; or
- 9 b. If the limited partnership has no office from which it conducts business, then  
10 the registered office of the limited partnership.
- 11 45. 18. "Signed" means that the signature of a person ~~has been~~ is placed on a document,  
12 as provided in subsection 39 of section 41-01-11, and:
- 13 a. With respect to a document required by this chapter to be filed with the  
14 secretary of state, means ~~that~~ the document ~~has been~~ is signed by a person  
15 authorized to ~~do so~~ sign the document by this chapter or by a resolution  
16 approved by the affirmative vote of the required proportion or number of  
17 partners; and
- 18 b. With respect to a document ~~that is~~ not required by this chapter to be filed with  
19 the secretary of state, means ~~that~~ the signature may be a facsimile affixed,  
20 engraved, printed, placed, stamped with indelible ink, transmitted by facsimile  
21 or electronically, or in any other manner reproduced on the document.
- 22 46. 19. "State" means a state, territory, or possession of the United States, the District of  
23 Columbia, or the Commonwealth of Puerto Rico.

24 **SECTION 146. AMENDMENT.** Subsection 1 of section 45-10.1-02 of the 1997

25 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 26 1. The name of each limited partnership as set forth in ~~its~~ the limited partnership's  
27 certificate of limited partnership:
- 28 a. Must be in the English language or in another language expressed in English  
29 letters or characters.
- 30 b. Must contain without abbreviation the words "limited partnership" or the  
31 abbreviation "L.P." or "LP", either of which abbreviation may be used

- 1 interchangeably for all purposes authorized by this chapter including real  
2 estate matters, contracts, and filings with the secretary of state.
- 3 c. May not contain the name of a limited partner unless:
- 4 (1) ~~It~~ Except as limited in subdivision g, the name is also the name of a  
5 general partner; or
- 6 (2) The business of the limited partnership ~~had been~~ has carried on under  
7 that name before the admission of that limited partner.
- 8 d. May not contain a word or phrase that indicates or implies ~~it~~ the limited  
9 partnership may not be organized under this chapter.
- 10 e. May not contain a word or phrase indicating or implying ~~it~~ the limited  
11 partnership is organized for a purpose other than a legal business purpose for  
12 which a limited partnership may be organized under this chapter.
- 13 f. May not contain a word or phrase indicating or implying ~~it~~ the limited  
14 partnership is organized other than for a purpose stated in ~~its~~ the limited  
15 partnership's certificate of limited partnership.
- 16 g. May not contain the word "corporation", "company", "incorporated", "limited  
17 liability company", "limited liability partnership", "limited liability limited  
18 partnership", or any abbreviation of ~~these~~ these words.
- 19 h. May not be the same as; or deceptively similar to:
- 20 (1) The name, whether foreign and authorized to do business in this state;  
21 or domestic, unless there is filed with the articles a document in  
22 compliance with subsection ~~2 of this section~~ 3, of:
- 23 (a) Another limited partnership;
- 24 (b) A corporation;
- 25 (c) A limited liability company; ~~or~~
- 26 (d) A limited liability partnership; or
- 27 (e) A limited liability limited partnership;
- 28 (2) A name the right to which is, at the time of organization, reserved in the  
29 manner provided in section 10-19.1-14, 10-32-11, 10-33-11,  
30 45-10.1-03, or 45-22-05;
- 31 (3) A fictitious name registered in the manner provided in chapter 45-11; or

1 (4) A trade name registered in the manner provided in chapter 47-25.

2 **SECTION 147.** A new subsection to section 45-10.1-04 of the 1997 Supplement to the  
3 North Dakota Century Code is created and enacted as follows:

4 Proof of the registered agent's consent to serve in the capacity of registered agent  
5 must be filed with the secretary of state, together with the filing fees provided in  
6 section 45-10.1-15.

7 **SECTION 148.** Section 45-10.1-04.1 of the North Dakota Century Code is created and  
8 enacted as follows:

9 **45-10.1-04.1. Change of registered office or agent.**

10 1. A limited partnership may change the limited partnership's registered office,  
11 change the limited partnership's registered agent, or state a change in the name of  
12 the limited partnership's registered agent, by filing with the secretary of state, along  
13 with the fees provided in section 45-10.1-15, a statement containing:

- 14 a. The name of the limited partnership;  
15 b. The new address of the limited partnership's registered office, if the address  
16 of the limited partnership's registered office is to be changed;  
17 c. The name of the limited partnership's new registered agent, if the limited  
18 partnership's registered agent is to be designated or changed;  
19 d. The name of the limited partnership's registered agent as changed, if the  
20 name of the limited partnership's registered agent is to be changed;  
21 e. A statement that the address of the limited partnership's registered office and  
22 the address of the business office of the limited partnership's registered  
23 agent, as changed, will be identical; and  
24 f. A statement that the change of registered office or registered agent was  
25 authorized by resolution approved by the general partners.

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

- 1           3. If the business address or name of a registered agent changes, the agent shall  
2           change the address of the registered office or the name of the registered agent, as  
3           the case may be, of each limited partnership represented by that agent by filing  
4           with the secretary of state a statement for each limited partnership as required in  
5           subsection 1, except that the statement need be signed only by the registered  
6           agent, need not be responsive to subdivision f of subsection 1, and must state that  
7           a copy of the statement was mailed to each of those limited partnerships or to the  
8           legal representative of each of those limited partnerships.
- 9           4. The fee prescribed in section 45-10.1-15 for change of registered office must be  
10          refunded if in the secretary of state's opinion a change of address of registered  
11          office results from rezoning or postal reassignment.

12           **SECTION 149. AMENDMENT.** Section 45-10.1-08 of the 1997 Supplement to the  
13 North Dakota Century Code is amended and reenacted as follows:

14           **45-10.1-08. (201) Certificate of limited partnership.**

- 15           1. In order to form a limited partnership, a certificate of limited partnership must be  
16           ~~executed~~ signed and filed in the office of the secretary of state. The certificate  
17           must set forth:
- 18           a. The name of the limited partnership.
- 19           b. The general character of its business.
- 20           c. The address of the registered office ~~and the name and address of the agent~~  
21           ~~for service of process required to be maintained by section 45-10.1-04 of the~~  
22           limited partnership and the name of the limited partnership's registered agent  
23           at that address.
- 24           d. The name and address of the principal place of business of each general  
25           partner.
- 26           e. Any other matters the general partners determine to include therein.
- 27           2. A limited partnership is formed at the time of the filing of the certificate of limited  
28           partnership in the office of the secretary of state or ~~at any later time~~ on the date  
29           specified in the certificate of limited partnership if, in either case, there has been  
30           ~~substantial compliance with the requirements of this section~~ which is within ninety

1           days after the filing of the certificate of limited partnership with the secretary of  
2           state.

3           **SECTION 150. AMENDMENT.** Section 45-10.1-09 of the North Dakota Century Code  
4 is amended and reenacted as follows:

5           **45-10.1-09. (202) Amendment to certificate.**

- 6           1. A certificate of limited partnership is amended by filing a certificate of amendment  
7           ~~thereto~~ in the office of the secretary of state. The certificate must set forth all of  
8           the following:
- 9           a. The name of the limited partnership.
  - 10           b. ~~The date of filing the certificate.~~
  - 11           e. The amendment to the certificate.
- 12           2. An amendment to a certificate of limited partnership reflecting the occurrence of  
13           the event or events must be filed within thirty days after the happening of any of  
14           the following events:
- 15           a. The admission of a new general partner.
  - 16           b. The withdrawal of a general partner.
  - 17           c. The continuation of the business under section 45-10.1-47 after an event of  
18           withdrawal of a general partner.
  - 19           d. A change of ~~office or an~~ registered agent or change of address of registered  
20           agent.
- 21           3. A general partner who becomes aware that any statement in a certificate of limited  
22           partnership was false when made or that any arrangements or other facts  
23           described have changed, making the certificate inaccurate in any respect, shall  
24           promptly amend the certificate.
- 25           4. A certificate of limited partnership may be amended at any time for any other  
26           proper purpose the general partners determine.
- 27           5. No person has any liability because an amendment to a certificate of limited  
28           partnership has not been filed to reflect the occurrence of any event referred to in  
29           subsection 2 if the amendment is filed within the thirty-day period specified in  
30           subsection 2.

- 1           6. A restated certificate of limited partnership may be executed and filed in the same
- 2           manner as a certificate of amendment.
- 3           7. A limited partnership must notify the secretary of state in writing whenever a
- 4           general partner changes the address of its principal place of business. A
- 5           corporate annual report filed by the secretary of state that reflects a change of
- 6           address of a general partner may serve as such notice. This notice is not subject
- 7           to the amendment fee prescribed in 45-10.1-15.
- 8           8. A limited partnership that ~~amends~~ changes its name and that is the owner of a
- 9           trademark, or uses a fictitious name registered with the secretary of state, or is a
- 10          general partner of another limited partnership on file with the secretary of state,
- 11          must effect a change of name in each of such registrations simultaneously with the
- 12          filing of the amendments.
- 13          9. Whenever a general partner that is a corporation files an amendment, or
- 14          application for an amended certificate of authority, to change its corporate name it
- 15          must simultaneously file an amendment to a certificate of limited partnership.

16           **SECTION 151. AMENDMENT.** Section 45-10.1-10 of the North Dakota Century Code  
17 is amended and reenacted as follows:

18           **45-10.1-10. (203) Cancellation of certificate.** A certificate of limited partnership must  
19 be canceled upon the dissolution and the commencement of winding up of the partnership or at  
20 any other time there are no limited partners. A certificate of cancellation must be filed in the  
21 office of the secretary of state and set forth all of the following:

- 22           1. The name of the limited partnership.
- 23           2. ~~The date of filing of its certificate of limited partnership.~~
- 24           3. ~~The reason for filing the certificate of cancellation.~~
- 25           4. The later effective date, ~~which must be a date certain, of cancellation~~ if it the  
26           effective date is not to be effective upon the filing of the certificate. A later effective  
27           date may not be later than ninety days after the date on which the certificate is filed  
28           with the secretary of state.
- 29           5. 3. Any other information the general partners filing the certificate determine.

30           **SECTION 152. AMENDMENT.** Section 45-10.1-11 of the North Dakota Century Code  
31 is amended and reenacted as follows:

1           **45-10.1-11. (204) Execution of certificates.**

2           1. Each certificate required by sections 45-10.1-08 through 45-10.1-19 to be filed in  
3           the office of the secretary of state must be ~~executed in the following manner:~~

4           signed by at least one general partner.

5           a. ~~An original certificate of limited partnership must be signed by all general~~  
6           ~~partners.~~

7           b. ~~A certificate of amendment must be signed by at least one general partner~~  
8           ~~and by each other general partner designated in the certificate as a new~~  
9           ~~general partner.~~

10          e. ~~A certificate of cancellation must be signed by all general partners.~~

11          2. Any person may sign a certificate by an attorney in fact, but a power of attorney to  
12          sign a certificate relating to the admission of a general partner must specifically  
13          describe the admission.

14          3. The ~~execution~~ signing of a certificate by a general partner constitutes an  
15          affirmation under the penalties of perjury that the facts stated ~~therein~~ in the  
16          certificate are true.

17          **SECTION 153. AMENDMENT.** Section 45-10.1-14 of the North Dakota Century Code  
18          is amended and reenacted as follows:

19          **~~45-10.1-14. Renewal of certificate—Filing with secretary~~ Secretary of state -**

20          **~~Cancellation~~ Annual report of limited partnership and foreign limited partnership.** Any  
21          ~~certificate of limited partnership or registration of foreign limited partnership filed under this~~  
22          ~~chapter must be renewed every five years from the date of the initial filing. Limited partnerships~~  
23          ~~existing prior to July 1, 1985, must file the statement of renewal by July 1, 1987, and every five~~  
24          ~~years thereafter. The statement of renewal must be executed by the limited partnership or~~  
25          ~~foreign limited partnership on forms prescribed and furnished by the secretary of state and sent~~  
26          ~~to the address of the registered office at least sixty days prior to the deadline for filing. The~~  
27          ~~statement must include the name of the limited partnership or foreign limited partnership, the~~  
28          ~~state or country of organization, the address of the registered office and the name of the~~  
29          ~~registered agent, and a statement that the limited partnership or foreign limited partnership is~~  
30          ~~still in existence and continues to transact business in this state. If the secretary of state finds~~  
31          ~~that the statement conforms to the requirements of this section, and the proper filing fee has~~



1 ~~been paid, the secretary of state shall file the statement. If the secretary of state finds that it~~  
2 ~~does not conform, the secretary of state shall promptly return the statement to the limited~~  
3 ~~partnership or the foreign limited partnership for any necessary corrections, and the certificate~~  
4 ~~of limited partnership or registration of foreign limited partnership must be canceled if the~~  
5 ~~statement is not returned corrected within thirty days after the statement was returned for~~  
6 ~~corrections. If any limited partnership or foreign limited partnership fails to file the statement of~~  
7 ~~renewal when due, the secretary of state shall cancel the certificate of limited partnership or~~  
8 ~~registration of foreign limited partnership and shall mail notice of cancellation to the address of~~  
9 ~~the registered office.~~

- 10       1. Each limited partnership, and each foreign limited partnership authorized to  
11 transact business in this state, shall file, within the time prescribed by subsection 3,  
12 an annual report setting forth:
- 13       a. The name of the limited partnership or foreign limited partnership and the  
14 jurisdiction of origin.
- 15       b. The address of the registered office of the limited partnership or foreign  
16 limited partnership in this state and the name of the limited partnership's or  
17 foreign limited partnership's registered agent in this state at that address.
- 18       c. The address of the limited partnership's or foreign limited partnership's  
19 principal executive office.
- 20       d. A brief statement of the character of the business in which the limited  
21 partnership or foreign limited partnership is actually engaged in this state.
- 22       e. The name and respective address of every general partner of the limited  
23 partnership or foreign limited partnership.
- 24       2. The annual report must be submitted on forms prescribed by the secretary of state.  
25 The information provided in the annual report must be accurate as of the time of  
26 filing the report. The annual report must be signed as prescribed in subsection 15  
27 of section 45-10.1-01 or a resolution approved by the affirmative vote of the  
28 required proportion or number of partners. If the limited partnership or foreign  
29 limited partnership is in the hands of a receiver or trustee, the annual report must  
30 be signed on behalf of the limited partnership or foreign limited partnership by the

- 1           receiver or trustee. The secretary of state may destroy any annual reports  
2           provided for in this section after the annual report is on file for six years.
- 3           3. The annual report of a limited partnership or foreign limited partnership must be  
4           delivered to the secretary of state before April first of each year, except the first  
5           annual report of a limited partnership or foreign limited partnership must be  
6           delivered before April first of the year following the calendar year in which the  
7           registration was filed by the secretary of state. A limited partnership existing  
8           before July 1, 1999, or a foreign limited partnership registered before July 1, 1999,  
9           shall file the limited partnership's or foreign limited partnership's first annual report  
10           before April first in the year of the expiration of the limited partnership's or foreign  
11           limited partnership's registration or renewal registration in effect on December 31,  
12           1999.
- 13           a. An annual report in a sealed envelope postmarked by the United States  
14           postal service on or before April first or an annual report in a sealed packet  
15           with a verified shipment date by any other carrier service on or before April  
16           first, complies with the delivery requirement under this subsection.
- 17           b. The secretary of state shall file the report if the report conforms to the  
18           requirements of subsection 2.
- 19                 (1) If the report does not conform, the report must be returned to the  
20                 limited partnership or foreign limited partnership for any necessary  
21                 corrections.
- 22                 (2) If the report is filed before the deadlines prescribed in this subsection,  
23                 penalties for the failure to file a report within the time provided do not  
24                 apply if the report is corrected to conform to the requirements of  
25                 subsection 2 and returned to the secretary of state within thirty days  
26                 after the annual report was returned by the secretary of state for  
27                 correction.
- 28           4. After the date established under subsection 3, the secretary of state shall notify  
29           any limited partnership or foreign limited partnership failing to file an annual report  
30           that the limited partnership's or foreign limited partnership's certificate or  
31           registration is not in good standing and that the limited partnership's certificate or

- 1           foreign limited partnership's registration may be terminated or revoked pursuant to  
2           subsection 5.
- 3           a.   The secretary of state must mail notice of termination or revocation to the last  
4           registered agent at the last registered office of record.
- 5           b.   If the limited partnership or foreign limited partnership files an annual report  
6           after the notice is mailed, together with the annual report filing fee and late  
7           filing penalty fee as prescribed by section 45-10.1-15, the secretary of state  
8           will restore the limited partnership's or foreign limited partnership's certificate  
9           or registration to good standing.
- 10          5.   A limited partnership that does not file an annual report, along with the statutory  
11          filing and penalty fees, within six months after the date established in subsection 3,  
12          ceases to exist and is considered involuntarily terminated by operation of law.
- 13          a.   The secretary of state shall note the termination of the limited partnership's  
14          certificate on the records of the secretary of state and shall give notice of the  
15          action to the terminated limited partnership.
- 16          b.   Notice by the secretary of state must be mailed to the limited partnership's  
17          last registered agent at the last registered office of record.
- 18          6.   A foreign limited partnership that does not file an annual report, along with the  
19          statutory filing and penalty fees, within six months after the date established by  
20          subsection 3, forfeits the right to transact business in this state.
- 21          a.   The secretary of state shall note the revocation of the foreign limited  
22          partnership's registration on the records of the secretary of state and shall  
23          give notice of the action to the foreign limited partnership.
- 24          b.   Notice by the secretary of state must be mailed to the foreign limited  
25          partnership's last registered agent at the last registered office of record.
- 26          7.   A limited partnership that is terminated for failure to file an annual report, or a  
27          foreign limited partnership registration that is forfeited for failure to file an annual  
28          report, may be reinstated by filing a past-due report, together with the statutory  
29          filing and penalty fees for an annual report and a reinstatement fee as prescribed  
30          in section 45-10.1-15. The fees must be paid and the report filed within one year  
31          following the involuntary dissolution or revocation. Reinstatement under this

1            subsection does not affect the rights or liability for the time from the termination or  
2            revocation to the reinstatement.

