

# CORPORATIONS

## CHAPTER 99

### SENATE BILL NO. 2153

(Senators Nething, Nelson)

(Representatives Dahl, DeKrey, Kerzman)

### REGISTERED AGENTS AND CORPORATION LAW REVISIONS

AN ACT to create and enact chapter 10-01.1 of the North Dakota Century Code, relating to registered agents; to amend and reenact subsection 1 of section 10-06.1-15, subsection 2 of section 10-06.1-17, subsection 2 of section 10-06.1-18, sections 10-15-12 and 10-15-13, subsection 2 of section 10-15-39, subsection 4 of section 10-15-51, subsection 4 of section 10-15-52.4, sections 10-15-52.6 and 10-15-54, subsection 1 of section 10-19.1-10, sections 10-19.1-15 and 10-19.1-16, subsection 4 of section 10-19.1-103, subsection 5 of section 10-19.1-104.6, subsection 1 of section 10-19.1-118, sections 10-19.1-129 and 10-19.1-135, subsection 2 of section 10-19.1-136, section 10-19.1-138, subsection 1 of section 10-19.1-140, sections 10-19.1-141, 10-19.1-145, 10-19.1-146, and 10-19.1-147, subsection 1 of section 10-32-07, sections 10-32-12 and 10-32-13, subsection 4 of section 10-32-107, subsection 5 of section 10-32-108.6, subsection 1 of section 10-32-122, sections 10-32-132 and 10-32-138, subsection 2 of section 10-32-139, section 10-32-141, subsection 1 of section 10-32-143, sections 10-32-144, 10-32-148, 10-32-149, and 10-32-150, subsection 1 of section 10-33-06, sections 10-33-12 and 10-33-13, subsection 4 of section 10-33-92, subsection 1 of section 10-33-107, sections 10-33-120 and 10-33-128, subsection 2 of section 10-33-129, section 10-33-131, subsection 1 of section 10-33-133, sections 10-33-134, 10-33-138, and 10-33-139, subsection 1 of section 10-33-140, sections 10-34-04, 10-34-06, 10-34-09, 45-10.2-17, and 45-10.2-18, subsection 1 of section 45-10.2-23, section 45-10.2-79, subsection 2 of section 45-10.2-80, sections 45-10.2-82, 45-10.2-87, 45-10.2-107, 45-10.2-108, and 45-10.2-109, subsection 1 of section 45-15-03, sections 45-15-03.1 and 45-15-03.2, subsection 5 of section 45-21-04.2, subsection 2 of section 45-21-06, subsection 3 of section 45-22-03, sections 45-22-11 and 45-22-12, subsection 2 of section 45-22-13, sections 45-22-16, 45-22-17, and 45-22-21.1, subsection 1 of section 45-22-22, section 45-23-08, subsection 8 of section 54-09-04, and section 54-09-07 of the North Dakota Century Code, relating to farm corporations and farm limited liability companies, cooperative associations, business corporations, limited liability companies, nonprofit corporations, real estate investment trusts, limited partnerships, partnerships, limited liability partnerships, limited liability limited partnerships, and the secretary of state; to repeal section 10-15-12.1 of the North Dakota Century Code, relating to cooperative associations; and to provide an effective date.

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

**SECTION 1.** Chapter 10-01.1 of the North Dakota Century Code is created and enacted as follows:

**10-01.1-01. Citation.** This chapter may be cited as the "North Dakota Registered Agents Act".

**10-01.1-02. Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. "Appointment of agent" means a statement appointing an agent for service of process filed by a domestic entity that is not a filing entity or a nonqualified foreign entity under section 10-01.1-12.
2. "Commercial registered agent" means a person that is listed under section 10-01.1-06 that serves in this state as the agent for service of process for another entity and that is:
  - a. An individual residing in this state; or
  - b. A domestic or foreign corporation or limited liability company.
3. "Domestic corporation" means a corporation, other than a foreign corporation, incorporated under any chapter of this code.
4. "Domestic entity" means an entity whose internal affairs are governed by the laws of this state.
5. "Domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.
6. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
  - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. That may be directly reproduced in paper form by the recipient through an automated process.
7. "Entity" means a person that has a separate legal existence or has the power to acquire an interest in real property in its own name other than:
  - a. An individual;
  - b. A testamentary, inter vivos, or charitable trust, with the exception of a business trust, statutory trust, or similar trust;
  - c. An association or relationship that is not a partnership by reason of section 45-14-02 or a similar provision of the law of any other jurisdiction;
  - d. A decedent's estate; or

- e. A government or governmental subdivision, agency, or instrumentality, or a quasi-governmental instrumentality.
8. "Filed with the secretary of state" means, except as otherwise permitted by rule or law:
- a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-01.1-03, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
  - b. That the secretary of state did then:
    - (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
    - (2) Record the record in the office of the secretary of state.
9. "Filing entity" means an entity that is created by the filing of a public organic document.
10. "Foreign corporation" means a corporation:
- a. That is incorporated under laws other than the laws of this state; and
  - b. That is a qualified foreign entity.
11. "Foreign entity" means an entity other than a domestic entity.
12. "Foreign limited liability company" means a limited liability company:
- a. That is organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32; and
  - b. That is a qualified foreign entity.
13. "Foreign qualification document" means an application for a certificate of authority or other foreign qualification filing with the secretary of state by a foreign entity.
14. "Governance interest" means the right under the organic law or organic rules of an entity, other than as a governor, agent, assignee, or proxy, to:
- a. Receive or demand access to information concerning, or the books and records of, the entity;
  - b. Vote for the election of the governors of the entity; or
  - c. Receive notice of or vote on any or all issues involving the internal affairs of the entity.

15. "Governor" means a person by or under whose authority the powers of an entity are exercised and under whose direction the business and affairs of the entity are managed pursuant to the organic law and organic rules of the entity.
16. "Interest" means:
  - a. A governance interest in an unincorporated entity;
  - b. A transferable interest in an unincorporated entity; or
  - c. A share or membership in a corporation.
17. "Interest holder" means a direct holder of an interest.
18. "Jurisdiction of organization", with respect to an entity, means the jurisdiction whose law includes the organic law of the entity.
19. "Noncommercial registered agent" means a person that is not listed as a commercial registered agent under section 10-01.1-06 that serves in this state as the agent for service of process for another entity and that is:
  - a. An individual residing in this state; or
  - b. A domestic or foreign corporation or a domestic or foreign limited liability company.
20. "Nonqualified foreign entity" means a foreign entity that is not authorized to transact business in this state pursuant to a filing with the secretary of state.
21. "Nonresident LLP statement" means a registration as provided in subsection 23 of section 45-22-01 and is:
  - a. A registration of a domestic limited liability partnership that does not have an office in this state; or
  - b. A registration of a foreign limited liability partnership that does not have an office in this state.
22. "Organic law" means the statutes, if any, other than this chapter, governing the internal affairs of an entity.
23. "Organic rules" means the public organic document and private organic rules of an entity.
24. "Person" means an individual, corporation, estate, trust, partnership, limited liability company, business or similar trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.
25. "Principal executive office" means:
  - a. If the entity has one or more elected or appointed governors, then an office where one or more of the governors has an office; or

- b. If the entity has no elected or appointed governors, then the office of the registered agent of the entity.
- 26. "Private organic rules" means the rules, whether or not in a record, that:
  - a. Govern the internal affairs of an entity;
  - b. Are binding on all of its interest holders; and
  - c. Are not part of its public organic document, if any.
- 27. "Public organic document" means the public record the filing of which creates an entity, and any amendment to or restatement of that record.
- 28. "Qualified foreign entity" means a foreign entity that is authorized to transact business in this state pursuant to a filing with the secretary of state.
- 29. "Record" means information is inscribed on a tangible medium or is stored in an electronic or other medium and is retrievable in perceivable form.
- 30. "Registered agent" means:
  - a. A commercial registered agent; or
  - b. A noncommercial registered agent.
- 31. "Registered agent filing" means:
  - a. The public organic document of a domestic filing entity;
  - b. A nonresident LLP statement;
  - c. A foreign qualification document; or
  - d. An appointment of agent.
- 32. "Registered office" means the address in this state of a registered agent as provided in this chapter and need not be the same as the principal place of business or principal executive office of the represented entity.
- 33. "Represented entity" means:
  - a. A domestic filing entity;
  - b. A domestic or qualified foreign limited liability partnership that does not have an office in this state;
  - c. A qualified foreign entity;
  - d. A domestic or foreign unincorporated nonprofit association for which an appointment of agent has been filed;
  - e. A domestic entity that is not a filing entity for which an appointment of agent has been filed; or

- f. A nonqualified foreign entity for which an appointment of agent has been filed.

34. "Signed" means:

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record with the present intention to authenticate that record; and
- b. With respect to a record required by this chapter to be filed with the secretary of state, that:
  - (1) The record is signed by a person authorized to do so by the organic rules of the entity; and
  - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

35. "Transferable interest" means the right under an entity's organic law to receive distributions from the entity.

36. "Type", with respect to an entity, means a generic form of entity:

- a. Recognized at common law; or
- b. Organized under an organic law, whether or not some entities organized under that organic law are subject to provisions of that law that create different categories of the form of entity.

#### 10-01.1-03. Fees.

1. The secretary of state shall collect the following fees when a filing is made under this chapter:
  - a. Commercial registered agent listing, one thousand dollars;
  - b. Commercial registered agent termination statement, five hundred dollars;
  - c. Statement of change, ten dollars except when the change is a change of address and in the secretary of state's opinion that change results from rezoning or postal reassignment;
  - d. Statement appointing an agent for service of process, ten dollars; and
  - e. Any process, notice, or demand for service, twenty-five dollars.
2. The secretary of state shall collect the following fees for copying and certifying a copy of any document filed under this chapter:
  - a. One dollar for every four pages, or fraction thereof, for copying a record;

- b. Fifteen dollars for furnishing a certificate; and
- c. Five dollars for a search of records when supplying copies, certification, or written verification of facts.
3. The secretary of state may not collect a fee to file a statement of resignation.

**10-01.1-04. Addresses in filings.** Whenever a provision of this chapter, other than subdivision d of subsection 1 of section 10-01.1-11 requires that a filing state an address, the filing must state:

1. An actual street address or rural route box number in this state; and
2. A mailing address in this state if different from the address under subsection 1.

**10-01.1-05. Appointment of registered agent.**

1. A registered agent filing must state:
  - a. The name of the commercial registered agent of the represented entity; or
  - b. If the entity does not have a commercial registered agent, then the name and address of the noncommercial registered agent of the entity.
2. The appointment of a registered agent pursuant to subsection 1 is an affirmation by the represented entity that the agent has consented to serve as such.
3. Upon request and as soon as practicable, the secretary of state shall make available in a record a list of filings that contain the name of a registered agent. The list must:
  - a. List in alphabetical order the names of the registered agents; and
  - b. State:
    - (1) The type of filing;
    - (2) The name of the represented entity making the filing; and
    - (3) The address of the principal executive office if disclosed in the record filed by the represented entity.

**10-01.1-06. Listing of commercial registered agent.**

1. An individual residing in this state or a domestic or foreign corporation or limited liability company may become listed as a commercial registered agent by filing with the secretary of state a commercial registered agent listing statement signed by or on behalf of the person which states:

- a. The name of the individual or the name, type, and jurisdiction of organization of the entity;
  - b. That the person is in the business of serving as a commercial registered agent in this state; and
  - c. The address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.
2. If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the secretary of state from the name of another commercial registered agent listed under this section, the person must adopt a fictitious name that is so distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.
  3. A commercial registered agent listing statement takes effect on filing.
  4. The secretary of state shall note the filing of the commercial registered agent listing statement in the record of the represented entity and in the index of filings maintained by the secretary of state for each entity represented by the registered agent at the time of the filing. The statement has the effect of deleting the address of the registered agent from the registered agent filing of each of those entities.

#### **10-01.1-07. Termination of listing of commercial registered agent.**

1. A commercial registered agent may terminate its listing as a commercial registered agent by filing with the secretary of state a commercial registered agent termination statement signed by or on behalf of the agent which states:
  - a. The name of the agent as currently listed under section 10-01.1-06; and
  - b. That the agent is no longer in the business of serving as a commercial registered agent in this state.
2. A commercial registered agent termination statement takes effect on the thirty-first day after the day on which it is filed.
3. The commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of the commercial registered agent termination statement.
4. When a commercial registered agent termination statement takes effect, the registered agent ceases to be an agent for service of process on each entity formerly represented by it.
  - a. Until an entity formerly represented by a terminated commercial registered agent appoints a new registered agent, service of process may be made on the entity as provided in section 10-01.1-13.

- b. Termination of the listing of a commercial registered agent under this section does not affect any contractual rights a represented entity may have against the agent or that the agent may have against the entity.

#### **10-01.1-08. Change of registered agent by entity.**

1. A represented entity may change the information currently on file under subsection 1 of section 10-01.1-05 by filing with the secretary of state a statement of change signed on behalf of the entity which states:
  - a. The name of the entity; and
  - b. The information that is to be in effect as a result of the filing of the statement of change.
2. The interest holders or governors of a domestic entity need not approve the filing of:
  - a. A statement of change under this section; or
  - b. A similar filing changing the registered agent or registered office of the entity in any other jurisdiction.
3. The appointment of a registered agent pursuant to subsection 1 is an affirmation by the represented entity that the agent has consented to serve as such.
4. A statement of change filed under this section takes effect on filing.
5. Instead of using the procedures in this section, a represented entity may change the information currently on file under subsection 1 of section 10-01.1-05 by amending its most recent registered agent filing as provided by the laws of this state other than this chapter for amending that filing.

#### **10-01.1-09. Change of name or address by noncommercial registered agent.**

1. If a noncommercial registered agent changes its name or its address as currently in effect with respect to a represented entity pursuant to subsection 1 of section 10-01.1-05, the agent shall file with the secretary of state, with respect to each entity represented by the agent, a statement of change signed by or on behalf of the agent which states:
  - a. The name of the entity;
  - b. If the name of the agent has changed, its new name; and
  - c. If the address of the agent has changed, its new address.
2. A statement of change filed under this section takes effect on filing.
3. A noncommercial registered agent shall promptly furnish the represented entity with notice in a record of the filing of a statement of change and the changes made by the filing.

**10-01.1-10. Change of name, address, or type of organization by commercial registered agent.**

1. If a commercial registered agent changes its name as a result of a merger, conversion, exchange, sale, reorganization, or amendment, or its address as currently listed under subsection 1 of section 10-01.1-06, or its type of jurisdiction of organization, the agent shall file with the secretary of state a statement of change signed by or on behalf of the agent which states:
  - a. The name of the agent as currently listed under subsection 1 of section 10-01.1-06;
  - b. If the name of the agent has changed, its new name;
  - c. If the address of the agent has changed, its new address; and
  - d. If the type or jurisdiction of organization of the agent has changed, then its new type or jurisdiction of organization.
2. The filing of a statement of change under subsection 1 is effective to change the information regarding the commercial registered agent with respect to each entity represented by the agent.
3. A statement of change filed under this section takes effect on filing.
4. A commercial registered agent shall promptly furnish each entity represented by it with notice in a record of the filing of a statement of change relating to the name or address of the agent and the changes made by the filing.
5. If a commercial registered agent changes its address without filing a statement of change as required by this section, then the secretary of state may cancel the listing of the agent under section 10-01.1-06. A cancellation under this subsection has the same effect as a termination under section 10-01.1-07. Promptly after canceling the listing of an agent, the secretary of state shall notify:
  - a. Each entity represented by the agent, stating that the agent has ceased to be an agent for service of process on the entity and that, until the entity appoints a new registered agent, service of process may be made on the entity as provided in section 10-01.1-13; and
  - b. The agent, stating that the listing of the agent has been canceled under this section.
6. The secretary of state shall note the filing of the commercial registered agent change statement in the index of filings maintained by the secretary of state for each entity represented by the commercial registered agent at the time of the filing.

**10-01.1-11. Resignation of registered agent.**

1. Until the legal existence of a represented entity ceases, or until the authority of a foreign entity is withdrawn or revoked, a registered agent may resign at any time with respect to a represented entity by filing with

the secretary of state a statement of resignation signed by or on behalf of the registered agent which states:

- a. The name of the entity;
  - b. The name of the registered agent;
  - c. That the registered agent resigns from serving as agent for service of process for the entity; and
  - d. The name and address of the person to which the registered agent will send the notice required by subsection 3.
2. A statement of resignation takes effect on the earlier of the thirty-first day after the day on which it is filed or the appointment of a new registered agent for the represented entity.
  3. The registered agent shall promptly furnish the represented entity with notice in a record of the date on which a statement of resignation was filed.
  4. When a statement of resignation takes effect, the registered agent ceases to have responsibility for any matter tendered to it as agent for the represented entity. A resignation under this section does not affect any contractual rights the entity may have against the registered agent or that the registered agent may have against the entity.
  5. A registered agent may resign with respect to a represented entity whether or not the entity is in good standing but not after the legal existence of the represented entity has ceased or, in the case of a foreign entity, after its authority has been withdrawn or revoked.

#### **10-01.1-12. Appointment of agent by nonfiling or nonqualified foreign entity.**

1. A domestic entity that is not a filing entity or a nonqualified foreign entity may file with the secretary of state a statement appointing an agent for service of process signed on behalf of the entity which states:
  - a. The name, type, and jurisdiction of organization of the entity; and
  - b. The information required by subsection 1 of section 10-01.1-05.
2. A statement appointing an agent for service of process takes effect on filing.
3. The appointment of a registered agent under this section does not qualify a nonqualified foreign entity to do business in this state and is not sufficient alone to create personal jurisdiction over the nonqualified foreign entity in this state.
4. A statement appointing an agent for service of process may not be rejected for filing because the name of the entity filing the statement is not distinguishable on the records of the secretary of state from the name of another entity appearing in those records. The filing of a statement appointing an agent for service of process does not make the

name of the entity filing the statement unavailable for use by another entity.

5. An entity that has filed a statement appointing an agent for service of process may cancel the statement by filing a statement of cancellation, which shall take effect upon filing, and must state the name of the entity and that the entity is canceling its appointment of an agent for service of process in this state. A statement appointing an agent for service of process, which has not been canceled earlier, is effective for a period of five years after the date of filing. The secretary of state may destroy a statement provided for in this section after the statement has been on file for six years.
6. A statement appointing an agent for service of process for a nonqualified foreign entity terminates automatically on the date the entity becomes a qualified foreign entity.

**10-01.1-13. Service of process on entities, nonresident governors, and the secretary of state.**

1. Until the legal existence of an entity ceases, or until the authority of a foreign entity is withdrawn or revoked, service of any process, notice, or demand on the entity or nonresident governor may be served on:
  - a. A registered agent;
  - b. A governor of the entity, whether resident in this state or not;
  - c. Any responsible person found at the registered office or at the principal executive office if located in this state; or
  - d. On the secretary of state as provided in this section.
2. Service is perfected under this section pursuant to North Dakota Rules of Civil Procedure or applicable law.
3. The secretary of state is the agent for service of process:
  - a. When a foreign entity transacts business without a certificate of authority;
  - b. When a domestic entity has been dissolved;
  - c. If an entity that previously filed a registered agent filing with the secretary of state no longer has a registered agent; or
  - d. If the registered agent, governor, or responsible person cannot with reasonable diligence be served.
4. Service of process, notice, or demand on a registered agent must be in the form of a written document.
5. Service on the secretary of state:
  - a. Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication.

- b. Shall include the return of the sheriff, or the affidavit of an individual who is not a party, verifying that neither the registered agent nor a responsible person can be found at the registered office or at the principal executive office.
      - c. Is deemed personal service upon the entity and must be made by filing with the secretary of state:
        - (1) Three copies of the process, notice, or demand; and
        - (2) The fees provided in section 10-01.1-03.
  - d. Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
- 6. The secretary of state shall immediately forward, by registered mail, a copy of the process, notice, or demand addressed to:
    - a. The entity at the principal executive office address of record;
    - b. Any address provided by any serving party; or
    - c. To any forwarding address provided by the United States postal service.
  - 7. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.
  - 8. Service of process, notice, or demand may be perfected by any other means provided by law other than this chapter.
  - 9. The court shall determine if service is proper.

**10-01.1-14. Duties of registered agent.** The only duties under this chapter of a registered agent who has complied with this chapter are:

- 1. To forward to the represented entity at the address most recently supplied to the agent by the entity any process, notice, or demand that is served on the agent;
- 2. To provide the notices required by this chapter to the entity at the address most recently supplied to the agent by the entity; and
- 3. If the agent is:
  - a. A noncommercial registered agent, then to keep current the information required by subsection 1 of section 10-01.1-05 in the most recent registered agent filing for the entity; or
  - b. A commercial registered agent, then to keep current the information listed for it under subsection 1 of section 10-01.1-06.

**10-01.1-15. Jurisdiction and venue.** The appointment or maintenance in this state of a registered agent does not by itself create the basis for personal

jurisdiction over the represented entity in this state. The address of the agent does not determine venue in an action or proceeding involving the entity.

**10-01.1-16. Relation to Electronic Signatures in Global and National**

**Commerce Act.** This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.], but does not modify, limit, or supersede section 101(c) of that Act [15 U.S.C. 7001(c)] or authorize delivery of any of the notices described in section 103(b) of that Act [15 U.S.C. 7003(b)].

**10-01.1-17. Savings clause.** This chapter does not affect an action or proceeding commenced or right accrued before the effective date of this chapter.

**SECTION 2. AMENDMENT.** Subsection 1 of section 10-06.1-15 of the North Dakota Century Code is amended and reenacted as follows:

1. Every farming or ranching corporation or limited liability company shall file an initial report with its articles of incorporation. The report must be signed by the incorporators or organizers and must contain the following:
  - a. The name of the corporation or limited liability company.
  - b. ~~The address of the registered office of the corporation or limited liability company in this state and the name of its registered agent in this state at that address.~~
  - c. With respect to each shareholder or member:
    - (1) The name and address of each, including the names and addresses and relationships of trusts and estates that own shares or membership interests;
    - (2) The number of shares or membership interests or percentage of shares or membership interests owned by each;
    - (3) The relationship of each;
    - (4) A statement of whether each is a citizen or permanent resident alien of the United States; and
    - (5) A statement of whether each is actively engaged in operating the farm or ranch, whether each resides on the farm or ranch, and whether each depends principally on farming or ranching for a livelihood.
  - d. c. With respect to management:
    - (1) If a corporation, then the names and addresses of the officers and members of the board of directors; or
    - (2) If a limited liability company, then the names and addresses of the managers and members of the board of governors.

- e. d. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching.

**SECTION 3. AMENDMENT.** Subsection 2 of section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the corporation or limited liability company in this state and the name of the corporation's or limited liability company's registered agent in this state at that address.

**SECTION 4. AMENDMENT.** Subsection 2 of section 10-06.1-18 of the North Dakota Century Code is amended and reenacted as follows:

2. The address name of the registered office agent of the corporation or limited liability company in this state as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the name and address of its noncommercial registered agent in this state.

**SECTION 5. AMENDMENT.** Section 10-15-12 of the North Dakota Century Code is amended and reenacted as follows:

**10-15-12. Principal office - Registered agent.**

1. A cooperative shall maintain in this state either its:
- a. Its principal office; or a
  - b. A registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office in this state.
2. The board may establish or change the location of the principal office or name and address of the registered agent by causing a statement in writing to be filed as an amendment to the articles as provided in section 10-15-53. Such statement shall set forth the name of the cooperative and the location of its principal office or the name and address of the registered agent as established or changed. For the purposes of this chapter, the post-office address of an existing cooperative becoming subject to this chapter, as set forth in the articles for its business office, shall be considered its registered office and the secretary of the cooperative shall be considered its registered agent unless the articles are amended otherwise.
3. The board may establish a registered agent as provided in chapter 10-01.1 by causing a statement in writing to be filed as an amendment to the articles as provided in section 10-15-53. Such statement shall set forth:
- a. The name of the cooperative; and

- b. The name of the registered agent as provided in chapter 10-01.1, and if a noncommercial registered agent, the address of the registered office.
- 4. As provided in chapter 10-01.1:
  - a. The board may change:
    - (1) A registered agent;
    - (2) The address of a registered agent; or
    - (3) The name of a registered agent.
  - b. A registered agent may resign by mailing a written notice to both the secretary of state and the cooperative. The resignation becomes effective when the cooperative names a new registered agent or sixty days after the receipt of notice by the secretary of state, whichever is sooner.

**SECTION 6. AMENDMENT.** Section 10-15-13 of the North Dakota Century Code is amended and reenacted as follows:

**10-15-13. Service of process.** The registered agent appointed by a cooperative shall be an agent of the cooperative and any nonresident director upon whom any Any process, notice, or demand required or permitted by law to be served upon the cooperative or its directors may be served as provided in chapter 10-01.1.

Whenever a cooperative does not appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such cooperative upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand must be made by delivering to and leaving with the secretary of state, or with any clerk having charge of the corporation department of the secretary of state's office, an original and two copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the cooperative at the address of the principal place of business or to the nonresident director at the nonresident director's last reported address, as the case may be. Any service on the secretary of state is returnable in not less than thirty days.

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

Nothing herein contained limits or affects the right to serve any process, notice, or demand required or permitted by law to be served upon a cooperative or its directors in any other manner permitted by law.

**SECTION 7. AMENDMENT.** Subsection 2 of section 10-15-39 of the North Dakota Century Code is amended and reenacted as follows:

2. The location of the principal office, or the complete address of the present registered agent, shall be set forth as of the time of adoption of the restated articles. The name and address of a new registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of such noncommercial registered agent in this state may be set forth in lieu thereof of the location of the principal office.

**SECTION 8. AMENDMENT.** Subsection 4 of section 10-15-51 of the North Dakota Century Code is amended and reenacted as follows:

4. ~~The As provided in chapter 10-01.1, the name of the registered agent, and if a noncommercial registered agent, the address of the proposed noncommercial registered office of the cooperative agent in this state and the name of its proposed registered agent in this state at such address.~~

**SECTION 9. AMENDMENT.** Subsection 4 of section 10-15-52.4 of the North Dakota Century Code is amended and reenacted as follows:

4. That the cooperative revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit, or proceeding based upon any claim for relief arising in this state during the time the cooperative was authorized to transact business in this state may thereafter be made on such cooperative by service thereof on the secretary of state as provided in section 10-01.1-13.

**SECTION 10. AMENDMENT.** Section 10-15-52.6 of the North Dakota Century Code is amended and reenacted as follows:

**10-15-52.6. Change of registered office or registered agent of foreign cooperative.** As provided in section 10-01.1-11:

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

The statement must be executed by the cooperative by its president or a vice president and delivered to the secretary of state. If a registered agent changes its name or its business address, the agent may change its name or address, as the case may be, for any cooperatives of which

it is the registered agent by filing a statement as required above with one copy for each cooperative listed on the certificate. The statement need only be signed by the registered agent, need not be responsive to subdivision e or e, and must recite that a copy of the statement has been mailed to each listed cooperative or to the legal representative of each. A copy of the statement must be mailed by the registered agent to each listed cooperative or the legal representative of each cooperative; and

2. A registered agent of a foreign cooperative may resign upon filing a written notice with the secretary of state, including a statement that a signed copy of the notice has been given to the foreign cooperative at its principal executive office or to a legal representative of the cooperative. The appointment of the agent terminates upon the expiration of thirty days after filing the notice with the secretary of state. The registered agent must also give a signed copy of the notice to the foreign cooperative at its principal executive office or a legal representative of the cooperative.

## **SECTION 11. AMENDMENT.** Section 10-15-54 of the North Dakota Century Code is amended and reenacted as follows:

**10-15-54. Fees.** No document may be filed or recorded nor any certificate issued until all fees therefor have been paid. Any fee or penalty due under this chapter may be recovered in a suit brought by the attorney general in the name of the state. The secretary of state shall charge and collect from any association for:

1. Filing articles of association and issuing a certificate of association, thirty dollars.
2. Filing articles of amendment and issuing a certificate of amendment, twenty dollars.
3. Filing restated articles of association, thirty dollars.
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
5. Filing articles or decree of dissolution, twenty dollars.
6. Receiving service of any process, notice, or demand, twenty-five dollars the fee provided in section 10-01.1-03.
7. Filing an application of a foreign cooperative for a certificate of authority to do business in this state and issuing a certificate therefor, forty dollars.
8. For filing a name reservation, a transfer of name reservation, a cancellation of name reservation, or a consent to use of name, ten dollars.
9. For filing a change of registered office or change of registered agent, or both, the fees provided in section 10-01.1-03.
10. Filing any other document or statement, or issuing any other certificate, twenty dollars.

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

<sup>37</sup> **SECTION 12. AMENDMENT.** Subsection 1 of section 10-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

1. The articles of incorporation must contain:
  - a. The name of the corporation.
  - b. The ~~address name of the registered office of agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the corporation and the name of its registered agent at that address of that noncommercial registered agent in this state.~~
  - c. The aggregate number of shares that the corporation has authority to issue.
  - d. The name and address of each incorporator.
  - e. The effective date of incorporation if a later date than that on which the certificate of incorporation is issued by the secretary of state, which may not be later than ninety days after the date on which the certificate of incorporation is issued.

**SECTION 13. AMENDMENT.** Section 10-19.1-15 of the North Dakota Century Code is amended and reenacted as follows:

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

4. A corporation shall continuously maintain a registered ~~office agent~~ in this state ~~as provided by chapter 10-01.1, and if a noncommercial registered agent, then the address of that noncommercial registered agent in this state. A registered office need not be the same as the principal place of business or the principal executive office of the corporation.~~
2. A corporation shall appoint and continuously maintain a registered agent who may be:
  - a. An individual residing in this state;
  - b. A domestic corporation, whether incorporated under this chapter or under another provision of this code, or domestic limited liability company; or
  - e. A foreign corporation, whether authorized to do business or conduct activities under this chapter or another provision of this

<sup>37</sup> Section 10-19.1-10 was also amended by section 5 of House Bill No. 1241, chapter 101.

code, or a foreign limited liability company authorized to transact business in this state.

3. The registered agent shall maintain a business office that is identical with the registered office. Proof of the registered agent's consent to serve in that capacity must be filed with the secretary of state, together with the fees provided in section 10-19.1-147.

**SECTION 14. AMENDMENT.** Section 10-19.1-16 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-16. Change of registered office or registered agent - Change of name of registered agent.** As provided in chapter 10-01.1:

1. A corporation may change its registered office, change its registered agent, or state a change in the name of its registered agent by filing with the secretary of state, along with the fees provided in section 10-19.1-147, a statement containing:
  - a. The name of the corporation.
  - b. If the address of its registered office is to be changed, the new address of its registered office.
  - c. If its registered agent is to be changed, the name of its new registered agent.
  - d. If the name of its registered agent is to be changed, the name of its registered agent as changed.
  - e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
  - f. A statement that the change of registered office or registered agent was authorized by resolution approved by the board.
2. A registered agent of a corporation may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.
3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the secretary of state a statement for each corporation as required in subsection 4, except that it need be signed only by the registered agent, need not be responsive to subdivision f of subsection 4, and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.
4. The fee prescribed in section 10-19.1-147 for change of registered office must be refunded when in the secretary of state's opinion a change of

address of registered office results from rezoning or postal reassignment.

<sup>38</sup> **SECTION 15. AMENDMENT.** Subsection 4 of section 10-19.1-103 of the North Dakota Century Code is amended and reenacted as follows:

4. If the surviving organization in a merger will be a foreign corporation or foreign limited liability company and will transact business in this state, the organization shall comply with the provisions of this chapter with respect to foreign corporations or chapter 10-32 with respect to foreign limited liability companies. In every case, the surviving foreign corporation or foreign limited liability company shall file with the secretary of state:
  - a. An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign corporation or foreign limited liability company;
  - b. An irrevocable appointment of the secretary of state as the organization's agent to accept service of process in any proceeding, and an address to which process may be forwarded as provided in section 10-01.1-13; and
  - c. An agreement that the organization will promptly pay to the dissenting owners of ownership interests of each domestic constituent corporation and domestic constituent limited liability company the amount, if any, to which they are entitled under section 10-19.1-88 or 10-32-55.

**SECTION 16. AMENDMENT.** Subsection 5 of section 10-19.1-104.6 of the North Dakota Century Code is amended and reenacted as follows:

5. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection as provided in section 10-01.1-13.

**SECTION 17. AMENDMENT.** Subsection 1 of section 10-19.1-118 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation may be dissolved involuntarily by a decree of a court in this state in an action filed by the attorney general when it is established that:
  - a. The articles and certificate of incorporation were procured through fraud;

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<sup>38</sup> Section 10-19.1-103 was also amended by section 31 of House Bill No. 1241, chapter 101.

- b. The corporation was incorporated for a purpose not permitted by section 10-19.1-08;
- c. The corporation failed to comply with the requirements of sections 10-19.1-02 through 10-19.1-24 essential to incorporation under or election to become governed by this chapter;
- d. The corporation has failed for thirty days to appoint and maintain a registered agent in this state as provided in chapter 10-01.1;
- e. The corporation has failed for thirty days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change as provided in chapter 10-01.1; or
- f. The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate franchise, privileges, or enterprise.

**SECTION 18. AMENDMENT.** Section 10-19.1-129 of the North Dakota Century Code is amended and reenacted as follows:

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

- 4. The registered agent must be an agent of the corporation or foreign corporation and any nonresident director upon whom any Any process, notice, or demand required or permitted by law to be served on the corporation, the foreign corporation, or any director may be served as provided in section 10-01.1-13.
  - a. When a foreign corporation transacts business without a certificate of authority, or when the certificate of authority of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notice, or demand.
  - b. Acceptance of a directorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
- 2. A process, notice, or demand required or permitted by law to be served upon a corporation or foreign corporation may be served:
  - a. On the registered agent of the corporation;
  - b. On an officer of the corporation or foreign corporation;
  - c. On any responsible person found at the registered office or at the principal executive office if located in this state; or
  - d. On the secretary of state as provided in this section.
- 3. If neither the registered agent nor a responsible person can be found at the registered office, or if a responsible person cannot be found at the principal executive office if located in this state, then the secretary of

state is an agent of the corporation or foreign corporation upon whom the process, notice, or demand may be served.

- a. Service on the secretary of state:
  - (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication.
  - (2) Shall include the return of the sheriff, or the affidavit of an individual who is not a party, verifying that neither the registered agent nor a responsible person can be found at the registered office or at the principal executive office.
  - (3) Is deemed personal service upon the corporation and must be made by filing with the secretary of state:
    - (a) Three copies of the process, notice, or demand; and
    - (b) The fees provided in section 10-19.1-147.
  - (4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
- b. The secretary of state shall immediately forward, by registered mail, addressed to the corporation or foreign corporation at the registered office or principal executive office, a copy of the process, notice, or demand.
4. Process, notice, or demand may be served on a dissolved corporation as provided in this subsection. The court shall determine if service is proper. If a corporation has voluntarily dissolved or a court has entered a decree of dissolution, then service may be made according to subsection 2 so long as claims are not finally barred under section 10-19.1-124. If a corporation has been involuntarily dissolved pursuant to section 10-19.1-146, then service may be made according to subsection 2.
5. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.
6. This section does not limit the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

**SECTION 19. AMENDMENT.** Section 10-19.1-135 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-135. Foreign corporation application for certificate of authority.**

1. An applicant for a certificate shall file with the secretary of state an application executed by an authorized person and setting forth:
  - a. The name of the foreign corporation and, if different, the name under which it proposes to transact business in this state;

- b. The jurisdiction of its incorporation;
  - c. The date of incorporation in the jurisdiction of its incorporation and the period of duration of the foreign corporation;
  - d. The address of the principal executive office of the foreign corporation;
  - e. The ~~address name of the proposed registered office agent of the foreign corporation in this state;~~
  - f. ~~The name of the proposed as provided in chapter 10-01.1, and if a noncommercial registered agent in this state, as defined under section 10-19.1-16, the address of such noncommercial registered agent in this state;~~
  - g. f. The purpose of the corporation which it proposes to pursue in transacting business in this state;
  - h. g. The names and addresses of the directors and officers of the foreign corporation; and
  - i. h. Any additional information deemed necessary or appropriate by the secretary of state to enable the secretary of state to determine whether the foreign corporation is entitled to a certificate of authority to transact business in this state.
2. The application must be accompanied by payment of the fees provided in section 10-19.1-147 together with a certificate of good standing or a certificate of existence duly authenticated by the incorporating officer of the state or country where the corporation is incorporated ~~and the consent of the designated registered agent for service of process to serve in that capacity.~~

**SECTION 20. AMENDMENT.** Subsection 2 of section 10-19.1-136 of the North Dakota Century Code is amended and reenacted as follows:

2. File the application; ~~and the certificate of good standing or certificate of existence; and the consent of the registered agent; and~~

**SECTION 21. AMENDMENT.** Section 10-19.1-138 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-138. Foreign corporation - Registered agent - Registered office - Certain reports.** A foreign corporation authorized to transact business in this state shall:

4. Establish and continuously maintain a registered office ~~in the same manner as provided in section 10-19.1-15;~~
2. Appoint and continuously maintain a registered agent in the same manner as provided in section 10-19.1-15; and
3. File a report upon any change in the address of its registered office or in the name or address of its registered agent in the same manner as provided in section 10-19.1-16 ~~agent in this state as provided in chapter~~

10-01.1 and, if a noncommercial registered agent, the address of such noncommercial registered agent in this state.

**SECTION 22. AMENDMENT.** Subsection 1 of section 10-19.1-140 of the North Dakota Century Code is amended and reenacted as follows:

1. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign corporation shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-19.1-147, which must set forth:
  - a. The name of the corporation and the state or country under the laws of which it is incorporated;
  - b. That the corporation is not transacting business in this state;
  - c. That the corporation surrenders its authority to transact business in this state;
  - d. That the corporation revokes the authority of its registered agent in this state to accept service of process and consents to that service of process on the corporation by service upon the secretary of state in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation as provided in section 10-01.1-13;
  - e. A post-office address to which a person may mail a copy of any process against the corporation; and
  - f. Any additional information necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees payable by the foreign corporation.

**SECTION 23. AMENDMENT.** Section 10-19.1-141 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-141. Foreign corporation - Revocation of certificate of authority.**

1. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the occurrence of either of these events if:
  - a. The foreign corporation has failed to:
    - (1) Maintain Appoint and maintain a registered agent, and if a noncommercial registered agent, then the registered office of the noncommercial registered agent as required by this provided in chapter 10-01.1; or
    - (2) Appoint and maintain a registered agent as required by this chapter;

- (3) File a report upon any change in the address of its registered office;
  - (4) File a report upon any change in the name or business address of the registered agent; or
  - (5) File in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-19.1-137; or
- b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign corporation pursuant to this chapter.
2. Except for revocation of the certificate of authority for failure to file the annual report for which the certificate of authority may be revoked as provided in section 10-19.1-146 as provided in section 10-19.1-146, no certificate of authority of a foreign corporation may be revoked by the secretary of state unless:
- a. The secretary has given the foreign corporation at least sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign corporation fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
  - b. During the sixty-day period, the foreign corporation has failed to file:
    - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent; to file;
    - (2) File any amendment; or to correct
    - (3) Correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign corporation to transact business in this state ceases; and the secretary of state shall issue a certificate notice of revocation and shall mail the certificate notice to the principal executive office of the foreign corporation.

**SECTION 24. AMENDMENT.** Section 10-19.1-145 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-145. Foreign corporation - Service of process.** Service of process on a foreign corporation must be as provided in section 10-19.1-129 10-01.1-13.

<sup>39</sup> **SECTION 25. AMENDMENT.** Section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-146. Secretary of state - Annual report of corporations and foreign corporations - Involuntary dissolution - Revocation of certificate of authority.**

1. Each corporation and each foreign corporation authorized to transact business in this state shall file, within the time provided in subsection 3, an annual report setting forth:
  - a. The name of the corporation or foreign corporation and the state or country under the laws of which the corporation or foreign corporation is incorporated.
  - b. The address of the registered office of the corporation or foreign corporation in this state, the name of the corporation's or foreign corporation's registered agent in this state at that address, and the address of the corporation's or foreign corporation's principal executive office.
  - c. A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this state.
  - d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.
  - e. A statement of the aggregate number of shares the corporation or foreign corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - f. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - g. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the total gross income of the corporation for the twelve months ending on December thirty-first preceding the date provided under this section for the filing of the annual report and the gross amount accumulated by the corporation at or from places of business in this state. If, on December thirty-first preceding the time provided under this section for the filing of the report, the corporation had not been in existence for a period of twelve months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve months, the statement with respect to total gross income must be furnished for the period between the

<sup>39</sup> Section 10-19.1-146 was also amended by section 36 of House Bill No. 1241, chapter 101.

date of incorporation or the date of the corporation's authorization to transact business in this state and December thirty-first.

- h. Any additional information necessary or appropriate to enable the secretary of state to determine and assess the proper amount of fees payable by the corporation.
  2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report except as to the information required by subdivision g of subsection 1 which must be given as of the close of business on December thirty-first next preceding the date herein provided for the filing of the report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. The annual report must be signed as provided in subsection 51 of section 10-19.1-01, or the articles or the bylaws or a resolution approved by the affirmative vote of the required proportion or number of the directors or holders of shares entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years. The secretary of state, or any employee or legal representative of the secretary of state, may not disclose the information reported under subdivision g of subsection 1 to any person, except a person that is verified to be a shareholder of the corporation or foreign corporation, a legal representative of the shareholder for which information is requested, or to the tax commissioner or any employee or legal representative of the tax commissioner, who may not disclose the information and may use the information only for the administration of the tax laws.
  3. Except for the first annual report, the annual report must be delivered to the secretary of state:
    - a. By a corporation, before August second of each year; and
    - b. By a foreign corporation, before May sixteenth of each year.
4. The secretary of state must file the annual report if the annual report conforms to the requirements of this section and all fees have been paid as provided in section 10-19.1-147.

The first annual report of either a corporation or foreign corporation must be delivered before the date provided in the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state, or in the case of a corporation, in the year following the calendar year of the effective date stated in the articles of incorporation. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this subsection, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this subsection, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.

- a. If the annual report does not conform, it must be returned to the corporation or foreign corporation for any necessary correction or payment.
  - b. If the annual report is corrected and filed before the date provided in subsection 3, or within thirty days after the annual report was returned by the secretary of state for correction, then the penalties provided in section 10-19.1-147 for the failure to file an annual report within the time provided do not apply.
5. The secretary of state may extend the annual report filing date provided in subsection 3 if a written application for an extension is delivered before the date provided in subsection 3. A corporation or foreign corporation with a fiscal year ending within three months before the date provided in subsection 3 may make a written request for an extension, to apply to reports for subsequent years until the fiscal year is changed.
  6. Three months after the date provided in subsection 3, any corporation or foreign corporation failing to file its annual report is not in good standing. After the corporation or foreign corporation becomes not in good standing, the secretary of state shall notify the corporation or foreign corporation that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked as provided in subsection 7 or 8.
    - a. The secretary of state must mail the notice of impending dissolution or revocation to the last registered agent at the last registered office ~~of record~~.
    - b. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the filing fee and the late filing penalty fee provided in section 10-19.1-147, then the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.
  7. A corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 ceases to exist as a corporation and is considered involuntarily dissolved by operation of law.
    - a. The secretary of state shall note the dissolution of the corporation's certificate of incorporation on the records of the secretary of state and shall give notice of the action to the dissolved corporation.
    - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office ~~of record~~.
  8. A foreign corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 forfeits its authority to transact business in this state.
    - a. The secretary of state shall note the revocation of the foreign corporation's certificate of authority on the records of the secretary

- of state and shall give notice of the action to the foreign corporation.
- b. Notice by the secretary of state must be mailed to the foreign corporation's last registered agent at the last registered office ~~or record~~.
  - c. The decision by the secretary of state that a certificate of authority must be revoked under this subsection is final.
9. A corporation dissolved for failure to file an annual report, or a foreign corporation whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the filing and penalty fees for an annual report and a reinstatement fee as provided in section 10-19.1-147. The fees must be paid and an annual report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.

<sup>40</sup> **SECTION 26. AMENDMENT.** Section 10-19.1-147 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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<sup>40</sup> Section 10-19.1-147 was also amended by section 37 of House Bill No. 1241, chapter 101.

7. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
8. Filing articles of abandonment of merger, fifty dollars.
9. Filing an application to reserve a corporate name, ten dollars.
10. Filing a notice of transfer of a reserved corporate name, ten dollars.
11. Filing a cancellation of reserved corporate name, ten dollars.
12. Filing a consent to use of name, ten dollars.
13. Filing a statement of change of address of registered office or, change of registered agent, or both, ~~ten dollars~~.
14. ~~Filing a statement of or a change of address of registered office by registered agent, ten dollars for each corporation affected by such change.~~
15. ~~Filing a registered agent's consent to serve in such capacity, ten dollars.~~
16. ~~Filing a resignation as registered agent, ten dollars the fee provided in section 10-01.1-03.~~
17. 14. Filing a statement of the establishment of a series of shares, twenty dollars.
18. 15. Filing a statement of cancellation of shares, twenty dollars.
19. 16. Filing a statement of reduction of stated capital, twenty dollars.
20. 17. Filing a statement of intent to dissolve, ten dollars.
21. 18. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
22. 19. Filing articles of dissolution, twenty dollars.
23. 20. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, ~~forty one hundred forty-five dollars.~~
24. 21. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, forty dollars.
25. 22. Filing a certificate of fact stating a merger or consolidation of a foreign corporation holding a certificate of authority to transact business in this state, fifty dollars.
26. 23. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
27. 24. Filing an annual report of a corporation or foreign corporation, twenty-five dollars.

- a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) Within ninety days after the date provided in subsection 3 of section 10-19.1-146, twenty dollars;
    - (2) Thereafter, sixty dollars; and
    - (3) After the involuntary dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of one hundred thirty-five dollars.
  - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-19.1-146, or the annual report lacks sufficient payment as required by this subsection.
28. 25. Filing any process, notice, or demand for service, ~~twenty five dollars~~ the fee provided in section 10-01.1-03.
29. 26. Furnishing a certified copy of any record, instrument, or paper relating to a corporation, one dollar for every four pages or fraction and fifteen dollars for the certificate and affixing the seal thereto.
30. License fee of fifty dollars for the first fifty thousand dollars of a corporation's authorized shares, or fraction, and the further sum of ten dollars if paid at the time of authorization, or twelve dollars if paid after authorized shares are issued, for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of fifty thousand dollars.
- a. A license fee is payable by a corporation at the time of:
    - (1) Filing articles of incorporation;
    - (2) Filing articles of amendment increasing the number or value of authorized shares; or
    - (3) Filing articles of merger or consolidation increasing the number or value of authorized shares a surviving or new corporation will have authority to issue above the aggregate number or value of shares the constituent corporations had authority to issue.
  - b. A license fee payable on an increase in authorized shares must be imposed only on the additional shares, but the amount of previously authorized shares must be taken into account in determining the rate applicable to the additional authorized shares.
  - c. For the purposes of this subsection, shares without par value are considered worth one dollar per share.
  - d. The minimum sum of fifty dollars must be paid for authorized shares at the time of filing articles of incorporation.

- e. A corporation increasing authorized shares by articles of amendment or articles of merger must have previously paid for a minimum of fifty thousand dollars of authorized shares.
    - (1) Thereafter, a corporation may postpone the payment for any additional amount until the filing of an annual report after the unpaid shares are issued.
    - (2) Any additional amount must be paid in increments of ten thousand dollars of authorized shares.
  - f. The provisions of this subsection do not apply to a building and loan or savings and loan association.
31. License fee of eighty-five dollars from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state. Thereafter, the secretary of state shall fix the license fee for each foreign corporation as follows:
- a. The secretary of state shall first ascertain the license fee which a newly organized corporation would be required to pay if it had authorized shares of the same kind and amount as the issued or allotted shares of the reporting foreign corporation shown by its filed annual report.
  - b. Said amount must be multiplied by a fraction, the numerator of which must be the sum of the value of the property of the foreign corporation located in this state and the gross receipts of the foreign corporation derived from that foreign corporation's business transacted within this state, and the denominator of which must be the sum of the value of all of that foreign corporation's property wherever located and the gross receipts of the foreign corporation derived from that foreign corporation's business wherever transacted. The amounts used in determining the numerator and denominator must be determined from the foreign corporation's filed annual report.
  - c. From the product of such multiplication, there must be deducted the aggregate amount of license fee previously paid by the foreign corporation, and the remainder, if any, must be the amount of additional fee to be paid by the foreign corporation.

The secretary of state shall enter the amount of any additional license fee in the records of the foreign corporation in the secretary of state's office and shall mail a notice of the amount of additional license fee due to the foreign corporation at the foreign corporation's principal office. The additional license fee must be paid by the foreign corporation before the annual report may be filed by the secretary of state. Amounts less than five dollars are not collected.

32. 27. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
33. 28. Filing any other statement of a corporation or foreign corporation, ten dollars.

<sup>41</sup> **SECTION 27. AMENDMENT.** Subsection 1 of section 10-32-07 of the North Dakota Century Code is amended and reenacted as follows:

1. The articles of organization must contain:
  - a. The name of the limited liability company;
  - b. The address name of the registered office agent of the limited liability company as provided in chapter 10-01.1 and the name of the limited liability company's registered agent at that address, if a noncommercial registered agent, then the address of such noncommercial registered agent in this state;
  - c. The name and address of each organizer;
  - d. The effective date of organization:
    - (1) If a later date than that on which the certificate of organization is issued by the secretary of state; and
    - (2) Which may not be later than ninety days after the date on which the certificate of organization is issued; and
  - e. If the articles of organization are filed with the secretary of state:
    - (1) Before July 1, 1999, a statement stating in years that the period of existence for the limited liability company must be a period of thirty years from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly authorize a shorter or longer period of duration, which may be perpetual.
    - (2) After June 30, 1999, a statement stating in years the period of existence of the limited liability company, if other than perpetual.

**SECTION 28. AMENDMENT.** Section 10-32-12 of the North Dakota Century Code is amended and reenacted as follows:

#### **10-32-12. Registered office and agent.**

4. A As provided by chapter 10-01.1, a limited liability company shall continuously maintain a registered office agent in this state. A registered office need not be the same as the principal place of business or the principal executive office of the limited liability company.
2. A limited liability company shall appoint and continuously maintain a registered agent. The registered agent may be an individual residing in this state, a corporation or a limited liability company, or a foreign corporation or foreign limited liability company authorized to transact

<sup>41</sup> Section 10-32-07 was also amended by section 40 of House Bill No. 1241, chapter 101.

business in this state. The registered agent must maintain a business office that is identical with the registered office. Proof of the registered agent's consent to serve in such capacity must be filed with the secretary of state, together with the fees provided in section 10-32-150.

**SECTION 29. AMENDMENT.** Section 10-32-13 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-13. Change of registered office or agent.** As provided in chapter 10-01.1:

1. A limited liability company may change its registered office, change its registered agent, or state a change in the name of its registered agent, by filing with the secretary of state, along with the fees provided in section 10-32-150, a statement containing:
  - a. The name of the limited liability company;
  - b. If the address of its registered office is to be changed, the new address of its registered office;
  - c. If its registered agent is to be designated or changed, the name of its new registered agent;
  - d. If the name of its registered agent is to be changed, the name of its registered agent as changed;
  - e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
  - f. A statement that the change of registered office or registered agent was authorized by resolution approved by the board; and
2. A registered agent of a limited liability company may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the limited liability company at its principal executive office or to a legal representative of the limited liability company. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.
3. If the business address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each limited liability company represented by that agent by filing with the secretary of state a statement for each limited liability company as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision f of subsection 1, and must state that a copy of the statement has been mailed to each of those limited liability companies or to the legal representative of each of those limited liability companies.
4. The fee provided in section 10-32-150 for change of address of registered office must be refunded when the secretary of state

determines a change of address of registered office results from rezoning or postal reassignment.

<sup>42</sup> **SECTION 30. AMENDMENT.** Subsection 4 of section 10-32-107 of the North Dakota Century Code is amended and reenacted as follows:

4. If the surviving organization in a merger will be a foreign corporation or foreign limited liability company and will transact business in this state, the surviving organization shall comply, as the case may be, with the provisions of chapter 10-19.1 with respect to foreign corporations or with the provisions of this chapter with respect to foreign limited liability companies. In every case, the surviving foreign corporation or foreign limited liability company shall file with the secretary of state:
  - a. An agreement that the surviving organization may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign corporation or foreign limited liability company;
  - b. An irrevocable appointment of the secretary of state as the surviving organization's agent to accept service of process in any proceeding, and an address to which process may be forwarded as provided in section 10-01.1-13; and
  - c. An agreement that the surviving organization promptly will pay to the dissenting owners of ownership interests of each constituent limited liability company and constituent corporation the amount, if any, to which the dissenting owners are entitled under section 10-19.1-88 or 10-32-55.

**SECTION 31. AMENDMENT.** Subsection 5 of section 10-32-108.6 of the North Dakota Century Code is amended and reenacted as follows:

5. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection as provided in section 10-01.1-13.

**SECTION 32. AMENDMENT.** Subsection 1 of section 10-32-122 of the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company may be involuntarily dissolved, wound up, and terminated by a decree of a court in this state in an action filed by the attorney general when it is established that:
  - a. The articles of organization were procured through fraud;

<sup>42</sup> Section 10-32-107 was also amended by section 57 of House Bill No. 1241, chapter 101.

- b. The limited liability company was organized for a purpose not permitted by section 10-32-04;
- c. The limited liability company failed to comply with the requirements essential to organization under this chapter;
- d. The limited liability company has failed for thirty days to appoint and maintain a registered agent in this state as provided in chapter 10-01.1;
- e. The limited liability company has failed for thirty days after change of the registered office or registered agent to file in the office of the secretary of state a statement of such change as provided in chapter 10-01.1; or
- f. The limited liability company has acted, or failed to act, in a manner that constitutes surrender or abandonment of the limited liability company privileges or enterprise.

**SECTION 33. AMENDMENT.** Section 10-32-132 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-132. Service of process on limited liability company, foreign limited liability company, and nonresident governors.**

- 4. The registered agent must be an agent of the limited liability company or foreign limited liability company and any nonresident governor upon whom any Any process, notice, or demand required or permitted by law to be served on the limited liability company, the foreign limited liability company, or a governor may be served as provided in section 10-01.1-13.
  - a. When a foreign limited liability company transacts business with a certificate of authority, or when the certificate of authority of a foreign limited liability company is suspended or revoked, the secretary of state is an agent of the foreign limited liability company for service of process, notice, or demand.
  - b. Acceptance of a governorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
- 2. A process, notice, or demand required or permitted by law to be served upon a limited liability company or foreign limited liability company may be served:
  - a. On the registered agent of the limited liability company or foreign limited liability company;
  - b. On a manager of the limited liability company or foreign limited liability company;
  - c. On any responsible person found at the registered office or at the principal executive office if located in this state; or
  - d. On the secretary of state as provided in this section.

3. If neither the registered agent nor a responsible person can be found at the registered office or the principal executive office if located in this state, or if a limited liability company or foreign limited liability company fails to maintain a registered agent in this state, then the secretary of state is an agent of the limited liability company or foreign limited liability company upon whom the process, notice, or demand may be served.
  - a. Service on the secretary of state:
    - (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
    - (2) Shall include the return of the sheriff, or the affidavit of a person not a party, verifying that neither the registered agent nor a responsible person can be found at the registered office or at the principal executive office;
    - (3) Is deemed personal service upon the limited liability company or foreign limited liability company and must be made by filing with the secretary of state:
      - (a) Three copies of the process, notice, or demand; and
      - (b) The fees provided for in section 10-32-150; and
    - (4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
  - b. The secretary of state shall immediately forward, by registered mail, addressed to the limited liability company at its registered office or principal executive office, a copy of the process, notice, or demand.
  4. Process, notice, or demand may be served on a dissolved limited liability company as provided in this subsection. The court shall determine if service is proper. If a limited liability company has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subsection 2 so long as claims are not finally barred under section 10-32-128. If a limited liability company has been involuntarily dissolved pursuant to section 10-32-149, then service may be made according to subsection 2.
  5. The secretary of state shall maintain a record of every process, notice, and demand served upon the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.
  6. Nothing in this section limits the right of a person to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company or foreign limited liability company in any other manner permitted by law.

**SECTION 34. AMENDMENT.** Section 10-32-138 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-138. Foreign limited liability company - Application for certificate of authority.**

1. An applicant for the certificate shall file with the secretary of state a certificate of status from the filing office in the jurisdiction in which the foreign limited liability company is organized and an application executed by an authorized person and setting forth:
  - a. The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;
  - b. The jurisdiction of its organization;
  - c. The name of the proposed registered agent ~~in this state, which agent must be as defined in section 10-32-12 as required by chapter 10-01.1 and, if a noncommercial registered agent, then the address of such noncommercial registered agent in this state;~~
  - d. ~~The address of the proposed registered office of the foreign limited liability company in this state;~~
  - e. The date the foreign limited liability company expires in the jurisdiction of its organization;
  - f. ~~e.~~ The purpose the foreign limited liability company proposes to pursue in transacting its business in this state;
  - g. ~~f.~~ The names and addresses of the governors and managers of the foreign limited liability company; and
  - h. ~~g.~~ Any additional information deemed appropriate by the secretary of state to determine whether the foreign limited liability company is entitled to a certificate of authority to transact business in this state.
2. The application must be accompanied by payment of the fees provided in section 10-32-150 together with a certificate of good standing or a certificate of existence duly authenticated by the organizing officer of the state or country where the foreign limited liability company is organized ~~and the consent of the designated registered agent for service of process to serve in that capacity.~~

**SECTION 35. AMENDMENT.** Subsection 2 of section 10-32-139 of the North Dakota Century Code is amended and reenacted as follows:

2. File the application; ~~and the certificate of good standing or certificate of existence; and the consent of the registered agent;~~ and

**SECTION 36. AMENDMENT.** Section 10-32-141 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-141. Foreign limited liability company - Registered agent and certain reports - Registered office.** A foreign limited liability company authorized to transact business in this state shall:

4. Appoint and continuously maintain a registered agent in the same manner and registered office in this state as provided in section 10-32-12; and
2. File a report upon any change in the address of the registered office or upon any change in the name of its registered agent in the same manner as provided in subsection 3 of section 10-32-13 chapter 10-01.1.

**SECTION 37. AMENDMENT.** Subsection 1 of section 10-32-143 of the North Dakota Century Code is amended and reenacted as follows:

1. A foreign limited liability company authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign limited liability company shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-32-150, which must set forth:
  - a. The name of the foreign limited liability company and the state or country under the laws of which it is organized;
  - b. That the foreign limited liability company is not transacting business in this state;
  - c. That the foreign limited liability company surrenders its authority to transact business in this state;
  - d. That the foreign limited liability company revokes the authority of its registered agent in this state to accept service of process and consents to that service of process on the foreign limited liability company by service upon the secretary of state in any action, suit, or proceeding based upon any cause of action arising in this state during the time the foreign limited liability company was authorized to transact business in this state may thereafter be made on such foreign limited liability company as provided in section 10-01.1-13; and
  - e. A post-office address to which a person may mail a copy of any process against the foreign limited liability company.

**SECTION 38. AMENDMENT.** Section 10-32-144 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-144. Foreign limited liability company - Revocation of certificate of authority.**

1. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state upon the occurrence of either of these events if:
  - a. The foreign limited liability company has failed to appoint:
    - (1) Appoint and maintain a registered agent and registered office as required by this provided in chapter, file a report

upon any change in the name or business address of the registered agent; 10-01.1; or file

- (2) File in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-32-140; or
- b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign limited liability company pursuant to this chapter.
2. ~~No Except for revocation of the certificate of authority for failure to file the annual report as provided in section 10-32-149, no certificate of authority of a foreign limited liability company may be revoked by the secretary of state unless:~~
  - a. The secretary has given the foreign limited liability company not less than sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, addressed to its principal executive office; and
  - b. During the sixty-day period, the foreign limited liability company has failed to file:
    - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent; to file;
    - (2) File any amendment; or to correct
    - (3) Correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign limited liability company to transact business in this state ceases. The secretary of state shall issue a certificate notice of revocation and shall mail the certificate notice to the principal executive office of the foreign limited liability company.

**SECTION 39. AMENDMENT.** Section 10-32-148 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-148. Service of process on a foreign limited liability company.** Service of process on a foreign limited liability company must be as provided in section 10-32-132 10-01.1-13.

**SECTION 40. AMENDMENT.** Section 10-32-149 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-149. Secretary of state - Annual report of limited liability company and foreign limited liability company.**

1. Each limited liability company, and each foreign limited liability company authorized to transact business in this state, shall file, within the time provided by subsection 3, an annual report setting forth:

- a. The name of the limited liability company or foreign limited liability company and the state or country under the laws of which it is organized.
  - b. The address of the registered office of the limited liability company or foreign limited liability company in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.
  - c. A brief statement of the character of the business in which the limited liability company or foreign limited liability company is actually engaged in this state.
  - d. The names and respective addresses of the managers and governors of the limited liability company or foreign limited liability company or the name or names and respective address or addresses of the managing member or members of the limited liability company or foreign limited liability company.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 56 of section 10-32-02, the articles, the bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the governors or members entitled to vote. If the limited liability company or foreign limited liability company is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited liability company or foreign limited liability company by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.
  3. The annual report of a limited liability company or foreign limited liability company must be delivered to the secretary of state before November sixteenth of each year, except that the first annual report of a limited liability company or foreign limited liability company must be delivered before November sixteenth of the year following the calendar year in which the certificate of organization or certificate of authority was issued by the secretary of state.
    - a. An annual report in a sealed envelope postmarked by the United States postal service before November sixteenth, or an annual report in a sealed packet with a verified shipment date by any other carrier service before November sixteenth, is in compliance with this requirement.
    - b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.
      - (1) If the report does not conform, it must be returned to the limited liability company or foreign limited liability company for any necessary corrections.
      - (2) If the report is filed before the deadlines provided in this subsection, penalties for the failure to file a report within the time provided do not apply if the report is corrected to

- conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.
- c. The secretary of state may extend the annual filing date of any limited liability company or foreign limited liability company, if a written application for an extension is delivered before November sixteenth.
  4. After the date established under subsection 3, the secretary of state shall notify any limited liability company or foreign limited liability company failing to file its annual report that its certificate of organization or certificate of authority is not in good standing and that it may be terminated or revoked pursuant to subsection 5.
    - a. The secretary of state must mail notice of termination or revocation to the last registered agent at the last registered office ~~of record~~.
    - b. If the limited liability company or foreign limited liability company files its annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as provided by section 10-32-150, the secretary of state will restore its certificate of organization or certificate of authority to good standing.
  5. A limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within six months after the date established in subsection 3, ceases to exist and is considered involuntarily terminated by operation of law.
    - a. The secretary of state shall note the termination of the limited liability company's certificate of organization on the records of the secretary of state and shall give notice of the action to the terminated limited liability company.
    - b. Notice by the secretary of state must be mailed to the foreign limited liability company's last registered agent at the last registered office ~~of record~~.
  6. A foreign limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within six months after the date established by subsection 3, forfeits its authority to transact business in this state.
    - a. The secretary of state shall note the revocation of the foreign limited liability company's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign limited liability company.
    - b. Notice by the secretary of state must be mailed to the foreign limited liability company's last registered agent at the last registered office ~~of record~~.
    - c. The secretary of state's decision that a certificate of authority must be revoked under this subsection is final.

7. A limited liability company that was terminated for failure to file an annual report, or a foreign limited liability company whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as provided in section 10-32-150. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the termination or revocation to the reinstatement.

**SECTION 41. AMENDMENT.** Section 10-32-150 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Filing articles of organization and issuing a certificate of organization, one hundred twenty-five thirty-five dollars.
2. Filing articles of amendment, fifty dollars.
3. Filing articles of correction, fifty dollars.
4. Filing restated articles of organization, one hundred twenty-five dollars.
5. Filing articles of conversion of a limited liability company, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.
7. Filing articles of merger and issuing a certificate of merger, fifty dollars.
8. Filing abandonment of merger or exchange, fifty dollars.
9. Filing an application to reserve a name, ten dollars.
10. Filing a notice of transfer of a reserved name, ten dollars.
11. Filing a cancellation of reserved name, ten dollars.
12. Filing a consent to use of name, ten dollars.
13. Filing a statement of change of address of registered office or change of registered agent or both, ten dollars.

14. Filing or a statement of change of address of registered office by registered agent, ten dollars for each limited liability company affected by such change the fee provided in section 10-01.1-03.
15. Filing a registered agent's consent to serve in such capacity, ten dollars.
16. Filing a resignation as registered agent, ten dollars.
17. 14. Filing a resolution for the establishment of a class or series of membership interests, fifty dollars.
18. 15. Filing a notice of dissolution, ten dollars.
19. 16. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
20. 17. Filing articles of dissolution and termination, twenty dollars.
21. 18. Filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred twenty-five thirty-five dollars.
22. 19. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.
23. 20. Filing a certificate of fact stating a merger of a foreign limited liability company holding a certificate of authority to transact business in this state, fifty dollars.
24. 21. Filing a certified statement of conversion of a foreign limited liability company, fifty dollars.
25. 22. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.
26. 23. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars.
  - a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) After the date provided in subsection 3 of section 10-32-149, fifty dollars; and
    - (2) After the termination of the limited liability company, or the revocation of the certificate of authority of a foreign limited liability company, the reinstatement fee of one hundred twenty-five dollars.
  - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-32-149, or the annual report lacks sufficient payment as required by this subsection.

27. 24. Filing any process, notice, or demand for service, twenty-five dollars the fee provided in section 10-01.1-03.
28. 25. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
29. 26. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.
30. 27. Furnishing a copy of any record, or paper relating to a limited liability company or a foreign limited liability company:
  - a. One dollar for every four pages, or fraction thereof; and
  - b. Five dollars for a search of records.
31. 28. Furnishing a certificate of good standing, existence, or authorization:
  - a. Fifteen dollars; and
  - b. Five dollars for a search of records.
32. 29. Each page of any record or form sent by electronic transmission, one dollar.

<sup>43</sup> **SECTION 42. AMENDMENT.** Subsection 1 of section 10-33-06 of the North Dakota Century Code is amended and reenacted as follows:

1. The articles of incorporation must contain:
  - a. The name of the corporation;
  - b. The address name of the registered office agent of the corporation as provided in chapter 10-01.1 and the name of its, if a noncommercial registered agent at that, then the address of that noncommercial registered agent in this state;
  - c. The name and address of each incorporator;
  - d. The effective date of the incorporation:
    - (1) If a later date than that on which the certificate of incorporation is issued by the secretary of state; and
    - (2) Which may not be later than ninety days after the date on which the certificate of incorporation is issued; and
  - e. A statement that the corporation is incorporated under this chapter.

<sup>43</sup> Section 10-33-06 was also amended by section 61 of House Bill No. 1241, chapter 101.

**SECTION 43. AMENDMENT.** Section 10-33-12 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-12. Registered office - Registered agent.**

4. A corporation shall continuously maintain a registered office agent in this state as provided by chapter 10-01.1, and if a noncommercial registered agent, then the address of the noncommercial registered agent in this state. A registered office need not be the same as the principal place of business or the principal executive office of the corporation.
2. A corporation shall appoint and continuously maintain a registered agent. The registered agent may be an individual residing in this state, another corporation whether incorporated under this chapter or under another chapter of this code, a limited liability company, a foreign corporation whether authorized to do business or conduct activities in the state under this chapter or under another provision of this code, or foreign limited liability company authorized to conduct activities in this state. The registered agent shall maintain a business office that is identical with the registered office. Proof of the registered agent's consent to serve in that capacity must be filed with the secretary of state, together with the fees provided in section 10-33-140.

**SECTION 44. AMENDMENT.** Section 10-33-13 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-13. Establishment or change Change of registered office - Appointment or change of registered agent - Change of name of registered agent.**

1. A corporation may establish or change its registered office, designate or change its registered agent, or state a change in the name of its registered agent by filing with the secretary of state, along with the fees provided in section 10-33-140, a statement containing:
  - a. The name of the corporation.
  - b. The new address of its registered office if the address of its registered office is to be established or changed as provided in chapter 10-01.1.
  - c. The name of its new registered agent if its registered agent is to be designated or changed.
  - d. The name of its registered agent as changed if the name of its registered agent is to be changed.
  - e. A statement that the address of its registered office and the address of the business office of its registered agent, as established or changed, will be identical.
  - f. A statement that the establishment or change of registered office or designation or change of registered agent is authorized by resolution approved by the board as provided in chapter 10-01.1.

2. A registered agent of a corporation may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state as provided in chapter 10-01.1.
3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent of each corporation represented by that agent by filing with the secretary of state a statement for each corporation as required in subsection 4; except that it need be signed only by the registered agent, need not be responsive to subdivision f, and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.
4. With respect to fees:
  - a. The fee provided in section 10-33-140 for change of registered office must be refunded if in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.
  - b. The fees provided in section 10-33-140 10-01.1-03 for change of registered agent, and change of registered office, and consent of registered agent do not apply if the registered agent or registered office is established or changed in the annual report.

**SECTION 45. AMENDMENT.** Subsection 4 of section 10-33-92 of the North Dakota Century Code is amended and reenacted as follows:

4. If the single corporation will be a foreign corporation and will conduct activities in this state, then it shall comply with the provisions of sections 10-33-125 through 10-33-138 with respect to foreign corporations. In every case the single corporation shall file with the secretary of state:
  - a. An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent corporation; and
  - b. An irrevocable appointment of the secretary of state as its agent to accept service of process in any proceeding and an address to which process may be forwarded as provided in section 10-01.1-13.

**SECTION 46. AMENDMENT.** Subsection 1 of section 10-33-107 of the North Dakota Century Code is amended and reenacted as follows:

1. A court may grant equitable relief it considers just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and activities:
  - a. In a supervised voluntary dissolution under section 10-33-106.

- b. In an action by a director or at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, when it is established that:
  - (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs, the members cannot break the deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;
  - (2) The directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members, directors, or officers;
  - (3) The members of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
  - (4) The corporate assets are being misappropriated or wasted; or
  - (5) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-33-118.
- c. In an action by a creditor when:
  - (1) The claim of the creditor has been reduced to judgment and an execution on it has been returned unsatisfied; or
  - (2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation cannot pay its debts in the ordinary course of its activities.
- d. In an action by the attorney general when it is established that:
  - (1) The articles and certificate of incorporation were obtained through fraud;
  - (2) The corporation should not have been formed under this chapter;
  - (3) The corporation failed to comply with the requirements of sections 10-33-02 through 10-33-19 essential to incorporation under or election to become governed by this chapter;
  - (4) The corporation has flagrantly violated a provision of this chapter, has violated a provision of this chapter more than once, or has violated more than one provision of this chapter;

- (5) The corporation has engaged in an unauthorized act, contract, conveyance, or transfer or has exceeded its powers;
  - (6) The corporation has acted, or failed to act, in a manner that constitutes surrender or abandonment of the corporate purpose, franchise, privileges, or enterprise;
  - (7) The corporation has liabilities and obligations exceeding the corporate assets;
  - (8) The period of corporate existence has ended without extension;
  - (9) The corporation has failed for a period of ninety days to pay fees, charges, or penalties required by this chapter;
  - (10) The corporation has failed for a period of thirty days:
    - (a) To appoint and maintain a registered agent in this state as provided in chapter 10-01.1; or
    - (b) After changing its registered office, to file with the secretary of state a statement of the change as provided in chapter 10-01.1;
  - (11) The corporation has answered falsely or failed to answer a reasonable written interrogatory from the secretary of state or the attorney general to the corporation, its officers, or directors;
  - (12) The corporation has solicited property and has failed to use it for the purpose solicited; or
  - (13) The corporation has fraudulently used or solicited property.
- e. An action may not be commenced under subdivision d until thirty days after notice to the corporation by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the corporation has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles or bylaws or by performance of or abstention from the act, the attorney general shall give the corporation thirty additional days in which to effect the correction before filing the action.