3            8. A limited partnership or foreign limited partnership registration expiring between  
4            July 1, 1999, and December 31, 1999, may be renewed or canceled in the manner  
5            provided by this section before July 1, 1999.

6            **SECTION 154. AMENDMENT.** Section 45-10.1-15 of the North Dakota Century Code  
7 is amended and reenacted as follows:

8            **45-10.1-15. Fees for filing documents.** The secretary of state shall charge and  
9 collect for:

- 10            1. Filing a limited partnership, one hundred dollars.
- 11            2. Filing a limited partnership amendment, forty dollars.
- 12            3. Filing a limited partnership dissolution, twenty-five dollars.
- 13            4. Filing a limited partnership cancellation, twenty-five dollars.
- 14            5. Filing a reservation of name, ten dollars.
- 15            6. Filing a ~~statement notice of renewal~~ transfer of a reserved limited partnership ~~or~~  
16            ~~renewal of registration of foreign limited partnership name,~~ forty ten dollars.
- 17            7. Filing a cancellation of a reserved limited partnership name, ten dollars.
- 18            8. Filing a consent to use a deceptively similar name, ten dollars.
- 19            9. Filing a statement of change of address of registered office or change of registered  
20            agent, or both, ten dollars.
- 21            10. Filing a statement of change of address of registered office by registered agent,  
22            ten dollars for each limited partnership affected by the change.
- 23            11. Filing a registered agent's consent to serve in the capacity of registered agent, ten  
24            dollars.
- 25            12. Filing a resignation as registered agent, ten dollars.
- 26            13. Filing a registration of foreign limited partnership, one hundred dollars.
- 27            8- 14. Filing a certified statement of amendment of foreign limited partnership, twenty-five  
28            dollars.
- 29            9- 15. Filing a certified statement of dissolution of foreign limited partnership, twenty-five  
30            dollars.

1 ~~40.~~ 16. Filing a certified statement of cancellation of foreign limited partnership, twenty-five  
2 dollars.

3 ~~44.~~ 17. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.

4 ~~42.~~ 18. Filing ~~a consent to use of a deceptively similar name, ten dollars.~~ an annual report  
5 of a limited partnership or foreign limited partnership, twenty-five dollars. The  
6 secretary of state shall charge and collect additional fees for late filing of an annual  
7 report as follows:

8 a. After the date prescribed in subsection 3 of section 45-10.1-14, twenty  
9 dollars; and

10 b. After the termination of the limited partnership or the revocation of the  
11 registration of a foreign limited partnership, the reinstatement fee of one  
12 hundred dollars.

13 19. Any document submitted for approval before the actual time of submission for  
14 filing, half of the fee provided in this section for filing the document.

15 **SECTION 155. AMENDMENT.** Section 45-10.1-36 of the North Dakota Century Code  
16 is amended and reenacted as follows:

17 **45-10.1-36. (603) Withdrawal of limited partner.** A With respect to the withdrawal of  
18 a limited partner may withdraw from a limited partnership at the time or upon the happening of  
19 events specified in writing in the partnership agreement.:

20 1. If the limited partnership is formed before July 1, 1999, and the agreement does  
21 not specify in writing the time when or the events upon the happening of which a  
22 limited partner may withdraw or a definite time for the dissolution and winding up of  
23 the limited partnership, a limited partner may withdraw upon not less than six  
24 months' ~~prior~~ advance written notice to each general partner at the general  
25 partner's address on the books of the limited partnership at ~~its~~ the limited  
26 partnership's office in this state.

27 2. If the limited partnership is formed after June 30, 1999, or if the limited partnership  
28 is formed before July 1, 1999, and the partnership agreement does specify in  
29 writing the time when or the events upon the happening of which a limited partner  
30 may withdraw or a definite time for the dissolution and winding up of the limited  
31 partnership, a limited partner may not withdraw from a limited partnership except at

1           the time when or upon the happening of events specified in writing in the  
2           partnership agreement.

3           **SECTION 156. AMENDMENT.** Section 45-10.1-51 of the 1997 Supplement to the  
4 North Dakota Century Code is amended and reenacted as follows:

5           **45-10.1-51. (901) Foreign limited partnership - Law governing.** Subject to the  
6 Constitution of North Dakota, the laws of the ~~state~~ jurisdiction under which a foreign limited  
7 partnership is organized govern ~~its~~ the organization and internal affairs and the liability of ~~its~~ the  
8 limited partners; ~~and a.~~ A foreign limited partnership may not be denied registration by reason  
9 of any difference between ~~these~~ the laws of the jurisdiction and the laws of this state.

10          **SECTION 157.** Section 45-10.1-51.1 of the North Dakota Century Code is created and  
11 enacted as follows:

12          **45-10.1-51.1. Foreign limited partnership - Name.** A foreign limited partnership may  
13 register under any name that would be available to a domestic limited partnership regardless of  
14 whether the name is the name under which the foreign limited partnership is authorized in the  
15 jurisdiction of origin. A fictitious name certificate must be filed as provided in chapter 45-11 if  
16 registering under a name other than the name as authorized in the jurisdiction of origin.

17          **SECTION 158. AMENDMENT.** Section 45-10.1-52 of the 1997 Supplement to the  
18 North Dakota Century Code is amended and reenacted as follows:

19          **45-10.1-52. (902) Foreign limited partnership - Registration.** Before transacting  
20 business in this state, a foreign limited partnership shall register with the secretary of state.

21          1. In order to register, a foreign limited partnership shall submit to the secretary of  
22 state, on forms prescribed and furnished by the secretary of state, an application  
23 for registration as a foreign limited partnership, signed and sworn to by a general  
24 partner and setting forth all of the following:

25          ~~4-~~ a. The name of the foreign limited partnership and, if different, the name under  
26 which ~~it~~ the foreign limited partnership proposes to register and transact  
27 business in this state.

28          ~~2-~~ b. The state and date of ~~its~~ the foreign limited partnership's formation.

29          ~~3-~~ c. The general character of the business ~~it~~ the foreign limited partnership  
30 proposes to transact in this state.



1 ~~conforms to law and all requisite fees have been paid, the secretary of~~ A foreign limited  
2 partnership registered in this state shall:

- 3 1. ~~Endorse on the application the word "Filed" and the month, day, and year of the~~  
4 ~~filing.~~ Appoint and continuously maintain a registered agent and a registered office  
5 in the same manner as provided in section 45-10.1-04; and  
6 2. ~~File the application in the office of the secretary of state.~~ File a report upon any  
7 change in the address of the registered office or upon any change in the name of  
8 the foreign limited partnership's registered agent as provided in section  
9 45-10.1-04.1.

10 **SECTION 160.** Section 45-10.1-54.1 of the North Dakota Century Code is created and  
11 enacted as follows:

12 **45-10.1-54.1. Foreign limited partnership - Admission of foreign limited**  
13 **partnership - Transacting business - Obtaining licenses and permits.** A foreign limited  
14 partnership may not:

- 15 1. Transact business in this state or obtain any license or permit required by this state  
16 until the foreign limited partnership registers with the secretary of state.  
17 2. Transact in this state any business that is prohibited to a domestic limited  
18 partnership organized under this chapter.  
19 3. Be denied registration because the laws of the foreign limited partnership's  
20 jurisdiction of origin differ from the laws of this state.

21 **SECTION 161. AMENDMENT.** Section 45-10.1-55 of the 1997 Supplement to the  
22 North Dakota Century Code is amended and reenacted as follows:

23 **45-10.1-55. (905) Foreign limited partnership - Changes and amendments.**

- 24 1. If any statement in the application for registration of a foreign limited partnership  
25 ~~was is~~ is false when made or any arrangements or other facts described ~~have~~  
26 ~~changed~~ change, making the application inaccurate in any respect, the foreign  
27 limited partnership shall promptly file in the office of the secretary of state a  
28 certificate, signed ~~and sworn to~~ by a general partner, correcting the statement.  
29 2. A foreign limited partnership that ~~amends its~~ changes the foreign limited  
30 partnership's name and files a statement as provided in subsection 1 and is the  
31 owner of a trademark, or uses a fictitious name registered with the secretary of



1 state, or is a general partner of another limited partnership or a limited liability  
2 limited partnership on file with the secretary of state, ~~must shall~~ effect a change of  
3 name in each of ~~such the foregoing~~ registrations ~~simultaneously with the filing of~~  
4 which is applicable when the foreign limited partnership files the certificate  
5 amending the registration of foreign limited partnership.

6 3. A foreign limited partnership ~~must shall~~ file a certificate of amendment, signed ~~and~~  
7 ~~sworn to~~ by a general partner, ~~whenever when~~ a general partner that is a  
8 corporation files an amendment changing ~~its the~~ the general partner's corporate name,  
9 or when ~~it the~~ the general partner files an application for an amended certificate of  
10 authority. This certificate of amendment must be filed simultaneously with the  
11 amendment to the articles of incorporation or application for amended certificate of  
12 authority.

13 4. A foreign limited partnership ~~must shall~~ notify the secretary of state in writing  
14 ~~whenever when~~ a general partner changes the address of ~~its the~~ the general partner's  
15 principal place of business. A corporate annual report filed by the secretary of  
16 state that reflects a change of address of a general partner may serve as ~~such a~~  
17 notice under this subsection. This notice is not subject to the amendment fee  
18 prescribed in 45-10.1-15.

19 **SECTION 162. AMENDMENT.** Section 45-10.1-58 of the 1997 Supplement to the  
20 North Dakota Century Code is amended and reenacted as follows:

21 **45-10.1-58. (908) Foreign limited partnership - Action by secretary of state.**

22 1. The secretary of state may revoke the registration of a foreign limited partnership  
23 ~~for transacting upon occurrence of any of the following:~~

24 a. ~~Transacting business in this state in violation of sections 45-10.1-52 through~~  
25 ~~45-10.1-58, or that has failed to file a renewal statement as required by~~  
26 ~~section 45-10.1-14. The secretary of state may not revoke the registration of~~  
27 ~~a foreign limited partnership;~~

28 b. Failing to:

29 (1) Maintain a registered office as required by this chapter;

30 (2) Appoint and maintain a registered agent as required by this chapter;

- 1                   (3) File a report upon any change in the address of the foreign limited  
2                   partnership's registered office;  
3                   (4) File a report upon any change in the name or business address of the  
4                   registered agent; or  
5                   (5) File in the office of the secretary of state any amendment to the foreign  
6                   limited partnership's registration as specified in section 45-10.1-55; or  
7                   c. Misrepresenting any material matter in any registration, certificate, report, or  
8                   other document submitted by the foreign limited partnership pursuant to this  
9                   chapter.  
10                  2. Except for the annual report for which the registration may be revoked as provided  
11                  in section 45-10.1-14, registration of a foreign limited partnership may not be  
12                  revoked by the secretary of state unless the:  
13                  a. The secretary of state ~~has given~~ gave the foreign limited partnership ~~not less~~  
14                  ~~than~~ at least sixty days' notice by mail addressed to ~~its~~ the foreign limited  
15                  partnership's registered office in this state ~~and the~~ or, if the foreign limited  
16                  partnership fails to appoint and maintain a registered agent in this state,  
17                  addressed to the foreign limited partnership's principal executive office of  
18                  record, ~~and the foreign limited partnership has failed to remedy the deficiency~~  
19                  ~~prior to revocation;~~ and  
20                  b. During the sixty-day period, the foreign limited partnership failed to file the  
21                  report of change regarding the registered office or the registered agent, to file  
22                  any amendment, or to correct the misrepresentation.  
23                  3. Upon the expiration of sixty days after the mailing of the notice, the authority of the  
24                  foreign limited partnership to transact business in this state ceases and the  
25                  secretary of state shall issue a notice of revocation and shall mail the notice to the  
26                  principal executive office of the foreign limited partnership.

27                  **SECTION 163.** Section 45-10.1-58.1 of the North Dakota Century Code is created and  
28                  enacted as follows:

29                  **45-10.1-58.1. Foreign limited partnership - Action by attorney general.** The  
30                  attorney general may bring an action to restrain a foreign limited partnership from transacting  
31                  business in this state in violation of this chapter.

1           **SECTION 164. AMENDMENT.** Section 45-11-08.2 of the North Dakota Century Code  
2 is amended and reenacted as follows:

3           **45-11-08.2. Cancellation.** The secretary of state shall cancel ~~any~~:

- 4           1. Any fictitious name filed before August 1, 1997, by a limited liability partnership  
5           upon written request for cancellation, from one or more partners, ~~with the~~ without a  
6           filing fee of ~~ten dollars~~.
- 7           2. Any other fictitious name upon written request for cancellation, from one or more  
8           partners, with the filing fee of ten dollars.

9           **SECTION 165. AMENDMENT.** Section 45-13-01 of the 1997 Supplement to the North  
10 Dakota Century Code is amended and reenacted as follows:

11           **45-13-01. (101) Definitions.** In chapters 45-13 through 45-21 unless the context or  
12 subject matter otherwise requires:

- 13           1. "Business" includes every trade, occupation, and profession.
- 14           2. "Chief executive office" means an office from which the partnership conducts  
15           business.
- 16           3. "Debtor in bankruptcy" means a person who is the subject of:
  - 17           a. An order for relief under title 11 of the United States Code or a comparable  
18           order under a successor statute of general application; or
  - 19           b. A comparable order under federal, state, or foreign law governing insolvency.
- 20           ~~3.~~ 4. "Distribution" means a transfer of money or other property from a partnership to a  
21           partner in the partner's capacity as a partner or to the partner's transferee.
- 22           5. "Filed with the secretary of state" means, except as otherwise permitted by law or  
23           rule:
  - 24           a. A signed original or a legible facsimile telecommunication of a signed original  
25           of a request for reserved name or the signed original of all other documents  
26           meeting the applicable requirements of this chapter together with the fees  
27           provided in section 45-13-05 was delivered to the secretary of state and was  
28           determined by the secretary of state to conform to law.
  - 29           b. The secretary of state shall then endorse on the original the word "filed" and  
30           the month, day, and year, and record the document in the office of the  
31           secretary of state.

- 1           6. "Foreign limited liability partnership" means a partnership that is formed under laws  
2           other than the laws of this state and has the status of a limited liability partnership  
3           under those laws.
- 4           7. "Limited liability partnership" means a partnership that filed a registration under  
5           chapter 45-22 and does not have a similar statement in effect in any other  
6           jurisdiction.
- 7           8. "Notice":
- 8           a. Is given to a partnership or to a partner of a partnership when in writing and  
9           mailed or delivered to the partnership or to the partner at the chief executive  
10          office of the partnership.
- 11          b. In all other cases is given to a person:
- 12           (1) When mailed to the person at an address designated by the person or  
13           at the last known address of the person;
- 14           (2) When handed to the person; or
- 15           (3) When left at the office of the person with a clerk or other person in  
16           charge of the office or, if there is no one in charge, when left in a  
17           conspicuous place in the office or, if the office is closed or the person to  
18           be notified has no office, when left at the dwelling, house, or other  
19           usual place of abode of the person with some person of suitable age  
20           and discretion residing there.
- 21          c. Is given when deposited in the United States mail with sufficient postage  
22          affixed.
- 23          d. Is deemed received when it is given.
- 24          4. ~~9.~~ "Partnership" means an association of two or more persons to carry on as  
25          coowners a business for profit formed under section 45-14-02, predecessor law, or  
26          comparable law of another jurisdiction.
- 27          5. ~~10.~~ "Partnership agreement" means the agreement, whether written, oral, or implied,  
28          among the partners concerning the partnership, including amendments to the  
29          partnership agreement.

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- 1     ~~6.~~ 11. "Partnership at will" means a partnership in which the partners have not agreed to  
2                    remain partners until the expiration of a definite term or the completion of a  
3                    particular undertaking.
- 4     ~~7.~~ 12. "Partnership interest" or "partner's interest in the partnership" means all of a  
5                    partner's interests in the partnership, including the partner's transferable interest  
6                    and all management and other rights.
- 7             ~~8.~~ "~~Person~~" ~~includes any legal or commercial entity. The term includes governmental~~  
8                    ~~subdivision, agency, or instrumentality.~~
- 9     ~~9.~~ 13. "Property" means all property, real, personal, or mixed, tangible or intangible, or  
10                   any interest therein.
- 11            14. "Signed" means the signature of a person is placed on a document, as provided in  
12                    subsection 39 of section 41-01-11, and:
- 13                    a. With respect to a document required by this chapter to be filed with the  
14                    secretary of state, means the document is signed by a person authorized to  
15                    do so by this chapter or by a resolution approved by the affirmative vote of the  
16                    required proportion or number of partners; and
- 17                    b. With respect to a document not required by this chapter to be filed with the  
18                    secretary of state, means the signature may be a facsimile affixed, engraved,  
19                    printed, placed, stamped with indelible ink, transmitted by facsimile  
20                    telecommunication or electronically, or in any other manner reproduced on  
21                    the document.
- 22     ~~40.~~ 15. "State" means a state of the United States, the District of Columbia, the  
23                    Commonwealth of Puerto Rico, or any territory or insular possession subject to the  
24                    jurisdiction of the United States.
- 25     ~~44.~~ 16. "Statement" means a statement of partnership authority under section 45-15-03, a  
26                    statement of denial under section 45-15-04, a statement of dissociation under  
27                    section 45-19-04, a statement of dissolution under section 45-20-05, a statement  
28                    of merger under section 45-21-07, or an amendment or cancellation of any of the  
29                    foregoing.
- 30     ~~42.~~ 17. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and  
31                    encumbrance.

- 1           **SECTION 166. AMENDMENT.** Subsection 2 of section 45-13-03 of the 1997  
2 Supplement to the North Dakota Century Code is amended and reenacted as follows:
- 3           2. The partnership agreement may not:
- 4           a. Vary the rights and duties under section 45-13-05 except to eliminate the duty  
5           to provide copies of statements to all of the partners;
- 6           b. Unreasonably restrict the right of access to books and records under  
7           subsection 2 of section 45-16-03;
- 8           c. Eliminate the duty of loyalty under subsection 2 of section 45-16-04 or  
9           subdivision c of subsection 2 of section 45-18-03, but:
- 10           (1) The partnership agreement may identify specific types or categories of  
11           activities that do not violate the duty of loyalty, if not manifestly  
12           unreasonable; or
- 13           (2) All of the partners or a number or percentage specified in the  
14           partnership agreement may authorize or ratify, after full disclosure of all  
15           material facts, a specific act or transaction that otherwise would violate  
16           the duty of loyalty;
- 17           d. Unreasonably reduce the duty of care under subsection 3 of section 45-16-04  
18           or subdivision c of subsection 2 of section 45-18-03;
- 19           e. Eliminate the obligation of good faith and fair dealing under subsection 4 of  
20           section 45-16-04, but the partnership agreement may prescribe the standards  
21           by which the performance of the obligation is to be measured, if the standards  
22           are not manifestly unreasonable;
- 23           f. Vary the power to dissociate as a partner under subsection 1 of section  
24           45-18-02, except to require the notice under subsection 1 of section 45-18-01  
25           to be in writing;
- 26           g. Vary the right of a court to expel a partner in the events specified in  
27           subsection 5 of section 45-18-01;
- 28           h. Vary the requirement to wind up the partnership business in cases specified  
29           in subsection 4, 5, or 6 of section 45-20-01; ~~or~~
- 30           i. Vary the law applicable to a limited liability partnership under chapter 45-22;  
31           or

1           j. Restrict rights of third parties under chapters 45-13 through 45-21.

2           **SECTION 167.** Section 45-13-04.1 of the North Dakota Century Code is created and  
3 enacted as follows:

4           **45-13-04.1. Partnership name.**

5           1. A partnership name filed in a statement under section 45-13-05:

6           a. Must be in the English language or in any other language expressed in  
7           English letters or characters;

8           b. May not contain a word or phrase indicating or implying the partnership may  
9           not be organized under this chapter;

10          c. May not contain a word or phrase indicating or implying the partnership is  
11          organized for a purpose other than a legal business purpose for which a  
12          partnership may be organized under this chapter;

13          d. May not contain the word "corporation", "company", "incorporated", "limited  
14          liability company", "limited partnership", "limited liability partnership", "limited  
15          liability limited partnership", or any abbreviation of these words; and

16          e. May not be the same as, or deceptively similar to:

17           (1) The name, whether foreign and authorized to do business in this state  
18           or domestic, unless filed with the statement is a document which  
19           complies with subsection 3 of:

20           (a) Another partnership;

21           (b) A limited liability company;

22           (c) A corporation;

23           (d) A limited partnership;

24           (e) A limited liability partnership; or

25           (f) A limited liability limited partnership;

26           (2) A name, the right of which is, at the time of filing, reserved in the  
27           manner provided in section 10-19.1-14, 10-32-11, 10-33-11,  
28           45-10.1-03, or 45-22-05;

29           (3) A fictitious name registered in the manner provided in chapter 45-11; or

30           (4) A trade name registered in the manner provided in chapter 47-25.

- 1           2. The secretary of state shall determine whether a partnership name is deceptively  
2           similar to another name for purposes of this chapter.
- 3           3. This subsection does not affect the right of a domestic partnership existing on  
4           July 1, 1999, or a foreign partnership authorized to do business in this state on  
5           July 1, 1999, to continue the use of the foreign partnership's name. If the  
6           secretary of state determines a partnership name is deceptively similar to another  
7           name for purposes of this chapter, the partnership name may not be used unless  
8           there is filed with the statement:
- 9           a. The written consent of the holder of the rights to the name to which the  
10           proposed name is determined to be deceptively similar; or
- 11           b. A certified copy of a judgment of a court in this state establishing the earlier  
12           right of the applicant to the use of the name in this state.
- 13           4. This section and section 45-13-04.2 do not:
- 14           a. Abrogate or limit the law of unfair competition or unfair practices; chapter  
15           47-25; the laws of the United States with respect to the right to acquire and  
16           protect copyrights, trade names, trademarks, service names, service marks;  
17           or any other rights to the exclusive use of a name or symbol.
- 18           b. Derogate the common law or any principle of equity.
- 19           5. A partnership that is merged with another partnership or domestic or foreign limited  
20           partnership, or that is formed by the reorganization of one or more partnerships or  
21           domestic or foreign limited partnerships, or that acquires by sale, lease, or other  
22           disposition to or exchange with a partnership all or substantially all of the assets of  
23           another partnership or domestic or foreign limited partnership including the  
24           partnership's or limited partnership's name, may have the same name as that used  
25           in this state by any other partnership or domestic or foreign limited partnership if  
26           the other partnership or domestic or foreign limited partnership:
- 27           a. Is formed under the laws of this state;
- 28           b. Is authorized to transact business or conduct activities in this state;
- 29           c. Holds a reserved name in the manner provided in section 45-10.1-03;
- 30           d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
- 31           e. Holds a trade name registered in the manner provided in chapter 47-25.



- 1           6. The use of a name by a partnership in violation of this section does not affect or  
2           vitate the partnership's partnership existence. However, a court in this state may,  
3           upon application of the state or of an interested or affected person, enjoin the  
4           partnership from doing business under a name assumed in violation of this section,  
5           although a statement may have been filed with the secretary of state.
- 6           7. If a partnership's period of existence is expired or a partnership's statement filed  
7           under section 45-13-05 is expired, the partnership may reacquire the right to use  
8           that name by refiling a statement pursuant to section 45-13-05, unless the name  
9           was adopted for use or reserved by another person, in which case the filing must  
10          be rejected unless the filing is accompanied by a written consent or judgment  
11          pursuant to subsection 2. A partnership that cannot reacquire the use of the  
12          partnership's partnership name shall adopt a new partnership name that complies  
13          with this section.

14           **SECTION 168.** Section 45-13-04.2 of the North Dakota Century Code is created and  
15 enacted as follows:

16           **45-13-04.2. Reserved name.**

- 17           1. The exclusive right to the use of a partnership name otherwise permitted by  
18           section 45-13-04.1 may be reserved by any person.
- 19           2. The reservation is made by filing with the secretary of state a request that the  
20           name be reserved together with the fees provided in section 45-13-05.
- 21           a. If the name is available for use by the applicant, the secretary of state shall  
22           reserve the name for the exclusive use of the applicant for a period of twelve  
23           months.
- 24           b. The reservation may be renewed for successive twelve-month periods.
- 25           3. The right to the exclusive use of a partnership name reserved pursuant to this  
26           section may be transferred to another person by or on behalf of the applicant for  
27           whom the name was reserved by filing with the secretary of state a notice of the  
28           transfer and specifying the name and address of the transferee together with the  
29           fees provided in section 45-13-05.
- 30           4. The right to the exclusive use of a partnership name reserved pursuant to this  
31           section may be canceled by or on behalf of the applicant for whom the name was

1           reserved by filing with the secretary of state a notice of the cancellation together  
2           with the fees provided in section 45-13-05.

3           5. The secretary of state may accept for filing a legible facsimile telecommunication  
4           of the signed original of any request for reserved name.

5           6. The secretary of state may destroy any reserved name request and any index of  
6           reserved names one year after expiration.

7           **SECTION 169. AMENDMENT.** Section 45-13-05 of the 1997 Supplement to the North  
8 Dakota Century Code is amended and reenacted as follows:

9           **45-13-05. (105) Execution, filing, and recording of statements.**

10          1. A statement may be filed in the office of the secretary of state. A certified copy of  
11 a statement that is filed in an office in another state may be filed in the office of the  
12 secretary of state. Either filing has the effect provided in chapters 45-13 through  
13 45-21 with respect to partnership property located in or transactions that occur in  
14 this state.

15          2. A certified copy of a statement that has been filed in the office of the secretary of  
16 state and recorded in the office for recording transfers of real property has the  
17 effect provided for recorded statements in chapters 45-13 through 45-21. A  
18 recorded statement that is not a certified copy of a statement filed in the office of  
19 the secretary of state does not have the effect provided for recorded statements in  
20 chapters 45-13 through 45-21.

21          3. A statement filed by a partnership must be executed by at least two partners.  
22 Other statements must be executed by a partner or other person authorized by  
23 chapters 45-13 through 45-21. An individual who executes a statement as, or on  
24 behalf of, a partner or other person named as a partner in a statement shall  
25 personally declare under penalty of perjury that the contents of the statement are  
26 accurate.

27          4. A person authorized by chapters 45-13 through 45-21 to file a statement may  
28 amend or cancel the statement by filing an amendment or cancellation that names  
29 the partnership, identifies the statement, and states the substance of the  
30 amendment or cancellation.

- 1           5. A person who files a statement pursuant to this section shall promptly send a copy  
2           of the statement to every nonfiling partner and to any other person named as a  
3           partner in the statement. Failure to send a copy of a statement to a partner or  
4           other person does not limit the effectiveness of the statement as to a person not a  
5           partner.
- 6           ~~6. A partnership name filed in a statement under this section may not be the same as  
7           or deceptively similar to the name of any other partnership filed under this section  
8           or any corporation, limited liability company, or limited partnership, or a trade name  
9           or fictitious name certificate on file with the secretary of state, unless there is filed  
10          with the partnership statement a written consent of the holder of the similar name  
11          to use the name proposed by the partnership.~~
- 12          ~~7.~~ 7. Any statement filed under this section must be renewed every five years from the  
13          date of the initial filing. A statement of renewal must be executed by the  
14          partnership on a form furnished by the secretary of state which is sent to the  
15          address of the chief executive office at least sixty days before the deadline for  
16          filing. If the secretary of state finds that the statement of renewal conforms to the  
17          requirements of this section, and the proper filing fee has been paid, the secretary  
18          of state shall file the statement of renewal. If the secretary of state finds that the  
19          statement of renewal does not so conform, the secretary of state shall return the  
20          statement of renewal to the partnership for any necessary corrections. If the  
21          statement of renewal is not returned corrected within thirty days after the statement  
22          of renewal was returned for correction, the statement of renewal is subject to  
23          cancellation. If any partnership fails to file the statement of renewal, the secretary  
24          of state shall cancel the initial statement and shall mail notice of the cancellation to  
25          the address of the chief executive office.
- 26          ~~8.~~ 7. A partnership shall notify the secretary of state in writing upon a change in address  
27          of the partnership's chief executive office. A statement of renewal filed by the  
28          secretary of state which reflects a change of address of the chief executive office  
29          of the partnership may serve as ~~such~~ a notice under this subsection.
- 30          ~~9.~~ 8. a. The secretary of state shall charge and collect a fee for:  
31                 (1) Filing a statement under this section, one hundred dollars.

- 1 (2) Filing an amendment under this section, forty dollars.
  - 2 (3) Filing a cancellation under this section, ~~twenty-four~~ twenty-five dollars.
  - 3 (4) Filing a renewal under this section, forty dollars.
  - 4 (5) Filing a request to reserve a partnership name, ten dollars.
  - 5 (6) Filing a notice of transfer of a reserved partnership name, ten dollars.
  - 6 (7) Filing a cancellation of reserved partnership name, ten dollars.
  - 7 (8) Filing a statement of conversion, fifty dollars.
  - 8 (9) Filing a statement of merger, fifty dollars.
  - 9 (10) Any document submitted for approval before the actual time of
  - 10 submission for filing, half of the fee provided in this section for filing the
  - 11 document.
- 12 b. The officer responsible for recording transfers of real property may collect a
- 13 fee for recording a statement.

14 **SECTION 170. AMENDMENT.** Section 45-13-06 of the 1997 Supplement to the North  
15 Dakota Century Code is amended and reenacted as follows:

16 **45-13-06. (106) Law governing internal relations.**

- 17 1. The ~~Except as otherwise provided in subsection 2, the~~ law of the jurisdiction in
- 18 which a partnership has ~~its~~ the partnership's chief executive office governs
- 19 relations among the partners and between the partners and the partnership.
- 20 2. The law of this state governs relations among the partners and between the
- 21 partners and the partnership and the liability of partners for an obligation of a
- 22 limited liability partnership.