**SECTION 47. AMENDMENT.** Section 10-33-120 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-120. Service of process on corporation, foreign corporation, and nonresident directors.**

- 4. The registered agent must be an agent of the corporation or foreign corporation, and any nonresident director upon whom any Any process, notice, or demand required or permitted by law to be served on the corporation, the foreign corporation, or a director may be served as provided in section 10-01.1-13.

- a. When a foreign corporation transacts business without a certificate of authority, or when the certificate of authority of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notice, or demand.
  - b. Acceptance of a directorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
2. A process, notice, or demand required or permitted by law to be served upon a corporation or foreign corporation may be served:
- a. On the registered agent of the corporation or foreign corporation;
  - b. On an officer of the corporation or foreign corporation;
  - c. On any responsible person found at the registered office or at the principal executive office if located in this state; or
  - d. On the secretary of state as provided in this section.
3. If neither the registered agent nor a responsible person can be found at the registered office, or if a responsible person cannot be found at the principal executive office if located in this state, then the secretary of state is an agent of the corporation upon whom the process, notice, or demand may be served.
- a. Service on the secretary of state:
    - (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
    - (2) Shall include the return of the sheriff, or the affidavit of an individual who is not a party, verifying that neither the registered agent nor a responsible person can be found at the registered office or at the principal executive office if located in this state;
    - (3) Is deemed personal service upon the corporation or foreign corporation and must be made by filing with the secretary of state:
      - (a) Three copies of the process, notice, or demand; and
      - (b) The fees provided in section 10-33-140; and
    - (4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.
  - b. The secretary of state shall immediately forward, by registered mail, addressed to the corporation or foreign corporation at its registered office, a copy of the process, notice, or demand.
4. Process, notice, or demand may be served on a dissolved corporation as provided in this subsection. The court shall determine if service is

proper. If a corporation has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subsection 2 as long as claims are not finally barred under section 10-33-115. If a corporation has been involuntarily dissolved pursuant to section 10-33-139, service may be made according to subsection 2.

5. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.
6. This section does not limit the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation or foreign corporation in any other manner permitted by law.

**SECTION 48. AMENDMENT.** Section 10-33-128 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-128. Foreign corporation application for certificate of authority.**

1. An applicant for the certificate shall file with the secretary of state a certificate of status from the filing office in the jurisdiction in which the foreign corporation is incorporated and an application executed by an authorized person and setting forth:
  - a. The name of the foreign corporation and, if different, the name under which it proposes to conduct activities in this state;
  - b. The jurisdiction of its incorporation;
  - c. The date of incorporation in the jurisdiction of its incorporation and the period of duration of the foreign corporation;
  - d. The address of the principal executive office of the foreign corporation in the jurisdiction where it is incorporated;
  - e. The address name of the proposed registered office agent of the foreign corporation in this state;
  - f. The name as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of the proposed that noncommercial registered agent in this state that is:
    - (1) An individual resident of this state;
    - (2) A corporation whether incorporated under this chapter or under another provision of this code; or
    - (3) A foreign corporation having a place of activity in, and authorized to conduct activities in, this state whether authorized to conduct activities in this state under this chapter or under another provision of this code;
  - g. f. The purpose or purposes of the foreign corporation which it proposes to pursue in conducting its activities in this state;

- h. g. The names and addresses of the directors and officers of the foreign corporation; and
  - h. Any additional information deemed necessary or appropriate by the secretary of state to enable the secretary of state to determine whether the foreign corporation is entitled to a certificate of authority to conduct activities in this state.
2. The application must be accompanied by payment of the fees provided in section 10-33-140 together with a certificate of good standing or a certificate of existence duly authenticated by the incorporating officer of the state or country where the corporation is incorporated and the consent of the designated registered agent for service of process to serve in that capacity.

**SECTION 49. AMENDMENT.** Subsection 2 of section 10-33-129 of the North Dakota Century Code is amended and reenacted as follows:

2. File the application, and the certificate of good standing or certificate of existence, and the consent of the registered agent; and

**SECTION 50. AMENDMENT.** Section 10-33-131 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-131. Foreign corporation - Registered agent - Registered office - Certain reports.** A foreign corporation authorized to conduct activities in this state must:

1. Establish and shall continuously maintain a registered agent and registered office in the same manner this state as provided in section 10-33-12;
2. Appoint and continuously maintain a registered agent in the same manner as provided in section 10-33-12; and
3. File a report upon the establishment of or any change in the address of its registered office or upon the designation of or change in the name or address of its registered agent in the same manner as provided in section 10-33-13 chapter 10-01.1.

**SECTION 51. AMENDMENT.** Subsection 1 of section 10-33-133 of the North Dakota Century Code is amended and reenacted as follows:

1. A foreign corporation authorized to conduct activities in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign corporation shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-33-140, which must set forth:
  - a. The name of the corporation and the state or country under the laws of which it is incorporated;
  - b. That the corporation is not conducting activities in this state;

- c. That the corporation surrenders its authority to conduct activities in this state;
- d. That the corporation revokes the authority of its registered agent in this state to accept service of process and consents to that service of process on the corporation by service upon the secretary of state in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct activities in this state may thereafter be made on such corporation as provided in section 10-01.1-13; and
- e. A post-office address to which a person may mail a copy of any process against the corporation.

**SECTION 52. AMENDMENT.** Section 10-33-134 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-134. Foreign corporation - Revocation of certificate of authority.**

- 1. The certificate of authority of a foreign corporation to conduct activities in this state may be revoked by the secretary of state if:
  - a. The foreign corporation has failed to:
    - (1) Maintain Appoint and maintain a registered agent and registered office as required by this provided in chapter 10-01.1; or
    - (2) Appoint and maintain a registered agent as required by this chapter;
    - (3) File a report upon any change in the address of its registered office;
    - (4) File a report upon any change in the name or business address of the registered agent; or
    - (5) File in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-33-130; or
  - b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign corporation pursuant to this chapter.
- 2. No Except revocation of the certificate of authority for failure to file the annual report as provided in section 10-33-139, no certificate of authority of a foreign corporation may be revoked by the secretary of state unless:
  - a. The secretary has given the foreign corporation not less than sixty days' notice by mail addressed to its registered agent at the registered office in this state or, if the foreign corporation fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and

- b. During the sixty-day period, the foreign corporation has failed to file:
  - (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent, to file;
  - (2) File any amendment; or to correct
  - (3) Correct the misrepresentation.
3. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign corporation to conduct activities in this state ceases. The secretary of state shall issue a certificate notice of revocation and shall mail the certificate notice to the principal executive office of the foreign corporation.

**SECTION 53. AMENDMENT.** Section 10-33-138 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-138. Foreign corporation - Service of process.** Service of process on a foreign corporation must be as provided in section ~~10-33-120~~ 10-01.1-13.

**SECTION 54. AMENDMENT.** Section 10-33-139 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-139. Secretary of state - Annual report of corporations and foreign corporations.**

1. Each corporation, and each foreign corporation authorized to conduct activities in this state, shall file, within the time provided in subsection 3, an annual report setting forth:
  - a. The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated.
  - b. The address of the registered office of the corporation or foreign corporation in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.
  - c. A brief statement of the character of the activities in which the corporation or foreign corporation is actually engaged in this state.
  - d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.
  - e. The section of the Internal Revenue Code by which its tax status is established.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 34 of section 10-33-01 or in the articles or bylaws, or in a resolution approved by the affirmative vote of the required proportion or number of the directors or members entitled to vote. If the corporation or foreign corporation is in the hands of a

receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

3. The annual report must be delivered to the secretary of state before February first of each year, except that the first annual report must be delivered before February first of the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state.
  - a. An annual report in a sealed envelope postmarked by the United States postal service before February first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before February first, complies with this requirement. When the filing date falls on a Saturday or holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day complies with this requirement.
  - b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.
    - (1) If the report does not conform, it must be returned to the corporation for any necessary corrections.
    - (2) If the report is filed before the deadlines provided in this subsection, penalties for the failure to file a report within the time provided do not apply, if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.
  - c. The secretary of state may extend the annual filing date of any corporation or foreign corporation if a written application for an extension is delivered before February first.
4. After the date established under subsection 3, the secretary of state shall notify any corporation or foreign corporation failing to file its annual report that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked pursuant to subsections 5 and 6. The secretary of state must mail the notice to the last registered agent at the last registered office of record. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as provided in section 10-33-140, the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.
5. A corporation that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established in subsection 3 ceases to exist and is considered involuntarily dissolved by operation of law.
  - a. Thereafter, the secretary of state shall note the termination of the corporation's certificate of incorporation on the records of the secretary of state and shall give notice of the action to the dissolved corporation.

- b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office ~~or record~~.
6. A foreign corporation that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established by subsection 3 forfeits its authority to conduct activities in this state.
  - a. The secretary of state shall note the revocation of the foreign corporation's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign corporation.
  - b. Notice by the secretary of state must be mailed to the foreign corporation's last registered agent at the last registered office ~~or record~~.
  - c. The decision by the secretary of state that a certificate of authority must be revoked under this subsection is final.
7. A corporation that was dissolved for failure to file an annual report, or a foreign corporation whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as provided in section 10-33-140. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.
8. The secretary of state may waive any penalties provided in this section when an annual report form could not be delivered to the corporation.

**SECTION 55. AMENDMENT.** Subsection 1 of section 10-33-140 of the North Dakota Century Code is amended and reenacted as follows:

1. The secretary of state shall charge and collect for:
  - a. Filing articles of incorporation and issuing a certificate of incorporation, thirty forty dollars.
  - b. Filing articles of amendment, twenty dollars.
  - c. Filing articles of correction, twenty dollars.
  - d. Filing restated articles of incorporation, thirty dollars.
  - e. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
  - f. Filing an intent to dissolve, ten dollars.
  - g. Filing articles of dissolution, twenty dollars.
  - h. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.

- ↳ Filing a registered agent's consent to serve in that capacity, ten dollars.
- ↳ Filing a resignation as registered agent, ten dollars the fee provided in section 10-01.1-03.
- ↳ i. Filing an application to reserve a corporate name, ten dollars.
- ↳ j. Filing a notice of transfer of a reserved corporate name, ten dollars.
- ↳ k. Filing a cancellation of reserved corporate name, ten dollars.
- ↳ l. Filing a consent to use of a deceptively similar name, ten dollars.
- ↳ m. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, ~~forty~~ fifty dollars.
- ↳ n. Filing an application of a foreign corporation for an amended certificate of authority, forty dollars.
- ↳ o. Filing a certified statement of merger of a foreign corporation holding a certificate of authority to conduct activities in this state, fifty dollars.
- ↳ p. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
- ↳ q. Filing an annual report of a domestic or foreign corporation, ten dollars.
  - (1) The secretary of state shall charge and collect additional fees for late filing of the annual report:
    - (a) After the date provided in subsection 3 of section 10-33-139, five dollars; and
    - (b) After the dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of forty dollars.
  - (2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-33-139, or the annual report lacks sufficient payment as required by this subdivision.
- ↳ r. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this subsection for filing the record.
- ↳ s. Filing any other statement of a domestic or foreign corporation, ten dollars.

**SECTION 56. AMENDMENT.** Section 10-34-04 of the North Dakota Century Code is amended and reenacted as follows:

**10-34-04. Compliance with title - Registered office and - Registered agent.**

1. A real estate investment trust may not do business in this state until it complies with this title.
2. Each real estate investment trust shall continuously maintain in this state:
  - a. A registered office, which need not be the same as the principal place of business or the principal executive office of the real estate investment trust.
  - b. An agent for service of process on the real estate investment trust. The agent must be an individual resident of this state, a domestic corporation, a domestic limited liability company, a foreign corporation, or a foreign limited liability company authorized to do business agent as provided by chapter 10-01.1, and if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.
3. A domestic or foreign real estate investment trust shall register with the secretary of state by submitting an application signed by a trustee which includes:
  - a. The name of the real estate investment trust which may not be the same or deceptively similar to the name of any other real estate investment trust registered with the secretary of state, or any corporation, limited liability company, limited partnership, limited liability partnership, or any name that is in some manner reserved with the secretary of state, that is a fictitious trade name registered in the manner as provided in chapter 45-11, or that is a trade name registered in the manner as provided in chapter 47-25 unless there is filed with the secretary of state a written consent of the holder of the similar trade name to use the name proposed by the real estate investment trust. The name may not contain the word "corporation", "company", "incorporated", "limited liability company", or any abbreviation of these words.
  - b. The state and date of its formation.
  - c. The name, address, and principal place of business of each trustee and officer.
  - d. The address name of its registered office and the name of its registered agent located at that office with the written consent of the as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent attached to the application in this state.
  - e. A statement that the secretary of state is appointed the agent of the real estate investment trust for service of process if the registered agent's authority has been revoked or if the agent cannot be found

or served with the exercise of reasonable diligence as provided in section 10-01.1-13.

4. If the secretary of state finds that an application for registration of a real estate investment trust conforms to law and all fees have been paid, the secretary of state shall:
  - a. Endorse on the application the word "filed", and the month, day, and year of the filing.
  - b. File the application in the office of the secretary of state.
5. A real estate investment trust may change its registered office, change its registered agent, or state a change in the name of its registered agent by filling with the secretary of state, along with the fees provided in this chapter, a statement containing:
  - a. The name of the real estate investment trust.
  - b. If the address of its registered office is to be changed, the new address of its registered office.
  - c. If its registered agent is to be changed, the name of its new registered agent.
  - d. If the name of its registered agent is to be changed, the name of its registered agent as changed.
  - e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
  - f. A statement that the change of registered office or registered agent was authorized by resolution approved by the real estate investment trust as provided in chapter 10-01.1.
6. A registered agent of a real estate investment trust may resign by filling with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the real estate investment trust at its principal executive office or to a legal representative of the real estate investment trust. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state as provided in chapter 10-01.1.
7. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each real estate investment trust represented by that agent by filling with the secretary of state a statement as required in subsection 5, except that it need not be signed only by the registered agent, need not be responsive to subdivision f of subsection 5, and must state that a copy of the statement has been mailed to each of those real estate investment trusts or to the legal representative of each of those real estate investment trusts.
8. The fee prescribed in this chapter for change of registered office must be refunded when in the secretary of state's opinion a change of

address of registered office results from rezoning or postal reassignment.

9. If any statement in the application was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the real estate investment trust shall file promptly with the secretary of state an application for an amended application executed by an authorized person correcting the statement.
10. 8. The secretary of state may revoke the registration of a domestic or foreign real estate investment trust for failure to maintain a registered office and or a registered agent as required by this chapter and chapter 10-01.1. Before revoking the registration, the secretary of state shall give not less than sixty days' notice by mail addressed to the last registered agent at the last registered office and, or to the principal office of record of a foreign real estate investment trust of the deficiency.

**SECTION 57. AMENDMENT.** Section 10-34-06 of the North Dakota Century Code is amended and reenacted as follows:

**10-34-06. Service of process on real estate investment trust and nonresident trustees.**

1. The registered agent must be an agent of the real estate investment trust and any nonresident trustee upon whom any Any process, notice, or demand required or permitted by law to be served on the real estate investment trust or trustee may be served on the real estate investment trust and any nonresident trustee as provided in section 10-01.1-13. Acceptance of a trusteeship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
2. A process, notice, or demand required or permitted by law to be served upon a real estate investment trust may be served either upon the registered agent, or upon a trustee of the real estate investment trust, or upon the secretary of state as provided in this section.
3. If neither the registered agent nor a trustee of the real estate investment trust can be found at the registered office, or if a real estate investment trust fails to maintain a registered agent in this state and a trustee cannot be found at the registered office, then the secretary of state is the agent upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person who is not a party, that no registered agent or trustee can be found at the registered office must be provided to the secretary of state. Service on the secretary of state of any process, notice, or demand is deemed personal service upon the real estate investment trust and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand. The secretary of state immediately shall forward, by registered mail, addressed to the real estate investment trust at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

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

**SECTION 58. AMENDMENT.** Section 10-34-09 of the North Dakota Century Code is amended and reenacted as follows:

**10-34-09. Fees.** The secretary of state shall charge and collect the following fees with respect to real estate investment trusts:

1. Filing a registration of a real estate investment trust, one hundred ten dollars.
2. Filing a registered agent's consent or any amendment changing the registered agent or registered office, ~~ten dollars~~ the fee provided in section 10-01.1-03.
3. Filing a resignation of a registered agent, ten dollars.
4. Filing a renewal or amendment of registration of a real estate investment trust, forty dollars.
5. 4. Issuing a certificate of good standing, twenty-five dollars.

**SECTION 59. AMENDMENT.** Section 45-10.2-17 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-17. Registered office and registered - Registered agent.**

4. A limited partnership shall continuously maintain a registered office agent in this state as provided by chapter 10-01.1, and if a noncommercial registered agent, the address of that noncommercial registered agent. A registered office need not be the same as the principal place of business or the principal executive office of the limited partnership.
2. The limited partnership shall appoint and continuously maintain a registered agent who may be:
  - a. An individual residing in this state;
  - b. A domestic corporation;
  - c. A domestic limited liability company; or
  - d. A foreign corporation or foreign limited liability company authorized to transact business in this state.
3. The registered agent shall maintain a business office identical to its registered office.

4. Proof of the consent of the registered agent to serve in the capacity of registered agent must be filed with the secretary of state.

**SECTION 60. AMENDMENT.** Section 45-10.2-18 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-18. Change of registered office or agent - Resignation of registered agent - Change of name or address of registered agent.**

1. A limited partnership may change the its registered office of the limited partnership, change the its registered agent of the limited partnership, or state a change in the name of the registered agent of the limited partnership, by filing with the secretary of state a statement containing:
  - a. The name of the limited partnership;
  - b. The new address of the registered office of the limited partnership, if the address of the registered office of the limited partnership is to be changed;
  - c. The name of the new registered agent of the limited partnership, if the registered agent of the limited partnership is to be designated or changed;
  - d. The name of the registered agent of the limited partnership as changed, if the name of the registered agent of the limited partnership is to be changed;
  - e. A statement that the address of the registered office of the limited partnership and the address of the business office of the registered agent of the limited partnership, as changed, will be identical; and
  - f. A statement that the change of registered office or registered agent was authorized by resolution approved by the general partners as provided in chapter 10-01.1.
2. A registered agent of a limited partnership may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice was given to the limited partnership at the principal executive office of the limited partnership, or to a legal representative of the limited partnership. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state as provided in chapter 10-01.1.
3. If the business address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each limited partnership represented by that agent by filing with the secretary of state a statement for each limited partnership as required in subsection 1, except that the statement need be signed only by the registered agent, need not be responsive to subdivision f of subsection 1, and must state that a copy of the statement was mailed to each of those limited partnerships or to the legal representative of each of those limited partnerships.

4. The fee provided in section 45-10.2-109 for change of registered office must be refunded if in the opinion of the secretary of state a change of address of registered office results from rezoning or postal reassignment.

**SECTION 61. AMENDMENT.** Subsection 1 of section 45-10.2-23 of the North Dakota Century Code is amended and reenacted as follows:

1. In order for a limited partnership to be formed, a certificate of limited partnership must be filed with the secretary of state.
  - a. The certificate must state:
    - (1) The name of the limited partnership, which must comply with section 45-10.2-10;
    - (2) The general character of its business;
    - (3) The street address and mailing address of the principal executive office;
    - (4) The name, street address, and mailing address of each general partner;
    - (5) The name, street address, and mailing address of the registered agent in this state as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that noncommercial registered agent in this state; and
    - (6) Any additional information required by sections 45-10.2-94 through 45-10.2-106.
  - b. A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in subsection 2 of section 45-10.2-12 in a manner inconsistent with that section.

**SECTION 62. AMENDMENT.** Section 45-10.2-79 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-79. (902) Foreign limited partnership - Application for certificate of authority.**

1. A foreign limited partnership may apply for a certificate of authority to transact business or conduct activities in this state by delivering an application to the secretary of state for filing. The application must state:
  - a. The name of the foreign limited partnership and, if the name does not comply with section 45-10.2-10, then an alternate name adopted pursuant to subsection 1 of section 45-10.2-77;
  - b. The name of the state or other jurisdiction under whose law the foreign limited partnership is organized;
  - c. The general character of the business the foreign limited partnership proposes to transact in this state;

- d. The street and mailing address of the principal executive office of the foreign limited partnership;
  - e. The name, street address, and mailing address in this state of the initial registered agent of the foreign limited partnership as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that noncommercial registered agent in this state;
  - f. The name, street address, and mailing address of each general partner of the foreign limited partnership; and
  - g. Whether the foreign limited partnership is a foreign limited liability limited partnership.
2. A With the completed application, the foreign limited partnership shall deliver with the completed application:
    - a. A certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the publicly filed records of the foreign limited partnership in the state or other jurisdiction under whose law the foreign limited partnership is organized; and
    - b. Proof of the consent of the registered agent to serve in the capacity of registered agent.

**SECTION 63. AMENDMENT.** Subsection 2 of section 45-10.2-80 of the North Dakota Century Code is amended and reenacted as follows:

2. File the application, and the certificate of good standing or certificate of existence, and the consent of the registered agent.

**SECTION 64. AMENDMENT.** Section 45-10.2-82 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-82. Foreign limited partnership - Registered agent - Registered office - Certain reports.** A foreign limited partnership authorized to transact business in this state shall:

1. Establish and continuously maintain a registered office in the same manner as provided in section 45-10.2-17;
2. Appoint and continuously maintain a registered agent in the same manner as provided in section 45-10.2-17; and
3. File a report upon any change in the address of its registered office or in the name or address of its registered agent in the same manner as provided in section 45-10.2-18 and, if a noncommercial registered agent, the address of that noncommercial registered agent in this state.

**SECTION 65. AMENDMENT.** Section 45-10.2-87 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-87. Foreign limited partnership - Revocation of certificate of authority.**

1. The certificate of authority of a foreign limited partnership to transact business in this state may be revoked by the secretary of state upon the occurrence of either of these events if:
  - a. The foreign limited partnership has failed to:
    - (1) Maintain Appoint and maintain a registered office as required by this chapter agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state;
    - (2) Maintain the registration of a general partner as required in section 45-10.2-16;
    - (3) File a report upon any change in the address of its principal executive office; or
    - (4) Appoint and maintain a registered agent as required by this chapter;
    - (5) File a report upon any change in the name or business address of the registered agent; or
    - (6) File in the office of the secretary of state any amendment to its application for certificate of authority as specified in section 45-10.2-81; or
  - b. A misrepresentation has been made of any material matter in an application, report, affidavit, or other record submitted by the foreign limited partnership pursuant to this chapter.- 2. Except for revocation of the certificate of authority for failure to file the annual report for which the certificate of authority may be revoked as provided in section 45-10.2-108 as provided in section 45-10.1-108, no certificate of authority may be revoked by the secretary of state unless:
  - a. The secretary has given the foreign limited partnership at least sixty days' notice by mail addressed to its registered agent at the registered office in this state or if the foreign limited partnership fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and
  - b. During the sixty-day period, the foreign limited partnership has failed to file the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent, to register a general partner as required by section 45-10.2-16, to file any amendment, or to correct the misrepresentation.
- 3. Upon the expiration of sixty days after the mailing of the notice:
  - a. The authority of the foreign limited partnership to transact business in this state ceases; and

- b. The secretary of state shall issue a notice of revocation and shall mail the notice to the registered office of the foreign limited partnership, or if the foreign limited partnership has failed to maintain a registered office, then to its principal executive office.

**SECTION 66. AMENDMENT.** Section 45-10.2-107 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-107. Service of process on a limited partnership or foreign limited partnership and on nonresident general partners.**

4. ~~The registered agent must be an agent of the limited partnership, the foreign limited partnership, and any nonresident general partner upon whom any Any process, notice, or demand required or permitted by law to be served on the limited partnership, foreign limited partnership, or general partner may be served as provided in section 10-01.1-13.~~
  - a. When a foreign limited partnership transacts business without a certificate of authority or when the certificate of authority of a foreign limited partnership is suspended or revoked, the secretary of state is an agent of the foreign limited partnership for service of process, notice, or demand.
  - b. Acceptance of a general partnership interest in a limited partnership or foreign limited partnership includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
2. A process, notice, or demand required or permitted by law to be served on a limited partnership or foreign limited partnership may be served:
  - a. On the registered agent;
  - b. On a general partner of the limited partnership or foreign limited partnership;
  - c. On any responsible person found at the registered office or at the principal executive office if located in this state; or
  - d. On the secretary of state as provided in this section.
3. If neither the registered agent nor a responsible person can be found at the registered office and if a responsible person affiliated with the limited partnership or foreign limited partnership cannot be found at the principal place of business in this state, then the secretary of state is an agent of the limited partnership or foreign limited partnership on whom the process, notice, or demand may be served.
  - a. Service on the secretary of state:
    - (1) Must be made by registered mail or personal delivery to the secretary of state and not by electronic communication.
    - (2) Must include the return of the sheriff or affidavit of a person not a party, verifying that neither a registered agent nor a

responsible person can be found at the registered office or at the principal place of business in this state.

- (3) Is deemed personal service on the limited partnership or foreign limited partnership and may be made by filing with the secretary of state:
    - (a) Three copies of the process, notice, or demand; and
    - (b) The fees provided in section 45-10.2-109.
  - (4) Is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand.
- b. The secretary of state shall immediately forward, by registered mail addressed to the limited partnership or foreign limited partnership at its registered office or principal place of business in this state, a copy of the process, notice, or demand.
- 4. Process, notice, or demand may be served on a dissolved limited partnership as provided in this subsection. The court shall determine if service is proper.
    - a. If a limited partnership has voluntarily dissolved or a court has entered a decree of dissolution, then service may be made as provided in subsection 2 as long as claims are not finally barred under section 45-10.2-73.
    - b. If a limited partnership has been involuntarily dissolved by the secretary of state pursuant to section 45-10.2-108, then service may be made as provided in subsection 3.
  - 5. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.
  - 6. This section does not limit the right of a person to serve process, notice, or demand required or permitted by law to be served on a limited partnership or foreign limited partnership in any other manner permitted by law.

**SECTION 67. AMENDMENT.** Section 45-10.2-108 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-108. Secretary of state - Annual report of limited partnership and foreign limited partnership.**

- 1. Each limited partnership, and each foreign limited partnership authorized to transact business in this state, shall file, within the time provided by subsection 3, an annual report setting forth:
  - a. The name of the limited partnership or foreign limited partnership and the jurisdiction of origin.

- b. The address of the registered office of the limited partnership or foreign limited partnership in this state and the name of the registered agent of the limited partnership or foreign limited partnership in this state at that address.
  - c. The address of the principal executive office of the limited partnership or foreign limited partnership.
  - d. A brief statement of the character of the business in which the limited partnership or foreign limited partnership is actually engaged in this state.
  - e. The name and respective address of every general partner of the limited partnership or foreign limited partnership.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided in the annual report must be accurate as of the time of filing the report. The annual report must be signed as provided in subsection 40 of section 45-10.2-02 or a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited partnership or foreign limited partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited partnership or foreign limited partnership by the receiver or trustee. The secretary of state may destroy any annual reports provided for in this section after the annual report is on file for six years.
3. The annual report of a limited partnership or foreign limited partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited partnership or foreign limited partnership must be delivered before April first of the year following the calendar year in which the certificate of limited partnership or certificate of authority was filed by the secretary of state.
  - a. An annual report in a sealed envelope postmarked by the United States postal service on or before April first or an annual report in a sealed packet with a verified shipment date by any other carrier service on or before April first, complies with the delivery requirement under this subsection.
  - b. The secretary of state shall file the report if the report conforms to the requirements of subsection 2.
    - (1) If the report does not conform, then the report must be returned to the limited partnership or foreign limited partnership for any necessary corrections.
    - (2) If the report is filed before the deadlines provided in this subsection, then penalties for the failure to file a report within the time provided do not apply if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.
  4. After the date established under subsection 3, the secretary of state shall notify any limited partnership or foreign limited partnership failing

to file an annual report that the certificate of limited partnership or certificate of authority of a foreign limited partnership is not in good standing and that the certificate of the limited partnership or the certificate of authority of the foreign limited partnership may be dissolved or revoked pursuant to subsection 5.

- a. The secretary of state must mail notice of dissolution or revocation to the last registered agent at the last registered office of record.
  - b. If the limited partnership or foreign limited partnership files an annual report after the notice is mailed, then the secretary of state will restore the certificate or certificate of authority of the limited partnership or foreign limited partnership to good standing.
5. A limited partnership that does not file an annual report, within six months after the date established in subsection 3, ceases to exist and is considered involuntarily dissolved by operation of law.
- a. The secretary of state shall note the dissolution of the certificate of limited partnership on the records of the secretary of state and shall give notice of the action to the dissolved limited partnership.
  - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record of the limited partnership.
6. A foreign limited partnership that does not file an annual report, within six months after the date established by subsection 3, forfeits the right to transact business in this state.
- a. The secretary of state shall note the revocation of the certificate of authority of the foreign limited partnership on the records of the secretary of state and shall give notice of the action to the foreign limited partnership.
  - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record of the foreign limited partnership.
7. A limited partnership that is dissolved for failure to file an annual report, or a certificate of authority of a foreign limited partnership that is forfeited for failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as provided in section 45-10.2-109. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.

**SECTION 68. AMENDMENT.** Section 45-10.2-109 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-109. Secretary of state - Fees for filing records.** The secretary of state shall charge and collect for:

1. Filing a certificate of limited partnership, one hundred ten dollars.

2. Filing a limited partnership amendment, forty dollars.
3. Filing articles of conversion of a limited partnership, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
4. Filing abandonment of conversion, fifty dollars.
5. Filing limited partnership articles of merger, fifty dollars.
6. Filing abandonment of merger or exchange, fifty dollars.
7. Filing a limited partnership statement of correction, forty dollars.
8. Filing a limited partnership dissolution, twenty-five dollars.
9. Filing a limited partnership cancellation, twenty-five dollars.
10. Filing a reservation of name, ten dollars.
11. Filing a notice of transfer of a reserved limited partnership name, ten dollars.
12. Filing a cancellation of a reserved limited partnership name, ten dollars.
13. Filing a consent to use a deceptively similar name, ten dollars.
14. Filing a statement of change of address of registered office or change of registered agent, or both, ~~ten dollars~~.
15. ~~Filing a statement of or a change of address of registered office by registered agent, ten dollars for each limited partnership affected by the change the fee provided by section 10-01.1-03.~~
16. ~~Filing a consent of registered agent to serve in the capacity of registered agent, ten dollars.~~
17. ~~Filing a resignation as registered agent, ten dollars.~~
18. 15. Filing a certificate of authority of foreign limited partnership, one hundred dollars.
19. 16. Filing a certified statement of amendment of foreign limited partnership, forty dollars.
20. 17. Filing a certified statement of dissolution of foreign limited partnership, twenty-five dollars.

24. 18. Filing a certified statement of cancellation of foreign limited partnership, twenty-five dollars.
22. 19. Filing a certified statement of merger of foreign limited partnership, fifty dollars.
23. 20. Filing a certified statement of conversion of foreign limited partnership, fifty dollars and:
- a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
24. 21. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.
25. 22. Filing an annual report of a limited partnership or foreign limited partnership, twenty-five dollars.
- a. The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:
    - (1) After the date provided in subsection 3 of section 45-10.2-108, twenty dollars; and
    - (2) After the dissolution of the limited partnership or the revocation of the certificate of authority of a foreign limited partnership, the reinstatement fee of one hundred dollars.
  - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 45-10.2-108, or the annual report lacks sufficient payment as required by this subsection.
26. 23. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
27. 24. Filing any process, notice, or demand for service, ~~twenty five dollars the fee provided in section 10-01.1-03.~~
- a. 25. Furnishing a certificate of existence or authorization:
    - (1) a. Fifteen dollars; and
    - (2) b. Five dollars for a search of records.
  - b. 26. Furnishing a certified copy of any record, or paper relating to a limited partnership or foreign limited partnership:

- (4) a. One dollar for every four pages or fraction;
- (2) b. Fifteen dollars for the certificate and affixing the seal thereto; and
- (3) c. Five dollars for a search of records.

**SECTION 69. AMENDMENT.** Subsection 1 of section 45-15-03 of the North Dakota Century Code is amended and reenacted as follows:

1. A partnership may file with the secretary of state, along with the fees provided in section 45-13-05, a statement of partnership authority which:
  - a. Must include:
    - (1) The name of the partnership;
    - (2) The street address of the partnership's principal executive office and of one office in this state, if there is one;
    - (3) The name and mailing address of each partner;
    - (4) The address name of the registered office agent of the partnership as provided in chapter 10-01.1 and, if a noncommercial registered agent, the name of the registered agent at that address of the noncommercial registered agent in this state;
    - (5) The name of each partner authorized to execute an instrument transferring real property held in the name of the partnership; and
    - (6) The nature of business to be transacted.
  - b. May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

**SECTION 70. AMENDMENT.** Section 45-15-03.1 of the North Dakota Century Code is amended and reenacted as follows:

#### **45-15-03.1. Registered office - Registered agent.**

4. A partnership that files and maintains a statement of partnership authority shall continuously maintain a registered office in this state agent as provided by chapter 10-01.1 and, if a noncommercial registered agent, the address of the noncommercial registered agent in this state. A registered office need not be the same as the principal place of business or the principal executive office of the partnership.
2. A partnership that files a statement of partnership authority shall appoint and continuously maintain a registered agent who may be:
  - a. An individual residing in this state;
  - b. A domestic corporation;

- e. A domestic limited liability company; or
  - f. A foreign corporation or foreign limited liability company authorized to transact business in this state.
3. The registered agent shall maintain a business office identical to the registered agent's registered office.
4. Proof of the registered agent's consent to serve in the capacity of registered agent must be filed with the secretary of state, together with the fees provided in section 45-13-05.

**SECTION 71. AMENDMENT.** Section 45-15-03.2 of the North Dakota Century Code is amended and reenacted as follows:

**45-15-03.2. Change of registered office or agent.**

- 1. A partnership that files and maintains a statement of partnership authority may change the partnership's registered office, change the partnership's registered agent, or state a change in the name of the partnership's registered agent, by filing with the secretary of state, along with the fees provided in section 45-13-05, a statement containing:
  - a. The name of the partnership;
  - b. If the address of the partnership's registered office is changing, the new address of the partnership's registered office;
  - c. If the partnership's registered agent is being designated or changing, the name of the partnership's new registered agent;
  - d. If the name of the partnership's registered agent is changing, the name of the partnership's registered agent as changed;
  - e. A statement that the address of the partnership's registered office and the address of the business office of the partnership's registered agent, as changed, will be identical; and
  - f. A statement that the change of registered office or registered agent was authorized by resolution approved by the partners as provided in chapter 10-01.1.
- 2. A registered agent of a partnership may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice was given to the partnership at the partnership's principal executive office, or to a legal representative of the partnership. The appointment of the agent terminates thirty days after notice is filed with the secretary of state as provided in chapter 10-01.1.
- 3. If the business address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each partnership represented by that agent by filing with the secretary of state a statement for each partnership as required in subsection 1, except the statement need be signed only by the registered agent, need not be

responsive to subdivision f of subsection 1, and must state that a copy of the statement was mailed to each of those partnerships or to the legal representative of each of those partnerships.

**SECTION 72. AMENDMENT.** Subsection 5 of section 45-21-04.2 of the North Dakota Century Code is amended and reenacted as follows:

5. A converted organization that is a foreign organization and not authorized to transact business or conduct activities in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection as provided in section 10-01.1-13.

**SECTION 73. AMENDMENT.** Subsection 2 of section 45-21-06 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership to enforce an obligation of a partnership that is a constituent organization. The surviving organization shall promptly notify the secretary of state of the mailing address of its principal executive office and of any change of address. Upon receipt of process, the secretary of state shall mail a copy of the process to the surviving foreign partnership as provided in section 10-01.1-13.