23 **SECTION 171. AMENDMENT.** Section 45-14-01 of the 1997 Supplement to the North  
24 Dakota Century Code is amended and reenacted as follows:

25 **45-14-01. (201) Partnership as entity.**

- 26 1. A partnership is an entity distinct from ~~its~~ the partnership's partners.
- 27 2. A limited liability partnership continues to be the same entity in existence before
- 28 the filing of the registration under chapter 45-22.

29 **SECTION 172. AMENDMENT.** Subsection 1 of section 45-15-03 of the 1997  
30 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 31 1. A partnership may file a statement of partnership authority; which:

- 1           a.    Must include:
- 2                (1)   The name of the partnership;
- 3                (2)   The street address of ~~its~~ the partnership's chief executive office and of
- 4                            one office in this state, if there is one;
- 5                (3)   The ~~names~~ name and mailing ~~addresses~~ address of ~~all of the partners~~
- 6                            ~~and of an agent appointed and maintained by the partnership~~ each
- 7                            partner;
- 8                (4)   The address of the registered office of the partnership and the name of
- 9                            the registered agent at that address;
- 10               (5)   The ~~names~~ name of ~~the partners~~ each partner authorized to execute
- 11                            an instrument transferring real property held in the name of the
- 12                            partnership; and
- 13               ~~(5)~~ (6)   The nature of business to be transacted; ~~and.~~
- 14           b.    May state the authority, or limitations on the authority, of some or all of the
- 15                            partners to enter into other transactions on behalf of the partnership and any
- 16                            other matter.

17           **SECTION 173.** Section 45-15-03.1 of the North Dakota Century Code is created and

18 enacted as follows:

19           **45-15-03.1. Registered office - Registered agent.**

- 20           1.    A partnership that files and maintains a statement of partnership authority shall
- 21                            continuously maintain a registered office in this state. A registered office need not
- 22                            be the same as the principal place of business or the chief executive office of the
- 23                            partnership.
- 24           2.    A partnership that files a statement of partnership authority shall appoint and
- 25                            continuously maintain a registered agent who may be:
- 26                a.    An individual residing in this state;
- 27                b.    A domestic corporation;
- 28                c.    A domestic limited liability company; or
- 29                d.    A foreign corporation or foreign limited liability company authorized to transact
- 30                            business in this state.

- 1           3. The registered agent shall maintain a business office identical to the registered  
2           agent's registered office.
- 3           4. Proof of the registered agent's consent to serve in the capacity of registered agent  
4           must be filed with the secretary of state, together with the fees provided in section  
5           45-13-05.

6           **SECTION 174.** Section 45-15-03.2 of the North Dakota Century Code is created and  
7 enacted as follows:

8           **45-15-03.2. Change of registered office or agent.**

- 9           1. A partnership that files and maintains a statement of partnership authority may  
10           change the partnership's registered office, change the partnership's registered  
11           agent, or state a change in the name of the partnership's registered agent, by filing  
12           with the secretary of state, along with the fees provided in section 45-13-05, a  
13           statement containing:
- 14           a. The name of the partnership;
- 15           b. If the address of the partnership's registered office is changing, the new  
16           address of the partnership's registered office;
- 17           c. If the partnership's registered agent is being designated or changing, the  
18           name of the partnership's new registered agent;
- 19           d. If the name of the partnership's registered agent is changing, the name of the  
20           partnership's registered agent as changed;
- 21           e. A statement that the address of the partnership's registered office and the  
22           address of the business office of the partnership's registered agent, as  
23           changed, will be identical; and
- 24           f. A statement that the change of registered office or registered agent was  
25           authorized by resolution approved by the partners.
- 26           2. A registered agent of a partnership may resign by filing with the secretary of state  
27           a signed written notice of resignation, including a statement that a signed copy of  
28           the notice was given to the partnership at the partnership's chief executive office,  
29           or to a legal representative of the partnership. The appointment of the agent  
30           terminates thirty days after notice is filed with the secretary of state.

1           3. If the business address or name of a registered agent changes, the agent shall  
2           change the address of the registered office or the name of the registered agent, as  
3           the case may be, of each partnership represented by that agent by filing with the  
4           secretary of state a statement for each partnership as required in subsection 1,  
5           except the statement need be signed only by the registered agent, need not be  
6           responsive to subdivision f of subsection 1, and must state that a copy of the  
7           statement was mailed to each of those partnerships or to the legal representative  
8           of each of those partnerships.

9           **SECTION 175. AMENDMENT.** Subsection 1 of section 45-15-06 of the 1997  
10 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11           1. Except as otherwise provided in subsection 2 and in chapter 45-22, all partners  
12           are liable jointly and severally for all obligations of the partnership unless otherwise  
13           agreed by the claimant or provided by law.

14           **SECTION 176. AMENDMENT.** Section 45-22-01 of the 1997 Supplement to the North  
15 Dakota Century Code is amended and reenacted as follows:

16           **45-22-01. Definitions.** In this chapter, unless the context otherwise requires:

17           1. "Address" means:  
18           a. In the case of a registered office or principal executive office, the mailing  
19           address, including the zip code, of the actual office location which may not be  
20           only a post-office box; and  
21           b. In all other cases, the mailing address, including a zip code.  
22           2. "Domestic limited liability partnership" means a ~~general~~ partnership that is  
23           organized under the laws of this state with a registration ~~or a renewal registration~~  
24           in effect and which is not a foreign limited liability partnership.  
25           3. "Filed with the secretary of state" means, except as otherwise permitted by law or  
26           rule:  
27           a. That ~~either:~~  
28           (1) A a signed original or a legible facsimile ~~copy~~ telecommunication of a  
29           signed original of a request for reserved name; or  
30           (2) A a signed original of all other documents meeting the applicable  
31           requirements of this chapter, together with the fees provided in section

- 1 45-22-23, ~~has been~~ was delivered to the secretary of state and ~~has~~  
2 ~~been~~ was determined by the secretary of state to conform to law.
- 3 b. That the secretary of state shall then:
- 4 (1) Endorse on the original the word "filed" and the month, day, and year;  
5 and  
6 (2) Record the document in the office of the secretary of state.
- 7 4. "Foreign limited liability partnership" means a partnership organized as a limited  
8 liability partnership:
- 9 a. ~~Which is organized~~ under laws other than the laws of this state ~~for a purpose~~  
10 ~~or purposes for which a limited liability partnership may be organized under~~  
11 ~~this chapter~~;
- 12 b. ~~With a registration or renewal registration in effect~~; and  
13 e. ~~In~~ which is in good standing in ~~its~~ the partnership's jurisdiction of origin.
- 14 5. ~~"General partnership" means an association of two or more persons to carry on as~~  
15 ~~coowners of a business for profit formed under North Dakota law, predecessor law,~~  
16 ~~or comparable law of another jurisdiction.~~
- 17 6. "Jurisdiction of origin" ~~refers to~~ means the jurisdiction in which the limited liability  
18 partnership status of the foreign limited liability partnership was created.
- 19 7. 6. "Limited liability partnership" means a domestic limited liability partnership or a  
20 foreign limited liability partnership.
- 21 8. 7. "Managing partner" means one of the partners charged with the management in  
22 this state of the limited liability partnership or foreign limited liability partnership and  
23 if no partners are so specifically designated, then all partners.
- 24 9. 8. "Notice":
- 25 a. Is given to a limited liability partnership or to a partner of the limited liability  
26 partnership when in writing and mailed or delivered to the limited liability  
27 partnership or the partner at the registered office or principal executive office  
28 of the limited liability partnership; ~~and~~.
- 29 b. In all other cases, is given to a person:
- 30 (1) When mailed to the person at an address designated by the person or  
31 at the ~~last known~~ last-known address of the person; or



- 1                   (2) When handed to the person; or
- 2                   (3) When left at the office of the person with a clerk or other person in
- 3                   charge of the office; or
- 4                   (a) If there is no one in charge, when left in a conspicuous place in
- 5                   the office; or
- 6                   (b) If the office is closed or the person to be notified has no office,
- 7                   when left at the dwelling house or usual place of abode of the
- 8                   person with some person of suitable age and discretion then
- 9                   residing therein.
- 10                  c. Is given when deposited in the United States mail with sufficient postage
- 11                  affixed.
- 12                  d. Is deemed received when ~~it is~~ given.
- 13    40- 9. "Originally registered" and "original registration" ~~refers to~~ means the document
- 14                  establishing the limited liability partnership status of the foreign limited liability
- 15                  partnership in ~~its~~ the foreign limited liability partnership's jurisdiction of origin.
- 16    10. "Partnership" means an association of two or more persons to carry on as
- 17                  coowners of a business for profit formed under chapters 45-13 through 45-21,
- 18                  predecessor law, or comparable law of another jurisdiction.
- 19    11. "Principal executive office" means:
- 20                  a. An office from which the limited liability partnership conducts business; or
- 21                  b. If the limited liability partnership has no office from which ~~it~~ the limited liability
- 22                  partnership conducts business, ~~then~~ the registered office of the limited liability
- 23                  partnership.
- 24    12. "Register" means the act of filing with the secretary of state which causes:
- 25                  a. A domestic limited liability partnership to be created; or
- 26                  b. A foreign limited liability partnership to be authorized to transact business in
- 27                  this state.
- 28    13. "Registered office" means the place in this state designated as the registered
- 29                  office of the limited liability partnership.
- 30    14. "Registration" means the document which, when filed with the secretary of state,
- 31                  causes:

- 1 a. A domestic limited liability partnership to be created; or
- 2 b. A foreign limited liability partnership to be authorized to do business in this
- 3 state.
- 4 15. ~~"Renewal registration" means the document by which the status of a domestic~~
- 5 ~~limited liability partnership or a foreign limited liability partnership is extended for~~
- 6 ~~an additional one-year period.~~
- 7 16. "Signed" means ~~that~~ the signature of a person ~~has been~~ is placed on a document,
- 8 as provided in subsection 39 of section 41-01-11~~;~~.
- 9 a. With respect to a document required by this chapter to be filed with the
- 10 secretary of state, the term means ~~that~~ the document ~~has been~~ is signed by a
- 11 person authorized to do so by this chapter, or by or pursuant to an agreement
- 12 among the partners, or by a resolution approved by the affirmative vote of the
- 13 required proportion or number of partners~~; and~~.
- 14 b. With respect to a document not required by this chapter to be filed with the
- 15 secretary of state, the signature may be a facsimile affixed, engraved, printed,
- 16 placed, stamped with indelible ink, transmitted by telecommunication or
- 17 electronically, or in any other manner reproduced on the document.

18 **SECTION 177. AMENDMENT.** Section 45-22-03 of the 1997 Supplement to the North

19 Dakota Century Code is amended and reenacted as follows:

20 **45-22-03. Registration.**

- 21 1. A partnership may become a limited liability partnership pursuant to this section.
- 22 a. In determining whether the underlying ~~general~~ partnership necessary for
- 23 registration as a domestic limited liability partnership has been formed, the
- 24 rules set forth in section 45-14-02 apply.
- 25 b. The terms and conditions on which a partnership becomes a limited liability
- 26 partnership must be approved by the necessary vote of partners required to
- 27 amend the partnership agreement, unless the partnership agreement
- 28 contains a requirement that the vote of a greater number of partners is
- 29 necessary to amend provisions relating to the partners' obligations to
- 30 contribute to the partnership, in which case by the necessary vote of the
- 31 partners to amend these provisions.

- 1           2. After the approval required by subdivision b of subsection 1, a partnership shall  
2           become a limited liability partnership by filing a registration with the secretary of  
3           state. A domestic limited liability partnership or foreign limited liability partnership  
4           that is transacting business in this state must have in effect and filed with the  
5           secretary of state a registration that complies with this section.
- 6           a. ~~For one year from its~~ From the effective date of filing, the registration of:
- 7           (1) a. A domestic limited liability partnership establishes ~~its~~ the status as a domestic  
8           limited liability partnership; and
- 9           (2) b. A foreign limited liability partnership authorizes ~~it to transact~~ the transaction of  
10           business in this state.
- 11           ~~Unless a renewal registration is properly filed with the secretary of state, the~~  
12           ~~registration is subject to revocation by the secretary of state as provided in~~  
13           ~~section 45-22-16.~~
- 14           b. ~~The limited liability partnership or foreign limited liability partnership may file a~~  
15           ~~renewal registration that complies with this section no earlier than sixty days~~  
16           ~~before the expiration of the one year period.~~
- 17           (1) ~~A registration may be renewed for successive one year periods.~~
- 18           (2) ~~A proper renewal registration extends the registration of a limited~~  
19           ~~liability partnership or foreign limited liability partnership for another~~  
20           ~~one year period, measured from the end of the previous one year~~  
21           ~~period.~~
- 22           (3) ~~Unless a renewal registration is properly filed with the secretary of~~  
23           ~~state, the registration shall be subject to revocation by the secretary of~~  
24           ~~state as provided in section 45-22-16.~~
- 25           3. A registration ~~or renewal registration~~ must contain:
- 26           a. With respect to a domestic limited liability partnership:
- 27           (1) The name of the domestic limited liability partnership.
- 28           (2) The nature of the business to be transacted in this state.
- 29           (3) The address of the principal executive office of the domestic limited  
30           liability partnership.

- 1                   (4)    The address of the registered office of the domestic limited liability  
2                   partnership and the name of ~~its~~ the registered agent at that address.
- 3                   (5)    The name and address of each managing partner.
- 4                   (6)    ~~An acknowledgment that the status of limited liability partnership will~~  
5                   ~~automatically expire, unless the partnership files a proper renewal~~  
6                   ~~registration. A statement that the partnership elects to be a limited~~  
7                   ~~liability partnership.~~ A statement that the partnership elects to be a limited  
8                   (7)    ~~An acknowledgment that other jurisdictions, including other jurisdictions~~  
9                   ~~that have limited liability partnership statutes, may not provide any~~  
10                  ~~limited liability shield or may not provide as broad a limited liability~~  
11                  ~~shield as does this chapter. A deferred effective date, if any.~~
- 12                  b.    With respect to a foreign limited liability partnership:
- 13                   (1)    The name of the foreign limited liability partnership and, if different, the  
14                   name under which ~~it~~ the foreign limited liability partnership proposes to  
15                   transact business in this state.
- 16                   (2)    The jurisdiction of ~~its original registration~~ origin.
- 17                   (3)    The date on which the foreign limited liability partnership expires in the  
18                   jurisdiction of ~~its~~ origin.
- 19                   (4)    The nature of the business to be transacted in this state.
- 20                   (5)    The address of the principal executive office of the foreign limited  
21                   liability partnership.
- 22                   (6)    The address of the registered office of the foreign limited liability  
23                   partnership and the name of ~~its~~ the foreign limited liability partnership's  
24                   registered agent at that address.
- 25                   (7)    The name and address of each managing partner.
- 26                   (8)    An acknowledgment that the status of the foreign limited liability  
27                   partnership in this state will automatically expire:  
28                   ~~(a)    Unless the foreign limited liability partnership files a proper~~  
29                   ~~renewal registration; and~~



- 1           **(b)** d. In the case of a termination or merger:
- 2                   **{4}** (1) A foreign limited liability partnership that is not the surviving
- 3                                   organization need not file an amended registration but, within thirty
- 4                                   days after the merger or termination becomes effective, shall file with
- 5                                   the secretary of state a certificate to that effect authenticated by the
- 6                                   proper officer of the ~~state or country under the laws of which the foreign~~
- 7                                   limited liability ~~partnership is originally registered~~ partnership's
- 8                                   jurisdiction of origin.
- 9                   **{2}** (2) It is not necessary for any foreign limited liability partnership, which is
- 10                                   the surviving organization in a merger, to procure ~~either~~ a new or
- 11                                   amended registration unless the name of the foreign limited liability
- 12                                   partnership is changed or unless the foreign limited liability partnership
- 13                                   desires to pursue in this state purposes other than those which ~~it~~ the
- 14                                   foreign limited liability partnership is authorized to transact in this state.
- 15           e. ~~With respect to renewals:~~
- 16                   **(1)** ~~A renewal registration received by the secretary of state in a sealed~~
- 17                                   envelope postmarked by the United States postal service on or before
- 18                                   the lapse, or a renewal registration in a sealed packet with a verified
- 19                                   shipment date by any other carrier service on or before the lapse, and
- 20                                   properly addressed to the secretary of state is deemed to be in
- 21                                   compliance with the requirement for timely delivery. ~~When a lapse falls~~
- 22                                   ~~on a Saturday, Sunday, or other holiday as defined in section 1-03-01,~~
- 23                                   ~~a postmark or verified shipment date on the next business day is in~~
- 24                                   ~~compliance with this requirement.~~
- 25                   **(2)** ~~The secretary of state must file the renewal registration if the renewal~~
- 26                                   ~~registration conforms to the requirements of this section.~~
- 27                   **(3)** ~~If the renewal registration does not conform, the registration must be~~
- 28                                   ~~returned to the limited liability partnership or foreign limited liability~~
- 29                                   ~~partnership for any necessary corrections. If the corrected renewal~~
- 30                                   ~~registration is filed after the lapse date, but within thirty days after it is~~

- 1                   ~~returned for correction, the penalties for failure to file the renewal~~  
2                   ~~registration within the time required do not apply.~~
- 3                   (4) ~~Each limited liability partnership or foreign limited liability partnership~~  
4                   ~~that fails or refuses to file its renewal registration on or before the lapse~~  
5                   ~~date of a registration must pay an additional late renewal fee as~~  
6                   ~~provided in section 45-22-22.~~
- 7                   ~~e.~~ e. The secretary of state may destroy any ~~registrations and renewal registrations~~  
8                   ~~which have been~~ registration that is on file for seven years.
- 9                   5. A managing partner must be separately registered with the secretary of state at the  
10                   time of the registration of a domestic limited liability partnership ~~whenever~~ if that  
11                   managing partner is ~~either~~ a domestic or foreign:
- 12                   a. Corporation;
- 13                   b. Limited liability company;
- 14                   c. Limited partnership;
- 15                   d. Limited liability partnership; ~~or~~
- 16                   e. Limited liability limited partnership; or
- 17                   f. General partnership Partnership using a fictitious name.
- 18                   6. With respect to a domestic limited liability partnership:
- 19                   a. A ~~general~~ partnership's decision to file a registration is an ordinary matter that  
20                   may be decided by a majority of the partners.
- 21                   b. The decision to withdraw ~~or not renew~~ a registration may be undertaken only  
22                   with the consent of all ~~of the~~ partners or as otherwise expressly provided in a  
23                   written partnership agreement.
- 24                   7. A ~~general~~ partnership that registers as a limited liability partnership is not deemed  
25                   to have dissolved as a result of the registration.
- 26                   8. If a limited liability partnership or foreign limited liability partnership dissolves  
27                   without winding up ~~its~~ business or changes ~~its~~ the jurisdiction of origin, a  
28                   partnership ~~which~~ that is a successor to ~~such~~ the limited liability partnership or  
29                   foreign limited liability partnership and which intends to be a limited liability  
30                   partnership or foreign limited liability partnership ~~shall~~ is not be required to file a  
31                   new registration or renewal and ~~shall be~~ is deemed to have filed any documents

1 required or permitted under this section which were filed by the predecessor  
2 partnership.

3 9. The status of a partnership as a limited liability partnership is effective on the later  
4 of the filing of the registration or a date specified in the registration which is within  
5 ninety days after the filing of the registration.

6 a. The status of a partnership as a domestic limited liability partnership and the  
7 authority of a foreign limited liability partnership to transact business in this  
8 state remains effective, regardless of changes in the partnership, until the  
9 partnership's registration is voluntarily withdrawn pursuant to section 45-22-13  
10 or revoked by the secretary of state pursuant to sections 45-22-16 and  
11 45-22-21.1.

12 b. The status of a partnership as a limited liability partnership and the liability of  
13 the partnership's partners for obligation of the partnership is not affected by  
14 errors or later changes in the information required to be contained in the  
15 registration under subsection 3.

16 **SECTION 178. AMENDMENT.** Section 45-22-04 of the 1997 Supplement to the North  
17 Dakota Century Code is amended and reenacted as follows:

18 **45-22-04. Limited liability partnership - Name.**

19 1. The name of a limited liability partnership:

20 a. Must be in the English language or in any other language, expressed in  
21 English letters or characters.

22 b. Must contain ~~the~~:

23 (1) The words "limited liability partnership" or either the abbreviation  
24 "L.L.P." or the abbreviation "LLP", either of which abbreviations can  
25 may be used interchangeably for all purposes authorized by this  
26 chapter, including real estate matters, contracts, and filings with the  
27 secretary of state; or

28 (2) In the case of a foreign limited liability partnership, any other words or  
29 abbreviations as may be authorized or required under the laws of the  
30 jurisdiction of ~~original registration~~ origin.



- 1 c. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~  
2 implying the limited liability partnership may not be formed under this chapter.
- 3 d. May not contain the word "corporation", "company", "incorporated", "limited  
4 liability company", "limited partnership", "limited liability limited partnership", or  
5 any abbreviation of these words.
- 6 e. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~  
7 implying the limited liability partnership is formed for a purpose other than one  
8 or more business purposes for which a partnership may be formed under  
9 North Dakota law.
- 10 e. f. May not be the same as, or deceptively similar to:
- 11 (1) The name, whether foreign and authorized to do business in this state,  
12 or domestic, unless there is filed with the registration a document ~~which~~  
13 that complies with subsection 2 3 of this section, ~~or~~ of:
- 14 (a) Another limited liability partnership;  
15 (b) A corporation;  
16 (c) A limited liability company; ~~or~~  
17 (d) A limited partnership; or  
18 (e) A limited liability limited partnership;
- 19 (2) A name, the right to which is at the time of registration reserved in the  
20 manner provided in section 10-19.1-14, 10-32-11, 10-33-11,  
21 45-10.1-03, or 45-22-05;
- 22 (3) A fictitious name registered in the manner provided in chapter 45-11; or  
23 (4) A trade name registered in the manner provided in chapter 47-25.
- 24 f. g. Need not be filed as provided in chapter 45-11 except ~~when~~ if transacting  
25 business under a name other than the name as registered under this chapter.
- 26 2. The secretary of state shall determine whether a name is deceptively similar to  
27 another name for purposes of this section.
- 28 3. If the secretary of state determines that a limited liability partnership name is  
29 deceptively similar to another name for purposes of this chapter, ~~then~~ the limited  
30 liability partnership name may not be used unless there is filed with the  
31 registration:

- 1           a. The written consent of the holder of the rights to the name to which the  
2                    proposed name has been determined to be deceptively similar; or  
3           b. A certified copy of a judgment of a court in this state establishing the ~~prior~~  
4                    earlier right of the applicant to the use of the name in this state.
- 5        4. This section and section 45-22-05 do not:
- 6           a. Abrogate or limit:
- 7                    (1) The law of unfair competition or unfair practices;  
8                    (2) Chapter 47-25;  
9                    (3) The laws of the United States with respect to the right to acquire and  
10                    protect copyrights, trade names, trademarks, service names, and  
11                    service marks; or  
12                    (4) Any other rights to the exclusive use of names or symbols.
- 13          b. Derogate the common law or principles of equity.
- 14        5. A limited liability partnership that is merged with ~~another~~ a domestic or foreign  
15           organization, that is registered by the reorganization of one or more domestic or  
16           foreign organizations, or that acquires by sale, lease, or other disposition to or  
17           exchange with a domestic organization all or substantially all of the assets of  
18           another domestic or foreign organization including ~~its~~ the organization's name,  
19           may have the same name as that used in this state by any of the other  
20           organizations, if the other organization:
- 21           a. ~~Was~~ is incorporated, organized, formed, or registered under the laws of this  
22                    state;  
23           b. Is authorized to transact business or conduct activities in this state;  
24           c. Holds a reserved name in the manner provided in section 10-19.1-14,  
25                    10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;  
26           d. Holds a fictitious name registered in the manner provided in chapter 45-11; or  
27           e. Holds a trade name registered in the manner provided in chapter 47-25.
- 28        6. The use of a name by a limited liability partnership in violation of this section does  
29           not affect or vitiate ~~its~~ the limited liability partnership's status as a limited liability  
30           partnership ~~existence~~. However, a court of this state may, upon application of the  
31           state or of an interested or affected person, enjoin the limited liability partnership

1 from doing business under a name assumed in violation of this section, even  
2 though ~~its~~ the limited liability partnership's registration may have been filed with the  
3 secretary of state.

- 4 7. With respect to foreign limited liability partnerships:
- 5 a. A foreign limited liability partnership may register under any name that would  
6 be available to a domestic limited liability partnership, regardless of whether  
7 ~~or not~~ the name is the same under which ~~it~~ the foreign limited liability  
8 partnership is authorized in ~~its~~ the jurisdiction of original registration.
- 9 b. A fictitious name certificate must be filed as provided in chapter 45-11 only  
10 ~~when~~ if registering under a name other than the name as authorized in the  
11 jurisdiction of original registration.

12 **SECTION 179. AMENDMENT.** Section 45-22-05 of the 1997 Supplement to the North  
13 Dakota Century Code is amended and reenacted as follows:

14 **45-22-05. Reserved name.**

- 15 1. The exclusive right to the use of a limited liability partnership ~~or foreign limited~~  
16 ~~liability partnership~~ name otherwise permitted by section 45-22-04 may be  
17 reserved by any person.
- 18 2. The reservation is made by filing with the secretary of state a request that the  
19 name be reserved together with the fees provided in section 45-22-22.
- 20 a. If the name is available for use by the applicant, the secretary of state shall  
21 reserve the name for the exclusive use of the applicant for a period of twelve  
22 months.
- 23 b. The reservation may be renewed for successive twelve-month periods.
- 24 3. The right to the exclusive use of a limited liability partnership ~~or foreign limited~~  
25 ~~liability partnership~~ name reserved pursuant to this section may be transferred to  
26 another person by or on behalf of the applicant for whom the name was reserved  
27 by filing with the secretary of state a notice of the transfer and specifying the name  
28 and address of the transferee together with the fees provided in section 45-22-22.
- 29 4. The right to the exclusive use of a limited liability partnership ~~or foreign limited~~  
30 ~~liability partnership~~ name reserved pursuant to this section may be canceled by or  
31 on behalf of the applicant for whom the name was reserved by filing with the

1 secretary of state a notice of cancellation together with the fees provided in section  
2 45-22-22.

3 5. The secretary of state may accept for filing a legible facsimile copy of the signed  
4 original of any request for a reserved name.

5 6. The secretary of state may destroy ~~all~~ any reserved name ~~requests~~ request and  
6 name request index ~~thereof~~ one year after expiration.

7 **SECTION 180. AMENDMENT.** Section 45-22-06 of the 1997 Supplement to the North  
8 Dakota Century Code is amended and reenacted as follows:

9 **45-22-06. Failure to use required name.** If a person purports to enter into a contract  
10 or other undertaking on behalf of a limited liability partnership and with intent to defraud does  
11 not disclose to the other party that part of the limited liability partnership's name that complies  
12 with subsection 1 of section 45-22-04, ~~then~~ that person is personally liable on the contract or  
13 undertaking; unless that person can show in making the contract or accepting the undertaking  
14 that the other party had knowledge or notice that the partnership was a limited liability  
15 partnership, or did not rely on the partnership being an ordinary ~~general~~ partnership. Any  
16 partner of a limited liability partnership who with intent to defraud consents to a person not  
17 making the disclosure described in this section is also personally liable on the contract or  
18 undertaking, unless that partner can make the showing described in this section.

19 **SECTION 181. AMENDMENT.** Section 45-22-07 of the 1997 Supplement to the North  
20 Dakota Century Code is amended and reenacted as follows:

21 **45-22-07. Unauthorized assumption of limited liability partnership powers -**  
22 **Liability.** A person who assumes to act as a limited liability partnership knowing that ~~he~~ a  
23 registration ~~or renewal registration~~ is not in effect is jointly and severally liable for all debts and  
24 liabilities incurred or arising as a result.

25 **SECTION 182.** Section 45-22-08.1 of the North Dakota Century Code is created and  
26 enacted as follows:

27 **45-22-08.1. Partner liability.**

28 1. An obligation of a partnership incurred while the partnership is a domestic limited  
29 liability partnership, whether arising in contract, tort, or otherwise, is solely the  
30 obligation of the domestic limited liability partnership.

- 1           2. A partner is not personally liable, directly or indirectly, including by way of  
2           indemnification, contribution, or otherwise under section 45-19-03, 45-20-06,  
3           45-20-07, 45-21-03, or 45-21-06 or any other basis of law, for an obligation under  
4           this section solely by reason of being a partner or acting as a partner.  
5           3. This section applies notwithstanding any inconsistent provision in the partnership  
6           agreement.  
7           4. This section does not limit or impair the right of a domestic limited liability  
8           partnership or the domestic limited liability partnership's partners to make claims  
9           against any particular partner on the grounds that the particular partner has, in the  
10          partner's capacity as a partner, breached a duty to a domestic limited liability  
11          partnership.

12           **SECTION 183. AMENDMENT.** Section 45-22-10 of the 1997 Supplement to the North  
13 Dakota Century Code is amended and reenacted as follows:

14           **45-22-10. Liability of partners for illegal distributions.** With respect to the liability of  
15 partners for illegal distributions:

- 16           1. A Except as provided in subsection 3, a partner who receives a distribution from a  
17           domestic limited liability partnership ~~that~~ which would have been in violation of  
18           section 10-19.1-92 had the limited liability partnership been a corporation with a  
19           board of directors is liable to the domestic limited liability partnership, ~~its~~ the  
20           domestic limited liability partnership's receiver, or other person winding up ~~its~~ the  
21           domestic limited liability partnership's affairs, but only to the extent that the  
22           distribution received by the partner exceeded the amount that properly could have  
23           been paid under section 10-19.1-92.  
24           2. An action may not be commenced under this section more than two years from the  
25           date of the distribution.  
26           3. A partner actively engaged in the partnership business is not liable to the domestic  
27           limited liability partnership for any distribution that is or was regularly paid to the  
28           partner on account of engagement in the partnership business to the extent the  
29           distribution is reasonable compensation for the partner's services to or on behalf of  
30           the partnership.

1           **SECTION 184. AMENDMENT.** Section 45-22-11 of the 1997 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **45-22-11. Registered office and agent.**

- 4           1. A limited liability partnership ~~or foreign limited liability partnership~~ shall  
5 continuously maintain a registered office in this state. A registered office need not  
6 be the same as the principal place of business or the principal executive office of  
7 the limited liability partnership ~~or foreign limited liability partnership~~.
- 8           2. A limited liability partnership ~~or foreign limited liability partnership~~ shall appoint and  
9 continuously maintain a registered agent in ~~its~~ the registration who may be:
- 10           a. An individual residing in this state;
- 11           b. A domestic corporation, a domestic limited liability company, or a domestic  
12 limited liability partnership; or
- 13           c. A foreign corporation, foreign limited liability company, or foreign limited  
14 liability partnership authorized to transact business in this state.
- 15           3. Proof of the registered agent's consent to serve in ~~that~~ the capacity of registered  
16 agent must be filed with the secretary of state, together with the fees provided in  
17 section 45-22-22.