**SECTION 74. AMENDMENT.** Subsection 3 of section 45-22-03 of the North Dakota Century Code is amended and reenacted as follows:

3. A registration, signed by a managing partner, must contain:
  - a. With respect to a domestic limited liability partnership:
    - (1) The name of the domestic limited liability partnership.
    - (2) The nature of the business to be transacted in this state.
    - (3) A statement indicating whether the limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching.
    - (4) The address of the principal executive office of the domestic limited liability partnership.
    - (5) The address name of the registered office agent of the domestic limited liability partnership as provided in chapter 10-01.1 and the name of the, if a noncommercial registered agent at that, the address of that noncommercial registered agent in this state.
    - (6) The name and address of each managing partner.
    - (7) A statement that the partnership elects to be a limited liability partnership.
    - (8) A deferred effective date, if any.

- b. With respect to a foreign limited liability partnership:
- (1) The name of the foreign limited liability partnership and, if different, the name under which the foreign limited liability partnership proposes to transact business in this state.
  - (2) The jurisdiction of origin.
  - (3) The date on which the foreign limited liability partnership expires in the jurisdiction of origin.
  - (4) The nature of the business to be transacted in this state.
  - (5) A statement indicating whether the foreign limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching.
  - (6) The address of the principal executive office of the foreign limited liability partnership.
  - (7) The ~~address name of the registered office agent of the foreign limited liability partnership as provided in chapter 10-01.1 and the name of the foreign limited liability partnership, if a noncommercial registered agent at that, the address of that registered agent in this state.~~
  - (8) The name and address of each managing partner.
  - (9) An acknowledgment that the status of the foreign limited liability partnership in this state will automatically expire unless the foreign limited liability partnership continuously maintains limited liability partnership status in the jurisdiction of origin.
- c. The registration must be accompanied by payment of the fees provided in section 45-22-22 together with a certificate of good standing or certificate of existence authenticated by the registering officer of the state or country where the foreign limited liability partnership is originally registered and the consent of the designated registered agent for service of process to serve in that capacity.

**SECTION 75. AMENDMENT.** Section 45-22-11 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-11. Registered office and agent.**

4. A limited liability partnership shall continuously maintain a registered office ~~in this state agent as provided by chapter 10-01.1 and, if a noncommercial registered agent, the address of that noncommercial registered agent in this state.~~ A registered office need not be the same as the principal place of business or the principal executive office of the limited liability partnership.

2. A limited liability partnership shall appoint and continuously maintain a registered agent in the registration who may be:
  - a. An individual residing in this state;
  - b. A domestic corporation, domestic limited liability company, or domestic limited liability partnership; or
  - c. A foreign corporation, foreign limited liability company, or foreign limited liability partnership authorized to transact business in this state.
3. Proof of the registered agent's consent to serve in the capacity of registered agent must be filed with the secretary of state, together with the fees provided in section 45-22-22.

**SECTION 76. AMENDMENT.** Section 45-22-12 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-12. Change of registered office or agent.**

1. A limited liability partnership may change the limited liability partnership's registered office, change the limited liability partnership's registered agent, or state a change in the name of the limited liability partnership's registered agent, by filing with the secretary of state, along with the fees provided in section 45-22-22, a statement containing:
  - a. The name of the limited liability partnership.
  - b. If the address of the limited liability partnership's registered office is changing, the new address of the limited liability partnership's registered office.
  - c. If the limited liability partnership's registered agent is to be designated or is changing, the name of the limited liability partnership's new registered agent.
  - d. If the name of the limited liability partnership's registered agent is changing, the name of the limited liability partnership's registered agent as changed.
  - e. A statement that the address of the limited liability partnership's registered office and the address of the business office of the limited liability partnership's registered agent, as changed, will be identical.
  - f. A statement that the change of registered office or registered agent was authorized by resolution of the partnership as provided in chapter 10-01.1.
2. A registered agent of a limited liability partnership may resign by filing with the secretary of state a written notice of resignation, including a statement that a signed copy of the notice was given to the limited liability partnership at the limited liability partnership's principal executive office, or to a legal representative of the limited liability partnership. The appointment of the agent terminates thirty days after

~~the notice is filed with the secretary of state as provided in chapter 10-01.1.~~

3. If the business address or name of a registered agent changes, the agent shall change the address of the registered office or name of the registered agent of each limited liability partnership represented by that agent by filing with the secretary of state a statement for each limited liability partnership as required in subsection 4, except the statement need be signed only by the registered agent, need not be responsive to subdivision e or f of subsection 1, and must state that a copy of the statement was mailed to each of those limited liability partnerships or to the legal representative of each of those limited liability partnerships.
4. The fee prescribed in section 45-22-22 for the change of registered office must be refunded if, in the opinion of the secretary of state, the change of address of registered office results from rezoning or postal reassignment.

**SECTION 77. AMENDMENT.** Subsection 2 of section 45-22-13 of the North Dakota Century Code is amended and reenacted as follows:

2. The withdrawal statement must contain:
  - a. With respect to a domestic limited liability partnership:
    - (1) The name of the domestic limited liability partnership.
    - (2) A statement that the domestic limited liability partnership is withdrawing the current registration.
    - (3) An acknowledgment by the domestic limited liability partnership that the withdrawal ends the domestic limited liability partnership's status as a limited liability partnership with respect to periods after the effective date of the withdrawal.
  - b. With respect to a foreign limited liability partnership:
    - (1) The name of the foreign limited liability partnership.
    - (2) The jurisdiction of origin.
    - (3) A statement that the foreign limited liability partnership is not transacting business in this state as a foreign limited liability partnership.
    - (4) A statement that the foreign limited liability partnership surrenders authority to transact business in this state as a foreign limited liability partnership and is withdrawing the foreign limited liability partnership's current registration.
    - (5) An acknowledgment by the foreign limited liability partnership that the withdrawal ends the foreign limited liability partnership's authorization to transact business in this state as a foreign limited liability partnership with respect to periods after the effective date of the withdrawal.

- (6) A statement that the foreign limited liability partnership revokes the authority of the foreign limited liability partnership's registered agent in this state to accept service of process and consents that to service of process based upon any cause of action arising in this state during the time the foreign limited liability partnership was authorized to transact business in this state and that service may be made on the foreign limited liability partnership by service upon the secretary of state as provided in section 10-01.1-13.
- (7) A post-office address to which a person may mail a copy of any process against the foreign limited liability partnership.

**SECTION 78. AMENDMENT.** Section 45-22-16 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-16. Revocation of registration.**

1. The registration of a limited liability partnership may be revoked by the secretary of state upon the occurrence of any of these events if:
  - a. The limited liability partnership fails:
    - (1) To appoint and maintain a registered agent and registered office as required by this provided in chapter 10-01.1; or
    - (2) To file a report upon any change in the name or business address of the registered agent; or
    - (3) To file any amendment to the limited liability partnership's registration required to be filed pursuant to subdivision b or c of subsection 4 of section 45-22-03.
  - b. An intentional misrepresentation is made in any material matter in any registration, report, affidavit, or other document submitted by the limited liability partnership pursuant to this chapter.
2. ~~The Except for revocation of the registration for failure to file the annual report as provided in section 45-22-21.1, the secretary of state may not revoke the registration of a limited liability partnership unless:~~
  - a. The secretary of state gave the limited liability partnership at least sixty days' notice of the reason for the pending revocation by mail addressed to the limited liability partnership's registered agent at the registered office or, if the limited liability partnership fails to appoint and maintain a registered agent in this state, by mail addressed to the limited liability partnership's principal executive office; and
  - b. During the sixty-day period, the limited liability partnership fails:
    - (1) To appoint and maintain a registered agent as required by this provided in chapter 10-01.1;
    - (2) To file the report of change regarding the name or business address of the registered agent;

- (3) To file any amendment to the limited liability partnership's registration required to be filed pursuant to subdivision b or c of subsection 4 of section 45-22-03; or
  - (4) To correct the misrepresentation.
3. Upon the expiration of the sixty-day period without the limited liability partnership curing the reason for the pending revocation set forth in the notice, the registration is revoked. The secretary of state shall note the revocation in the records of the secretary of state and shall give notice of the revocation to the limited liability partnership. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record. If the limited liability partnership fails to appoint and maintain a registered office in this state, the notice must be mailed to the limited liability partnership's principal executive office.

**SECTION 79. AMENDMENT.** Section 45-22-17 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-17. Service of process on a limited liability partnership or a foreign limited liability partnership and on a nonresident partner.**

1. The registered agent must be an agent of the limited liability partnership or foreign limited liability partnership and any nonresident partner upon whom any Any process, notice, or demand required or permitted by law to be served on the limited liability partnership, the foreign limited liability partnership, or a partner may be served as provided in section 10-01.1-13.
  - a. When a foreign limited liability partnership transacts business without a registration or when the registration of a foreign limited liability partnership is suspended or revoked, the secretary of state is an agent of the foreign limited liability partnership for service of process, notice, or demand.
  - b. Acceptance of a managing partnership status in a limited liability partnership or foreign limited liability partnership includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
2. A process, notice, or demand required or permitted by law to be served on a limited liability partnership or foreign limited liability partnership may be served:
  - a. On the registered agent;
  - b. On any responsible person found at the registered office or at the principal executive office if located in this state;
  - c. On a managing partner of the partnership; or
  - d. On the secretary of state as provided in this section.
3. If neither the registered agent nor a responsible person can be found at the registered office and if a responsible person affiliated with the limited liability partnership or foreign limited liability partnership cannot be

found at the principal place of business in this state, then the secretary of state is an agent of the limited liability partnership or foreign limited liability partnership on whom the process, notice, or demand may be served.

a. Service on the secretary of state:

- (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication.
  - (2) Shall include the return of the sheriff or affidavit of a person not a party, verifying that neither a registered agent nor a responsible person can be found at the registered office or at the principal place of business in this state.
  - (3) Is deemed personal service on the limited liability partnership or foreign limited liability partnership and may be made by filing with the secretary of state:
    - (a) Three copies of the process, notice, or demand; and
    - (b) The fees provided in section 45-22-22.
  - (4) Is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand.
- b. The secretary of state immediately shall forward, by registered mail addressed to the limited liability partnership or foreign limited liability partnership at the registered office or principal place of business in this state, a copy of the process, notice, or demand.
4. Process, notice, or demand may be served on a limited liability partnership or foreign limited liability partnership that has voluntarily withdrawn its registration or which has forfeited its registration as provided in section 45-22-21.1. The court shall determine if service is proper:
- a. If a limited liability partnership or foreign limited liability partnership has voluntarily withdrawn its registration, then service may be made as provided in subsection 2.
  - b. If a limited liability partnership or foreign limited liability partnership has forfeited its registration as provided in section 45-22-21.1, then service may be made as provided in subsection 3.
5. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.
6. This section does not limit the right of a person to serve process, notice, or demand required or permitted by law to be served on a limited liability partnership or foreign limited liability partnership in any other manner permitted by law.

**SECTION 80. AMENDMENT.** Section 45-22-21.1 of the North Dakota Century Code is amended and reenacted as follows:

**45-22-21.1. Secretary of state - Annual report of domestic limited liability partnership and foreign limited liability partnership.**

1. Each domestic limited liability partnership and each foreign limited liability partnership authorized to transact business in this state, shall file, within the time provided by subsection 3, an annual report setting forth:
  - a. The name of the limited liability partnership and its jurisdiction of origin.
  - b. The address of the registered office of the limited liability partnership in this state, and the name of the limited liability partnership's registered agent in this state at that address.
  - c. The address of the limited liability partnership's chief executive office.
  - d. A brief statement of the character of the business in which the limited liability partnership is actually engaged in this state.
  - e. The name and respective address of each managing partner of the domestic limited liability partnership or foreign limited liability partnership.
  - f. If the limited liability partnership or foreign limited liability partnership owns or leases land that is used for farming or ranching in this state, a statement listing:
    - (1) The names and addresses of all partners; and
    - (2) The acreage [hectarage] and location listed by section, township, range, and county of all land in this state owned or leased by the limited liability partnership or foreign limited liability partnership.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 24 of section 45-22-01, the partnership agreement, or in a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited liability partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited liability partnership by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.
3. The annual report of a limited liability partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited liability partnership must be delivered before April first of the year following the calendar year in which the registration is filed by the secretary of state. A limited liability partnership in

existence on July 1, 1999, shall file the first annual report before April first in the year of the expiration of the registration in effect on July 1, 1999.

- a. An annual report in a sealed envelope postmarked by the United States postal service before April first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before April first, complies with this requirement.
- b. The secretary of state must file the annual report if the annual report conforms to the requirements of subsection 2.
  - (1) If the annual report does not conform, the annual report must be returned to the limited liability partnership for any necessary corrections.
  - (2) If the annual report is filed before the deadlines provided in this subsection, penalties for the failure to file a report within the time provided do not apply if the annual report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.
4. After the date established under subsection 3, the secretary of state shall notify any limited liability partnership failing to file an annual report that the limited liability partnership's registration is not in good standing and that the registration of the limited liability partnership may be revoked pursuant to subsection 5.
  - a. The secretary of state shall mail notice of revocation to the last registered agent at the last registered office of record.
  - b. If the limited liability partnership files an annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as provided by section 45-22-22, the secretary of state shall restore the limited liability partnership's registration to good standing.
5. A domestic limited liability partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established in subsection 3, forfeits the limited liability partnership's registration.
  - a. The secretary of state shall note the revocation of the domestic limited liability partnership's registration on the records of the secretary of state and shall give notice of the action to the revoked domestic limited liability partnership.
  - b. Notice by the secretary of state must be mailed to the domestic limited liability partnership's last registered agent at the last registered office of record.
6. A foreign limited liability partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after

- the date established by subsection 3, forfeits the foreign limited liability partnership's registration and authority to transact business in this state.
- a. The secretary of state shall note the revocation of the foreign limited liability partnership's registration and authority on the records of the secretary of state and shall give notice of the action to the foreign limited liability partnership.
  - b. Notice by the secretary of state must be mailed to the foreign limited liability partnership's last registered agent at the last registered office ~~or record~~.
  - c. The secretary of state's decision that a registration must be revoked under this subsection is final.
7. A domestic limited liability partnership with a registration that is revoked for failure to file an annual report or a foreign limited liability partnership with registration and authority that are forfeited by failure to file an annual report may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as provided in section 45-22-22. The fees must be paid and the report filed within one year following the revocation. Reinstatement under this subsection does not affect any right or liability of a domestic limited liability partnership or a foreign limited liability partnership for the time from the revocation to the reinstatement.

<sup>44</sup> **SECTION 81. AMENDMENT.** Subsection 1 of section 45-22-22 of the North Dakota Century Code is amended and reenacted as follows:

1. The secretary of state shall charge and collect for:
  - a. Filing a registration as a domestic limited liability partnership, ~~twenty-five~~ thirty-five dollars. If there are more than two managing partners, an additional three dollars must be paid for each additional managing partner not to exceed two hundred fifty dollars.
  - b. Filing a registration as a foreign limited liability partnership, ~~fifty~~ sixty dollars.
  - c. Filing an annual report of a domestic limited liability partnership or foreign limited liability partnership, twenty-five dollars.
    - (1) The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:
      - (a) After the date provided in subsection 3 of section 45-22-21.1, twenty dollars; and

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<sup>44</sup> Section 45-22-22 was also amended by section 76 of House Bill No. 1241, chapter 101.

- (b) After the revocation of the domestic limited liability partnership registration or the foreign limited liability partnership registration, the reinstatement fee of fifty dollars.
- (2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 45-22-21.1 or the annual report lacks sufficient payment as required by this subdivision.
  - d. Filing a statement of correction or amended registration, twenty-five dollars.
  - e. Filing an application to reserve a name, ten dollars.
  - f. Filing a notice of transfer of a reserved name, ten dollars.
  - g. Filing a cancellation of reserved name, ten dollars.
  - h. Filing a consent to use of name, ten dollars.
  - i. Filing a statement of change of address of registered office or change of registered agent or both, ~~ten dollars~~.
  - j. Filing a statement of or change of address of registered office by registered agent, ~~ten dollars for each domestic limited liability partnership or foreign limited liability partnership affected by the change.~~
  - k. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.
  - l. Filing a resignation as registered agent, ten dollars the fee provided in section 10-01.1-03.
  - m. l. Filing a notice of withdrawal, ten dollars.
  - n. k. Filing a certificate of fact stating a merger of a foreign limited liability partnership registered with the secretary of state, fifty dollars.
  - o. l. Filing any other statement of a domestic limited liability partnership, ten dollars.
  - p. m. Filing any process, notice, or demand for service, ~~twenty-five dollars~~ the fee provided in section 10-01.1-03.
  - q. n. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.

**SECTION 82. AMENDMENT.** Section 45-23-08 of the North Dakota Century Code is amended and reenacted as follows:

**45-23-08. Secretary of state - Fees for filing records.** The secretary of state shall charge and collect for:

1. Filing a certificate of limited liability limited partnership, one hundred ten dollars.
2. Filing a certificate of limited liability limited partnership amendment, forty dollars.
3. Filing a statement of conversion of a limited liability limited partnership, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
4. Filing abandonment of conversion, fifty dollars.
5. Filing limited liability limited partnership articles of merger, fifty dollars.
6. Filing abandonment of merger or exchange, fifty dollars.
7. Filing a limited liability limited partnership statement of correction, forty dollars.
8. Filing a certificate of limited liability limited partnership dissolution, twenty-five dollars.
9. Filing a certificate of limited liability limited partnership cancellation, twenty-five dollars.
10. Filing a reservation of limited liability limited partnership name, ten dollars.
11. Filing a notice of transfer of reserved limited liability limited partnership name, ten dollars.
12. Filing a cancellation of a reserved limited liability limited partnership name, ten dollars.
13. Filing a consent to use of a deceptively similar name, ten dollars.
14. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
15. ~~Filing or~~ a statement of change of address of registered office by registered agent, ~~ten dollars for each limited liability limited partnership affected by the change~~.

16. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.
17. Filing a resignation as registered agent, ten dollars the fee provided in section 10-01.1-03.
18. 15. Filing a registration of foreign limited liability limited partnership, one hundred dollars.
19. 16. Filing a certified statement of amendment of foreign limited liability limited partnership, twenty-five dollars.
20. 17. Filing a certified statement of dissolution of foreign limited liability limited partnership, twenty-five dollars.
21. 18. Filing a certified statement of merger of foreign limited liability limited partnership, fifty dollars.
22. 19. Filing a certified statement of conversion of foreign limited liability limited partnership, fifty dollars and:
  - a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
23. 20. Filing a certified statement of cancellation of foreign limited liability limited partnership, twenty-five dollars.
24. 21. Filing a statement of withdrawal of foreign limited liability limited partnership, twenty-five dollars.
25. 22. Filing an annual report of limited liability limited partnership, twenty-five dollars.
  - a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) After the date provided in subsection 3 of section 45-10.2-108, twenty dollars; and
    - (2) After the dissolution of the limited liability limited partnership or the revocation of the registration of a foreign limited liability limited partnership, the reinstatement fee of one hundred dollars.
  - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by

- section 45-10.2-108 or the annual report lacks sufficient payment as required by this subsection.
- 26. 23. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
  - 27. 24. Filing any process, notice, or demand for service, twenty five dollars the fee provided in section 10-01.1-03.
  - 28. 25. Furnishing a certificate of existence or authorization:
    - a. Fifteen dollars; and
    - b. Five dollars for a search of records.
  - 29. 26. Furnishing a certified copy of any record or paper relating to a limited partnership or foreign limited partnership:
    - a. One dollar for every four pages or fraction;
    - b. Fifteen dollars for the certificate and affixing the seal thereto; and
    - c. Five dollars for a search of records.

**SECTION 83. AMENDMENT.** Subsection 8 of section 54-09-04 of the North Dakota Century Code is amended and reenacted as follows:

- 8. For filing any process, notice, or demand for service, twenty dollars the fee provided in section 10-01.1-03.

**SECTION 84. AMENDMENT.** Section 54-09-07 of the North Dakota Century Code is amended and reenacted as follows:

**54-09-07. Service of process on secretary of state if agent not found - Procedure - Time for answering process.** If an agent other than the secretary of state has been appointed for receipt of service, but the affidavit of a sheriff or of an adult who is not a party to a proceeding establishes that diligent inquiry has been made and that personal service cannot be accomplished upon any registered agent, officer, or superintending, managing, or general agent of an entity, then the secretary of state may be deemed the agent of the entity for receiving service of process. Service on the secretary of state must be made by registered mail or personal delivery to the secretary of state and not by electronic communication. The party serving process, notice, or demand must provide a copy of the affidavit of a sheriff or of an adult who is not a party to the proceeding that service cannot be accomplished and must file with the secretary of state three copies of the process, notice, or demand, together with the fees required by section 54-09-04. Service on the secretary of state constitutes personal service on the entity. The secretary of state shall immediately forward a copy of the sheriff or other adult's affidavit and of the process, notice, or demand by registered mail addressed to the entity to be served at its registered office or last address on file with the secretary of state. Notwithstanding a shorter period of time specified in the process, notice, or demand, the entity has thirty days after the secretary of state receives the documents to respond to the process, notice, or demand as provided in section 10-01.1-13.

**SECTION 85. REPEAL.** Section 10-15-12.1 of the North Dakota Century Code is repealed.

**SECTION 86. EFFECTIVE DATE.** This Act becomes effective July 1, 2008.

Approved March 16, 2007

Filed March 16, 2007

# CHAPTER 100

## HOUSE BILL NO. 1492

(Representatives Damschen, DeKrey, Monson, Vigesaa)  
(Senators Oehlke, Wanzek)

### CORPORATE FARMING VIOLATION PENALTY

AN ACT to amend and reenact section 10-06.1-24 of the North Dakota Century Code, relating to a penalty for violation of the corporate farming provisions.

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

**SECTION 1. AMENDMENT.** Section 10-06.1-24 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-24. Enforcement - Penalty.**

1. The recorder shall mail or deliver a copy of every instrument filed or recorded, within thirty days after the instrument is recorded, to the attorney general if the instrument documents evidence of a lease agreement or purchase agreement pursuant to subsection 6 or 7 or if the instrument conveys the title to farmland or ranchland to a corporation or limited liability company. The attorney general shall commence an action in the district court of the county in which the substantial portion of farmland or ranchland used in violation of this chapter is situated if the attorney general has reason to believe that any person is violating this chapter. The attorney general shall file for record with the recorder of each county in which any portion of the land is located a notice of the pendency of the action. If the court finds that the land in question is being held in violation of this chapter, or that a corporation or limited liability company is conducting the business of farming or ranching in violation of this chapter, the court shall enter an order so declaring. The attorney general shall file any such order for record with the recorder of each county in which any portion of the land is located. Thereafter, the corporation or limited liability company shall, within the time set by the court not to exceed one year from the date of the court's final order, divest itself of any farming or ranching land owned or leased by it in violation of this chapter, and cease all farming or ranching operations. Any Except as otherwise provided in subsection 10, any corporation or limited liability company that fails to comply with the court's order is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved or terminated by the secretary of state.
2. The divestment period is deemed to be a covenant running with the title to the land against any corporate or limited liability company grantee, corporate or limited liability company successor, or corporation or limited liability company assignee of the corporation or limited liability company not authorized to do business under this chapter.
3. Any land not divested within the divestment period prescribed must be sold at public sale in the manner prescribed by law for the foreclosure of real estate mortgage by action. In addition, any prospective or

threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law, including enjoining the corporation or limited liability company from completing performance on the remainder of any leasehold which is in violation of this chapter.

4. Subject to the divestiture requirements of subsections 5, 6, and 7, a domestic or foreign corporation or limited liability company may acquire farmland or ranchland as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.
5. Unless retention of the farmland or ranchland is permitted under subsection 6 or 7, all farmland or ranchland acquired as security for indebtedness, in the collection of debts, or by the enforcement of a lien or claim shall be disposed of within three years after acquiring ownership, if the acquisition would otherwise violate this chapter.
6. The disposition requirement does not apply to a corporation or limited liability company that has acquired title to the land through the process of foreclosure of a mortgage, or a deed from a mortgagor instead of a foreclosure, if, by the expiration of one month after what is or what would have been the redemption period of the mortgage if the mortgage had been foreclosed, that corporation or limited liability company leases to the prior mortgagor from whom it was acquired, with an option to purchase, and if documents evidencing the lease agreement have been filed with the recorder of each county in which the land is located. A copy of a notice of lease is sufficient evidence. The exemption in this subsection applies for only five years and then only if the property has been appraised in accordance with subsection 8. The annual lease payments required of the tenant may not exceed seven percent of the appraised value.
7. The disposition requirement does not apply to a corporation or limited liability company that has acquired title to the land through the process of foreclosure of a mortgage, or a deed from the mortgagor instead of foreclosure, if, by the expiration of one month after what is or what would have been the redemption period of the mortgage if the mortgage had been foreclosed, that corporation or limited liability company contracts for the sale of the land to the prior mortgagor from whom it was acquired, and if documents evidencing the purchase agreement have been filed with the recorder of each county in which the land is located. A copy of a notice of the contract for deed is sufficient evidence. An exemption under this subsection is valid only if an appraisal has been made in accordance with subsection 8, and if it is valid, the exemption is unlimited in duration. The sale price may not exceed the price determined by the appraisers.
8. If an appraisal is required, the appraisal must be made by three independent appraisers, one selected by the corporation or limited liability company, one selected by the prior mortgagor, and the third selected by the first two appraisers.
9. If a corporation or limited liability company holds land pending divestiture, and the holding is not otherwise governed by this section, the land must be leased to persons actually engaged in farming or ranching and a disposal may not be to a corporation or limited liability

company unless ownership by that corporation or limited liability company is authorized under this chapter.

10. The civil penalty for a violation of section 10-06.1-10 may not exceed one hundred thousand dollars.
10. 11. Any Except as provided in subsection 10, any corporation or limited liability company continuing to violate this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved or terminated by the attorney general in accordance with the laws of this state.

Approved April 11, 2007

Filed April 13, 2007

# CHAPTER 101

## HOUSE BILL NO. 1241

(Representative DeKrey)  
(Senator Nething)

### CORPORATION AND LLC LAW REVISIONS

AN ACT to create and enact section 10-19.1-00.1, a new section to chapter 10-19.1, a new subsection to section 10-19.1-48, sections 10-19.1-74.1 and 10-19.1-139.1, a new section to chapter 10-32, section 10-32-42.1, a new subsection to section 10-32-85, section 10-33-01.3, a new subsection to section 10-33-44, and sections 10-33-72.1, 10-34-02.1, 45-10.2-06.1, and 45-13-02.1 of the North Dakota Century Code, relating to business corporations, limited liability companies, nonprofit corporations, real estate investment trusts, limited partnerships, and partnerships; and to amend and reenact sections 10-19.1-01, 10-19.1-01.2, 10-19.1-10, 10-19.1-13, and 10-19.1-23, subsection 2 of section 10-19.1-39, section 10-19.1-41, subsection 3 of section 10-19.1-61, section 10-19.1-63, subsection 1 of section 10-19.1-65, subsection 6 of section 10-19.1-66, section 10-19.1-69, subsection 1 of section 10-19.1-75, subsection 1 of section 10-19.1-76.1, subsection 2 of section 10-19.1-84, section 10-19.1-87, subsection 1 of section 10-19.1-93, sections 10-19.1-96, 10-19.1-97, and 10-19.1-98, subsection 1 of section 10-19.1-99, section 10-19.1-100, subsection 1 of section 10-19.1-100.1, section 10-19.1-101, subsection 2 of section 10-19.1-102, sections 10-19.1-102.1, 10-19.1-103, and 10-19.1-104, subsection 2 of section 10-19.1-104.1, subsection 1 of section 10-19.1-110, sections 10-19.1-146, 10-19.1-147, 10-32-02, 10-32-07, 10-32-10, and 10-32-27, subsection 1 of section 10-32-37, section 10-32-43, subsection 1 of section 10-32-76, subsection 2 of section 10-32-94, section 10-32-100, subsection 1 of section 10-32-101, section 10-32-102, subsection 1 of section 10-32-103, sections 10-32-104 and 10-32-105, subsections 2 and 3 of section 10-32-106, sections 10-32-106.1 and 10-32-107, subsection 4 of section 10-32-108, sections 10-33-01, 10-33-06, 10-33-10, 10-33-34, and 10-33-73, subsection 40 of section 45-10.2-02, subsection 1 of section 45-10.2-27, section 45-10.2-81, subsection 26 of section 45-13-01, subsection 6 of section 45-13-05, subsection 24 of section 45-22-01, subsection 2 of section 45-22-22, and subsection 24 of section 45-23-01 of the North Dakota Century Code, relating to business corporations, limited liability companies, nonprofit corporations, limited partnerships, partnerships, limited liability partnerships, and limited liability limited partnerships.

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

**SECTION 1.** Section 10-19.1-00.1 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-00.1. Citation.** This chapter may be cited as the "North Dakota Business Corporation Act."

<sup>45</sup> **SECTION 2. AMENDMENT.** Section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-01. Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Acquiring organization" means the ~~corporation, foreign corporation, or domestic or foreign limited liability company organization~~ acquiring in an exchange the ~~shares ownership interests of a corporation or another foreign corporation or the membership interests of a domestic or foreign limited liability company or domestic organization participating in an exchange.~~
3. "Address" means:
  - a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location, which may not be only a post-office box; and
  - b. In any other case, the mailing address, including the zip code.
4. "Articles" means:
  - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, articles of conversion, and articles of dissolution.
  - b. In the case of a foreign corporation, the term includes all records serving a similar function required to be filed with the secretary of state or other officer of the ~~corporation's~~ state of incorporation of the foreign corporation.
5. "Authenticated electronic communication" means:
  - a. That the electronic communication is delivered:
    - (1) To the principal place of business of the corporation; or
    - (2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and

<sup>45</sup> Section 10-19.1-01 was also amended by section 3 of House Bill No. 1035, chapter 354.

- b. That the electronic communication sets forth information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.
6. "Ballot" means a written ballot or a ballot transmitted by electronic communications.
7. "Board" or "board of directors" means the board of directors of a corporation.
8. "Board member" means:
  - a. An individual serving on the board of directors in the case of a corporation; and
  - b. An individual serving on the board of governors in the case of a limited liability company.
9. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.
10. "Class", when used with reference to shares ownership interests, means a category of shares ownership interests that differs in designation or one or more rights or preferences from another category of shares ownership interests of the corporation organization.
11. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.
12. "Constituent corporation" means a corporation or a foreign corporation that:
  - a. In a merger, is either the surviving corporation or a foreign or domestic corporation that is merged into the surviving organization; or
  - b. In an exchange, is either the acquiring corporation or a foreign or domestic corporation whose shares are acquired by the acquiring organization.
13. "Constituent organization" means a corporation, foreign corporation, limited liability company, or foreign limited liability company an organization that:
  - a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
  - b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.
14. "Converted organization" means the organization into which a converting organization converts pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.

15. "Converting organization" means an organization that converts into another organization pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
16. "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
17. "Director" means a member of the board.
18. "Distribution" means a direct or indirect transfer of money or other property, other than ~~a corporation's~~ its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of ~~the corporation's~~ its shareholders in respect of ~~the corporation's~~ its shares, and may be in the form of a dividend, an interim distribution, or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of ~~the corporation's~~ its shares, or otherwise.
19. "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.
20. "Domestic organization" means an organization created under the laws of this state.
21. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
22. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that:
  - a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. May be directly reproduced in paper form by the recipient through an automated process.
23. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
24. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
25. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
  - a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-19.1-147, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.
  - b. That the secretary of state did then:

- (1) Record the actual date on which the record was filed, and if different the effective date of filing; and
  - (2) Record the record in the office of the secretary of state.
26. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.
27. "Foreign limited liability company" means a limited liability company organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.
28. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
29. "Good faith" means honesty in fact in the conduct of an act or transaction.
30. "Governing body" means for an organization that is:
- a. A corporation, its board of directors;
  - b. A limited liability company, its board of governors; or
  - c. Any other organization, the body selected by its owners that has the ultimate power to determine the policies of the organization and to control its policies.
31. "Governing statute" of an organization means:
- a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
    - (1) If a corporation, then this chapter;
    - (2) If a limited liability company, then chapter 10-32;
    - (3) If a general partnership, then chapters 45-13 through 45-21;
    - (4) If a limited partnership, then chapter 45-10.2;
    - (5) If a limited liability partnership, then chapter 45-22; and
    - (6) If a limited liability limited partnership, then chapter 45-23; and
  - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.
32. "Intentionally" means that the person referred to has a purpose to do or fail to do the act or cause the result specified or believes that the act or

failure to act, if successful, will cause that result. A person "intentionally" violates a statute:

a. If the person intentionally does the act or causes the result prohibited by the statute; or

b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

32. 33. "Legal representative" means a person empowered to act for another person, including an agent, a manager, an officer, a partner, or an associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.

33. 34. "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by chapter 10-32.

34. 35. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.

35. 36. "Notice":

a. Is given by a shareholder of a corporation to the corporation or an officer of the corporation:

(1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; or

(2) When given by a form of electronic communication consented to by the corporation to which the notice is given if by:

(a) Facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.

(b) Electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.

(c) Posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

- (d) Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
- b. Is given by a publicly held corporation to a shareholder if the notice is addressed to the shareholder or group of shareholders in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, as amended, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.
- c. Is given, in all other cases:
  - (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
  - (2) When handed to the person;
  - (3) When left at the office of the person with a clerk or other person in charge of the office:
    - (a) If there is no one in charge, when left in a conspicuous place in the office; or
    - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing there; or
  - (4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice.
    - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
    - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
      - [1] The posting; or
      - [2] The giving of the separate notice.
    - (d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person.
  - (5) When the method is fair and reasonable when all of the circumstances are considered.

d. Is given by mail when deposited in the United States mail with sufficient postage affixed.

e. Is deemed received when it is given.

36. 37. "Officer" means an individual who is eighteen years of age or more who is:

a. Elected, appointed, or otherwise designated as an officer by the board; or

b. Deemed elected as an officer pursuant to section 10-19.1-56.

37. 38. "Organization" means:

a. Whether domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or any other person subject to a governing statute; but

b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

39. "Originating records" means for an organization that is:

a. A corporation, its articles of incorporation;

b. A limited liability company, its articles of organization;

c. A limited partnership, its certificate of limited partnership;

d. A limited liability partnership, its registration; or

e. A limited liability limited partnership, its certificate of limited liability limited partnership.

38. 40. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.

39. 41. "Owners" means:

a. Shareholders in the case of a corporation; and

b. Members in the case of a limited liability company or a nonprofit corporation the holders of ownership interests in an organization.

40. 42. "Ownership interests" means for an a domestic or foreign organization that is:

a. A corporation, its shares;

b. A limited liability company, its membership interests;

c. A limited partnership, its partnership interests;

- d. A general partnership, its partnership interests;
  - e. A limited liability partnership, its partnership interests; ~~or~~
  - f. A limited liability limited partnership, its partnership interests; ~~or~~
  - g. Any other organization, its governance or transferable interests.
41. 43. "Parent" of a specified ~~corporation organization~~ means a ~~corporation, a foreign corporation, a limited liability company, or a foreign limited liability company~~ an ~~organization~~ that directly, or indirectly through related organizations, owns more than fifty percent of the voting power of the ~~shares ownership interests~~ entitled to vote for directors ~~or other members of the governing body~~ of the specified ~~corporation organization~~.
42. 44. "Principal executive office" means:
- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of a corporation has an office; or
  - b. If the corporation has no elected or appointed president, then the registered office of the corporation.
43. 45. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
44. 46. "Registered office" means the place in this state designated in a corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office.
45. 47. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the ~~shares, membership interests, or other~~ ownership interests of another organization;
  - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
  - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
46. 48. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
47. 49. "Security" has the meaning given in section 10-04-02.