18           **SECTION 185. AMENDMENT.** Section 45-22-12 of the 1997 Supplement to the North  
19 Dakota Century Code is amended and reenacted as follows:

20           **45-22-12. Change of registered office or agent.**

- 21           1. A limited liability partnership ~~or foreign limited liability partnership~~ may change ~~its~~  
22 the limited liability partnership's registered office, change ~~its~~ the limited liability  
23 partnership's registered agent, or state a change in the name of ~~its~~ the limited  
24 liability partnership's registered agent, by filing with the secretary of state, along  
25 with the fees provided in section 45-22-22, a statement containing:
- 26           a. The name of the limited liability partnership ~~or foreign limited liability~~  
27 ~~partnership~~.
- 28           b. If the address of ~~its~~ the limited liability partnership's registered office is ~~to be~~  
29 ~~changed~~ changing, the new address of ~~its~~ the limited liability partnership's  
30 registered office.

- 1 c. If ~~its~~ the limited liability partnership's registered agent is to be designated or  
2 ~~changed~~ is changing, the name of ~~its~~ the limited liability partnership's new  
3 registered agent.
- 4 d. If the name of ~~its~~ the limited liability partnership's registered agent is ~~to be~~  
5 ~~changed~~ changing, the name of ~~its~~ the limited liability partnership's registered  
6 agent as changed.
- 7 e. A statement that the address of ~~its~~ the limited liability partnership's registered  
8 office and the address of the business office of ~~its~~ the limited liability  
9 partnership's registered agent, as changed, will be identical.
- 10 f. A statement that the change of registered office or registered agent was  
11 authorized by resolution of the partnership.
- 12 2. A registered agent may resign by filing with the secretary of state a written notice  
13 of resignation, including a statement that a signed copy of the notice ~~has been~~ was  
14 given to the limited liability partnership ~~or foreign limited liability partnership~~ at ~~its~~  
15 the limited liability partnership's principal executive office, or to a legal  
16 representative of the limited liability partnership ~~or foreign limited liability~~  
17 ~~partnership~~. The appointment of the agent terminates thirty days after the notice is  
18 filed with the secretary of state.
- 19 3. If the business address or name of a registered agent changes, the agent shall  
20 change the address of the registered office or name of the registered agent of  
21 each limited liability partnership ~~or foreign limited liability partnership~~ represented  
22 by that agent by filing with the secretary of state a statement for each limited  
23 liability partnership ~~or foreign limited liability partnership~~ as required in  
24 subsection 1, except ~~that it~~ the statement need be signed only by the registered  
25 agent, need not be responsive to subdivision c or f of subsection 1, and must state  
26 that a copy of the statement ~~has been~~ was mailed to each of those limited liability  
27 partnerships ~~or foreign limited liability partnerships~~ or to the legal representative of  
28 each of those limited liability partnerships ~~or foreign limited liability partnerships~~.
- 29 4. The fee prescribed in section 45-22-22 for the change of registered office must be  
30 refunded ~~when~~ if, in the opinion of the secretary of state, the change of address of  
31 registered office results from rezoning or postal reassignment.

1           **SECTION 186. AMENDMENT.** Section 45-22-13 of the 1997 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **45-22-13. Voluntary withdrawal of status.**

4           1. A partnership may end ~~its~~ the partnership's status as a limited liability partnership  
5 ~~or foreign limited liability partnership~~ at any time by filing a withdrawal statement  
6 with the secretary of state.

7           2. The withdrawal statement must contain:

8           a. With respect to a domestic limited liability partnership:

9               (1) The name of the domestic limited liability partnership.

10              (2) A statement that the domestic limited liability partnership is withdrawing  
11 ~~its~~ the current registration.

12              (3) An acknowledgment by the domestic limited liability partnership that the  
13 withdrawal ends ~~its~~ the domestic limited liability partnership's status as  
14 a limited liability partnership status with respect to periods after the  
15 effective date of the withdrawal.

16           b. With respect to a foreign limited liability partnership:

17               (1) The name of the foreign limited liability partnership.

18               (2) The jurisdiction of origin.

19               (3) A statement that the foreign limited liability partnership is not  
20 transacting business in this state as a foreign limited liability  
21 partnership.

22               (4) A statement that the foreign limited liability partnership surrenders ~~its~~  
23 authority to transact business in this state as a foreign limited liability  
24 partnership and is withdrawing ~~its~~ the foreign limited liability  
25 partnership's current registration.

26               (5) An acknowledgment by the foreign limited liability partnership that the  
27 withdrawal ends ~~its~~ the foreign limited liability partnership's  
28 authorization to transact business in this state as a foreign limited  
29 liability partnership status in this state with respect to periods after the  
30 effective date of the withdrawal.



1                   (6) A statement that the foreign limited liability partnership revokes the  
2                   authority of ~~its~~ the foreign limited liability partnership's registered agent  
3                   in this state to accept service of process and consents that service of  
4                   process based upon any cause of action arising in this state during the  
5                   time the foreign limited liability partnership was authorized to transact  
6                   business in this state may be made on the foreign limited liability  
7                   partnership by service upon the secretary of state.

8                   (7) A post-office address to which a person may mail a copy of any  
9                   process against the foreign limited liability partnership.

10                  3. The withdrawal statement may state a delayed withdrawal date, ~~if that date is~~  
11                  ~~before the expiration date of the current registration.~~ If the withdrawal statement  
12                  does not state an effective date, ~~then~~ the statement is effective when filed.

13                  4. If the foreign limited liability partnership is not the surviving organization in a  
14                  merger or termination, ~~then~~ the filing with the secretary of state of a certificate to  
15                  that effect authenticated by the proper officer of the state or country under the laws  
16                  of which the foreign limited liability partnership is originally registered constitutes a  
17                  valid withdrawal statement.

18                  **SECTION 187. AMENDMENT.** Section 45-22-14 of the 1997 Supplement to the North  
19                  Dakota Century Code is amended and reenacted as follows:

20                  **45-22-14. Filing after dissolution.**

21                  1. A dissolved limited liability partnership ~~or a foreign limited liability partnership~~ that  
22                  is winding up ~~its~~ affairs may continue ~~its~~ the limited liability partnership's status as  
23                  a limited liability partnership ~~or foreign limited liability partnership~~ through  
24                  termination ~~either~~ by:

25                  a. ~~Continuing~~ continuing to file an annual renewal registrations report until  
26                  termination; ~~or,~~

27                  b. ~~Filing a final renewal registration that, in addition to providing the information~~  
28                  ~~required by subsection 3 of section 45-22-03:~~

29                  (1) ~~States the partnership is dissolved and is winding up its affairs.~~

30                  (2) ~~Identifies the cause of the dissolution.~~

- 1                   (3) ~~States the renewal registration is the final renewal registration and will~~  
2                   ~~remain in effect until termination.~~
- 3           2. ~~A final renewal registration that complies with subdivision b of subsection 1 must~~  
4           ~~not contain the statement required in:~~
- 5           a. ~~Paragraph 6 of subdivision a of subsection 3 of section 45-22-03 in the case~~  
6           ~~of a domestic limited liability partnership; or~~
- 7           b. ~~Paragraph 8 of subdivision b of subsection 3 of section 45-22-03 in the case~~  
8           ~~of a foreign limited liability partnership.~~
- 9           3. ~~When the dissolved limited liability partnership or foreign limited liability~~  
10           ~~partnership has wound~~ winds up its affairs, it the limited liability partnership shall  
11           file with the secretary of state a termination notice, together with the fees provided  
12           in section 45-22-22. The termination notice must:
- 13           a. Contain:
- 14               (1) The name of the limited liability partnership ~~or foreign limited liability~~  
15               ~~partnership.~~
- 16               (2) A statement the limited liability partnership ~~or foreign limited liability~~  
17               ~~partnership has dissolved and wound up its affairs.~~
- 18               (3) A statement the limited liability partnership ~~or foreign limited liability~~  
19               ~~partnership is terminated.~~
- 20           b. Be signed by one former managing partner who ~~has~~ did not wrongfully  
21           ~~dissolved~~ dissolve the partnership or, in the case of a foreign limited liability  
22           partnership, by ~~a managing~~ an authorized partner.

23           **SECTION 188. AMENDMENT.** Section 45-22-15 of the 1997 Supplement to the North  
24           Dakota Century Code is amended and reenacted as follows:

25           **45-22-15. Limited liability after dissolution.** With respect to limited liability after  
26           dissolution:

- 27           1. Subject to section 45-22-14, the limited liability shield described in sections  
28           45-22-08 and 45-22-09 continues in full force for the dissolved domestic limited  
29           liability partnership regardless of any dissolution, winding up, and termination.
- 30           2. If a domestic limited liability partnership dissolves and ~~its~~ the domestic limited  
31           liability partnership's business is continued by a successor general partnership

1 under section 45-20-02, ~~then~~ the limited liability described in ~~sections~~ section  
2 45-22-08 ~~and 45-22-09~~ also applies to that successor domestic limited liability  
3 partnership until the ~~expiration~~ withdrawal of the registration that the dissolved  
4 domestic limited liability partnership had in effect under section 45-22-03 at the  
5 moment of dissolution. The successor ~~general~~ partnership may at any time file ~~its~~  
6 the partnership's own registration under section 45-22-03.

7 **SECTION 189. AMENDMENT.** Section 45-22-16 of the 1997 Supplement to the North  
8 Dakota Century Code is amended and reenacted as follows:

9 **45-22-16. Revocation of registration.**

- 10 1. The registration of a limited liability partnership ~~or foreign limited liability~~  
11 ~~partnership~~ may be revoked by the secretary of state upon the occurrence of any  
12 of these events:
- 13 a. The limited liability partnership ~~or foreign limited liability partnership has failed~~  
14 fails:
- 15 (1) To appoint and maintain a registered agent as required by this chapter;  
16 (2) To file a report upon any change in the name or business address of  
17 the registered agent; or  
18 (3) To file any ~~required~~ amendment to ~~its~~ the limited liability partnership's  
19 registration; or required to be filed pursuant to subdivision b or c of  
20 subsection 4 of section 45-22-03.  
21 ~~(4) To file a renewal registration as provided in subsection 2 of section~~  
22 ~~45-22-03.~~
- 23 b. An intentional misrepresentation ~~has been~~ is made in any material matter in  
24 any registration, report, affidavit, or other document submitted by the limited  
25 liability partnership ~~or foreign limited liability partnership~~ pursuant to this  
26 chapter.
- 27 2. The secretary of state may not revoke the registration of a limited liability  
28 partnership ~~or foreign limited liability partnership~~ unless:
- 29 a. The secretary of state ~~has given~~ gave the limited liability partnership ~~or~~  
30 ~~foreign limited liability partnership~~ at least sixty days' notice of the reason for  
31 the pending revocation by mail addressed to ~~its~~ the limited liability

- 1                    ~~partnership's~~ registered office or, if the limited liability partnership ~~or foreign~~  
2                    ~~limited liability partnership~~ fails to appoint and maintain a registered agent in  
3                    this state, ~~then~~ by mail addressed to ~~its~~ the limited liability partnership's  
4                    principal executive office; and
- 5                    b. During the sixty-day period, the limited liability partnership ~~or foreign limited~~  
6                    ~~liability partnership has failed~~ fails:
- 7                    (1) To appoint and maintain a registered agent as required by this chapter;
- 8                    (2) To file the report of change regarding the name or business address of  
9                    the registered agent;
- 10                    (3) To file ~~the required~~ any amendment to ~~its~~ the limited liability  
11                    partnership's registration required to be filed pursuant to subdivision b  
12                    or c of subsection 4 of section 45-22-03; or
- 13                    (4) ~~To file a renewal registration as provided in subsection 2 of section~~  
14                    ~~45-22-03; or~~
- 15                    (5) To correct the misrepresentation.
- 16                    3. Upon the expiration of the sixty-day period without the limited liability partnership  
17                    ~~or foreign limited liability partnership having cured~~ curing the reason for the  
18                    pending revocation set forth in the notice, the registration is revoked. The  
19                    secretary of state shall note the revocation in the records of the secretary of state  
20                    and shall give notice of the revocation to the limited liability partnership ~~or foreign~~  
21                    ~~limited liability partnership~~. Notice by the secretary of state must be mailed to the  
22                    last registered agent at the last registered office of record. If the limited liability  
23                    partnership ~~or foreign limited liability partnership failed~~ fails to appoint and  
24                    maintain a registered office in this state, ~~then~~ the notice must be mailed to its the  
25                    limited liability partnership's principal executive office.

26                    **SECTION 190. AMENDMENT.** Section 45-22-17 of the 1997 Supplement to the North  
27                    Dakota Century Code is amended and reenacted as follows:

28                    **45-22-17. Service of process on a limited liability partnership ~~or foreign limited~~**  
29                    **liability partnership.**

- 30                    1. A process, notice, or demand required or permitted by law to be served on a  
31                    limited liability partnership ~~or foreign limited liability partnership~~ may be served

- 1           ~~either~~ on the registered agent or on any responsible person found at the registered  
2           office or on the secretary of state as provided in this section.
- 3           2. If neither the registered agent nor a responsible person can be found at the  
4           registered office and if a responsible person affiliated with the limited liability  
5           partnership ~~or foreign limited liability partnership~~ cannot be found at the principal  
6           place of business in this state, the secretary of state is the agent of the limited  
7           liability partnership ~~or foreign limited liability partnership~~ on whom the process,  
8           notice, or demand may be served.
- 9           a. The return of the sheriff, or affidavit of a person not a party, that ~~ne a~~  
10           registered agent or responsible person ~~may~~ cannot be found at ~~either~~ the  
11           registered office or at the principal place of business in this state is conclusive  
12           evidence ~~that~~ the limited liability partnership ~~or foreign limited liability~~  
13           ~~partnership~~ has no registered agent or responsible person at ~~its~~ the limited  
14           liability partnership's registered office or at ~~its~~ the limited liability partnership's  
15           principal place of business in this state.
- 16           b. Service on the secretary of state of any process, notice, or demand is  
17           deemed personal service on the limited liability partnership ~~or foreign limited~~  
18           ~~liability partnership~~ and may be made by filing with the secretary of state one  
19           original and two copies of the process, notice, or demand together with the  
20           fees provided in section 45-22-22.
- 21           c. The secretary of state immediately shall forward, by certified mail addressed  
22           to the limited liability partnership ~~or foreign limited liability partnership~~ at ~~its~~  
23           the limited liability partnership's registered office or ~~at its~~ principal place of  
24           business in this state, a copy of the process, notice, or demand.
- 25           d. Service on the secretary of state is returnable in not less than thirty days,  
26           notwithstanding a shorter period specified in the process, notice, or demand.
- 27           3. The secretary of state shall maintain a record of every process, notice, and  
28           demand served on the secretary of state under this section, including the date of  
29           service and the action taken with reference to ~~it~~ the process, notice, or demand.

- 1           4. This section does not limit the right of a person to serve process, notice, or  
2           demand required or permitted by law to be served on a limited liability partnership  
3           or ~~foreign limited liability partnership~~ in any other manner permitted by law.

4           **SECTION 191. AMENDMENT.** Section 45-22-18 of the 1997 Supplement to the North  
5 Dakota Century Code is amended and reenacted as follows:

6           **45-22-18. Foreign limited liability partnership governing law.**

- 7           1. The laws of the foreign limited liability partnership's jurisdiction ~~under which a~~  
8           ~~foreign limited liability partnership is originally registered~~ of origin govern its  
9           organization, internal affairs, and the liability of partners for the debts, obligations,  
10          and liabilities of or chargeable to the partnership or another partner or partners.:
- 11          a. The relations among the partners of a foreign limited liability partnership, or  
12          the relations between any partner or partners of a foreign limited liability  
13          partnership and the foreign limited liability partnership; and
- 14          b. The liability of partners for obligations of a foreign limited liability partnership.
- 15          2. A foreign limited liability partnership may not be denied registration to transact  
16          business in this state by reason of any difference between ~~these~~ the laws of the  
17          foreign limited liability partnership's jurisdiction of origin and the laws of this state.
- 18          3. A foreign limited liability partnership holding a valid registration in this state has the  
19          same, but no greater, rights and privileges as a domestic limited liability  
20          partnership. The registration does not authorize the foreign limited liability  
21          partnership to engage in any business or exercise any ~~of its powers for purposes~~  
22          power that a domestic limited liability partnership ~~is forbidden by law to exercise in~~  
23          ~~this state~~ may not engage in or exercise as a limited liability partnership.