48. 50. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to a corporation's articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.
49. 51. "Share" means one of the units, however designated, into which the shareholders' proprietary interests of the shareholder in a corporation are divided.
50. 52. "Shareholder" means a person registered on the books or records of a corporation or the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation.
51. 53. "Signed" means:
- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record, as provided under section 44-01-11 with the present intention to authenticate that record; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
    - (1) The record is signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the directors as required under section 10-19.1-46 or the shareholders as required under section 10-19.1-74; and
    - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.
52. 54. "Subscriber" means a person that subscribes for shares in a corporation, whether before or after incorporation.
53. 55. "Subsidiary" of a specified corporation organization means:
- a. A corporation or a foreign corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related organizations, by the specified corporation; or
  - b. A limited liability company or a foreign limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

54. 56. "Surviving corporation" means the domestic or foreign corporation resulting from a merger which:
- a. May preexist the merger; or
  - b. May be created by the merger.
55. 57. "Surviving organization" means the ~~corporation or foreign corporation or domestic or foreign limited liability company~~ organization resulting from a merger which:
- a. May preexist the merger; or
  - b. May be created by the merger.
56. 58. "Vote" includes authorization by written action.
57. 59. "Written action" means:
- a. A written record signed by all of the persons required to take the action; or
  - b. The counterparts of a written record signed by any of the persons taking the action described.
    - (1) Each counterpart constitutes the action of the person signing; and
    - (2) All the counterparts, taken together, constitute one written action by all of the persons signing the counterparts.

**SECTION 3. AMENDMENT.** Section 10-19.1-01.2 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-01.2. Knowledge and notice.**

1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:
  - a. Knows of the fact;
  - b. Has received notice of the fact as provided in subsection 35 36 of section 10-19.1-01;
  - c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or
  - d. Has notice of it under subsection 3.
3. Subject to subsection 8, a person has notice of:

- a. The intention of a corporation to dissolve, ninety days after the effective date of the filed notice of intent to dissolve;
  - b. The dissolution of a corporation, ninety days after the effective date of the filed articles of dissolution;
  - c. The conversion of a corporation, ninety days after the effective date of the filed articles of conversion; or
  - d. The merger of a corporation, ninety days after the effective date of the filed articles of merger.
4. A person notifies or gives a notification to another person by taking the steps provided in subsection 35 36 of section 10-19.1-01, whether or not the other person learns of it.
  5. A person receives a notification as provided in subsection 35 36 of section 10-19.1-01.
  6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection 35 36 of section 10-19.1-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.
    - a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
    - b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
  7. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by an officer or director is effective immediately as knowledge of, notice to, or receipt of a notification by the corporation, except in the case of a fraud on the corporation committed by or with the consent of the officer or director. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by a shareholder who is not an officer or director, is not effective as knowledge by, notice to, or receipt of a notification by the corporation.
  8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a corporation unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.

9. With respect to notice given by a form of electronic communication:
  - a. Consent by an officer or director to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the officer or director. However, no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.
  - b. An affidavit of an officer or director or an authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, *prima facie* evidence of the facts stated in the affidavit.

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

**Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A corporation incorporated under or governed by this chapter is subject to this reserved right.

<sup>46</sup> **SECTION 5. AMENDMENT.** Section 10-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **10-19.1-10. Articles.**

1. The articles of incorporation must contain:
  - a. The name of the corporation.
  - b. The address of the registered office of the corporation and the name of its registered agent at that address.
  - c. The aggregate number of shares that the corporation has authority to issue.
  - d. The name and address of each incorporator.
  - e. The effective date of incorporation if a later date than that on which the certificate of incorporation is issued by the secretary of state, which may not be later than ninety days after the date on which the certificate of incorporation is issued.
2. **The articles of incorporation may not contain;**
  - a. Any provision limiting the right of cumulative voting as guaranteed by section 6 of article XII of the Constitution of North Dakota.

<sup>46</sup> Section 10-19.1-10 was also amended by section 12 of Senate Bill No. 2153, chapter 99.

- b. Any provision authorizing the issuance of stocks or bonds in violation of section 9 of article XII of the Constitution of North Dakota.
- 3. The following provisions govern a corporation unless modified in the articles:
  - a. A corporation has general business purposes as provided in section 10-19.1-08.
  - b. A corporation has perpetual existence and certain powers as provided in section 10-19.1-26.
  - c. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-19.1-31.
  - d. A corporation must allow cumulative voting for directors as provided in section 10-19.1-39.
  - e. The affirmative vote of a majority of directors present is required for an action of the board as provided in section 10-19.1-46.
  - f. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-19.1-47.
  - g. The board may authorize the issuance of securities and rights to purchase securities as provided in subsection 1 of section 10-19.1-61.
  - h. All shares are common shares entitled to vote and are of one class and one series as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
  - i. All shares have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
  - j. L The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.
  - j. k. Subject to article XII of the Constitution of North Dakota, the board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits and determine the value of nonmonetary consideration as provided in subsection 1 of section 10-19.1-63.
  - k. l. Shares of a class or series may not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued as provided in subsection 1 of section 10-19.1-63.

- ↳ m. A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board as provided in section 10-19.1-64.
  - ↳ n. A shareholder has certain preemptive rights, unless otherwise provided by the board as provided in section 10-19.1-65.
  - ↳ o. The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except when this chapter requires the affirmative vote of:
    - (1) A plurality of the votes cast as provided in subsection 1 of section 10-19.1-39; or
    - (2) A majority of the voting power of all shares entitled to vote as provided in subsection 1 of section 10-19.1-74.
  - ↳ p. A written action of shareholders must be signed by all shareholders as provided in section 10-19.1-75.
  - ↳ q. Shares of a corporation acquired by the corporation may be reissued as provided in subsection 1 of section 10-19.1-93.
  - ↳ r. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding shares entitled to vote of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision c of subsection 3 of section 10-19.1-98.
  - ↳ s. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding participating shares of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision d of subsection 3 of section 10-19.1-98.
  - ↳ t. Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 5 of section 10-19.1-73.2.
  - ↳ u. The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval as provided in section 10-19.1-61.1.
  - ↳ v. A written action of shareholders must be signed by all shareholders as provided in section 10-19.1-75.
4. 3. The following provisions govern a corporation unless modified either in the articles or in the bylaws:
- a. A director serves for an indefinite term that expires upon the election and qualification of a successor as provided in section 10-19.1-35.
  - b. The compensation of directors is fixed by the board as provided in section 10-19.1-37.

- c. The method provided in section 10-19.1-41 or 10-19.1-41.1 must be used for removal of directors.
- d. The method provided in section 10-19.1-42 must be used for filling board vacancies.
- e. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-19.1-43.
- f. A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-19.1-43.
- g. A majority of the board is a quorum for a board meeting as provided in section 10-19.1-45.
- h. A committee must:
  - (1) Must consist of one or more persons individuals, who need not be directors, appointed by affirmative vote of a majority of the directors present as provided in subsection 2 of section 10-19.1-48; and
  - (2) May create one or more subcommittees, each consisting of one or more members of the committees and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-19.1-48.
- i. The board may establish a special litigation committee as provided in section 10-19.1-48.
- j. Unless the board determines otherwise, the officers have specified duties as provided in section 10-19.1-53.
- k. Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-19.1-59.
- l. The board corporation may establish uncertificated shares as provided in subsection 6 of section 10-19.1-66.
- m. Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions as provided in section 10-19.1-71.
- n. No fewer than ten nor more than fifty days' notice is required for a meeting of shareholders as provided in subsection 3 of section 10-19.1-73.
- o. The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting as provided in section 10-19.1-76.

- p. The board may fix a date up to fifty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting as provided in subsection 1 of section 10-19.1-73.2.
  - q. Indemnification of certain persons is required as provided in section 10-19.1-91.
  - r. The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-19.1-92.
5. 4. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board fixing a greater than majority director or shareholder vote or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:
- a. The members of the first board may be named in the articles as provided in subsection 1 of section 10-19.1-32.
  - b. A manner for increasing or decreasing the number of directors as provided in section 10-19.1-33.
  - c. Additional qualifications for directors may be imposed as provided in section 10-19.1-34.
  - d. Directors may be classified as provided in section 10-19.1-38.
  - e. The day or date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-19.1-43.
  - f. Absent directors may be permitted to give written consent or opposition to a proposal as provided in section 10-19.1-44.
  - g. A larger than majority vote may be required for board action as provided in section 10-19.1-46.
  - h. Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the president as provided in section 10-19.1-53.
  - i. Additional officers may be designated as provided in section 10-19.1-52.
  - j. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-19.1-53.
  - k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-19.1-58.
  - l. A certain officer or agent may be authorized to sign share certificates as provided in subsection 1 of section 10-19.1-66.

- m. The transfer or registration of transfer of securities may be restricted as provided in section 10-19.1-70.
  - n. The day or date, time, and place of regular shareholder meetings may be fixed as provided in subsection 3 of section 10-19.1-71.
  - o. Certain persons may be authorized to call special meetings of shareholders as provided in subsection 1 of section 10-19.1-72.
  - p. Notices of shareholder meetings may be required to contain certain information as provided in subsection 3 of section 10-19.1-73.
  - q. A larger than majority vote may be required for shareholder action as provided in section 10-19.1-74.
  - r. Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection 6 of section 10-19.1-73.2.
  - s. Corporate actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-19.1-87.
  - t. The rights and priorities of persons to receive distributions may be established as provided in section 10-19.1-92.
  - u. A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles as provided in section 10-19.1-50.
6. 5. The articles may contain other provisions not inconsistent with section 10-19.1-32 or any other provision of law relating to the management of the business or the regulation of the affairs of the corporation.
7. 6. It is not necessary to set forth in the articles any of the corporate powers granted by this chapter.
8. 7. Subsection 5 4 does not limit the right of the board, by resolution, to take an action that the bylaws may authorize under this section without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.
8. Except for provisions included pursuant to subsection 1, any provision of the articles may:
- a. Be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and
  - b. Incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the corporation, but only if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

**SECTION 6. AMENDMENT.** Section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-13. Corporate name.**

1. The corporate name:
  - a. Must be in the English language or in any other language expressed in English letters or characters.
  - b. Must contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
  - c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
  - d. May not contain a word or phrase that indicates or implies the corporation:
    - (1) Is incorporated for a purpose other than:
      - (a) A lawful business purpose for which a corporation may be incorporated under this chapter; or
      - (b) For a purpose stated in its articles of incorporation; or
    - (2) May not be incorporated under this chapter.
  - e. May not be the same as, or deceptively similar to:
    - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record that complies with subsection 3, of:
      - (a) Another corporation;
      - (b) A corporation incorporated or authorized to do business in this state under another chapter of this code;
      - (c) A limited liability company;
      - (d) A limited partnership;
      - (e) A limited liability partnership; or
      - (f) A limited liability limited partnership;
    - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
    - (3) A fictitious name registered in the manner provided in chapter 45-11; or

- (4) A trade name registered in the manner provided in chapter 47-25.
- 2. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
- 3. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:
  - a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
  - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
- 4. This subsection does not affect the right of a domestic corporation existing on July 1, 1986, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.
- 5. This section and section 10-19.1-14 do not:
  - a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;
    - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or
    - (4) Any other rights to the exclusive use of names or symbols; or
  - b. Derogate the common law or the principles of equity.
- 6. A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
  - a. Was incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to transact business or conduct activities in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

- d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25.
7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.
8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-19.1-146 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-19.1-11, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 2. A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name that complies with the provisions of this section:
- a. By refiling articles of incorporation pursuant to section 10-19.1-11;
  - b. By amending pursuant to section 10-19.1-17; or
  - c. By reinstating pursuant to section 10-19.1-146.
9. Subject to section 10-19.1-133, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the shareholders as provided in section 10-19.1-18.

**SECTION 7. AMENDMENT.** Section 10-19.1-23 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 8. AMENDMENT.** Subsection 2 of section 10-19.1-39 of the North Dakota Century Code is amended and reenacted as follows:

2. As provided in article XII of the Constitution of North Dakota Unless otherwise provided in the articles, and except as provided in subsection 4 of section 10-19.1-41, each shareholder entitled to vote for directors has the right to cumulate those votes in all elections of directors by giving written notice of intent to cumulate those votes to any officer of the corporation before the meeting, or to the presiding officer at the meeting at which the election is to occur at any time before the election of directors at the meeting, in which case:
  - a. The presiding officer at the meeting shall announce, before the election of directors, that shareholders may cumulate their votes; and
  - b. Each shareholder shall cumulate those votes either by casting for one candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes represented by the shares entitled to vote, or by distributing all of those votes on the same principle among any number of candidates.

**SECTION 9. AMENDMENT.** Section 10-19.1-41 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-41. Nonjudicial removal of directors.**

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

- outstanding shares of that class and not to the vote of the outstanding shares as a whole vote at an election of that director.
4. New directors may be elected at a meeting at which directors are In a corporation having cumulative voting, unless the entire board is removed simultaneously, a director is not removed from the board if there are cast against removal of the director the votes of a proportion of the voting power sufficient to elect the director at an election of the entire board under cumulative voting.
  5. New directors may be elected at a meeting at which directors are removed. If the corporation allows cumulative voting and if a shareholder notifies the presiding officer at any time prior to the election of new directors of interest to cumulate the votes of the shareholders, then the presiding officer shall announce before the election that cumulative voting is in effect and shareholders shall cumulate their votes as provided in subdivision b of subsection 2 of section 10-19.1-39.

**SECTION 10.** A new subsection to section 10-19.1-48 of the North Dakota Century Code is created and enacted as follows:

Unless otherwise provided in the articles, the bylaws, or the resolution of the board establishing the committee, a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to a subcommittee any or all of the authority of the committee. In this chapter, unless the language or the context clearly indicates that a different meaning is intended:

- a. Any reference to a committee is deemed to include a subcommittee; and
- b. Any reference to a committee member is deemed to include a subcommittee member.

**SECTION 11. AMENDMENT.** Subsection 3 of section 10-19.1-61 of the North Dakota Century Code is amended and reenacted as follows:

3. Subject to any restrictions in the articles, the power granted in subsection 2 may be exercised by a resolution approved by the directors as required under section 10-19.1-46 establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series established in the articles or by resolution of the directors:
  - a. May be made dependent upon facts ascertainable outside the articles or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and
  - b. May incorporate by reference any of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or

series if the corporation retains at the principal executive office, a copy of the agreements, contracts, or other arrangements or portions incorporated by reference.

**SECTION 12. AMENDMENT.** Section 10-19.1-63 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Subject to article XII of the Constitution of North Dakota, consideration for the issuance of shares may be paid, in whole or in part, in money; in other property, tangible or intangible; or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued is received by the corporation, the shares are considered fully paid and nonassessable. Neither promissory notes nor future services constitute payment or part payment for shares of a corporation.
2. Subject to any restrictions in the articles, a corporation may, without any new or additional consideration, a corporation may issue the corporation's its own shares in exchange for or in conversion of the corporation's its outstanding shares, or may, subject to authorization of share dividends, divisions, and combinations according to section 10-19.1-61.1, issue the corporation's its own shares pro rata to the corporation's shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. Shares No shares of a class or series, shares of which are then outstanding, may not shall be issued to the holders of shares of another class or series, except in exchange for or in conversion of outstanding shares of the other class or series, unless the issuance is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.
3. The determinations of the board or the shareholders as to the amount or fair value or the fairness to the corporation of the consideration received or to be received by the corporation for its shares or the terms of payment, as well as the agreement to issue shares for that consideration, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Unless otherwise required by the articles, the consideration may be less than the par value, if any, of the shares. Directors or shareholders who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving an issue of shares for a consideration that is unfair to the corporation, or overvalue property or services received or to be received by the corporation as consideration for shares issued, are jointly and severally liable to the corporation for the benefit of the then shareholders who did not consent to and are damaged by the action, to the extent of the damages of those shareholders. A director or shareholder against whom a claim is asserted pursuant to this section subsection, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors or shareholders who are liable under this section.

4. A corporation may issue only shares that are nonassessable or that are assessable but are issued with the unanimous consent of the shareholders. "Nonassessable" shares are shares for which the agreed consideration has been fully paid, delivered, or rendered to the corporation.
  - a. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without rendering the shares not fully paid and nonassessable.
  - b. If shares are issued in violation of this subsection, then the following persons are jointly and severally liable to the corporation for the difference between the agreed consideration for the shares and the consideration actually received by the corporation:
    - (1) A director or shareholder who was present and entitled to vote but who failed to vote against the issuance of the shares knowing of the violation;
    - (2) The person to whom the shares were issued; and
    - (3) A successor or transferee of the interest in the corporation of a person described in paragraph 1 or 2, including a purchaser of shares, a subsequent assignee, successor, or transferee, a pledgee, a holder of any other security interest in the assets of the corporation or shares granted by the person described in paragraph 1 or 2, or a legal representative of or for the person or estate of the person, which successor, transferee, purchaser, assignee, pledgee, holder, or representative acquired the interest knowing of the violation.
5. A pledgee or holder of any other security interest in all or any shares that have been issued in violation of subsection 4 is not liable under subdivision b of subsection 4 if all those shares are surrendered to the corporation. The surrender does not impair any rights of the pledgee or holder of any other security interest against the pledgor or person granting the security interest.
6. A pledgee, holder of any other security interest, or legal representative is liable under subdivision b of subsection 4 only in that capacity. The liability of the person under subdivision a of subsection 4 is limited to the assets held in that capacity for the person or estate of the person described in paragraph 1 or 2 of subdivision b of subsection 4.
7. Each person liable under subdivision b of subsection 4 has a full right of contribution on an equitable basis from all other persons liable under that subdivision for the same transaction.
8. An action may not be maintained against a person under subdivision b of subsection 4 unless commenced within two years from the date on which shares are issued in violation of subsection 4.

**SECTION 13. AMENDMENT.** Subsection 1 of section 10-19.1-65 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~To the extent allowed by section 9 of article XII of the Constitution of North Dakota, a shareholder of a corporation has the preemptive rights provided in this section, unless Unless denied or limited in the articles or by the board pursuant to subdivision b of subsection 2 of section 10-19.1-61, a shareholder of a corporation has the preemptive rights provided in this section.~~

**SECTION 14. AMENDMENT.** Subsection 6 of section 10-19.1-66 of the North Dakota Century Code is amended and reenacted as follows:

6. Unless uncertificated shares are prohibited by the articles or bylaws, a ~~resolution approved by the affirmative vote of a majority of the directors present corporation~~ may provide that some or all of any or all classes and series of the corporation's shares will be uncertificated shares.
  - a. The ~~resolution action by the corporation provided in this subsection~~ does not apply to shares represented by a certificate until the certificate is surrendered to the corporation.
  - b. Within a reasonable time after the issuance or transfer of uncertificated shares, the corporation shall send to the new shareholder the information required by this section to be stated on certificates.
  - c. The information required under this section is not required to be sent to the new shareholder by a publicly held corporation that adopted a system of issuance, recordation, and transfer of the corporation's shares by electronic or other means not involving the issuance of certificates if the system complies with federal law.
  - d. Except as otherwise expressly provided by statute, the rights and obligations of the holders of certificated and uncertificated shares of the same class and series are identical.

**SECTION 15. AMENDMENT.** Section 10-19.1-69 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-69. Liability of subscribers and shareholders with respect to shares.**

1. A holder of or subscriber for shares of a corporation is under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration of which such shares were issued or to be issued. As such, a shareholder is not personally liable for the acts or debts of the corporation.
2. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefore has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

3. A personal representative, conservator, guardian, trustee, assignee for the benefit of creditors, or a receiver is not personally liable to the corporation as a holder of or subscriber for shares of a corporation but the estate and funds in said person's hands are liable.
4. No pledgee or other holder of shares as collateral security is personally liable as a shareholder.

**SECTION 16.** Section 10-19.1-74.1 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-74.1. Contractual requirement to submit matter to shareholders.**

A corporation may agree to submit a matter to its shareholders whether or not the board determines, at any time after approving the matter, that the matter is no longer advisable and recommends that the shareholders reject it.

**SECTION 17. AMENDMENT.** Subsection 1 of section 10-19.1-75 of the North Dakota Century Code is amended and reenacted as follows:

1. If the articles so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the shareholders who own voting power equal to the voting power that would be required to take the same action at a meeting of the shareholders at which all shareholders were present. However, in no event may written action be taken by holders of less than a majority of the voting power of all shares entitled to vote on that action.
  - a. After the adoption of the initial articles, an amendment to the articles to permit written action to be taken by less than all shareholders requires the approval of all of the shareholders entitled to vote on the amendment.
  - b. When written action is permitted to be taken by less than all shareholders, all shareholders must be notified of its text and effective date no later than five days after the effective time of the action.
  - c. Failure to provide the notice does not invalidate the written action.
  - d. A shareholder who does not sign or consent to the written action has no liability for the action or actions taken by the written actions.

**SECTION 18. AMENDMENT.** Subsection 1 of section 10-19.1-76.1 of the North Dakota Century Code is amended and reenacted as follows:

1. Shares of a corporation registered in the name of another domestic or foreign corporation may be voted by the president or other legal representative of the domestic or foreign corporation.

**SECTION 19. AMENDMENT.** Subsection 2 of section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

2. A corporation shall keep, at its principal executive office, or, if its principal executive office is outside of this state, shall make available at its registered office within ten days after receipt by an officer of the

corporation of a written demand for them made by a person described in subsection 4 or 5, originals or copies of:

- a. Records of all proceedings of shareholders for the last three years;
- b. Records of all proceedings of the board for the last three years;
- c. Its articles and all amendments currently in effect;
- d. Its bylaws and all amendments currently in effect;
- e. Financial statements required by section 10-19.1-85 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;
- f. Reports made to shareholders generally within the last three years;
- g. A statement of the names and usual business addresses of its directors and principal officers;
- h. Voting trust agreements described in section 10-19.1-81;
- i. Shareholder control agreements described in section 10-19.1-83; and
- j. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsection 3 8 of section ~~10-19.1-64~~ 10-19.1-10.

**SECTION 20. AMENDMENT.** Section 10-19.1-87 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-87. Rights of dissenting shareholders.**

1. A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:
  - a. Unless otherwise provided in the articles, an amendment of the articles that materially and adversely affects the rights or preferences of the shares of a dissenting shareholder in that it:
    - (1) Alters or abolishes a preferential right of the shares;
    - (2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of shares;
    - (3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares;
    - (4) Excludes or limits the right of a shareholder to vote on a matter, or to accumulate votes, except as the right may be

excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights; or

- (5) Eliminates the right to obtain payment under this subdivision;
  - b. A sale, lease, transfer, or other disposition of property and assets of the corporation that requires shareholder approval under subsection 2 of section 10-19.1-104, but not including:
    - (1) A disposition in dissolution described in subsection 2 of section 10-19.1-109;
    - (2) A disposition pursuant to an order of a court; or
    - (3) A disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;
  - c. A plan of merger to which the corporation is a constituent organization, except as provided in subsection 3 and except for a plan of merger adopted under section 10-19.1-100.1;
  - d. A plan of exchange, whether under this chapter or under ~~chapter 40-32 its governing statute in the case of another organization~~, to which the corporation is a constituent organization as the corporation whose shares will be acquired by the acquiring ~~corporation organization~~, except as provided in subsection 3;
  - e. A plan of conversion adopted by a corporation; or
  - f. Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.
2. A shareholder may not assert dissenters' rights as to less than all of the shares registered in the name of the shareholder, unless the shareholder dissents with respect to all the shares that are beneficially owned by another person but registered in the name of the shareholder and discloses the name and address of each beneficial owner on whose behalf the shareholder dissents. In that event, the rights of the dissenter must be determined as if the shares as to which the shareholder has dissented and the other shares were registered in the names of different shareholders. The beneficial owner of shares who is not the shareholder may assert dissenters' rights with respect to shares held on behalf of the beneficial owner, and must be treated as a dissenting shareholder under the terms of this section and section 10-19.1-88, if the beneficial owner submits to the corporation at the time of or before the assertion of the rights a written consent of the shareholder.
  3. Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the shareholders of:

- a. The surviving corporation in a merger with respect to shares of the shareholders that are not entitled to be voted on the merger and are not canceled or exchanged in the merger; or
  - b. The corporation whose shares will be acquired by the acquiring ~~corporation organization~~ in a plan of exchange with respect to shares of the shareholders that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.
4. The shareholders of a corporation who have a right under this section to obtain payment for their shares, or who would have the right to obtain payment for their shares absent the exception set forth in subsection 6, do not have a right at law or in equity to have a corporate action described in subsection 1 set aside or rescinded, except when the corporate action is fraudulent with regard to the complaining shareholder or the corporation.
  5. If a date is fixed according to subsection 1 of section 10-19.1-73.2 for the determination of shareholders entitled to receive notice of and to vote on an action described under subsection 1, only shareholders as of the date fixed and beneficial owners as of the date fixed who hold through shareholders, as provided in subsection 2, may exercise dissenters' rights.
  6. Notwithstanding subsection 1, the right to obtain payment under this section, other than in connection with a plan of merger adopted under section 10-19.1-100, is limited in accordance with the following provisions:
    - a. The right to obtain payment under this section is not available for the holders of shares of any class or series of shares that is listed on the New York stock exchange or the American stock exchange or designated as a national market system security on ~~an interdealer quotation system by the national association of securities dealers, incorporated the nasdaq stock market~~.
    - b. The applicability of subdivision a is determined as of:
      - (1) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action described in subsection 1; or
      - (2) The day before the effective date of corporate action described in subsection 1 if there is no meeting of shareholders.
    - c. Subdivision a is not applicable, and the right to obtain payment under this section is available pursuant to subsection 1, for the holders of any class or series of shares who are required by the terms of the corporate action described in subsection 1 to accept for such shares anything other than shares, or cash in lieu of fractional shares, of any class or any series of shares of the domestic or foreign corporation, or any other proprietary ownership interest of any other entity organization, that satisfies the standards

set forth in subdivision a at the time the corporate action becomes effective.

**SECTION 21. AMENDMENT.** Subsection 1 of section 10-19.1-93 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation may acquire its own shares, subject to section 10-19.1-92.
  - a. If a corporation acquires its own shares, then any of the acquired shares that are not pledged by the corporation as security for the future payment of some or all of the purchase price for the shares constitute authorized but unissued shares of the corporation, unless the articles provide that they may not be reissued. If the articles prohibit reissue, the number of authorized shares is reduced by the number of shares acquired.
  - b. If a corporation pledges acquired shares as security for future payment of all or part of the purchase price for the shares and reissues the pledged shares in its own name, then:
    - (1) The shares must continue to be issued and outstanding except for voting and determination of a quorum, and the shares are not considered to be present and entitled to vote at any meeting of shareholders;
    - (2) The corporation may not vote or exercise any other rights of a shareholder with respect to the pledged shares, but the pledgee shall have any rights, other than the right to vote, with respect to the shares which the pledgee is entitled to by contract;
    - (3) If the pledge is foreclosed, the corporation shall reissue and deliver the pledged shares to or at the direction of the pledgee; and
    - (4) Shares that are released from a pledge have the status specified in subdivision a.

**SECTION 22. AMENDMENT.** Section 10-19.1-96 of the North Dakota Century Code is amended and reenacted as follows:

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

1. With or without a business purpose, a corporation may merge with:
  - a. Another domestic corporation under a plan of merger approved in the manner provided in sections 10-19.1-97 through 10-19.1-103.
  - b. A limited liability company under a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-106.
  - e. A foreign corporation or foreign limited liability company under a plan of merger in the manner provided in section 10-19.1-103 another domestic or foreign organization under a plan of merger approved in the manner provided in this section and in sections

10-19.1-97 through 10-19.1-103 and in the manner provided in the governing statute of the other organization.

2. With respect to an exchange:
  - a. A corporation may acquire all the ownership interests of one or more classes or series of another domestic corporation or foreign organization under a plan of exchange approved in the manner provided in this section and in sections 10-19.1-97 through 10-19.1-103 in the case of a domestic corporation and in the manner provided in the governing statute in the case of any other organization.
  - b. A corporation may acquire all the ownership interests of one or more classes or series of a limited liability company under a plan of exchange approved in the manner provided in sections 10-32-104 through 10-32-106.
  - c. A limited liability company Another domestic or foreign organization may acquire all the ownership interests shares of one or more classes or series of a corporation under a plan of exchange approved in the manner provided in this section and in sections 10-19.1-97 through 10-19.1-103 and chapter 10-32 in the case of a domestic corporation and in the manner provided in the governing statute in the case of any other organization.
  - d. A foreign corporation or foreign limited liability company may acquire all the ownership interests of one or more classes or series of a corporation under a plan of exchange approved in the manner provided in section 10-19.1-103.
3. A corporation may sell, lease, transfer, or otherwise dispose of all or substantially all of the corporation's property and assets in the manner provided in section 10-19.1-104.
4. A corporation may participate in a merger or exchange with a limited liability company only as permitted by this section and by sections 10-19.1-97 through 10-19.1-103. The dissenter's rights for shareholders of a corporation are governed by this chapter.

**SECTION 23. AMENDMENT.** Section 10-19.1-97 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A plan of merger or exchange must contain:
  - a. The name of the corporation and of each other constituent organization proposing to merge or participate in an exchange and:
    - (1) In the case of a merger, the name of the surviving organization; or
    - (2) In the case of an exchange, the name of the acquiring organization;

- b. The terms and conditions of the proposed merger or exchange;
  - c. The manner and basis for converting or exchanging ownership interests:
    - (1) In the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into securities of the surviving organization or of any other organization or, in whole or in part, into money or other property; or
    - (2) In the case of an exchange, the manner and basis of exchanging the ownership interests to be acquired for securities of the acquiring organization or any other organization or, in whole or in part, into money or other property;
  - d. In the case of a merger, a statement of any amendments to the ~~articles of incorporation or articles of organization~~ ~~originating records~~ of the surviving organization proposed as part of the merger; and
  - e. Any other provisions with respect to the proposed merger or exchange which are deemed necessary or desirable.
2. This section does not limit the power of a corporation to acquire all or part of the ownership interests of one or more classes or series of ~~another~~ ~~any other~~ organization through a negotiated agreement with the owners or otherwise.

**SECTION 24. AMENDMENT.** Section 10-19.1-98 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A resolution containing the plan of merger or exchange must be approved by the governing ~~beard~~ body as required by section 10-19.1-46 ~~in the case of a domestic corporation, or 10-32-83 by the governing statute of each other~~ constituent organization and must then be submitted at a regular or special meeting to the owners of each constituent organization, in the case of a plan of merger or the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of a plan of exchange. ~~The plan of merger or exchange may require that it be submitted to the shareholders whether or not the board determines at any time after the board's initial approval of the plan that the plan is no longer advisable and recommends that the shareholders reject it.~~ If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange under this subsection, then written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders in the case of a domestic corporation and, or in the manner provided in section 10-32-40 in the case of a limited liability company its governing statute in the case of

each other constituent organization. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.

2. At the meeting a vote of the owners must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests entitled to vote. Except as provided in subsection 3, a class or series of ~~shares~~ ownership interests of the ~~corporation~~ constituent organization is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles of incorporation, or a member-control agreement, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.
3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series ~~solely because the plan of merger or exchange affects a cancellation or exchange of ownership interests of the class or series~~ if the plan of merger or exchange affects a cancellation or exchange of all ownership interests of the constituent organization of all classes and series that are outstanding immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section 10-19.1-87, ~~or would have the right to obtain payment for their ownership interests absent the exception set forth in subsection 6 of section 10-19.1-87, in the case of a domestic corporation, or 10-32-54 under its governing statute in the case of any other organization~~ in the event of the merger or exchange.
4. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange to a vote at a meeting of owners of a surviving constituent organization is not required if:
  - a. The articles will not be amended in the transaction;
  - b. Each owner of ownership interests in the constituent organization which were outstanding immediately before the effective date of the transaction will hold the same number of ownership interests with identical rights immediately after the effective date;
  - c. The voting power of the outstanding ownership interests of the constituent organization entitled to vote immediately after the merger or exchange, plus the voting power of the ownership interests of the constituent organization entitled to vote issuable on conversion of, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than twenty percent the voting power of the outstanding ownership interests of the constituent organization entitled to vote immediately before the transaction; and
  - d. The number of participating ownership interests of the constituent organization immediately after the merger, plus the number of participating ownership interests of the constituent organization issuable on conversion of, or on the exercise of rights to purchase,

securities issued in the merger, will not exceed by more than twenty percent the number of participating ownership interests of the constituent organization immediately before the merger. "Participating ownership interests" are outstanding ownership interests of the constituent organization which entitle their owners to participate without limitation in distributions by the constituent organization.

5. If the merger or exchange is with an organization other than a domestic ~~limited liability company~~ corporation, the plan of merger or exchange must also be approved in the manner provided in ~~chapter 10-32~~ the governing statute of the other organization.

**SECTION 25. AMENDMENT.** Subsection 1 of section 10-19.1-99 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon receiving the approval required by section 10-19.1-98, articles of merger must be prepared which contain:
  - a. The plan of merger; and
  - b. A statement that the plan is approved by each constituent organization under ~~this chapter 10-19.1 or 10-32~~ under its governing statute in the case of any other organization.

**SECTION 26. AMENDMENT.** Section 10-19.1-100 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A If either the parent or the subsidiary is a domestic organization, then a parent that is a domestic or foreign organization owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary that is a domestic or foreign organization directly, or indirectly through related organizations other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger:
  - a. May merge the subsidiary into the parent or into any other subsidiary at least ninety percent of the outstanding ownership interests of each class and series of which is owned by the parent directly, or indirectly through related organizations other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, without a vote of the owners of the parent or any subsidiary; or
  - b. May merge the parent, or the parent and one or more subsidiaries into one of the subsidiaries under this section.
2. A resolution approved by the present directors of the parent as required by section 10-19.1-46 in the case of a domestic corporation or of the present governors of the parent required by section 10-32-83 by the present members of the governing body of the parent as required by its governing statute in the case of any other organization must set forth a plan of merger that contains:

- a. The name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving constituent organization;
  - b. The manner and basis of converting the ownership interests of the subsidiary or subsidiaries or the parent into securities or ownership interests of the parent, of the subsidiary, or of another organization; or, in whole or in part, into money or other property;
  - c. If the parent is a constituent organization but is not the surviving constituent organization in the merger, a provision for the pro rata issuance of ownership interests of the surviving constituent organization to the owners of ownership interests of the parent on surrender of any ownership interests of the parent; and
  - d. If the surviving constituent organization is a subsidiary, a statement of any amendments to the articles of the surviving constituent organization that will be part of the merger.
3. **If Notwithstanding subsection 1:**
    - a. If the parent is a domestic corporation and the conditions of subsection 4 of section 10-19.1-98 are not met with respect to the parent, then the resolution is not effective unless it is approved by the affirmative vote of the holders of a majority of the voting power of all shares of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98; and
    - b. If the parent is a domestic or foreign organization and is not the surviving organization in the merger, then the resolution is not effective unless it is also approved in the manner provided in the governing statute of the parent.
  4. Notwithstanding subsection 3, if the parent is a constituent organization and is the surviving organization in the merger, it may change its corporate name, without a vote of its owners, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the board members of the parent present. Upon the effective date of the merger, the name of the parent must be changed.
  4. If the parent is a constituent organization but is not the surviving constituent organization in a merger, the resolution is not effective unless the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98 if the parent is a domestic corporation, section 10-32-102 if the parent is a limited liability company, or in accordance with the laws of the jurisdiction under which the parent is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.
  5. Notice If the subsidiary is a domestic organization, then notice of the action, including a copy of the plan of merger must be given to each owner, other than the parent and any subsidiary, of each subsidiary that is a constituent organization in the merger before, or within ten days after, the effective date of the merger.

6. Articles of merger must be prepared which contain:
  - a. The plan of merger;
  - b. The number of outstanding ownership interests of each class and series of the subsidiary that is a constituent organization in the merger, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, and the number of ownership interests of each class and series owned, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, by the parent directly, or indirectly through related constituent organizations; and
  - c. A statement that the plan of merger is approved by the parent under this section.
7. The articles of merger must be signed on behalf of the parent and filed with the secretary of state, with the fees provided in section 10-19.1-147.
8. The secretary of state shall issue a certificate of merger to the surviving constituent organization or the legal representative of the surviving constituent organization's legal representative organization. The certificate must contain the effective date of the merger.
9. If all of the ownership interests of one or more domestic subsidiaries that is a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent organizations, immediately before the merger, then the owners of each domestic subsidiary which is either a limited liability company or a corporation, have dissenter's rights under section 10-19.1-87 or 10-32-54, without regard to subsection 3 of section 10-19.1-87 or subsection 2 of section 10-32-54, and under section 10-19.1-88 or 10-32-55.
  - a. If the parent is a constituent organization but is not the surviving organization in the merger, the articles of incorporation or articles of organization of the surviving organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54, and the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, then that owner of the parent has dissenter's rights as provided under section 10-19.1-87 or 10-32-54.
  - b. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this section.
10. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-19.1-97 through 10-19.1-99 instead of this section, in which case this section does not apply.

**SECTION 27. AMENDMENT.** Subsection 1 of section 10-19.1-100.1 of the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:

- a. "Holding company" means the corporation that is or becomes the direct parent of the surviving corporation of a merger accomplished under this section.
- b. "Parent constituent corporation" means the parent corporation that merges with or into the subsidiary constituent corporation.
- c. "Subsidiary constituent corporation" means the subsidiary corporation that the parent constituent corporation merges with or into in the merger.

**SECTION 28. AMENDMENT.** Section 10-19.1-101 of the North Dakota Century Code is amended and reenacted as follows:

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

1. After a plan of merger or exchange is approved by the owners entitled to vote on the approval of the plan as provided in section 10-19.1-98 and before the effective date of the plan, the plan may be abandoned:
  - a. With respect to the approval of the abandonment:
    - (1) If the owners of the ownership interests of each of the constituent organizations entitled to vote on the approval of the plan as provided in section 10-19.1-98 have approved the abandonment at a meeting by the affirmative vote of the owners of a majority of the voting power of the ownership interests entitled to vote;
    - (2) If the owners of a constituent organization are not entitled to vote on the approval of the plan under section 10-19.1-98, the governing board body of the constituent organization has approved the abandonment by the affirmative vote required by section 10-19.1-46 or 10-32-83 in the case of a domestic corporation or by its governing statute in the case of any other organization; and
    - (3) If the merger or exchange is with a foreign corporation or limited liability company organization, then if abandonment is approved in the manner as may be required by the laws of the jurisdiction under which the corporation is incorporated or the limited liability company is organized governing statute of the foreign organization;
  - b. If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or
  - c. Pursuant to subsection 2.
2. If articles of merger are not filed with the secretary of state and the plan is to be abandoned or if a plan of exchange is to be abandoned before

the effective date of the plan, then a resolution by the governing body of any constituent organization abandoning the plan of merger or exchange may be approved by the affirmative vote of the governing board body required by section 10-19.1-46 or ~~10-32-83~~ in the case of a domestic corporation or by its governing statute in the case of any other organization, subject to the contract rights of any other person under the plan.

3. If articles of merger are filed with the secretary of state, but are not yet effective, the constituent organizations, in the case of abandonment under paragraph 1 of subdivision a of subsection 1, then the constituent organization or any one of them under paragraph 2 of subdivision a of subsection 1, as the abandoning constituent organization in the case of abandonment under subsection 2, shall file with the secretary of state, with the fees provided in section 10-19.1-147, articles of abandonment that contain:
  - a. The names of the constituent organizations;
  - b. The provision of this section under which the plan is abandoned; and
  - c. The text of the resolution approved by the affirmative vote of a majority of the directors present abandoning the plan.
4. If the certificate of merger is issued, then the board governing body shall surrender the certificate to the secretary of state upon filing the articles of abandonment.

**SECTION 29. AMENDMENT.** Subsection 2 of section 10-19.1-102 of the North Dakota Century Code is amended and reenacted as follows:

2. When a merger becomes effective:
  - a. The constituent organizations become a single entity, the surviving corporation or the surviving limited liability company, as the case may be organization.
  - b. The separate existence of all constituent organizations except the surviving organization ceases.
  - c. As to any corporation that was a constituent organization and is not the surviving constituent organization, the articles of merger serve as articles of termination, and unless previously filed, the notice of dissolution.
  - d. As to rights, privileges, powers, duties, and liabilities:
    - (1) If the surviving organization is a limited liability company, the The surviving limited liability company organization has all the rights, privileges, immunities, and powers and is subject to all of the duties and liabilities of a domestic limited liability company the specified organization under its governing statute.

- (2) If the surviving organization is a corporation, the surviving corporation has all the rights, privileges, immunities, and powers and is subject to all the duties and liabilities of a corporation incorporated under this chapter.
- e. The surviving organization possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations.
- (1) All property and all debts due on any account, including subscriptions to ~~shares~~ ownership interests and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving organization without any further act or deed.
- (2) Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by the organization's current officers ~~or~~, managers, or governing body, as the case may be, or, if the organization no longer exists, by the organization's last officers ~~or~~, managers, or governing body of the organization.
- (3) The title to any real estate or any interest vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger.
- f. The surviving organization is responsible and liable for all the liabilities and obligations of each of the constituent organizations.
- (1) A claim of or against or a pending proceeding by or against a constituent organization may be prosecuted as if the merger did not take place, or the surviving organization may be substituted in the place of the constituent organization.
- (2) Neither the rights of creditors nor any liens upon the property of a constituent organization are impaired by the merger.
- g. The articles of incorporation or articles of organization, as the case may be, of the surviving organization are deemed to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

**SECTION 30. AMENDMENT.** Section 10-19.1-102.1 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-102.1. Continuance of corporate authority.** When an act or record is considered necessary or appropriate to evidence the vesting of property or other rights in the single corporation, the persons with authority to do so under the articles ~~or~~, bylaws, or member-control agreement of each constituent organization shall do the act or sign and deliver the record and for this purpose, the existence of the constituent organizations and the authority of those persons is continued.

<sup>47</sup> **SECTION 31. AMENDMENT.** Section 10-19.1-103 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A domestic corporation may merge with, including a merger pursuant to section 10-19.1-100, or participate in an exchange with a foreign corporation or foreign limited liability company organization by following the procedures set forth in this section, if:
  - a. With respect to a merger, the merger is permitted by the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized its governing statute.
  - b. With respect to an exchange, the constituent organization whose ownership interests will be acquired is a domestic corporation or limited liability company organization, regardless of whether the exchange is permitted by the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized its governing statute.
2. Each domestic corporation shall comply with the provisions of sections 10-19.1-96 through 10-19.1-103 with respect to the merger or exchange of ownership interests and each foreign corporation or foreign limited liability company organization shall comply with the applicable provisions of the laws of the jurisdiction under which it was incorporated or organized or by which it is governed its governing statute.
3. If the surviving organization in a merger will be a domestic corporation, then the organization shall comply with this chapter.
4. If the surviving organization in a merger will be a foreign corporation or foreign limited liability company organization and will transact business in this state, then the organization shall comply with the provisions of this chapter with respect to foreign corporations or chapter 10-32 with respect to foreign limited liability companies its governing statute. In every case, the surviving foreign corporation or foreign limited liability company organization shall file with the secretary of state:
  - a. An agreement that it may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign corporation or foreign limited liability company organization;
  - b. An irrevocable appointment of the secretary of state as the organization's agent of the organization to accept service of

<sup>47</sup> Section 10-19.1-103 was also amended by section 15 of Senate Bill No. 2153, chapter 99.

process in any proceeding, and an address to which process may be forwarded; and

- c. An agreement that the organization will promptly pay to the dissenting owners of ownership interests of each domestic constituent corporation and domestic constituent limited liability company organization the amount, if any, to which they are entitled under section ~~10-19.1-88 or 10-32-55~~ its governing statute.

**SECTION 32. AMENDMENT.** Section 10-19.1-104 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A corporation, by affirmative vote of a majority of the directors present upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, and without shareholder approval, may:
  - a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;
  - b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or
  - c. Transfer any or all of its property to a corporation an organization all the shares ownership interests of which are owned by the corporation.
2. With respect to shareholders' approval:
  - a. A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, when approved at a regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote.
    - (1) Written notice of the meeting must be given to all shareholders whether or not they are entitled to vote at the meeting.
    - (2) The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.
  - b. Shareholder approval is not required under subdivision a if, following the sale, lease, transfer, or other disposition of its

property and assets, the corporation retains a significant continuing business activity. The corporation will conclusively be deemed to have retained a significant continuing business activity if the corporation retains a business activity that represented at least:

- (1) Twenty-five percent of the corporation's total assets at the end of the most recently completed fiscal year; and
  - (2) Twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, measured on a consolidated basis with its subsidiaries for each of paragraphs 1 and 2.
3. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.
  4. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state. A disposition of all or substantially all of the property and assets of the corporation under this section is not considered to be a merger or a de facto merger pursuant to this chapter or otherwise. The transferee shall not be liable solely because it is deemed to be a continuation of the transferor.

**SECTION 33. AMENDMENT.** Subsection 2 of section 10-19.1-104.1 of the North Dakota Century Code is amended and reenacted as follows:

2. For the purposes of sections 10-19.1-104.1 through 10-19.1-104.6, unless the context otherwise requires:
  - a. "Act of the board" means action by the board as provided in section 10-19.1-46 whether:
    - (1) At a meeting of the board as provided in section 10-19.1-43; or
    - (2) By a written action of the board as provided in section 10-19.1-47.
  - b. "Act of the governing body" means action by the governing body of any organization, other than a domestic corporation, in the manner provided in the governing statute.
  - c. "Act of the owners" means action by the owners of an organization, other than a domestic corporation, in the manner provided in its governing statute.
  - d. "Act of the shareholders" means action by the shareholders as provided in section 10-19.1-74 whether:
    - (1) At a meeting of the shareholders as provided in sections 10-19.1-71 and 10-19.1-72; or

(2) By a written action of the shareholders as provided in section 10-19.1-75.

e. e. "Certificate of creation" means:

- (1) A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under this chapter;
- (2) A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter 10-32;
- (3) A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under chapter 45-10.2;
- (4) The filed registration of a limited liability partnership, if the converted organization is a limited liability partnership deemed to be established under chapter 45-22; or
- (5) A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.

f. f. "Date of origin" means the date on which:

- (1) A corporation which is:
  - (a) The converting organization was incorporated; or
  - (b) The converted organization is deemed to be incorporated;
- (2) A limited liability company which is:
  - (a) The converting organization was organized; or
  - (b) The converted organization is deemed to be organized;
- (3) A general partnership that is the converting organization was formed;
- (4) A limited partnership which is:
  - (a) The converting organization was formed; or
  - (b) The converted organization is deemed to be formed;
- (5) A limited liability partnership which is:
  - (a) The converting organization was formed; or
  - (b) The converted organization is deemed to be formed; and

- (6) A limited liability limited partnership which is:
- (a) The converting organization was formed; or
  - (b) The converted organization is deemed to be formed.
- e. g. "Filed registration" means the registration of a limited liability partnership which has been filed with the secretary of state.
- f. h. "General partnership" means an organization formed under chapters 45-13 through 45-21.
- g. i. "Organizational records" means for an organization which is:
- (1) A corporation, its articles of incorporation and bylaws;
  - (2) A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;
  - (3) A limited partnership, its partnership agreement;
  - (4) A limited liability partnership, its partnership agreement; or
  - (5) A limited liability limited partnership, its partnership agreement.
- h. "Originating records" means for an organization which is:
- (1) A corporation, its articles of incorporation;
  - (2) A limited liability company, its articles of organization;
  - (3) A limited partnership, its certificate of limited partnership;
  - (4) A limited liability partnership, its registration; or
  - (5) A limited liability limited partnership, its certificate of limited liability limited partnership.

**SECTION 34. AMENDMENT.** Subsection 1 of section 10-19.1-110 of the North Dakota Century Code is amended and reenacted as follows:

1. If notice to creditors and claimants is given, it must be given by:
  - a. Publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located; and
  - b. Giving written notice to known creditors and claimants pursuant to subsection 35 36 of section 10-19.1-01.

**SECTION 35.** Section 10-19.1-139.1 of the North Dakota Century Code is created and enacted as follows:

**10-19.1-139.1. Foreign corporation - Conversion of foreign corporation authorized to transact business in this state.** If a foreign corporation authorized to transact business in this state converts to another organization permitted by its governing statute, within thirty days after the conversion becomes effective, the newly created organization resulting from the conversion shall file with the secretary of state a certified statement of conversion duly authenticated by the proper officer of the jurisdiction in which the statutory conversion was effected. Any foreign organization that is the converted organization in a conversion and which will continue to transact business in this state shall obtain a certificate of authority or applicable registration in accordance with the North Dakota governing statute applicable to the converted organization.

<sup>48</sup> **SECTION 36. AMENDMENT.** Section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-146. Secretary of state - Annual report of corporations and foreign corporations - Involuntary dissolution - Revocation of certificate of authority.**

1. Each corporation and each foreign corporation authorized to transact business in this state shall file, within the time provided in subsection 3, an annual report setting forth:
  - a. The name of the corporation or foreign corporation and the state or country under the laws of which the corporation or foreign corporation is incorporated.
  - b. The address of the registered office of the corporation or foreign corporation in this state, the name of the corporation's or foreign corporation's registered agent in this state at that address, and the address of the corporation's or foreign corporation's principal executive office.
  - c. A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this state.
  - d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.
  - e. A In the case of a domestic or foreign corporation, a statement of the aggregate number of shares the corporation or foreign corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - f. A In the case of a domestic or foreign corporation, a statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

<sup>48</sup> Section 10-19.1-146 was also amended by section 25 of Senate Bill No. 2153, chapter 99.

- g. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the total gross income of the corporation for the twelve months ending on December thirty-first preceding the date provided under this section for the filing of the annual report and the gross amount accumulated by the corporation at or from places of business in this state. If, on December thirty-first preceding the time provided under this section for the filing of the report, the corporation had not been in existence for a period of twelve months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve months, the statement with respect to total gross income must be furnished for the period between the date of incorporation or the date of the corporation's authorization to transact business in this state and December thirty-first.
- h. Any additional information necessary or appropriate to enable the secretary of state to determine and assess the proper amount of fees payable by the corporation.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report except as to the information required by subdivision g of subsection 4 which must be given as of the close of business on December thirty-first next preceding the date herein provided for the filing of the report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. The annual report must be signed as provided in subsection 54-52 of section 10-19.1-01, or the articles or the bylaws or a resolution approved by the affirmative vote of the required proportion or number of the directors or holders of shares entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years. The secretary of state, or any employee or legal representative of the secretary of state, may not disclose the information reported under subdivision g of subsection 4 to any person, except a person that is verified to be a shareholder of the corporation or foreign corporation, a legal representative of the shareholder for which information is requested, or to the tax commissioner or any employee or legal representative of the tax commissioner, who may not disclose the information and may use the information only for the administration of the tax laws.
3. Except for the first annual report, the annual report must be delivered to the secretary of state:
- a. By a corporation, before August second of each year; and
  - b. By a foreign corporation, before May sixteenth of each year.

The first annual report of either a corporation or foreign corporation must be delivered before the date provided in the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state, or in the case of a corporation, in

the year following the calendar year of the effective date stated in the articles of incorporation. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this subsection, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this subsection, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.

4. The secretary of state must file the annual report if the annual report conforms to the requirements of this section and all fees have been paid as provided in section 10-19.1-147.
  - a. If the annual report does not conform, it must be returned to the corporation or foreign corporation for any necessary correction or payment.
  - b. If the annual report is corrected and filed before the date provided in subsection 3, or within thirty days after the annual report was returned by the secretary of state for correction, then the penalties provided in section 10-19.1-147 for the failure to file an annual report within the time provided do not apply.
5. The secretary of state may extend the annual report filing date provided in subsection 3 if a written application for an extension is delivered before the date provided in subsection 3. A corporation or foreign corporation ~~with a fiscal year ending within three months before the date provided in subsection 3~~ may make a written request for an extension, to apply to reports for subsequent years ~~until the fiscal year is changed~~.
6. Three months after the date provided in subsection 3, any corporation or foreign corporation failing to file its annual report is not in good standing. After the corporation or foreign corporation becomes not in good standing, the secretary of state shall notify the corporation or foreign corporation that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked as provided in subsection 7 or 8.
  - a. The secretary of state must mail the notice of impending dissolution or revocation to the last registered agent at the last registered office of record.
  - b. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the filing fee and the late filing penalty fee provided in section 10-19.1-147, then the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.
7. A corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 ceases to exist as a corporation and is considered involuntarily dissolved by operation of law.

- a. The secretary of state shall note the dissolution of the corporation's certificate of incorporation on the records of the secretary of state and shall give notice of the action to the dissolved corporation.
  - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record.
8. A foreign corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 forfeits its authority to transact business in this state.
- a. The secretary of state shall note the revocation of the foreign corporation's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign corporation.
  - b. Notice by the secretary of state must be mailed to the foreign corporation's last registered agent at the last registered office of record.
  - c. The decision by the secretary of state that a certificate of authority must be revoked under this subsection is final.
9. A corporation dissolved for failure to file an annual report, or a foreign corporation whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the filing and penalty fees for an annual report and a reinstatement fee as provided in section 10-19.1-147. The fees must be paid and an annual report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.

<sup>49</sup> **SECTION 37. AMENDMENT.** Section 10-19.1-147 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Filing articles of incorporation and issuing a certificate of incorporation, ~~thirty~~ ninety dollars.
2. Filing articles of amendment, twenty dollars.
3. Filing articles of correction, twenty dollars.
4. Filing restated articles of incorporation, thirty dollars.
5. Filing articles of conversion of a corporation, fifty dollars and:

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<sup>49</sup> Section 10-19.1-147 was also amended by section 26 of Senate Bill No. 2153, chapter 99.

- a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
  - b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
6. Filing abandonment of conversion, fifty dollars.
  7. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.
  8. Filing articles of abandonment of merger, fifty dollars.
  9. Filing an application to reserve a corporate name, ten dollars.
  10. Filing a notice of transfer of a reserved corporate name, ten dollars.
  11. Filing a cancellation of reserved corporate name, ten dollars.
  12. Filing a consent to use of name, ten dollars.
  13. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.
  14. Filing a statement of change of address of registered office by registered agent, ten dollars for each corporation affected by such change.
  15. Filing a registered agent's consent to serve in such capacity, ten dollars.
  16. Filing a resignation as registered agent, ten dollars.
  17. Filing a statement of the establishment of a series of shares, twenty dollars.
  18. Filing a statement of cancellation of shares, twenty dollars.
  19. Filing a statement of reduction of stated capital, twenty dollars.
  20. Filing a statement of intent to dissolve, ten dollars.
  21. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
  22. Filing articles of dissolution, twenty dollars.
  23. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, forty one hundred thirty-five dollars.

24. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, forty dollars.
25. Filing a certificate of fact stating a merger or consolidation of a foreign corporation holding a certificate of authority to transact business in this state, fifty dollars.
26. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
27. Filing an annual report of a corporation or foreign corporation, twenty-five dollars.
  - a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:
    - (1) Within ninety days after the date provided in subsection 3 of section 10-19.1-146, twenty dollars;
    - (2) Thereafter, sixty dollars; and
    - (3) After the involuntary dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of one hundred thirty-five dollars.
  - b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-19.1-146, or the annual report lacks sufficient payment as required by this subsection.
28. Filing any process, notice, or demand for service, twenty-five dollars.
29. Furnishing a certified copy of any record, instrument, or paper relating to a corporation, one dollar for every four pages or fraction and fifteen dollars for the certificate or affixing the seal thereto.
30. License fee of fifty dollars for the first fifty thousand dollars of a corporation's authorized shares, or fraction, and the further sum of ten dollars if paid at the time of authorization, or twelve dollars if paid after authorized shares are issued, for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of fifty thousand dollars.
  - a. A license fee is payable by a corporation at the time of:
    - (1) Filing articles of incorporation;
    - (2) Filing articles of amendment increasing the number or value of authorized shares; or
    - (3) Filing articles of merger or consolidation increasing the number or value of authorized shares a surviving or new corporation will have authority to issue above the aggregate

number or value of shares the constituent corporations had authority to issue.

- b. A license fee payable on an increase in authorized shares must be imposed only on the additional shares, but the amount of previously authorized shares must be taken into account in determining the rate applicable to the additional authorized shares.
  - c. For the purposes of this subsection, shares without par value are considered worth one dollar per share.
  - d. The minimum sum of fifty dollars must be paid for authorized shares at the time of filing articles of incorporation.
  - e. A corporation increasing authorized shares by articles of amendment or articles of merger must have previously paid for a minimum of fifty thousand dollars of authorized shares.
    - (1) Thereafter, a corporation may postpone the payment for any additional amount until the filing of an annual report after the unpaid shares are issued.
    - (2) Any additional amount must be paid in increments of ten thousand dollars of authorized shares.
  - f. The provisions of this subsection do not apply to a building and loan or savings and loan association.
31. License fee of eighty-five dollars from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state. Thereafter, the secretary of state shall fix the license fee for each foreign corporation as follows:
- a. The secretary of state shall first ascertain the license fee which a newly organized corporation would be required to pay if it had authorized shares of the same kind and amount as the issued or allotted shares of the reporting foreign corporation shown by its filed annual report.
  - b. Said amount must be multiplied by a fraction, the numerator of which must be the sum of the value of the property of the foreign corporation located in this state and the gross receipts of the foreign corporation derived from that foreign corporation's business transacted within this state, and the denominator of which must be the sum of the value of all of that foreign corporation's property wherever located and the gross receipts of the foreign corporation derived from that foreign corporation's business wherever transacted. The amounts used in determining the numerator and denominator must be determined from the foreign corporation's filed annual report.
  - c. From the product of such multiplication, there must be deducted the aggregate amount of license fee previously paid by the foreign corporation, and the remainder, if any, must be the amount of additional fee to be paid by the foreign corporation.

The secretary of state shall enter the amount of any additional license fee in the records of the foreign corporation in the secretary of state's office and shall mail a notice of the amount of additional license fee due to the foreign corporation at the foreign corporation's principal office. The additional license fee must be paid by the foreign corporation before the annual report may be filed by the secretary of state. Amounts less than five dollars are not collected.

32. Any record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.
33. 31. Filing any other statement of a corporation or foreign corporation, ten dollars.

<sup>50</sup> **SECTION 38. AMENDMENT.** Section 10-32-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Acquiring organization" means the limited liability company or domestic or foreign limited liability company, or corporation or foreign corporation organization that acquires in an exchange the shares ownership interests of a corporation or another foreign corporation the membership interests of a limited liability company or domestic organization in an exchange.
2. "Address" means:
  - a. In the case of a registered office or principal executive office, the mailing address, including a zip code, of the actual office location which may not be only a post-office box; and
  - b. In all other cases, the mailing address, including a zip code.
3. "Articles" or "articles of organization" means:
  - a. In the case of a limited liability company organized under this chapter, articles of organization, articles of amendment, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of abandonment, articles of conversion, and articles of termination.
  - b. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed with the secretary of state or other state office of the limited liability company's state of organization of the foreign limited liability company.

<sup>50</sup> Section 10-32-02 was also amended by section 4 of House Bill No. 1035, chapter 354.

4. "Authenticated electronic communication" means:
  - a. That the electronic communication is delivered:
    - (1) To the principal place of business of the limited liability company; or
    - (2) To a manager or agent of the limited liability company authorized by the limited liability company to receive the electronic communication; and
  - b. That the electronic communication sets forth information from which the limited liability company can reasonably conclude that the electronic communication was sent by the purported sender.
5. "Ballot" means a written ballot or a ballot transmitted by electronic communications.
6. "Board" or "board of governors" means the board of governors of a limited liability company.
7. "Board member" means:
  - a. An individual serving on the board of governors in the case of a limited liability company; and
  - b. An individual serving on the board of directors in the case of a corporation.
8. "Bylaws" means any rule, resolution, or other provision, regardless how designated, that:
  - a. Relates to the management of the business or the regulation of the affairs of the limited liability company; and
  - b. Was expressly part of the bylaws by the action, taken from time to time under section 10-32-68, by the board or the members.
9. "Class", when used with reference to membership interests, means a category of membership interests which differs in one or more rights or preferences from another category of membership interests of the limited liability company.
10. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.
11. "Constituent organization" means a ~~limited liability company or a domestic or foreign corporation~~ an organization that:
  - a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
  - b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.

12. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in the capacity of that member as a member.
13. "Contribution agreement" means an agreement between a person and a limited liability company under which:
  - a. The person agrees to make a contribution in the future; and
  - b. The limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.
14. "Contribution allowance agreement" means an agreement between a person and a limited liability company under which:
  - a. The person has the right, but not the obligation, to make a contribution in the future; and
  - b. The limited liability company agrees that, if the person makes the specified contribution at the time specified in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.
15. "Converted organization" means the organization resulting from a conversion under sections 10-32-108.1 through 10-32-108.6.
16. "Converting organization" means the organization that effects a conversion under sections 10-32-108.1 through 10-32-108.6.
17. "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under chapter 10-19.1.
18. "Dissolution" means that the limited liability company incurred an event under subsection 1 of section 10-32-109, subject only to sections 10-32-116 and 10-32-124, that obligates the limited liability company to wind up the limited liability company's affairs and to terminate the limited liability company's existence as a legal entity.
19. "Dissolution avoidance consent" means the consent of all remaining members:
  - a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after the occurrence of any event that terminates the continued membership of a member in the limited liability company; and
  - b. That the limited liability company must be continued as a legal entity without dissolution.
20. "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a

limited liability company to any of the limited liability company's its members in respect of its membership interests. A distribution and may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.

21. "Domestic organization" means an organization created under the laws of this state.
22. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
23. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
  - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. That may be directly reproduced in paper form by the recipient through an automated process.
24. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
25. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
26. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
  - a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-32-150, has been delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state, and has been determined by the secretary of state to conform to law.
  - b. That the secretary of state did then:
    - (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
    - (2) Record the record in the office of the secretary of state.
27. "Financial rights" means a member's rights:
  - a. To share in profits and losses as provided in section 10-32-36;
  - b. To share in distributions as provided in section 10-32-60;
  - c. To receive interim distributions as provided in section 10-32-61; and
  - d. To receive termination distributions as provided in subdivision c of subsection 1 of section 10-32-131.

28. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under chapter 10-19.1.
29. "Foreign limited liability company" means a limited liability company which is organized under or governed by laws other than the laws of this state for a purpose for which a limited liability company may be organized under this chapter.
30. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
31. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.
32. "Governance rights" means all of a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.
33. "Governing board body" means for an organization that is:
  - a. The A corporation, its board of governors in the case of a directors;
  - b. A limited liability company, its board of governors; and
  - c. The board of directors in the case of a corporation or
  - c. Any other organization, the body selected by its owners that has the ultimate power to determine the policies of the organization and to control its policies.
34. "Governing statute" of an organization means:
  - a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:
    - (1) If a corporation, then chapter 10-19.1;
    - (2) If a limited liability company, then this chapter;
    - (3) If a general partnership, then chapters 45-13 through 45-21;
    - (4) If a limited partnership, then chapter 45-10.2;
    - (5) If a limited liability partnership, then chapter 45-22; and
    - (6) If a limited liability limited partnership, then chapter 45-23; and
  - b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and which govern the internal affairs of the organization.
35. "Governor" means an individual serving on the board.

36. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute:
  - a. If the person intentionally does the act or causes the result prohibited by the statute; or
  - b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
37. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.
38. "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by this chapter.
39. "Manager" means:
  - a. An individual who is eighteen years of age or more and who is elected, appointed, or otherwise designated as a manager by the board; and
  - b. An individual considered elected as a manager pursuant to section 10-32-92.
40. "Member" means a person, with or without voting rights, reflected in the required records of a limited liability company as the owner of a membership interest in the limited liability company.
41. "Membership interest" means one of the units, however designated, into which ~~a member's~~ the proprietary interest of the members in a limited liability company is divided consisting of:
  - a. ~~A member's~~ The financial rights of a member;
  - b. ~~A member's~~ The right of a member to assign financial rights as provided in section 10-32-31;
  - c. ~~A member's~~ The governance rights of a member, if any; and
  - d. ~~A member's~~ The right of a member to assign any governance rights owned as provided in section 10-32-32.
42. "Notice":
  - a. Is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company:

- (1) When in writing and mailed or delivered to the limited liability company or the manager at the registered office or principal executive office of the limited liability company.
- (2) When given by a form of electronic communication consented to by the limited liability company or a manager to which the notice is given:
  - (a) If by facsimile communication, when directed to a telephone number at which the limited liability company or a manager has consented to receive notice;
  - (b) If by electronic mail, when directed to an electronic mail address at which the limited liability company or a manager has consented to receive notice;
  - (c) If by posting on an electronic network on which the limited liability company or a manager has consented to receive notice, together with separate notice to the limited liability company or a manager of the specific posting, upon the later of:
    - [1] The posting; or
    - [2] The giving of the separate notice; or
  - (d) If by any other form of electronic communication by which the limited liability company or a manager has consented to receive notice, when directed to the limited liability company or a manager.
- b. Is given, in all other cases:
  - (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
  - (2) When handed to the person;
  - (3) When left at the office of the person with a clerk or other person in charge of the office or:
    - (a) If there is no one in charge, when left in a conspicuous place in the office; or
    - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion who is residing there; or
  - (4) When given by a form of electronic communication consented to by the person to whom the notice is given:
    - (a) If by facsimile communication, when directed to a telephone number at which the person has consented to receive notice.

- (b) If by electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.
  - (c) If by posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
    - [1] The posting; or
    - [2] The giving of the separate notice.
  - (d) If by any other form of electronic communication by which the person has consented to receive notice when directed to the person.
- (5) When the method is fair and reasonable when all of the circumstances are considered.

- c. Is given by mail when deposited in the United States mail with sufficient postage affixed.
- d. Is deemed received when it is given.

43. "Organization" means:

- a. Whether domestic or foreign, a limited liability company, corporation, partnership, limited partnership, limited liability partnership, limited liability limited partnership, or any other person having a governing statute; but
- b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction.

44. "Originating records" means for an organization which is:

- a. A corporation, its articles of incorporation;
- b. A limited liability company, its articles of organization;
- c. A limited partnership, its certificate of limited partnership;
- d. A limited liability partnership, its registration; or
- e. A limited liability limited partnership, its certificate of limited liability limited partnership.

44. 45. "Owners" means:

- a. Members in the case of a limited liability company or a nonprofit corporation; and
- b. Shareholders in the case of a corporation the holder of ownership interests in an organization.

45. 46. "Ownership interests" means for a domestic or foreign organization that is:
- a. Membership interests in the case of a limited liability company or a nonprofit A corporation, its shares; and
  - b. Shares in the case of a corporation A limited liability company, its membership interests;
  - c. A limited partnership, its partnership interests;
  - d. A general partnership, its partnership interests;
  - e. A limited liability partnership, its partnership interests;
  - f. A limited liability limited partnership, its partnership interests; or
  - g. Any other organization, its governance or transferable interests.
46. 47. "Parent" of a specified limited liability company organization means a limited liability company, a foreign limited liability company, a corporation, or a foreign corporation an organization that directly or indirectly, through related organizations, owns more than fifty percent of the voting power of the membership ownership interests entitled to vote for governors, or other members of the governing body of the specified limited liability company organization.
47. 48. "Pertains" means a contribution "pertains":
- a. To a particular series when the contribution is made in return for a membership interest in that particular series.
  - b. To a particular class when the class has no series and the contribution is made in return for a membership interest in the class.
- A contribution that pertains to a series does not pertain to the class of which the series is a part.
48. 49. "Principal executive office" means:
- a. If the limited liability company has an elected or appointed president, an office where the elected or appointed president of the limited liability company has an office; or
  - b. If the limited liability company has no elected or appointed president, the registered office of the limited liability company.
49. 50. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
50. 51. "Registered office" means the place in this state designated in a limited liability company's articles of organization or a foreign limited liability company's certificate of authority as the registered office.

54. 52. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the ~~shares, membership interests, or other~~ ownership interests of another organization;
  - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
  - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
52. 53. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
53. 54. "Required records" are those records required to be maintained under section 10-32-51.
54. 55. "Security" has the meaning given in section 10-04-02.
55. 56. "Series" means a category of membership interests, within a class of membership interests, that has some of the same rights and preferences as other membership interests within the same class, but that differ in one or more rights and preferences from another category of membership interests within that class.
56. 57. "Signed" means:
- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record, as provided under section 41-01-11 with the present intention to authenticate that record.
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
    - (1) The record has been signed by a person authorized to do so by this chapter, the articles of organization, a member-control agreement, or the bylaws or a resolution approved by the governors as required by section 10-32-83 or the members as required by section 10-32-42; and
    - (2) The signature and the record are communicated by a method or medium acceptable by the secretary of state.
57. 58. "Subsidiary" of a specified limited liability company organization means:

- a. A limited liability company or a foreign limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly through related organizations by the specified limited liability company; or
  - b. A domestic corporation or a foreign corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly through related organizations by the specified limited liability company an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.
58. 59. "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under subsection 6 of section 10-32-119, continues the business of the dissolved and terminated limited liability company.
59. 60. "Surviving organization" means the limited liability company or foreign limited liability company or domestic or foreign corporation organization resulting from a merger which:
- a. May preexist the merger; or
  - b. May be created by the merger.
60. 61. "Termination" means the end of the existence of a limited liability company's existence company as a legal entity and occurs when a notice of termination is:
- a. Filed with the secretary of state under section 10-32-117 together with the fees provided in section 10-32-150; or
  - b. Considered filed with the secretary of state under subdivision c of subsection 2 of section 10-32-106 together with the fees provided in section 10-32-150.
64. 62. "Vote" includes authorization by written action.
62. 63. "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on business, except to the extent necessary for concluding affairs, and disposing of assets under section 10-32-131.
63. 64. "Written action" means:
- a. A written record signed by every person required to take the action described; and
  - b. The counterparts of a written record signed by any person taking the action described.
    - (1) Each counterpart constitutes the action of the persons signing it; and

- (2) All the counterparts, taken together, constitute one written action by all of the persons signing them.

**SECTION 39.** A new section to chapter 10-32 of the North Dakota Century Code is created and enacted as follows:

**Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A limited liability company organized under or governed by this chapter is subject to this reserved right.

<sup>51</sup> **SECTION 40. AMENDMENT.** Section 10-32-07 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The articles of organization must contain:
  - a. The name of the limited liability company;
  - b. The address of the registered office of the limited liability company and the name of the limited liability company's registered agent at that address;
  - c. The name and address of each organizer;
  - d. The effective date of organization:
    - (1) If a later date than that on which the certificate of organization is issued by the secretary of state; and
    - (2) Which may not be later than ninety days after the date on which the certificate of organization is issued; and
  - e. If the articles of organization are filed with the secretary of state:
    - (1) Before July 1, 1999, a statement stating in years that the period of existence for the limited liability company must be a period of thirty years from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly authorize a shorter or longer period of duration, which may be perpetual.
    - (2) After June 30, 1999, a statement stating in years the period of existence of the limited liability company, if other than perpetual.
2. The following provisions govern a limited liability company unless modified in the articles of organization or a member-control agreement under section 10-32-50:

<sup>51</sup> Section 10-32-07 was also amended by section 27 of Senate Bill No. 2153, chapter 99.