24          **SECTION 192. AMENDMENT.** Section 45-22-20 of the 1997 Supplement to the North  
25 Dakota Century Code is amended and reenacted as follows:

26          **45-22-20. Transaction of business by a foreign limited liability partnership**  
27 **without registration.**

- 28          1. A foreign limited liability partnership transacting business in this state may not  
29          maintain any cause of action in any court of this state until the partnership ~~has~~  
30          ~~registered~~ registers with the secretary of state.

- 1           2. The failure of a foreign limited liability partnership to register with the secretary of  
2           state does not impair the validity of any contract or act of the foreign limited liability  
3           partnership or prevent the foreign limited liability partnership from defending any  
4           claim for relief in any court of this state.
- 5           3. A limitation on the personal liability of a partner is not waived solely by the foreign  
6           limited liability partnership transacting business in this state without having filed a  
7           registration with the secretary of state.
- 8           4. A foreign limited liability partnership, by transacting business in this state without  
9           ~~having registered~~ registering with the secretary of state, appoints the secretary of  
10          state as ~~its~~ the agent upon whom any notice, process, or demand may be served.

11           **SECTION 193. AMENDMENT.** Subsection 1 of section 45-22-21 of the 1997

12 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 13           1. The following activities of a foreign limited liability partnership, among others, do  
14           not constitute transacting business within the meaning of this chapter:
- 15           a. Maintaining, defending, or settling any proceeding.
- 16           b. Holding meetings of ~~its~~ partners or carrying on any other activities concerning  
17           ~~its~~ internal affairs.
- 18           c. Maintaining bank accounts.
- 19           d. Maintaining offices or agencies for the transfer, exchange, and registration of  
20           the foreign limited liability partnership's own partnership interests or  
21           maintaining trustees or depositories with respect to those partnership  
22           interests.
- 23           e. Selling through independent contractors.
- 24           f. Soliciting or obtaining orders, whether by mail or through employees or  
25           agents or otherwise, if the orders require acceptance outside this state before  
26           ~~they~~ the orders become contracts.
- 27           g. Creating or acquiring indebtedness, ~~mortgages~~ with or without a mortgage,  
28           ~~and or other~~ security interests in real or personal property.
- 29           h. ~~Securing or collecting~~ Collecting debts or enforcing, including foreclosing  
30           mortgages; and security interests in property securing the debts canceling  
31           contracts for deed; enforcing other security interests on property; securing

1                    debts; accepting deeds or other instruments of title from debtors in lieu of  
2                    foreclosure; canceling or other enforcement; and holding, protecting, and  
3                    maintaining property acquired under this subdivision.

4                    i. ~~Holding, protecting, renting, maintaining, and operating real or personal~~  
5                    ~~property in this state so acquired.~~

6                    j. Selling or transferring title to property in this state to any person.

7                    ~~k.~~ j. Conducting an isolated transaction that is completed within thirty days and  
8                    that is not one in the course of repeated transactions of a like manner.

9                    k. Transacting business in interstate commerce.

10                  **SECTION 194.** Section 45-22-21.1 of the North Dakota Century Code is created and  
11 enacted as follows:

12                  **45-22-21.1. Secretary of state - Annual report of domestic limited liability**  
13 **partnership and foreign limited liability partnership.**

14                  1. Each domestic limited liability partnership and each foreign limited liability  
15 partnership authorized to transact business in this state, shall file, within the time  
16 prescribed by subsection 3, an annual report setting forth:

17                  a. The name of the limited liability partnership and the jurisdiction of origin.

18                  b. The address of the registered office of the limited liability partnership in this  
19 state, and the name of the limited liability partnership's registered agent in this  
20 state at that address.

21                  c. The address of the limited liability partnership's chief executive office.

22                  d. A brief statement of the character of the business in which the limited liability  
23 partnership is actually engaged in this state.

24                  e. The name and respective address of each managing partner of the domestic  
25 limited liability partnership or foreign limited liability partnership.

26                  2. The annual report must be submitted on forms prescribed by the secretary of state.

27                  The information provided must be given as of the date of the execution of the

28                  report. The annual report must be signed as prescribed in subsection 16 of

29                  section 45-22-01, the partnership agreement, or in a resolution approved by the

30                  affirmative vote of the required proportion or number of partners. If the limited

31                  liability partnership is in the hands of a receiver or trustee, the annual report must



- 1           be signed on behalf of the limited liability partnership by the receiver or trustee.  
2           The secretary of state may destroy any annual report provided for in this section  
3           after the annual report is on file for six years.
- 4           3. The annual report of a limited liability partnership must be delivered to the  
5           secretary of state before April first of each year, except the first annual report of a  
6           limited liability partnership must be delivered before April first of the year following  
7           the calendar year in which the registration is filed by the secretary of state. A  
8           limited liability partnership in existence on July 1, 1999, shall file the first annual  
9           report before April first in the year of the expiration of the registration in effect on  
10           July 1, 1999.
- 11           a. An annual report in a sealed envelope postmarked by the United States  
12           postal service before April first, or an annual report in a sealed packet with a  
13           verified shipment date by any other carrier service before April first, complies  
14           with this requirement.
- 15           b. The secretary of state must file the annual report if the annual report  
16           conforms to the requirements of subsection 2.
- 17               (1) If the annual report does not conform, the annual report must be  
18               returned to the limited liability partnership for any necessary  
19               corrections.
- 20               (2) If the annual report is filed before the deadlines prescribed in this  
21               subsection, penalties for the failure to file a report within the time  
22               provided do not apply if the annual report is corrected to conform to the  
23               requirements of subsection 2 and returned to the secretary of state  
24               within thirty days after the annual report was returned by the secretary  
25               of state for correction.
- 26           4. After the date established under subsection 3, the secretary of state shall notify  
27           any limited liability partnership failing to file an annual report that the limited liability  
28           partnership's registration is not in good standing and the limited liability partnership  
29           may be revoked pursuant to subsection 5.
- 30           a. The secretary of state shall mail notice of revocation to the last registered  
31           agent at the last registered office of record.

- 1            b. If the limited liability partnership files an annual report after the notice is  
2            mailed, together with the annual report filing fee and late filing penalty fee as  
3            prescribed by section 45-22-22, the secretary of state shall restore the limited  
4            liability partnership's registration to good standing.
- 5            5. A domestic limited liability partnership that does not file an annual report, along  
6            with the statutory filing and penalty fees, within six months after the date  
7            established in subsection 3, forfeits the limited liability partnership's registration.
- 8            a. The secretary of state shall note the revocation of the domestic limited liability  
9            partnership's registration on the records of the secretary of state and shall  
10           give notice of the action to the revoked domestic limited liability partnership.
- 11           b. Notice by the secretary of state must be mailed to the domestic limited liability  
12           partnership's last registered agent at the last registered office of record.
- 13           6. A foreign limited liability partnership that does not file an annual report, along with  
14           the statutory filing and penalty fees, within six months after the date established by  
15           subsection 3, forfeits the foreign limited liability partnership's registration and  
16           authority to transact business in this state.
- 17           a. The secretary of state shall note the revocation of the foreign limited liability  
18           partnership's registration and authority on the records of the secretary of state  
19           and shall give notice of the action to the foreign limited liability partnership.
- 20           b. Notice by the secretary of state must be mailed to the foreign limited liability  
21           partnership's last registered agent at the last registered office of record.
- 22           c. The secretary of state's decision that a registration must be revoked under  
23           this subsection is final.
- 24           7. A domestic limited liability partnership with a registration that is revoked for failure  
25           to file an annual report or a foreign limited liability partnership with registration and  
26           authority that are forfeited by failure to file an annual report may be reinstated by  
27           filing a past-due report, together with the statutory filing and penalty fees for an  
28           annual report and a reinstatement fee as prescribed in section 45-22-22. The fees  
29           must be paid and the report filed within one year following the revocation.  
30           Reinstatement under this subsection does not affect any right or liability of a

1           domestic limited liability partnership or a foreign limited liability partnership for the  
2           time from the revocation to the reinstatement.

3           **SECTION 195. AMENDMENT.** Section 45-22-22 of the 1997 Supplement to the North  
4 Dakota Century Code is amended and reenacted as follows:

5           **45-22-22. Fees and charges.**

6           1. The secretary of state shall charge and collect for:

7           a. Filing a registration as a domestic limited liability partnership, twenty-five  
8           dollars. ~~When~~ If there are more than two managing partners, an additional  
9           three dollars must be paid for each additional managing partner not to exceed  
10          two hundred fifty dollars.

11          b. Filing a ~~renewal~~ registration as a foreign limited liability partnership,  
12          ~~twenty-five~~ fifty dollars.

13          c. ~~Late filing of a renewal registration after the lapse of a registration, twenty~~  
14          ~~dollars. This fee is in addition to the renewal registration fee. Filing an~~  
15          annual report of a domestic limited liability partnership or foreign limited  
16          liability partnership, twenty-five dollars. The secretary of state shall charge  
17          and collect additional fees for late filing of an annual report as follows:

18           (1) After the date prescribed in subsection 3 of section 45-22-21.1, twenty  
19           dollars; and

20           (2) After the revocation of the domestic limited liability partnership  
21           registration or the foreign limited liability partnership registration, the  
22           reinstatement fee of fifty dollars.

23          d. Filing a statement of correction; or amended registration, twenty-five dollars.

24          e. Filing an application to reserve a name, ten dollars.

25          f. Filing a notice of transfer of a reserved name, ten dollars.

26          g. Filing a cancellation of reserved name, ten dollars.

27          h. Filing a consent to use of name, ten dollars.

28          i. Filing a statement of change of address of registered office or change of  
29          registered agent or both, ten dollars.

- 1           j.    Filing a statement of change of address of registered office by registered  
2                   agent, ten dollars for each domestic limited liability partnership or foreign  
3                   limited liability partnership affected by ~~such~~ the change.
- 4           k.    Filing a registered agent's consent to serve in ~~such~~ the capacity of registered  
5                   agent, ten dollars.
- 6           l.    Filing a resignation as registered agent, ten dollars.
- 7           m.    Filing a notice of withdrawal, ten dollars.
- 8           n.    Filing a certificate of fact stating a merger of a foreign limited liability  
9                   partnership registered with the secretary of state, fifty dollars.
- 10          o.    Filing any other statement of a domestic limited liability partnership, ten  
11               dollars.
- 12          p.    Filing any process, notice, or demand for service, twenty-five dollars.
- 13          q.    ~~Filing a registration as a foreign limited liability partnership, fifty dollars.~~ Any  
14               document submitted for approval before the actual time of submission for  
15               filing, one-half of the fee provided in this section for filing the document.
- 16          2.    The secretary of state shall charge and collect for:
- 17               a.    Furnishing a copy of any document, instrument, or paper relating to a  
18                   domestic limited liability partnership or foreign limited liability partnership, one  
19                   dollar for every four pages, or fraction ~~thereof~~ of pages.
- 20               b.    A certificate certifying a copy or reciting facts related to a domestic limited  
21                   liability partnership or foreign limited liability partnership, twenty dollars.
- 22               c.    Each page of any document or form sent by electronic transmission, one  
23                   dollar.

24           **SECTION 196. AMENDMENT.** Section 45-22-23 of the 1997 Supplement to the North  
25   Dakota Century Code is amended and reenacted as follows:

26           **45-22-23. Powers - Enforcement - Penalty - Appeal.**

- 27           1.    The secretary of state shall administer this chapter.
- 28           2.    The secretary of state may propound to any limited liability partnership ~~or foreign~~  
29               ~~limited liability partnership~~ subject to this chapter and to any partner, any  
30               interrogatory reasonably necessary and proper to ascertain whether the  
31               partnership has complied with this chapter.

- 1 a. Any interrogatory must be answered within thirty days after mailing, or within  
2 any additional time fixed by the secretary of state. ~~The answers~~ Every  
3 answer to the interrogatory must be full and complete and be made in writing  
4 and under oath.
- 5 b. If an interrogatory is directed:
- 6 (1) To an individual, ~~# the interrogatory~~ must be answered by that  
7 individual; ~~or~~
- 8 (2) To a domestic limited liability partnership ~~or foreign limited liability~~  
9 ~~partnership~~, ~~# the interrogatory~~ must be answered by a managing  
10 partner; ~~or~~
- 11 (3) To a foreign limited liability partnership, the interrogatory must be  
12 answered by a resident partner or, if no partner is a resident partner, a  
13 partner designated by the foreign limited liability partnership.
- 14 c. The secretary of state need not file any document to which an interrogatory  
15 relates until the interrogatory ~~has been~~ is answered, ~~and not then~~ except if  
16 the answers disclose ~~that such~~ the document is not in conformity with this  
17 chapter.
- 18 d. The secretary of state shall certify to the attorney general, for any action the  
19 attorney general determines appropriate, any interrogatory and answers  
20 ~~which that~~ disclose a violation of this chapter.
- 21 e. Each managing partner of a domestic limited liability partnership or a resident  
22 partner or designated partner of a foreign limited liability partnership who fails  
23 or refuses within the time provided by this section to answer truthfully and  
24 fully every interrogatory propounded to that person by the secretary of state is  
25 guilty of an infraction.
- 26 f. Any interrogatory propounded by the secretary of state and the answers are  
27 not open to public inspection under section 44-04-18. The secretary of state  
28 may not disclose any ~~facts~~ fact or information obtained from an interrogatory  
29 ~~except insofar as may be~~ to the extent permitted by law or ~~insofar as is~~  
30 required for evidence in any criminal ~~proceedings~~ proceeding or other action  
31 by this state.

- 1           3. If the secretary of state rejects any document required by this chapter to be  
2           approved by the secretary of state before the document may be filed, the secretary  
3           of state, ~~within ten days after receipt of the document,~~ shall give written notice of  
4           the rejection to the person who delivered the document, specifying the reasons for  
5           rejection. That person may appeal to the district court of the county in which the  
6           registered office of the domestic limited liability partnership or foreign limited  
7           liability partnership is, or is proposed to be, situated by filing with the clerk of ~~such~~  
8           that court a petition setting forth a copy of the document sought to be filed and a  
9           copy of the written rejection of the document by the secretary of state. The court  
10          shall try the matter de novo. The court shall ~~either~~ sustain the action of the  
11          secretary of state or direct the secretary of state to take any action the court  
12          determines proper.
- 13          4. If the secretary of state revokes the registration of any foreign limited liability  
14          partnership pursuant to section 45-22-16, the foreign limited liability partnership  
15          may appeal to district court of the county where the registered office of the foreign  
16          limited liability partnership in this state is situated by filing with the clerk of ~~such~~  
17          that court a petition setting forth a copy of ~~its~~ the foreign limited liability  
18          partnership's registration and a copy of the notice of revocation given by the  
19          secretary of state. The court shall try the matter de novo. The court shall ~~either~~  
20          sustain the action of the secretary of state or direct the secretary of state to take  
21          any action the court determines proper.
- 22          5. The attorney general may maintain an action to restrain a foreign limited liability  
23          partnership from transacting business in this state in violation of this chapter.

24           **SECTION 197. AMENDMENT.** Subsection 2 of section 45-22-24 of the 1997

25 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 26           2. A certificate by the secretary of state under the great seal of this state, as to the  
27           existence or nonexistence of the facts relating to domestic limited liability  
28           partnerships or foreign limited liability partnerships which would not appear from a  
29           certified copy of any of the foregoing documents or certificates, must be taken and  
30           received in all courts, public offices, and official bodies as prima facie evidence of  
31           the existence or nonexistence of the facts stated.

1           **SECTION 198. AMENDMENT.** Section 45-22-25 of the 1997 Supplement to the North  
2 Dakota Century Code is amended and reenacted as follows:

3           **45-22-25. Forms to be furnished by the secretary of state.** ~~All renewal registrations~~  
4 Every annual report must be made on forms prescribed by the secretary of state. Upon  
5 request, the secretary of state may furnish forms for all other documents to be filed in the office  
6 of the secretary of state. However, the use of these documents, unless otherwise specifically  
7 required by law, is not mandatory.