- a. A limited liability company has general business purposes as provided in section 10-32-04;
- b. A limited liability company has certain powers as provided in section 10-32-23;
- c. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in subsection 2 of section 10-32-68;
- d. A limited liability company must allow cumulative voting for governors as provided in section 10-32-76;
- e. The affirmative vote of the greater of a majority of governors present or a majority of the minimum number of governors constituting a quorum is required for an action of the board as provided in section 10-32-83;
- f. A written action by the board taken without a meeting must be signed by all governors as provided in section 10-32-84;
- g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements as provided in subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59;
- h. All membership interests are ordinary membership interests entitled to vote and are of one class with no series as provided in subdivisions a and b of subsection 5 of section 10-32-56;
- i. All membership interests have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivision b of subsection 5 of section 10-32-56;
- j. The value of previous contributions must be restated when a new contribution is accepted as provided in subsections 3 and 4 of section 10-32-57;
- k. A member has certain preemptive rights, unless otherwise provided by the board as provided in section 10-32-37;
- l. The affirmative vote of the greater of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting or a majority of the voting power of the membership interests with voting rights constituting the minimum voting power needed for a quorum for the transaction of business is required for an action of the members, except when this chapter requires the affirmative vote of:
  - (1) A plurality of the votes cast as provided in subsection 1 of section 10-32-76; or
  - (2) A majority of the voting power of all membership interests entitled to vote as provided in subsection 1 of section 10-32-42;

- m. The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members as provided in section 10-32-40.1;
  - n. Members share in distributions in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-60;
  - o. Members share profits and losses in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-36;
  - p. A written action by the members taken without a meeting must be signed by all members as provided in section 10-32-43;
  - q. Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind as provided in section 10-32-62;
  - r. A member is not subject to expulsion as provided in subsection 2 of section 10-32-30;
  - s. Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32;
  - t. For a limited liability company whose existence begins before July 1, 1999, unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109;
  - u. The termination of a person's membership interest has specified consequences as provided in section 10-32-30; and
  - v. Restrictions apply to the assignment of governance rights as provided in section 10-32-32.
3. The following provisions govern a limited liability company unless modified in the articles of organization, a member-control agreement under section 10-32-50, or in the bylaws:
- a. Governors serve for an indefinite term that expires at the next regular meeting of members as provided in section 10-32-72;
  - b. The compensation of governors is fixed by the board as provided in section 10-32-74;
  - c. A certain method must be used for removal of governors as provided in section 10-32-78;
  - d. A certain method must be used for filling board vacancies as provided in section 10-32-79;
  - e. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-32-80;

- f. The notice of a board meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-32-80;
- g. A majority of the board is a quorum for a board meeting as provided in section 10-32-82;
- h. A committee consists:
  - (1) Must consist of one or more individuals, who need not be governors, appointed by affirmative vote of a majority of the governors present as provided in subsection 2 of section 10-32-85; and
  - (2) A committee may create one or more subcommittees, each consisting of one or more members of the committees and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-32-85;
- i. The board may establish a special litigation committee as provided in section 10-32-85;
- j. The president and treasurer have specified duties, until the board determines otherwise as provided in section 10-32-89;
- k. Managers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-32-95;
- l. Regular meetings of members need not be held, unless demanded by a member under certain conditions as provided in section 10-32-38;
- m. In all instances when a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members as provided in subsection 2 of section 10-32-40;
- n. For a quorum at a members' meeting, there is required a majority of the voting power of the membership interests entitled to vote at the meeting as provided in section 10-32-44;
- o. The board may fix a date up to fifty days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-32-40.1;
- p. Indemnification of certain persons is required as provided in section 10-32-99;
- q. The board may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-32-64; and

- r. Members have no right to interim distributions except as provided through the bylaws or an act of the board as provided in section 10-32-61.
4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of organization or a member-control agreement under section 10-32-50. The provisions in subdivisions b through f, h, i, j, k, l, m, n, and q may be included in the articles of organization, in a member-control agreement under section 10-32-50, or, in the bylaws:
- a. The persons to serve as the first board may be named in the articles of organization as provided in subsection 1 of section 10-32-69;
  - b. A manner for increasing or decreasing the number of governors may be provided as provided in section 10-32-70;
  - c. Additional qualifications for governors may be imposed as provided in section 10-32-71;
  - d. Governors may be classified as provided in section 10-32-75;
  - e. The date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-32-80;
  - f. Absent governors may be permitted to give written consent or opposition to a proposal as provided in section 10-32-81;
  - g. A larger than majority vote may be required for board action as provided in section 10-32-83;
  - h. Authority to sign and deliver certain records may be delegated to a manager or agent of the limited liability company other than the president as provided in section 10-32-89;
  - i. Additional managers may be designated as provided in section 10-32-88;
  - j. Additional powers, rights, duties, and responsibilities may be given to managers as provided in section 10-32-89;
  - k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-32-94;
  - l. The date, time, and place of regular member meetings may be fixed as provided in subsection 3 of section 10-32-38;
  - m. Certain persons may be authorized to call special meetings of members as provided in subsection 1 of section 10-32-39;
  - n. Notices of member meetings may be required to contain certain information as provided in subsection 3 of section 10-32-40;
  - o. A larger than majority vote may be required for member action as provided in section 10-32-42;

- p. Voting rights may be granted in or pursuant to the articles of organization to persons who are not members as provided in subsection 3 of section 10-32-40.1;
  - q. Limited liability company actions giving rise to dissenters' rights may be designated as provided in subdivision d of subsection 1 of section 10-32-55; and
  - r. A governor's personal liability to the limited liability company or the limited liability company's members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles as provided in subsection 4 of section 10-32-86.
5. Subsection 4 does not limit the right of the board, by resolution, to take an action the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter. The articles of organization may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the limited liability company.
6. The It is not necessary to set forth in the articles of organization may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs any of the limited liability company powers granted by this chapter.
7. It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by Subsection 4 does not limit the right of the board by resolution to take an action the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.
8. Except for provisions included pursuant to subsection 1, any provision of the articles may:
  - a. Be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and
  - b. Incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the limited liability company, but only if the limited liability company retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

**SECTION 41. AMENDMENT.** Section 10-32-10 of the North Dakota Century Code is amended and reenacted as follows:

#### **10-32-10. Limited liability company name.**

1. The limited liability company name:
  - a. Must be in the English language or in any other language expressed in English letters or characters;

- b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state;
- c. May not contain the word "corporation", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words;
- d. May not contain a word or phrase that indicates or implies that the limited liability company:
  - (1) Is organized for a purpose other than:
    - (a) A lawful business purpose for which a limited liability company may be organized under this chapter; or
    - (b) For a purpose stated in its articles of organization; or
  - (2) May not be organized under this chapter; and
- e. May not be the same as, or deceptively similar to:
  - (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record which complies with subsection 3, of:
    - (a) Another limited liability company;
    - (b) A corporation;
    - (c) A limited partnership;
    - (d) A limited liability partnership; or
    - (e) A limited liability limited partnership;
  - (2) A name, the right of which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; or
  - (4) A trade name registered in the manner provided in chapter 47-25.
- 2. The secretary of state shall determine whether a limited liability company name is deceptively similar to another name for purposes of this chapter.
- 3. If the secretary of state determines that a limited liability company name is deceptively similar to another name for purposes of this chapter, then the limited liability company name may not be used unless there is filed with the articles:

- a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or
  - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
4. This section and section 10-32-11 do not:
    - a. Abrogate or limit:
      - (1) The law of unfair competition or unfair practices;
      - (2) Chapter 47-25;
      - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or
      - (4) Any other rights to the exclusive use of names or symbols.
    - b. Derogate the common law or the principles of equity.
  5. A domestic or foreign limited liability company that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the organization whose name is sought to be used:
    - a. Was organized, incorporated, formed, or registered under the laws of this state;
    - b. Is authorized to transact business or conduct activities in this state;
    - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
    - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
    - e. Holds a trade name registered in the manner provided in chapter 47-25.
  6. The use of a name by a limited liability company in violation of this section does not affect or vitiate its limited liability company existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability company from doing business under a name assumed in violation of this section, although its articles of organization may have been filed with the secretary of state and a certificate of organization issued.

7. A limited liability company whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-32-149 may reacquire the right to use that name by refiling articles of organization pursuant to section 10-32-20, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A limited liability company that cannot reacquire the use of its limited liability company name shall adopt a new limited liability company name which complies with the provisions of this section:
  - a. By refiling the articles of organization pursuant to section 10-32-07;
  - b. By amending pursuant to section 10-32-18; or
  - c. By reinstating pursuant to section 10-32-149.
8. Subject to section 10-32-136, this section applies to any foreign limited liability company transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
9. An amendment that only changes the name of the limited liability company may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the members as provided in section 10-32-15.

**SECTION 42. AMENDMENT.** Section 10-32-27 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-27. Transaction of business outside North Dakota.** By enacting this chapter the legislative assembly recognizes the limited liability company as an important and constructive form of business organization. The legislative assembly understands that:

1. Businesses organized under or governed by this chapter will often transact business in other states;
2. For businesses organized under or governed by this chapter to function effectively and for this chapter to be a useful enactment, this chapter must be accorded the same comity and full faith and credit that states typically accord to each other's corporate laws; and
3. Specifically, it is essential that other states recognize both the legal existence of limited liability companies formed organized under or governed by this chapter and the legal status of all members of these limited liability companies.

The legislative assembly therefore specifically seeks that, subject to any reasonable registration requirements, other states extend to this chapter the same full faith and credit under section 1 of article IV of the Constitution of the United States, and the same comity, that North Dakota extends to statutes that other states enact to provide for the establishment and operation of business organizations.

**SECTION 43. AMENDMENT.** Subsection 1 of section 10-32-37 of the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 44.** Section 10-32-42.1 of the North Dakota Century Code is created and enacted as follows:

**10-32-42.1. Contractual requirement to submit matter to members.** A limited liability company may agree to submit a matter to its members whether or not the board determines, at any time after approving the matter, that the matter is no longer advisable and recommends that the members reject it.

**SECTION 45. AMENDMENT.** Section 10-32-43 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-43. Action Member action without a meeting by the members.** An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the members entitled to vote on that action.

1. If the articles or a member-control agreement so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.
  - a. However, in no event may written action be taken by members holding less than a majority of the voting power of all membership interests entitled to vote on the action.
  - b. After the adoption of the initial articles or the first making of a member-control agreement, an amendment to the articles or to a member-control agreement to permit written action to be taken by less than all members requires the approval of all the members entitled to vote on the amendment.
2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required members, unless a different effective time is provided in the written action.
  - a. When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date.
  - b. Failure to provide the notice does not invalidate the written action.
  - c. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.
3. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the managers signing the certificate must so indicate if the action was taken under this section.

**SECTION 46. AMENDMENT.** Subsection 1 of section 10-32-76 of the North Dakota Century Code is amended and reenacted as follows:

1. Unless otherwise provided in the articles or a member-control agreement and subject to subsection 2, governors are elected by a plurality of the voting power of the membership interests present and entitled to vote on the election of governors at a meeting at which a quorum is present.

**SECTION 47.** A new subsection to section 10-32-85 of the North Dakota Century Code is created and enacted as follows:

Unless otherwise provided in the articles, the bylaws, or the resolution of the board establishing the committee, a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to a subcommittee any or all of the authority of the committee. In this chapter, unless the language or the context clearly indicates that a different meaning is intended:

- a. Any reference to a committee is deemed to include a subcommittee; and
- b. Any reference to a committee member is deemed to include a subcommittee member.

**SECTION 48. AMENDMENT.** Subsection 2 of section 10-32-94 of the North Dakota Century Code is amended and reenacted as follows:

2. Except as otherwise provided in the articles or, the bylaws, or a member-control agreement, a manager may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the governors present, subject to the provisions of a member control agreement. The removal The articles of organization, the bylaws, or a member-control agreement may provide other manners of removing a manager. Removal is without prejudice to any contractual rights of the officer manager.

**SECTION 49. AMENDMENT.** Section 10-32-100 of the North Dakota Century Code is amended and reenacted as follows:

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

1. With or without a business purpose, a limited liability company may merge:
  - a. With another limited liability company pursuant to a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-106.
  - b. With a corporation under a plan of merger approved in the manner provided in sections 10-32-104 through 10-32-107 and in chapter 10-19.1.
  - c. With any foreign corporation or foreign limited liability company pursuant to a plan of merger approved in the manner provided in section 10-32-107 with another domestic or foreign organization

under a plan of merger approved in the manner provided in this section and sections 10-32-101 through 10-32-106 and in the manner provided in its governing statutes in the case of any other organization.

2. With respect to an exchange:
  - a. A limited liability company may acquire all of the ownership interests of one or more classes or series of another limited liability company domestic or foreign organization pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106 in the case of a domestic limited liability company and in the manner provided in its governing statutes in the case of any other organization.
  - b. A limited liability company may acquire all of the ownership interests of one or more classes or series of a corporation pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.
  - c. A corporation Another domestic or foreign organization may acquire all of the ownership membership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in this section and in sections 10-32-101 through 10-32-106 10-32-107 and in chapter 10-19.1 the manner provided in its governing statute in the case of any other organization.
  - d. A foreign corporation or foreign limited liability company may acquire all of the ownership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in section 10-32-107.
3. A limited liability company may sell, lease, transfer, or otherwise dispose of all or substantially all of the limited liability company's property and assets in the manner provided in section 10-32-108.
4. A limited liability company may participate in a merger or exchange only as permitted by this section and sections 10-32-101 through 10-32-107.

**SECTION 50. AMENDMENT.** Subsection 1 of section 10-32-101 of the North Dakota Century Code is amended and reenacted as follows:

1. A plan of merger or exchange must contain:
  - a. The name of the limited liability company and of each other constituent organization proposing to merge or participate in an exchange, and:
    - (1) In the case of a merger, the name of the surviving organization, which may be the limited liability company or the other constituent organization; or
    - (2) In the case of an exchange, the name of the acquiring organization;

- b. The terms and conditions of the proposed merger or exchange;
- c. The manner and basis for converting or exchanging ownership interests:
  - (1) In the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into securities of the surviving organization or of any other organization or, in whole or in part, into money or other property; or
  - (2) In the case of an exchange, the manner and basis of exchanging the ownership interests to be acquired for securities of the acquiring organization or any other organization or, in whole or in part, for money or other property;
- d. In the case of a merger, a statement of any amendments to the articles of ~~organization or articles of incorporation, as the case may be,~~ of the surviving organization proposed as part of the merger; and
- e. Any other provisions with respect to the proposed merger that are considered necessary or desirable.

**SECTION 51. AMENDMENT.** Section 10-32-102 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A resolution containing the plan of merger or exchange must be approved by the governing ~~board body~~ as required by section ~~10-19.1-46 or 10-32-83 in the case of a domestic limited liability company or by its governing statute in the case of each constituent any other organization and must then be submitted at a regular or special meeting to the owners of each constituent organization in the case of a plan of merger; and the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of an exchange. The plan of merger or exchange may require that it be submitted to the owners whether or not the governing board determines at any time after the governing board's initial approval of the plan that the plan is no longer advisable and recommends that the owners reject it. If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange pursuant to this subsection, then written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders in the case of a corporation and in the manner provided in section 10-32-40 for notice of meetings of members in the case of a limited liability company, or in the manner provided in its governing statute for any other organization. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.~~

2. At the meeting, a vote of the owners must be taken on the proposed plan. The plan of merger is adopted when approved by the affirmative vote of the owners of a majority of the voting power of all ownership interests entitled to vote as required by section 10-19.1-74 or 10-32-42 in the case of a domestic limited liability company, or in the manner provided in its governing statute in the case of any other organization. Except as provided in subsection 3 or a member-control agreement, a class or series of ownership interests of the constituent organization is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles of organization or a member-control agreement, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.
3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series solely because the plan of merger or exchange effects a cancellation or exchange of the ownership interests of the class or series if the plan of merger or exchange effects a cancellation or exchange of all ownership interests of the constituent organization of all classes and series that are existing immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section 10-19.1-87 or 10-32-55; as in the case of a domestic limited liability company, or in the manner provided in the governing statute in the case may be of any other organization, in the event of the merger or exchange.
4. Notwithstanding subsections 1 and 2, submission of a plan of merger to a vote at a meeting of owners of a surviving constituent organization is not required if:
  - a. The articles will not be amended in the transaction;
  - b. Each owner of ownership interests in the constituent organization which were outstanding immediately before the effective time date of the transaction will hold the same number of ownership interests with identical rights immediately after that time date;
  - c. The voting power of the outstanding ownership interests of the constituent organization entitled to vote immediately after the merger, plus the voting power of the outstanding ownership interests of the constituent organization entitled to vote issuable on conversion of or on the exercise of rights to purchase securities issued in the transaction, will not exceed by more than twenty percent the voting power of the outstanding ownership interests of the constituent organization entitled to vote immediately before the transaction; and
  - d. The number of participating ownership interests of the constituent organization immediately after the merger, plus the number of participating ownership interests of the constituent organization issuable on conversion, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than twenty percent the number of participating ownership interests of the constituent organization immediately before the transaction. "Participating ownership interests" are outstanding ownership

interests of the constituent organization which entitle the ownership interests owners to participate without limitation in distributions by the constituent organization.

5. If the merger or exchange is with a corporation an organization other than a limited liability company, then the plan of merger or exchange must also be approved in the manner provided in chapter 10-19.1 its governing statute.

**SECTION 52. AMENDMENT.** Subsection 1 of section 10-32-103 of the North Dakota Century Code is amended and reenacted as follows:

1. Upon receiving the approval required by section 10-32-102, articles of merger must be prepared which contain:
  - a. The plan of merger; and
  - b. A statement that the plan has been approved by each constituent organization pursuant to chapter 10-19.1 or in the manner provided in this chapter in the case of a domestic limited liability company, or in the manner provided in its governing statute in the case of any other organization.

**SECTION 53. AMENDMENT.** Section 10-32-104 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If either the parent or the subsidiary is a domestic organization, then a parent that is a domestic or foreign organization owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary that is a domestic or foreign organization directly, or indirectly through related organizations other than classes or series that absent this section would otherwise not be entitled to vote on the merger:
  - a. May merge the subsidiary into the parent, or may merge the subsidiary into any other subsidiary at least ninety percent of the outstanding ownership interest of each class and series of which is owned by the parent directly or indirectly through related organizations other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, without a vote of the owners of the parent or any subsidiary; or
  - b. May merge the parent, or the parent and one or more subsidiaries, into one of the subsidiaries under this section.
2. A resolution approved by the directors of the parent as required by section 10-19.1-46 or by the governors of the parent present as required by section 10-32-83 in the case of a domestic limited liability company, or by the present members of the governing body of the parent as required by its governing statute in the case of any other organization must set forth a plan of merger which contains:
  - a. The name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving constituent organization;

- b. The manner and basis of converting the ownership interests of the subsidiary into ownership interests of the parent, the subsidiary, or of another organization or, in whole or in part, into money or other property;
  - c. If the parent is a constituent organization but is not the surviving constituent organization in the merger, then a provision for the pro rata issuance of ownership interests of the surviving constituent organization to the owners of ownership interests of the parent on surrender of any ownership interests of the parent; and
  - d. If the surviving constituent organization is a subsidiary, then a statement of any amendments to the articles of the surviving constituent organization that will be part of the merger.
3. **# Notwithstanding subsection 1:**
- a. If the parent is a domestic limited liability company and the conditions of subsection 4 of section 10-32-102 are not met with respect to the parent, then the resolution is not effective unless it is approved by the affirmative vote of the holders of a majority of the voting power of all membership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-32-102; and
  - b. If the parent is a domestic or foreign organization and is not the surviving organization in the merger, then the resolution is not effective unless it is approved in accordance with the governing statute of the parent.
4. Notwithstanding subsection 3, if the parent is a constituent organization and is the surviving organization in the merger, it may change its limited liability company name, without a vote of its owners, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of the board members of the parent present. Upon the effective date of the merger, the name of the parent must be changed.
4. If the parent is a constituent organization but is not the surviving constituent organization in a merger, the resolution is not effective unless the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19-1-98 if the parent is a corporation, section 10-32-102 if the parent is a limited liability company, or in accordance with the laws of the jurisdiction under which the parent is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.
5. Notice If the subsidiary is a domestic organization, then notice of the action, including a copy of the plan of merger must be given to each owner, other than the parent, of each subsidiary that is a constituent organization to the merger before, or within ten days after, the effective date of the merger.
6. Articles of merger must be prepared which contain:

- a. The plan of merger;
  - b. The number of outstanding ownership interests of each class and series of the subsidiary that is a constituent organization in the merger, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, and the number of ownership interests of each class and series of the subsidiary or subsidiaries, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, owned by the parent directly or indirectly, through related constituent organizations; and
  - c. A statement that the plan of merger has been approved by the parent under this section.
7. The articles of merger must be signed on behalf of the parent and filed with the secretary of state, together with the fees provided in section 10-32-150.
  8. The secretary of state shall issue a certificate of merger to the surviving constituent organization in the merger or the surviving constituent organization's legal representative. The certificate must contain the effective date of merger.
  9. If all of the ownership interests of one or more domestic subsidiaries that are a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent organizations, immediately before the merger, then the owners of each domestic subsidiary which is either a domestic corporation or a domestic limited liability company have dissenters' rights under section 10-19.1-87 or under section 10-32-54, without regard to subsection 3 of section 10-19.1-88 or to subsection 2 of section 10-32-54, and under section 10-19.1-88 or 10-32-55.
    - a. If the parent is a constituent organization but is not the surviving constituent organization in the merger, and the articles of incorporation or articles of organization of the surviving constituent organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenters' rights under subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54 if the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, then that owner of the parent has dissenters' rights as provided under section 10-19.1-87 or under section 10-32-54.
    - b. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this section.
  10. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-32-101 through 10-32-103 instead of this section, in which case this section does not apply.

**SECTION 54. AMENDMENT.** Section 10-32-105 of the North Dakota Century Code is amended and reenacted as follows:

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

1. After a plan of merger is approved by the owners entitled to vote on the approval of the plan as provided in section 10-32-102, and before the effective date of the plan, the plan of merger may be abandoned:
  - a. With respect to approval of the abandonment:
    - (1) If the owners of ownership interests of each of the constituent organizations entitled to vote on the approval of the plan as provided in section 10-32-102 have approved the abandonment at a meeting by the owners of a majority of the voting power of the ownership interests entitled to vote as required by section 10-19.1-74 or 10-32-42 in the case of a domestic limited liability company, or by its governing statute in the case of any other organization;
    - (2) If the owners of a constituent organization are not entitled to vote on the approval of the plan under section 10-32-102, then if the governing board body of that constituent organization has approved the abandonment by the board as required by section 10-19.1-46 or 10-32-83 in the case of a domestic limited liability company, or by its governing statute in the case of any other organization; and
    - (3) If the merger or exchange is with a foreign corporation or foreign limited liability company organization, then if abandonment is approved in the manner required by the laws of the jurisdiction under which the corporation is incorporated or the limited liability company is organized provided in its governing statute;
  - b. If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or
  - c. Pursuant to subsection 2.
2. If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned before the effective date of the plan, then a resolution by the governing board body of any constituent organization abandoning the plan of merger or exchange may be approved by the board governing body as required by section 10-19.1-46 or 10-32-83 in the case of a domestic limited liability company, or by its governing statute in the case of any other organization subject to the contract rights of any other person under the plan.
3. If articles of merger have been filed with the secretary of state, but have not yet become effective, the constituent organizations, in the case of abandonment under subdivision a of subsection 1, then the constituent organizations or any one constituent organization, in the case of abandonment under subdivision b of subsection 1, or the abandoning constituent organization in the case of abandonment under

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

- a. The names of the constituent organizations;
  - b. The provision of this section under which the plan is abandoned; and
  - c. The text of the resolution abandoning the plan.
4. If the certificate of merger has been issued, then the governing board body shall surrender the certificate to the secretary of state upon filing the articles of abandonment.

**SECTION 55. AMENDMENT.** Subsections 2 and 3 of section 10-32-106 of the North Dakota Century Code are amended and reenacted as follows:

2. When a merger becomes effective:
  - a. The constituent organizations become a single entity, the surviving corporation, or surviving limited liability company organization;
  - b. The separate existence of all constituent organizations except the surviving constituent organization ceases;
  - c. As to any limited liability company that was a constituent organization and is not the surviving constituent organization, the articles of merger serve as the articles of termination and, unless previously filed, the notice of dissolution;
  - d. As to rights, privileges, immunities, powers, duties, and liabilities:
    - (1) If the surviving organization is a limited liability company, the The surviving limited liability company organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a limited liability company organized under this chapter; and
    - (2) If the surviving organization is a corporation, the surviving corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a corporation the specified organization under its governing statute;
  - e. The surviving constituent organization, whether a limited liability company or a domestic or foreign corporation, possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations.
    - (1) All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares ownership interests and contribution agreements, as the case may be, and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving constituent organization without any further act or deed.

- (2) Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by its current officers or, managers, as the case may be or governing body, or, if the organization no longer exists, by its last officers or, managers, as the case may be or governing body.
  - (3) The title to any real estate or any interest in real estate vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger;
- f. The surviving constituent organization is responsible and liable for all the liabilities and obligations of each of the constituent organizations.
- (1) A claim of or against or a pending proceeding by or against a constituent organization may be prosecuted as if the merger had not taken place, or the surviving organization may be substituted in the place of the constituent organization.
  - (2) Neither the rights of creditors nor any liens upon the property of a constituent organization are impaired by the merger; and
- g. The articles of organization or articles of incorporation, as the case may be, of the surviving organization are considered to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.
3. When a merger becomes effective, the ownership interests to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are considered to be exchanged in the case of an exchange. The owners of those ownership interests are entitled only to the securities, money, or other property into which those ownership interests have been converted or for which those ownership interests have been exchanged in accordance with the plan, subject to any dissenters' rights under section 10-19.1-87 or 10-32-54, as the case may be.

**SECTION 56. AMENDMENT.** Section 10-32-106.1 of the North Dakota Century Code is amended and reenacted as follows:

**10-32-106.1. Continuance of limited liability company authority.** When an act or record is considered necessary or appropriate to evidence the vesting of property or other rights in the single limited liability company, the persons with authority to do so under the articles or, bylaws, or member-control agreement of each constituent organization shall do the act or sign and deliver the record and for this purpose, the existence of the constituent organizations and the authority of those persons are continued.

<sup>52</sup> **SECTION 57. AMENDMENT.** Section 10-32-107 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A limited liability company may merge with, including a merger pursuant to section 10-32-104, or participate in an exchange with a foreign corporation or a foreign limited liability company organization by following the procedures set forth in this section, if:
  - a. With respect to a merger, the merger is permitted by the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized its governing statute; and
  - b. With respect to an exchange, the constituent organization of which the ownership interests will be acquired is a limited liability company or a corporation an organization, regardless of whether the exchange is permitted by the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized its governing statute.
2. Each limited liability company shall comply with the provisions of this section and sections 10-32-100 through 10-32-106 with respect to the merger or exchange of ownership interests of organizations and each foreign corporation or foreign limited liability company organization shall comply with the applicable provisions of the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized or under which the foreign corporation or foreign limited liability company is governed its governing statute.
3. If the surviving organization in a merger will be a domestic limited liability company, then the surviving organization shall comply with all the provisions of this chapter.
4. If the surviving organization in a merger will be a foreign corporation or foreign limited liability company organization and will transact business in this state, then the surviving organization shall comply, as the case may be, with the provisions of chapter 10-19.1 with respect to foreign corporations or with the provisions of this chapter with respect to foreign limited liability companies its governing statute. In every case, the surviving foreign corporation or foreign limited liability company organization shall file with the secretary of state:
  - a. An agreement that the surviving organization may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership

<sup>52</sup> Section 10-32-107 was also amended by section 30 of Senate Bill No. 2153, chapter 99.

- interest of a constituent organization against the surviving foreign corporation or foreign limited liability company organization;
- b. An irrevocable appointment of the secretary of state as the surviving organization's agent of the surviving organization to accept service of process in any proceeding, and an address to which process may be forwarded; and
  - c. An agreement that the surviving organization promptly will pay to the dissenting owners of ownership interests of each constituent limited liability company and constituent corporation organization the amount, if any, to which the dissenting owners are entitled under section 10-19.1-88 or 10-32-55 its governing statute.

**SECTION 58. AMENDMENT.** Subsection 4 of section 10-32-108 of the North Dakota Century Code is amended and reenacted as follows:

4. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state. A disposition of all or substantially all of the property and assets of the limited liability company under this section is not considered to be a merger or a de facto merger pursuant to this chapter or otherwise. The transferee shall not be liable solely because it is deemed to be a continuation of the transferor.

<sup>53</sup> **SECTION 59. AMENDMENT.** Section 10-33-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Activity" or "activities" means, in a corporation organized under this chapter, the functional equivalent of "business" in a corporation organized under chapter 10-19.1.
2. "Address" means:
  - a. In the case of a registered office or principal executive office, the mailing address, including a zip code, of the actual office location which may not be only a post-office box; and
  - b. In any other case, the mailing address, including a zip code.
3. "Articles" means:
  - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a

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<sup>53</sup> Section 10-33-01 was also amended by section 5 of House Bill No. 1035, chapter 354.

statement of change of registered office, registered agent, or name of registered agent, articles of merger, articles of consolidation, articles of abandonment, articles of dissolution, and any annual report in which a registered office or registered agent has been established or changed.

- b. In the case of a foreign corporation, the term includes all records serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation of the foreign corporation.
4. "Authenticated electronic communication" means:
  - a. That the electronic communication is delivered:
    - (1) To the principal place of activity of the corporation; or
    - (2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and
  - b. That the electronic communication sets forth information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.
5. "Ballot" means a written ballot or a ballot transmitted by electronic communication.
6. "Board" means the board of directors of a corporation.
7. "Board member" means an individual serving on the board.
8. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.
9. "Corporation" means a corporation, other than a foreign corporation, that is incorporated under or governed by this chapter.
10. "Director" means a member of the board.
11. "Domestic organization" means an organization created under the laws of this state.
12. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
13. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
  - a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
  - b. That may be directly reproduced in paper form by the recipient through an automated process.
14. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

15. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
16. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
  - a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-33-140, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law; and
  - b. That the secretary of state did then:
    - (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
    - (2) Record the record in the office of the secretary of state.
17. "Foreign corporation" means a corporation that is formed under laws other than the laws of this state for a purpose for which a corporation may be organized under this chapter.
18. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.
19. "Good faith" means honesty in fact in the conduct of an act or transaction.
20. "Intentionally" means the person referred to has a purpose to do or fail to do the act or cause the result specified, or believes the act or failure to act, if successful, will cause that result. A person intentionally violates a statute:
  - a. If the person intentionally does the act or causes the result prohibited by the statute; or
  - b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.
21. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and successive federal revenue Acts.
22. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver, guardian, custodian, or conservator.
23. "Member" means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.

24. "Members with voting rights" means members or a class of members that has voting rights with respect to the purpose or matter involved.
25. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving pecuniary gain to any officer, director, or member, other than a member that is a nonprofit organization or subdivision, unit, or agency of the United States or a state or local government.
26. "Notice":
  - a. Is given by a member of a corporation to the corporation or an officer of the corporation:
    - (1) When in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; or
    - (2) When given by a form of electronic communication consented to by the corporation to which the notice is given if by:
      - (a) Facsimile communication, when directed to a telephone number at which the corporation has consented to receive notice.
      - (b) Electronic mail, when directed to an electronic mail address at which the corporation has consented to receive notice.
      - (c) Posting on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:
        - [1] The posting; or
        - [2] The giving of the separate notice.
      - (d) Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.
    - b. Is given, in all other cases:
      - (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
      - (2) When handed to the person;
      - (3) When left at the office of the person with a clerk or other person in charge of the office or:
        - (a) If there is no one in charge, when left in a conspicuous place in the office; or

- (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing there;
  - (4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:
    - (a) Facsimile communication, when directed to a telephone number at which the person has consented to receive notice;
    - (b) Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice; or
    - (c) Posting on an electronic network on which the person has consented to receive notice, together with separate notice to the person of the specific posting, upon the later of:
      - [1] The posting; or
      - [2] The giving of the separate notice; or
  - (5) When the method is fair and reasonable when all of the circumstances are considered.
- c. Is given by mail when deposited in the United States mail with sufficient postage affixed.
- d. Is deemed received when it is given.
27. "Officer" means an individual who is more than eighteen years of age and who is:
- a. Elected, appointed, or otherwise designated as an officer by the board or the members; or
  - b. Considered elected as an officer pursuant to section 10-33-52.
28. "Organization" means:
- a. Whether domestic or foreign, a corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, business trust, or any other person having a governing statute; but
  - b. Excludes any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under this chapter or a foreign nonprofit corporation which is incorporated in another jurisdiction.
29. "Principal executive office" means:

- a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of the corporation has an office; or
  - b. If the corporation has no elected or appointed president, then the registered office of the corporation.
30. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
31. "Registered office" means the place in this state designated in a corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office.
32. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
- a. Owns, directly or indirectly, at least fifty percent of the ~~shares, membership interests, or other~~ ownership interests of another organization;
  - b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
  - c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
33. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
34. "Signed" means:
- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record, is placed on a with the present intention to authenticate that record, as provided under section 41-01-14; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
    - (1) The record is signed by a person authorized to do so by this chapter, the articles, or bylaws, a resolution approved by the directors as required by section 10-33-42, or the members with voting rights, if any, as required by section 10-33-72; and

- (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.
35. "Subsidiary" of a specified corporation organization means:
- A corporation or a foreign corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly through related organizations, by the specified corporation; or
  - A limited liability company or a foreign limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through organizations, by the specified limited liability company an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.
36. "Surviving corporation" means the corporation or foreign corporation resulting from a merger which:
- May preexist the merger; or
  - May be created by the merger.
37. "Vote" includes authorization by written action.
38. "Written action" means:
- A written record signed by all of the persons required to take the action; or
  - The counterparts of a written record signed by any of the persons taking the action.
    - Each counterpart constitutes the action of the persons signing it; and
    - All the counterparts are one written action by all of the persons signing them.

**SECTION 60.** Section 10-33-01.3 of the North Dakota Century Code is created and enacted as follows:

**10-33-01.3. Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A corporation incorporated under or governed by this chapter is subject to this reserved right.

<sup>54</sup> **SECTION 61. AMENDMENT.** Section 10-33-06 of the North Dakota Century Code is amended and reenacted as follows:

### 10-33-06. Articles.

1. The articles of incorporation must contain:
  - a. The name of the corporation;
  - b. The address of the registered office of the corporation and the name of its registered agent at that address;
  - c. The name and address of each incorporator;
  - d. The effective date of the incorporation:
    - (1) If a later date than that on which the certificate of incorporation is issued by the secretary of state; and
    - (2) Which may not be later than ninety days after the date on which the certificate of incorporation is issued; and
  - e. A statement that the corporation is incorporated under this chapter.
2. The articles of incorporation may not contain:
  - a. Any provision limiting the right of cumulative voting as guaranteed by section 6 of article XII of the Constitution of North Dakota.
  - b. Any provision authorizing the issuance of stocks or bonds in violation of section 9 of article XII of the Constitution of North Dakota.
3. The following articles govern a corporation unless modified by the articles:
  - a. A corporation has a general purpose of engaging in any lawful nonprofit activity as provided in section 10-33-04;
  - b. A corporation has perpetual existence and certain powers as provided in section 10-33-21;
  - c. The power to initially adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-33-26;
  - d. Cumulative voting is prohibited as provided in section 10-33-34;
  - e. The affirmative vote of a majority of the directors present is required for an action of the board as provided in section 10-33-42;

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<sup>54</sup> Section 10-33-06 was also amended by section 42 of Senate Bill No. 2153, chapter 99.

- e. f. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-33-43;
  - f. g. Members are of one class as provided in section 10-33-57; and
  - g. h. A written action by the members must be signed by all members as provided in section 10-33-73.
4. 3. The following provisions govern a corporation unless modified either in the articles or bylaws:
- a. A certain method must be used for amending the articles as provided in section 10-33-15;
  - b. Certain procedures apply to the adoption, amendment, or repeal of bylaws by the members as provided in section 10-33-26;
  - c. A director holds office for an indefinite term that expires upon the election of a successor as provided in section 10-33-30;
  - d. The term of a director filling a vacancy expires at the end of the term the director is filling as provided in section 10-33-30;
  - e. The compensation of directors is fixed by the board as provided in section 10-33-32;
  - f. The method provided in section 10-33-36 or 10-33-37 must be used for removal of directors;
  - g. The method provided in section 10-33-38 must be used for filling board vacancies;
  - h. Board meetings must be held at least once per year and if the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-33-39;
  - i. A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-33-39;
  - j. A majority of the board is a quorum as provided in section 10-33-41;
  - k. The affirmative vote of the majority of directors present is required for board action as provided in section 10-33-42;
  - l. A committee consist:
    - (1) Must consist of one or more persons, who need not be directors, appointed by the board as provided in section 10-33-44; and
    - (2) May create one or more subcommittees, each consisting of one or more members of the committee and may delegate to

the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-33-44.