8           **SECTION 199. AMENDMENT.** Section 45-22-26 of the 1997 Supplement to the North  
9 Dakota Century Code is amended and reenacted as follows:

10           **45-22-26. Audit reports and audit of limited liability partnerships receiving state**  
11 **subsidies for production of alcohol or methanol for combination with gasoline.** Any  
12 limited liability partnership ~~or foreign limited liability partnership~~ that produces agricultural ethyl  
13 alcohol or methanol within this state and which receives a production subsidy from the state,  
14 whether in the form of reduced taxes or otherwise, shall submit an annual audit report,  
15 prepared by a certified public accountant based on an audit of all records and accounts of the  
16 limited liability partnership ~~or foreign limited liability partnership~~, to the legislative audit and  
17 fiscal review committee. The audit must be submitted within ninety days of the close of the  
18 taxable year of the limited liability partnership ~~or foreign limited liability partnership~~. Upon  
19 request of the legislative audit and fiscal review committee, the state auditor shall conduct an  
20 audit of the records and accounts of any limited liability partnership ~~or foreign limited liability~~  
21 ~~partnership~~ required to submit an annual report under this section.

22           **SECTION 200. AMENDMENT.** Subdivision b of subsection 1 of section 45-22-27 of  
23 the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

24           b. "Private limited liability partnership" means a domestic limited liability  
25           partnership or foreign limited liability partnership, one of the purposes of  
26           which is to establish, operate, and maintain a foreign trade zone by itself or in  
27           conjunction with a public corporation.

28           **SECTION 201.** Chapter 45-23 of the North Dakota Century Code is created and  
29 enacted as follows:

30           **45-23-01. Definitions.** In this chapter, unless the context otherwise requires:

31           1. "Address" means:

- 1           a. In case of a registered office or principal executive office, the mailing address  
2                   of the actual office location which may not be only a post-office box; and  
3           b. In all other cases, the mailing address.
- 4           2. "Domestic limited liability limited partnership" means a limited liability limited  
5                   partnership that is formed under this chapter.
- 6           3. "Filed with the secretary of state", except as otherwise permitted by law or rule,  
7                   means:
- 8           a. That a signed original or legible facsimile telecommunication of a signed  
9                   original of a request for reserved name or a signed original of all of the  
10                   documents meeting the applicable requirements of this chapter, together with  
11                   the fees provided in section 45-23-08, was delivered to the secretary of state  
12                   and was determined by the secretary of state to conform to law.
- 13           b. That the secretary of state shall then endorse on the original the word "filed"  
14                   and the month, day, and year and record the document in the office of the  
15                   secretary of state.
- 16           4. "Foreign limited liability limited partnership" means a limited liability limited  
17                   partnership that is:
- 18           a. Organized under the laws other than the laws of this state for a purpose or  
19                   purposes for which a limited liability limited partnership may be organized  
20                   under this chapter; and
- 21           b. In good standing in the jurisdiction of origin.
- 22           5. "Foreign limited partnership" means a limited partnership that is:
- 23           a. Organized under laws other than the laws of this state for a purpose for which  
24                   a limited partnership may be organized under chapter 45-10.1; and
- 25           b. Authorized to transact business in this state as provided in chapter 45-10.1.
- 26           6. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability limited  
27                   partnership status of a foreign limited liability limited partnership was created.
- 28           7. "Limited liability limited partnership" means a domestic limited liability limited  
29                   partnership.
- 30           8. "Limited partnership" means a limited partnership formed under chapter 45-10.1.
- 31           9. "Notice":



- 1           a. Is given to a limited liability limited partnership or to a partner of the limited  
2           liability limited partnership when in writing and mailed or delivered to the  
3           limited liability limited partnership or to the partner at the registered office or  
4           principal executive office of the partnership; and
- 5           b. In all other cases, is given to a person:
- 6               (1) When mailed to the person at an address designated by the person or  
7               at the last known address of the person;
- 8               (2) When handed to the person; or
- 9               (3) When left at the office of the person with a clerk or other person in  
10              charge of the office, or if there is no one in charge, when left in a  
11              conspicuous place in the office and if the office is closed or the person  
12              to be notified has no office, when left at the dwelling house or usual  
13              place of abode of the person with some person of suitable age and  
14              discretion residing in that house or abode.
- 15           c. Is given when deposited in the United States mail with sufficient postage  
16           affixed.
- 17           d. Is deemed received when given.
- 18        10. "Principal executive office" means:
- 19           a. An office from which the limited liability limited partnership conducts business;  
20           or
- 21           b. If the limited liability limited partnership has no office from which the limited  
22           liability limited partnership conducts business, then the registered office of the  
23           limited liability limited partnership.
- 24        11. "Registered office" means the place in this state designated as the registered  
25           office of the limited liability limited partnership.
- 26        12. "Signed" means the signature of a person is placed on a document, as provided in  
27           section 41-01-11.
- 28           a. With respect to a document required by this chapter to be filed with the  
29           secretary of state, means the document is signed by a person authorized to  
30           sign by this chapter, or pursuant to an agreement among the partners, or by a

- 1                   resolution approved by the affirmative vote of the required proportion or  
2                   number of partners; and  
3                   b. With respect to a document not required by this chapter to be filed with the  
4                   secretary of state, the signature may be a facsimile affixed, engraved, printed,  
5                   placed, stamped with indelible ink, transmitted by facsimile  
6                   telecommunication or electronically, or in any other manner reproduced on  
7                   the document.

8                   **45-23-02. Applicability of chapter 45-10.1.**

- 9                   1. In any case not provided for in this chapter, chapter 45-10.1 governs.  
10                  2. If applying chapter 45-10.1 to a limited liability limited partnership:  
11                  a. All references in chapter 45-10.1 to "limited partnership" refer to "limited  
12                  liability limited partnership"; and  
13                  b. All references in chapter 45-10.1 to "foreign limited partnership" refer to  
14                  "foreign limited liability limited partnership".  
15                  3. If any provision of this chapter conflicts with chapter 45-10.1, that provision of this  
16                  chapter takes precedence.

17                  **45-23-03. Limited liability limited partnership name.**

- 18                  1. The name of each limited liability limited partnership as set forth in the limited  
19                  liability limited partnership's certificate of limited liability limited partnership:  
20                  a. Must be in the English language or in another language expressed in English  
21                  letters or characters.  
22                  b. Must contain:  
23                       (1) Without abbreviation the words "limited liability limited partnership" or  
24                       the abbreviation "L.L.L.P." or "LLLP", either of which abbreviation may  
25                       be used interchangeably for any purpose authorized by this chapter  
26                       including real estate matters, contracts, and filings with the secretary of  
27                       state; or  
28                       (2) In the case of a foreign limited liability limited partnership, any other  
29                       words or abbreviations as may be authorized or required under the  
30                       laws of the jurisdiction of origin.  
31                  c. May not contain the name of a limited partner unless:

- 1                   (1) The name is also the name of a general partner; or
- 2                   (2) The business of the limited liability limited partnership was carried on
- 3                                 under that name before the admission of that limited partner.
- 4                   d. May not contain the word "corporation", "company", "incorporated", "limited
- 5                                 liability company", "limited liability partnership", or any abbreviation of these
- 6                                 words.
- 7                   e. May not contain a word or phrase indicating or implying the limited liability
- 8                                 limited partnership may not be organized under this chapter.
- 9                   f. May not contain a word or phrase indicating or implying the limited liability
- 10                                limited partnership is organized for a purpose other than a legal business
- 11                                purpose for which a limited liability limited partnership may be organized
- 12                                under this chapter.
- 13                   g. May not contain a word or phrase indicating or implying the limited liability
- 14                                limited partnership is organized other than for a purpose stated in the
- 15                                certificate of the limited liability limited partnership.
- 16                   h. May not be the same as, or deceptively similar to:
- 17                                (1) The name, whether foreign and authorized to do business in this state
- 18                                or domestic, unless there is filed with the certificate a document in
- 19                                compliance with subsection 3, of:
- 20                                (a) Another limited liability limited partnership;
- 21                                (b) A limited partnership;
- 22                                (c) A corporation;
- 23                                (d) A limited liability company; or
- 24                                (e) A limited liability partnership;
- 25                                (2) A name the right to which is, at the time of organization, reserved in the
- 26                                manner provided in section 10-19.1-14, 10-32-11, 10-33-11,
- 27                                45-10.1-03, or 45-22-05;
- 28                                (3) A fictitious name registered in the manner provided in chapter 45-11; or
- 29                                (4) A trade name registered in the manner provided in chapter 47-25.
- 30                   2. The secretary of state shall determine whether a limited liability limited partnership
- 31                                name is deceptively similar to another name for purposes of this chapter.

- 1           3. If the secretary of state determines a limited liability limited partnership name is  
2           deceptively similar to another name for purposes of this chapter, the limited liability  
3           limited partnership name may not be used unless there is filed with the certificate:
- 4           a. The written consent of the holder of the registered trade name or the holder of  
5           the rights to the name to which the proposed name has been determined to  
6           be deceptively similar; or
- 7           b. A certified copy of a judgment of a court in this state establishing the earlier  
8           right of the applicant to the use of the name in this state.
- 9           4. This section does not abrogate or limit the law of unfair competition or unfair  
10          practices; chapter 47-25; the laws of the United States with respect to the right to  
11          acquire and protect copyrights, trade names, trademarks, service names, service  
12          marks; or any other rights to the exclusive use of any name or symbol. This  
13          section does not derogate the common law or the principles of equity.
- 14          5. A limited liability limited partnership that is merged with another domestic or foreign  
15          organization, that is organized by the reorganization of one or more domestic or  
16          foreign organizations, or that acquires by sale, lease, or other disposition to or  
17          exchange with a domestic organization all or substantially all of the assets of  
18          another domestic or foreign organization, including the organization's name, may  
19          include in the limited liability limited partnership's name the name of any of the  
20          other organizations, if the other organization:
- 21          a. Is incorporated, organized, formed, or registered under the laws of this state;  
22          b. Is authorized to transact business or conduct activities in this state;  
23          c. Holds a reserved name in the manner provided in section 10-19.1-14,  
24             10-32-11, 10-33-11, 45-10.1-03, or 45-22-05;
- 25          d. Holds a fictitious name registered in the manner provided in chapter 45-11; or  
26          e. Holds a trade name registered in the manner provided in chapter 47-25.
- 27          6. The use of a name of a limited liability limited partnership in violation of this section  
28          does not affect or vitiate a limited liability limited partnership's existence. However,  
29          a court in this state may, upon application of the state or of an interested or  
30          affected person, enjoin the limited liability limited partnership from doing business

1           under a name assumed in violation of this section, although a certificate of limited  
2           liability limited partnership may have been filed with the secretary of state.

3           **45-23-04. Limited liability limited partnership formation.**

4           1. If a limited partnership does not exist, a limited liability limited partnership may be  
5           formed by filing with the secretary of state, together with the fees provided in  
6           section 45-23-08, a certificate of limited liability limited partnership:

- 7           a. That complies with the name requirements in section 45-23-03;  
8           b. That contains a statement that limited liability limited partnership status is  
9           elected; and  
10          c. That otherwise conforms to the requirements of section 45-10.1-08.

11          2. An existing limited partnership:

12          a. May elect to become a limited liability limited partnership:

13           (1) By obtaining approval to be governed by this chapter by the vote  
14           necessary to amend the limited partnership agreement except, in the  
15           case of a limited partnership agreement that expressly considers  
16           contribution obligations, the vote necessary to amend those provisions;

17           (2) By complying with the name requirements of section 45-23-03; and

18           (3) By filing with the secretary of state, together with the fees provided in  
19           sections 45-10.1-15 and 45-23-08, a document that is designated as  
20           both an amended certificate of limited partnership and a certificate of  
21           limited liability limited partnership which:

22           (a) Amends the limited partnership name to comply with the name  
23           requirements of section 45-23-03;

24           (b) Contains a statement that limited liability limited partnership  
25           status is elected; and

26           (c) Otherwise conforms to the requirements of section 45-10.1-09.

27          b. Continues to be the same entity in existence before the filing with the  
28           secretary of state pursuant to this section.

29           **45-23-05. Effective date of formation or election under this chapter.** With respect  
30           to the date on which a limited liability limited partnership is formed or on which a limited  
31           partnership elects to be governed by this chapter:

1           1. If a limited partnership does not exist, a limited liability limited partnership is formed  
2           on the later of the filing of the certificate of limited liability limited partnership or the  
3           date specified in the certificate of limited liability limited partnership which is within  
4           ninety days after the filing of the certificate of limited liability limited partnership.

5           2. An existing limited partnership electing to become a limited liability limited  
6           partnership is governed by this chapter on the later of the filing of the document  
7           designated as both an amendment to the certificate of limited partnership and a  
8           certificate of limited liability limited partnership or the date specified in that  
9           document which is within ninety days after the filing of the document.

10           **45-23-06. General partner liability.** An obligation of a limited liability limited  
11           partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited  
12           liability limited partnership. A general partner is not personally liable, directly or indirectly by  
13           way of contribution or otherwise, for an obligation of the limited liability limited partnership solely  
14           by reason of being or acting as a general partner. This section applies notwithstanding  
15           anything inconsistent in the partnership agreement.

16           **45-23-07. Foreign limited partnership - Adopting limited liability limited**  
17           **partnership status.** An existing foreign limited partnership authorized to transact business in  
18           this state pursuant to section 45-10.1-52 which subsequently adopts and maintains limited  
19           liability limited partnership status in the jurisdiction of origin shall file with the secretary of state,  
20           together with the fees required in sections 45-10.1-15 and 45-23-08:

21           1. A document designated as both an amended foreign limited partnership  
22           registration as required by section 45-10.1-55 and a foreign limited liability limited  
23           partnership registration as required by section 45-10.1-52; and

24           2. A certificate of identification, existence, and status of a foreign limited liability  
25           limited partnership, duly certified by the proper officer of the jurisdiction of origin.

26           **45-23-08. Fees for filing documents.** The secretary of state shall charge and collect  
27           for:

28           1. Filing a certificate of limited liability limited partnership, one hundred dollars.

29           2. Filing a certificate of limited liability limited partnership amendment, forty dollars.

30           3. Filing a certificate of limited liability limited partnership dissolution, twenty-five  
31           dollars.

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





1 the land described in the document evidencing ~~such these~~ membership interests. ~~When~~ If a  
2 copy of ~~such the~~ articles of organization or ~~operating agreement~~ bylaws is recorded in the  
3 office of the register of deeds of the county in which ~~such the~~ lands are situated, ~~such the~~  
4 membership interests ~~shall~~ become appurtenant to ~~said the~~ lands and ~~shall may~~ be transferred  
5 only with the sale or transfer of ~~such the~~ lands, except in the event of sale or forfeiture of ~~such~~  
6 the membership interests for delinquent assessments ~~thereon~~ on the land as provided in  
7 section 61-13-04. Notwithstanding ~~such any~~ provision in ~~its~~ the limited liability company's  
8 articles of organization or ~~operating agreement~~ bylaws, any limited liability company organized  
9 for irrigation purposes may sell water to an irrigation district, this state, or any department or  
10 agency ~~thereof of this state~~, and to the United States, or any department or agency ~~thereof of~~  
11 the United States, at the same rates as to holders of membership interests of ~~such the~~ limited  
12 liability company. ~~In the event~~ If lands to which any ~~such~~ membership interest is appurtenant  
13 are acquired by the state, the United States, or any department or agency ~~thereof of the state~~  
14 or the United States, ~~such the~~ membership interest ~~shall must~~ be canceled by the limited  
15 liability company, ~~which shall and must~~ be reissued to any persons subsequently acquiring title  
16 to ~~such the~~ land at a later date.

17 **SECTION 205. REPEAL.** Sections 45-10.1-54 and 45-22-08 of the 1997 Supplement  
18 to the North Dakota Century Code are repealed.