- m. Unless the articles or bylaws or a resolution adopted by the board, and not inconsistent with the articles or bylaws, provides otherwise, the officers shall have the duties provided in section 10-33-50;
- n. The method provided in section 10-33-54 must be used for removal of officers;
- o. If not prohibited by the board from doing so, officers may delegate some or all of their duties and powers as provided in section 10-33-55;
- p. A corporation does not have members as provided in section 10-33-57;
- q. The board may determine the consideration required to admit members as provided in section 10-33-57;
- r. All members are entitled to vote and have equal rights and preferences in matters as provided in section 10-33-57;
- s. Memberships are nontransferable except as provided in section 10-33-59;
- t. A corporation with voting members must hold a regular meeting of voting members annually as provided in section 10-33-65;
- u. If a specific minimum notice period has not been fixed by law, then at least five days' notice is required for a meeting of members as provided in section 10-33-68;
- v. The board may fix a date up to fifty days before the date of a members' meeting as the date for determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-33-68;
- w. Each member has one vote as provided in section 10-33-71;
- x. The affirmative vote of the majority of members with voting rights present and entitled to vote is required for action of the members, unless this chapter or the articles or bylaws require a greater vote or voting by class as provided in section 10-33-72;
- y. Members may take action at a meeting by voice or ballot, by unanimous action without a meeting, by mailed ballot, or by electronic communication as provided in section 10-33-72;
- z. The number of members required for a quorum is ten percent of the members entitled to vote as provided in section 10-33-76;
- aa. The procedures provided in section 10-33-78 govern acceptance of member acts; and

- bb. Indemnification of certain persons is required as provided in section 10-33-84.
- 5. 4. The following provisions relating to the management or regulation of the affairs of a corporation may be included in the articles or, except for naming members of the first board, in the bylaws:
  - a. The first board of directors may be named in the articles as provided in section 10-33-25;
  - b. Additional qualifications for directors may be imposed as provided in section 10-33-29;
  - c. Terms of directors may be staggered as provided in section 10-33-30;
  - d. The date, time, and place of board meetings may be fixed as provided in section 10-33-39;
  - e. Additional officers may be designated as provided in section 10-33-49;
  - f. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-33-50;
  - g. A method for filling vacant offices may be specified as provided in section 10-33-54;
  - h. Membership criteria and procedures for admission may be established as provided in section 10-33-57;
  - i. Membership terms may be fixed as provided in section 10-33-57;
  - j. A corporation may issue membership certificates or preferred or common shares as the board deems appropriate as provided in section 10-33-58;
  - k. A corporation may levy dues, assessments, or fees on members as provided in section 10-33-60;
  - l. A corporation may buy memberships as provided in section 10-33-63;
  - m. A corporation may have delegates with some or all the authority of members as provided in section 10-33-64;
  - n. The date, time, and place of regular member meetings or the place of special meetings may be fixed as provided in section 10-33-65;
  - o. Certain persons may be authorized to call special meetings of members as provided in section 10-33-66;
  - p. Notices of special member meetings may be required to contain certain information as provided in section 10-33-68;

- q. A larger than majority vote may be required for member action as provided in section 10-33-72;
  - r. Members may vote by proxy as provided in section 10-33-77; and
  - s. Members may enter into voting agreements as provided in section 10-33-79.
6. 5. The articles may contain other provisions consistent with law relating to the management or regulation of the affairs of the corporation.
7. 6. It is not necessary to state the corporate powers granted by this chapter in the articles.
8. 7. If there is a conflict between subsection 2, 3, or 4, or 5 and another section of this chapter, then the other section controls.
9. 8. Subsection 5 4 does not limit the right of the board, by resolution, to take an action that the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be in the bylaws by another provision of this chapter.
9. Except for provisions included pursuant to subsection 1, any provision of the articles may:
  - a. Be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and
  - b. Incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the corporation, but only if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

**SECTION 62. AMENDMENT.** Section 10-33-10 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-10. Corporate name.**

1. The corporate name:
  - a. Must be in the English language or in any other language expressed in English letters or characters.
  - b. Need not contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
  - c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
  - d. May not contain a word or phrase that indicates or implies that the corporation:

- (1) Is incorporated for a purpose other than:
    - (a) A lawful nonprofit purpose for which a corporation may be incorporated under this chapter; or
    - (b) For a purpose stated in its articles; or
  - (2) May not be incorporated under this chapter.
- e. May not be the same as or deceptively similar to:
- (1) The name, whether foreign and authorized to conduct activities in this state or domestic unless there is filed with the articles a record that complies with subsection 2, of:
    - (a) Another corporation;
    - (b) A corporation incorporated or authorized to do business in this state under another provision of this code;
    - (c) A limited liability company;
    - (d) A limited partnership;
    - (e) A limited liability partnership; or
    - (f) A limited liability limited partnership;
  - (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - (3) A fictitious name registered in the manner provided in chapter 45-11; or
  - (4) A trade name registered in the manner provided in chapter 47-25.
2. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
  3. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:
    - a. The written consent of the holder of the rights to the name the proposed name is determined to be deceptively similar to; or
    - b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.
  4. Subsection 3 does not affect the right of a corporation existing on August 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.

5. This section and section 10-33-11 do not:
  - a. Abrogate or limit:
    - (1) The law of unfair competition or unfair practices;
    - (2) Chapter 47-25;
    - (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, or service marks; or
    - (4) Any other rights to the exclusive use of names or symbols; or
  - b. Derogate the common law or the principles of equity.
6. A domestic or foreign corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:
  - a. Was incorporated, organized, formed, or registered under the laws of this state;
  - b. Is authorized to conduct activities or transact business in this state;
  - c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;
  - d. Holds a fictitious name registered in the manner provided in chapter 45-11; or
  - e. Holds a trade name registered in the manner provided in chapter 47-25.
7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from conducting activities under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.
8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-33-139 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-33-08 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A corporation that cannot reacquire the use of its corporate name must adopt a new corporate name that complies with the provisions of this section:

- a. By refiling articles of incorporation pursuant to section 10-33-08;
  - b. By amending pursuant to section 10-33-14; or
  - c. By reinstating pursuant to section 10-33-139.
9. Subject to section 10-33-126, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the members as provided in section 10-33-15.

**SECTION 63. AMENDMENT.** Section 10-33-34 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-34. Cumulative voting for directors.** Unless the articles provide otherwise ~~or except as provided in article XII of the Constitution of North Dakota,~~ there is no cumulative voting.

**SECTION 64.** A new subsection to section 10-33-44 of the North Dakota Century Code is created and enacted as follows:

Unless otherwise provided in the articles, the bylaws, or the resolution of the board establishing the committee, a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to a subcommittee any or all of the authority of the committee. In this chapter, unless the language or context clearly indicates that a different meaning is intended:

- a. Any reference to a committee is deemed to include a subcommittee; and
- b. Any reference to a committee member is deemed to include any reference to a subcommittee member.

**SECTION 65.** Section 10-33-72.1 of the North Dakota Century Code is created and enacted as follows:

**10-33-72.1. Contractual requirement to submit a matter to the members.** A corporation may agree to submit a matter to its members whether or not the board determines, at any time after approving the matter, that the matter is no longer advisable and recommends that the members reject it.

**SECTION 66. AMENDMENT.** Section 10-33-73 of the North Dakota Century Code is amended and reenacted as follows:

**10-33-73. Action Member action without a meeting by the members.** An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the members entitled to vote on that action.

1. If the articles so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who hold voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present. However, in no event may written action be taken by members who hold less than a majority of the voting power of all members entitled to vote on that action.
  - a. After the adoption of the initial articles, an amendment to the articles to permit written action to be taken by less than all members requires the approval of all members entitled to vote on the amendment.
  - b. When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date no later than five days after the effective time of the action.
  - c. Failure to provide the notice does not invalidate the written action.
  - d. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.
2. The written action is effective when signed by the required members, unless a different effective time is provided in the written action.
3. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the certificate must indicate if the action was taken under this section.

**SECTION 67.** Section 10-34-02.1 of the North Dakota Century Code is created and enacted as follows:

**10-34-02.1. Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A real estate investment trust formed under or governed by this chapter is subject to this reserved right.

<sup>55</sup> **SECTION 68. AMENDMENT.** Subsection 40 of section 45-10.2-02 of the North Dakota Century Code is amended and reenacted as follows:

40. "Signed" means:

- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the record, is placed on a record as provided under section 41-01-11 with the present intention to authenticate that record; and

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<sup>55</sup> Section 45-10.2-02 was also amended by section 24 of House Bill No. 1035, chapter 354.

- b. With respect to a record required by this chapter to be filed with the secretary of state that:
  - (1) The record is signed by a person authorized to sign the record by this chapter, by the partnership agreement, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
  - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

**SECTION 69.** Section 45-10.2-06.1 of the North Dakota Century Code is created and enacted as follows:

**45-10.2-06.1. Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A limited partnership formed under or governed by this chapter is subject to this reserved right.

**SECTION 70. AMENDMENT.** Subsection 1 of section 45-10.2-27 of the North Dakota Century Code is amended and reenacted as follows:

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and, except for an annual report, return a copy of the filed record to the person that delivered it to the secretary of state for filing. That person shall then:
  - a. For a statement of dissociation, send a copy of the filed statement:
    - (1) To the person which the statement indicates has dissociated as a general partner; and
    - (2) To the limited partnership;
  - b. For a statement of withdrawal, send a copy of the filed statement:
    - (1) To the person on whose behalf the record was filed; and
    - (2) If the statement refers to an existing limited partnership, to the limited partnership; and
  - c. For all other records, send a copy of the filed record to the person on whose behalf the record was filed.

**SECTION 71. AMENDMENT.** Section 45-10.2-81 of the North Dakota Century Code is amended and reenacted as follows:

**45-10.2-81. Foreign limited partnership - Amendments to the certificate of authority.** If any statement in the application for a certificate of authority by a foreign limited partnership is false when made or becomes false due to changed circumstances, or if the foreign limited partnership changes its name or purposes sought in this state, then the foreign limited partnership shall file with the secretary of

state an application for an amended certificate of authority signed by ~~an authorized person at least one general partner~~ correcting the statement and, in the case of a change in the name of the foreign limited partnership, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign limited partnership is organized.

1. In the case of a dissolution, a foreign limited partnership need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign limited partnership is organized.
2. A foreign limited partnership that changes its name and applies for an amended certificate of authority and which is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the name of the foreign limited partnership in each of the foregoing registrations that is applicable when the foreign limited partnership files an application for an amended certificate of authority.
3. A foreign limited partnership shall report any change of address of the principal executive office to the secretary of state and need not file an application for amended certificate of authority.

<sup>56</sup> **SECTION 72. AMENDMENT.** Subsection 26 of section 45-13-01 of the North Dakota Century Code is amended and reenacted as follows:

26. "Signed" means:
- a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically or in any other manner reproduced on the record, is placed on a record; ~~as provided under section 44-01-11 with the present intention to authenticate that record;~~ and
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
    - (1) The record is signed by a person authorized to do so by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
    - (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

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<sup>56</sup> Section 45-13-01 was also amended by section 25 of House Bill No. 1035, chapter 354.

**SECTION 73.** Section 45-13-02.1 of the North Dakota Century Code is created and enacted as follows:

**45-13-02.1. Reservation of legislative right.** The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A partnership formed under or governed by this chapter is subject to this reserved right.

**SECTION 74. AMENDMENT.** Subsection 6 of section 45-13-05 of the North Dakota Century Code is amended and reenacted as follows:

6. Any statement filed under this section must be renewed every five years from the date of the initial filing. A statement of renewal must be executed by the partnership ~~on a form furnished by the secretary of state which is sent to the address of the principal executive office at least sixty days before the deadline for filing in the same manner as previously executed.~~ If the secretary of state finds that the statement of renewal conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement of renewal. If the secretary of state finds that the statement of renewal does not so conform, the secretary of state shall return the statement of renewal to the partnership for any necessary corrections. If the statement of renewal is not returned corrected within thirty days after the statement of renewal was returned for correction, the statement of renewal is subject to cancellation. If any partnership fails to file the statement of renewal, the secretary of state shall cancel the initial statement and shall mail notice of the cancellation to the last address of the principal executive office as recorded in the office of the secretary of state.

<sup>57</sup> **SECTION 75. AMENDMENT.** Subsection 24 of section 45-22-01 of the North Dakota Century Code is amended and reenacted as follows:

24. "Signed" means:
  - a. That the signature of a person which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by telecommunication or electronically, or in any other manner reproduced on the record, is placed on a record; as provided under section 44-01-14 with the present intention to authenticate that record; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state means that:
    - (1) The record is signed by a person authorized to do so by this chapter, or by or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

<sup>57</sup> Section 45-22-01 was also amended by section 26 of House Bill No. 1035, chapter 354.

- (2) The signature and the record are communicated by a method or medium of communication acceptable by the secretary of state.

<sup>58</sup> **SECTION 76. AMENDMENT.** Subsection 2 of section 45-22-22 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state shall charge and collect for:
  - a. Furnishing a copy of any record or paper relating to a domestic limited liability partnership or foreign limited liability partnership, one dollar for every four pages, or fraction of pages.
  - b. A certificate certifying a copy or reciting facts related to a domestic limited liability partnership or foreign limited liability partnership, twenty fifteen dollars.
  - c. Each page of any record or form sent by electronic transmission, one dollar.

<sup>59</sup> **SECTION 77. AMENDMENT.** Subsection 24 of section 45-23-01 of the North Dakota Century Code is amended and reenacted as follows:

24. "Signed" means:
  - a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the record, is placed on a record, as provided under section 41-01-14 with the present intention to authenticate that record; and
  - b. With respect to a record required by this chapter to be filed with the secretary of state, that:
    - (1) The record is signed by a person authorized to sign by this chapter, or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and
    - (2) The signature and the record are communicated by a method or medium acceptable by the secretary of state.

Approved April 10, 2007

Filed April 11, 2007

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<sup>58</sup> Section 45-22-22 was also amended by section 81 of Senate Bill No. 2153, chapter 99.

<sup>59</sup> Section 45-23-01 was also amended by section 27 of House Bill No. 1035, chapter 354.

# CHAPTER 102

## HOUSE BILL NO. 1340

(Representatives Klemin, DeKrey, Delmore)  
(Senators Grindberg, Nelson, Nething)

### PUBLICLY TRADED CORPORATIONS

AN ACT to create and enact chapter 10-35 of the North Dakota Century Code, relating to publicly traded corporations; and to amend and reenact section 54-09-08 of the North Dakota Century Code, relating to the secretary of state's general services operating fund.

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

**SECTION 1.** Chapter 10-35 of the North Dakota Century Code is created and enacted as follows:

**10-35-01. Citation.** This chapter may be cited as the "North Dakota Publicly Traded Corporations Act".

**10-35-02. Definitions.** For purposes of this chapter, unless the context otherwise requires:

1. "Beneficial owner", "owns beneficially", and similar terms have the same meaning as in the rules and regulations of the commission under section 13 of the Exchange Act.
2. "Commission" means the United States securities and exchange commission.
3. "Exchange Act" means the Securities Exchange Act of 1934, as amended [15 U.S.C. section 78a et seq.].
4. "Executive officer" has the same meaning as in the rules and regulations of the commission under the Exchange Act.
5. "Poison pill" means a security created or issued by a publicly traded corporation that precludes or limits a person or group of persons from owning beneficially or of record, or from exercising, converting, transferring, or receiving, the security on the same terms as other shareholders or which is intended to have the effect of diluting disproportionately from the shareholders generally the interest of the person or group of persons in the corporation or a successor to the corporation or otherwise discouraging the person or group of persons from acquiring beneficial ownership of shares of the corporation or a successor to the corporation. For the purposes of this subsection:
  - a. A security may constitute a poison pill whether or not it trades separately or together with other securities of the corporation and whether or not it is evidenced by a separate certificate or by a certificate for other securities of the corporation.

- b. "Poison pill" includes any form of security created or issued by a corporation, or any agreement or arrangement entered into by a corporation, regardless of the name by which it is known, that is designed or intended to operate as or that has the effect of what is commonly referred to, either on July 1, 2007, or at any time thereafter, as a "poison pill" or "shareholder rights plan".
- c. A security is not a poison pill if it would otherwise be a poison pill solely because it contains restrictions on ownership or acquisition of shares of the corporation that are necessary:
- (1) To maintain the tax status of the corporation; or
  - (2) For the corporation to comply with a statute, rule, or regulation that regulates a business in which the corporation is engaged.
- d. "Security" includes:
- (1) An investment contract, warrant, option right, conversion right, or any other form of right or obligation;
  - (2) A "security" within the meaning of that term in the Exchange Act, the Securities Act of 1933, as amended [15 U.S.C. section 77a et seq.], the rules and regulations of the commission, or judicial interpretations under any of the foregoing;
  - (3) Any other ownership interest or right to acquire an ownership interest;
  - (4) Any other instrument commonly known as a "security"; and
  - (5) Any instrument or contract right created or issued by a publicly traded corporation, whether or not the instrument or contract right is a security under any other provision of law.
6. "Publicly traded corporation" or "corporation" means a corporation as defined in section 10-19.1-01:
- a. That becomes governed by chapter 10-19.1 after July 1, 2007; and
  - b. The articles of which state that the corporation is governed by this chapter.
7. "Publicly traded corporation franchise fee" means the fee imposed by subsection 3 of section 10-35-28.
8. "Qualified shareholder" means a person or group of persons acting together that satisfies the following requirements:
- a. The person or group owns beneficially in the aggregate more than five percent of the outstanding shares of the publicly traded corporation that are entitled to vote generally for the election of directors; and

- b. The person or each member of the group has beneficially owned the shares that are used for purposes of determining the ownership threshold in subdivision a continuously for at least two years.
- 9. "Required vote" means approval of a provision of the articles or bylaws, at a time when the publicly traded corporation has a class of voting shares registered under the Exchange Act, by at least the affirmative vote of both:
  - a. A majority of the directors in office who are not executive officers of the corporation; and
  - b. Two-thirds of the voting power of the outstanding shares entitled to vote generally for the election of directors that are not owned beneficially or of record by directors or executive officers of the corporation.

#### **10-35-03. Application and effect of chapter.**

- 1. This chapter applies only to a publicly traded corporation meeting the definition of a "publicly traded corporation" in section 10-35-02 during such time as its articles state that it is governed by this chapter.
- 2. The existence of a provision of this chapter does not of itself create any implication that a contrary or different rule of law is or would be applicable to a corporation that is not a publicly traded corporation. This chapter does not affect any statute or rule of law as it applies to a corporation that is not a publicly traded corporation.
- 3. A provision of the articles or bylaws of a publicly traded corporation may not be inconsistent with any provision of this chapter.
- 4. The computation of a percentage of shares owned beneficially or of record by a person or group of persons for purposes of this chapter or chapter 10-19.1 shall be based on the number of outstanding shares of the publicly traded corporation shown most recently in a filing by the corporation with the commission under the Exchange Act.

#### **10-35-04. Application of chapter 10-19.1.**

- 1. Chapter 10-19.1 applies generally to all publicly traded corporations, except that the provisions of this chapter control over any inconsistent provision of chapter 10-19.1.
- 2. A publicly traded corporation is a "publicly held corporation" as that term is used in chapter 10-19.1.
- 3. The definitions in section 10-19.1-01 apply to the use in this chapter of the terms defined in that section.

#### **10-35-05. Amendment of the bylaws.**

- 1. Any shareholder of a publicly traded corporation may propose the adoption, amendment, or repeal of a bylaw.

2. Subdivision c of subsection 3 of section 10-19.1-31 shall not apply to a publicly traded corporation except that a provision of the articles or bylaws authorized by section 10-35-14 may apply to a proposal to adopt, amend, or repeal a bylaw.

#### **10-35-06. Board of directors.**

1. The articles or bylaws of a publicly traded corporation may not fix a term for directors longer than one year.
2. The articles or bylaws of a publicly traded corporation may not stagger the terms of directors into groups whose terms end at different times.
3. The size of the board of a publicly traded corporation may not be changed at a time when:
  - a. The board has notice that there will be a contested election of directors at the next regular or special meeting of the shareholders; or
  - b. The shareholders do not have the right to nominate candidates for election at the next regular meeting of the shareholders under a provision of the articles or bylaws adopted pursuant to section 10-35-07.
4. The board of a publicly traded corporation must elect one of its members as the chair of the board who shall preside at meetings of the board and perform such other functions as may be provided in the articles or bylaws or by resolution of the board. The chair of the board may not serve as an executive officer of the corporation.

#### **10-35-07. Nomination of directors.**

1. A publicly traded corporation may not require a shareholder or beneficial owner of shares to provide notice of an intention to nominate a candidate for election as a director except as provided in a provision of the articles or bylaws that satisfies the requirements of this section.
2. A provision of the articles or bylaws of a publicly traded corporation requiring a shareholder or beneficial owner to provide notice of an intention to nominate a candidate for election as a director may not require the notice to include more than:
  - a. The name of the shareholder or beneficial owner;
  - b. A statement that the shareholder or beneficial owner is the beneficial owner of one or more shares in the corporation and reasonable evidence of that ownership; and
  - c. The number of candidates the shareholder or beneficial owner intends to nominate.
3. Any deadline fixed by the articles or bylaws for submission by a shareholder or beneficial owner of a notice of intention to nominate a candidate for election as a director may not be earlier than:

- a. In the case of a meeting held within five business days before or after the anniversary of the previous year's regular meeting, ninety days before the anniversary date of the prior regular meeting; or
  - b. In the case of a meeting not held within five business days before or after the anniversary of the previous year's regular meeting ninety days before the date of the meeting.
4. A provision of the articles or bylaws requiring a shareholder or beneficial owner to provide notice of an intention to nominate a candidate for election as a director must provide a period of at least twenty days during which the shareholder or beneficial owner may submit the notice to the public corporation.
  5. The adoption or amendment of a bylaw requiring advance notice of nominations may not take effect in the one hundred twenty-day period before the next meeting of shareholders, unless the adoption or amendment of the bylaw has been approved by the shareholders.

#### **10-35-08. Access to corporation's proxy statement.**

1. If a qualified shareholder provides notice of an intention to nominate one or more candidates for election to the board of directors that satisfies both section 10-35-07 and this section, the publicly traded corporation must:
  - a. Include the name of each nominee and a statement not longer than five hundred words without counting the information required under subdivisions a through e of subsection 2 supplied by the qualified shareholder in support of each nominee in the corporation's proxy statement; and
  - b. Make provision for a shareholder to vote on each nominee on the form of proxy solicited on behalf of the corporation.
2. The publicly traded corporation may not require the notice from the qualified shareholder to include more than:
  - a. The name of the person or the names of the members of the group;
  - b. A statement that the person or group satisfies the definition of a qualified shareholder in subsection 8 of section 10-35-02 and reasonable evidence of the required ownership of shares by the person or group;
  - c. A statement that the person or group does not have knowledge that the candidacy or, if elected, board membership of any of its nominees would violate controlling state or federal law or rules other than rules regarding director independence of a national securities exchange or national securities association applicable to the corporation;
  - d. The information regarding each nominee that is required to be included in the corporation's proxy statement by the rules and regulations adopted by the commission under the Exchange Act;

- e. A statement from each nominee that the nominee consents to be named in the corporation's proxy statement and form of proxy and, if elected, to serve on the board of directors of the corporation, for inclusion in the corporation's proxy statement; and
  - f. The supporting statement permitted by subdivision a of subsection 1.
3. If the qualified shareholder does not own at least five percent of the outstanding shares of the publicly traded corporation entitled to vote generally for the election of directors on the date of the meeting, the qualified shareholder is not entitled to nominate the candidates named in the notice provided under subsection 1.

### **10-35-09. Election of directors.**

- 1. After a quorum is established at a meeting of the shareholders of a publicly traded corporation at which directors are to be elected, the polls must be opened for the election of directors before the meeting may be recessed or adjourned. If the polls have not been previously closed, the polls close for the election of directors upon the first recess or adjournment of the meeting.
- 2. Except as provided in subsection 3, if the articles of a publicly traded corporation provide that the shareholders do not have the right to cumulate their votes in an election of directors:
  - a. Each share in the corporation entitled to vote on the election of directors shall be entitled to vote noncumulatively for or against, or to abstain with respect to, each candidate for election.
  - b. To be elected, a candidate must receive the affirmative vote of at least a majority of the votes cast for or against the candidate's election.
  - c. An individual who is not elected under subdivision b may not be appointed by the board of directors to fill a vacancy on the board at any time thereafter unless the individual is subsequently elected as a director by the shareholders.
  - d. If a director who was a candidate for reelection is not elected under subdivision b, the director may continue to serve under subdivision b of subsection 1 of section 10-19.1-35 for not longer than ninety days after the date of the first public announcement of the results of the election.
  - e. If no directors are elected under subdivision b, the current directors continue to serve under subdivision b of subsection 1 of section 10-19.1-35, and another meeting of the shareholders for the election of directors must be held not later than eighty-nine days after the date of the first public announcement of the results of the election.
- 3. Subsection 2 does not apply to an election of directors by a voting group if there are more candidates for election by the voting group than the number of directors to be elected by the voting group and one or more

of the candidates has been properly nominated by the shareholders. An individual is not counted as a candidate for election under this subsection if the board of directors reasonably determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest. The determination of the number of candidates for purposes of this subsection shall be made as of:

- a. The expiration of the time fixed by the articles or bylaws for advance notice by a shareholder of an intention to nominate directors; or
- b. Absent such a provision at a time publicly announced by the board of directors which is not more than fourteen days before notice is given of the meeting at which the election is to occur.
4. A publicly traded corporation may not compensate an individual, directly or indirectly, as a result of the fact, in whole or in part, that the individual is not elected or reelected as a director, and without regard to whether the compensation would be paid to the individual as a director or officer or on any other basis.
5. The shareholders of a publicly traded corporation may act by consent in a record to elect directors, but the consent will be in lieu of a regular meeting of shareholders only if:
  - a. The shareholders are not entitled to vote cumulatively for the election of directors;
  - b. The election by consent takes effect within the one hundred twenty-day period before the anniversary of the most recent regular meeting; and
  - c. The full board is elected by the consent.

#### **10-35-10. Reimbursement of proxy expenses.**

1. A shareholder of a publicly traded corporation who nominates one or more candidates for election as directors who are not nominated by management or the board of directors must be reimbursed by the corporation for the reasonable actual costs of solicitation of proxies incurred by the shareholder in an amount equal to the shareholder's total reasonable actual costs of solicitation multiplied by a fraction, the numerator of which is the number of candidates nominated by the shareholder who are elected, and the denominator of which is the total number of candidates nominated by the shareholder.
2. As used in this section, "actual costs of solicitation" means amounts paid to third parties relating to the solicitation, including lawyers, proxy solicitors, public relations firms, printers, the United States postal service, and media outlets.

#### **10-35-11. Supermajority provisions prohibited.** Neither the articles nor the bylaws of a publicly traded corporation may provide a quorum or voting requirement:

1. For the board or a committee of the board that is greater than a majority of the number of directors that would constitute the full board or committee assuming there are no vacancies; or
2. For shareholders that is greater than a majority of the voting power of the shares entitled to vote on the item of business or, in the case of a class or series entitled to vote as a separate group, a majority of the voting power of the outstanding shares of the class or series.

#### **10-35-12. Regular meeting of shareholders.**

1. Unless directors are elected by consent in lieu of a regular meeting as provided in subsection 5 of section 10-35-09, a publicly traded corporation must hold a meeting of shareholders annually for the election of directors and the conduct of such other business as may be properly brought before the meeting by the board or the shareholders.
2. The articles or bylaws of a publicly traded corporation must state the latest date in each calendar year by which the regular meeting of shareholders must be held. The date so fixed by the articles or bylaws may not be later than one hundred eighty days after the end of the prior fiscal year of the corporation.
3. Any shareholder of a publicly traded corporation may demand a regular meeting of shareholders under subsection 2 of section 10-19.1-71 or apply for an order of court directing the holding of a regular meeting of shareholders under section 10-19.1-72.1, in each case without regard to the percentage of the voting power held by the shareholder.
4. An amendment of the bylaws of a publicly traded corporation that changes the latest date by which the regular meeting of shareholders must be held may not take effect until after the regular meeting has been held for the year during which the amendment is adopted, unless the amendment has been approved by the shareholders.
5. The committee of the board of a publicly traded corporation that has authority to set the compensation of executive officers must report to the shareholders at each regular meeting of shareholders on the compensation of the corporation's executive officers. The shareholders that are entitled to vote for the election of directors shall also be entitled to vote on an advisory basis on whether they accept the report of the committee.

#### **10-35-13. Call of special meeting of shareholders.**

1. A publicly traded corporation shall hold a special meeting of shareholders upon the demand of its shareholders as provided in section 10-19.1-72, except that, regardless of the purpose for the meeting, the shareholders demanding the meeting must own beneficially ten percent or more of the voting power of all shares entitled to vote on each issue proposed to be considered at the special meeting.
2. The articles or bylaws of a publicly traded corporation may not restrict:
  - a. The period during which shareholders may call a special meeting of shareholders; or

- b. The business that may be conducted at a special meeting.

**10-35-14. Shareholder proposals of business at a regular meeting.**

1. A publicly traded corporation may not require a shareholder or beneficial owner to provide notice of an intention to propose a matter for consideration or a vote at a regular meeting of shareholders except as provided in a provision of the article or bylaws that satisfies the requirements of this section.
2. A provision of the articles or bylaws requiring a shareholder or beneficial owner to provide notice of an intention to propose a matter for consideration or a vote by the shareholders may not require the notice to include more than:
  - a. The name of the shareholder or beneficial owner;
  - b. A statement that the shareholder or beneficial owner is the beneficial owner of one or more shares in the corporation and reasonable evidence of that ownership; and
  - c. The general nature of the business to be proposed.
3. Any deadline fixed by the articles or bylaws for submission by a shareholder or beneficial owner of a notice of intention to propose a matter for consideration or a vote by the shareholders may not be earlier than:
  - a. In the case of a meeting held within five business days before or after the anniversary of the previous year's regular meeting, ninety days before the anniversary date of the prior regular meeting; or
  - b. In the case of a meeting not held within five business days before or after the anniversary of the previous year's regular meeting ninety days before the date of the meeting.
4. A provision of the articles or bylaws requiring a shareholder or beneficial owner to provide notice of an intention to propose a matter for consideration or a vote by the shareholders must provide a period of at least twenty days during which the shareholder or beneficial owner may submit the notice to the publicly traded corporation.
5. The adoption or amendment of a bylaw requiring advance notice of business to be proposed by a shareholder or beneficial owner may not take effect in the one hundred twenty-day period before the next regular meeting of shareholders, unless the adoption or amendment of the bylaw has been approved by the shareholders.
6. This section does not apply to the proposal by a shareholder or beneficial owner of an amendment of the articles of a publicly traded corporation.

**10-35-15. Shareholder proposals of amendment of the articles.**

1. A proposal of an amendment of the articles of a publicly traded corporation by a shareholder or shareholders under subsection 2 of section 10-19.1-19 need not include more than:
  - a. The name of the shareholder or the names of the members of the group of shareholders;
  - b. A statement of the number of shares of each class owned beneficially or of record by the shareholder or group of shareholders and reasonable evidence of that ownership; and
  - c. The text of the proposed amendment.
2. The articles or bylaws of a publicly traded corporation may not impose any requirements on the proposal of an amendment of the articles by a shareholder.
3. An amendment proposed by a shareholder or shareholders pursuant to subsection 1 and approved by the shareholders does not need to be approved by the board to be adopted and become effective.

**10-35-16. Requirements for convening shareholder meetings.**

1. If the articles or bylaws of a publicly traded corporation have a provision for advance notice authorized by section 10-35-07 or 10-35-14, a regular meeting of shareholders of the corporation may not be convened unless the corporation has announced the date of the meeting in the body of a public filing, and not solely in an exhibit or attachment to a filing, regardless of whether the exhibit or attachment has been incorporated by reference into the body of the filing, with the commission under the Exchange Act at least twenty-five days before the deadline in the articles or bylaws for a shareholder to give the advance notice.
2. If a proxy is given authority by a shareholder of a publicly traded corporation to vote on less than all items of business considered at a meeting of shareholders, the shareholder is considered to be present and entitled to vote by the proxy on all items of business to be considered at the meeting for purposes of determining the existence of a quorum under section 10-19.1-76. A proxy who is given authority by a shareholder who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

**10-35-17. Approval of certain issuances of shares.**

1. An issuance by a publicly traded corporation of shares, or other securities convertible into or rights exercisable for shares, in a transaction or a series of integrated transactions, requires approval of the shareholders if the voting power of the shares that are issued or issuable as a result of the transaction or series of integrated transactions will exceed twenty percent of the voting power of the

shares of the corporation which were outstanding immediately before the transaction.

2. Subsection 1 does not apply to:

- a. A public offering solely for cash, cash equivalents or a combination of cash and cash equivalents; or
- b. A bona fide private financing, solely for cash, cash equivalents or a combination of cash and cash equivalents, of:
  - (1) Shares at a price equal to at least the greater of the book or market value of the corporation's common shares; or
  - (2) Other securities or rights if the conversion or exercise price is equal to at least the greater of the book or market value of the corporation's common shares.

3. For purposes of this section:

- a. The voting power of shares issued and issuable as a result of a transaction or series of integrated transactions shall be the greater of:
  - (1) The voting power of the shares to be issued; or
  - (2) The voting power of the shares that would be outstanding after giving effect to the conversion of convertible shares and other securities and the exercise of rights to be issued.
- b. A series of transactions is integrated if consummation of one transaction is made contingent on consummation of one or more of the other transactions.
- c. "Bona fide private financing" means a sale in which:
  - (1) A registered broker-dealer purchases the shares, other securities, or rights from the publicly traded corporation with a view to their private sale to one or more purchasers; or
  - (2) The corporation sells the shares, other securities, or rights to multiple purchasers, and no one purchaser or group of related purchasers acquires, or has the right to acquire, more than five percent of the voting power of shares issued or issuable in the transaction or series of integrated transactions.

**10-35-18. Preemptive rights.** Unless otherwise provided in the articles, a shareholder of a publicly traded corporation does not have the preemptive rights provided in section 10-19.1-65.

**10-35-19. Conduct and business of shareholder meetings.**

1. There must be a presiding officer at every meeting of the shareholders of a publicly traded corporation. The presiding officer must be appointed in the manner provided in the articles or bylaws or, in the

absence of such a provision, by the board before the meeting or by the shareholders at the meeting. If the articles or bylaws are silent on the appointment of a presiding officer and the board and the shareholders fail to designate a presiding officer, the president is the presiding officer.

2. Except as otherwise provided in the articles or bylaws or, in the absence of such a provision, by the board before the meeting, the presiding officer determines the order of business and has the authority to establish rules for the conduct of the meeting.
3. The order of business and rules for the conduct of a meeting and any action by the presiding officer must:
  - a. Be reasonable;
  - b. Be fair to all of the shareholders; and
  - c. May not favor or disadvantage the proponent of any action to be taken at the meeting.
4. The presiding officer may announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls close upon the final adjournment of the meeting, except as provided in subsection 1 of section 10-35-09. After the polls close, ballots, proxies, and votes may not be accepted, and changes and revocations of ballots, proxies, or votes may not be made.

#### **10-35-20. Action by shareholders without a meeting.**

1. An action required or permitted to be taken at a meeting of the shareholders of a publicly traded corporation may be taken without a meeting by one or more records signed by shareholders who own voting power equal to the voting power that would be required to take the same action at a meeting of the shareholders at which all shareholders were present.
2. Action may not be taken by a publicly traded corporation by ballot of its shareholders without a meeting.

**10-35-21. Financial statements.** Section 10-19.1-85 does not apply to a publicly traded corporation.

#### **10-35-22. Duration of poison pills limited.**

1. If a publicly traded corporation adopts, creates, or issues a poison pill without a vote of its shareholders authorizing that action, the poison pill must expire or be redeemed and will otherwise be of no further force or effect not later than the earlier of:
  - a. One year after the date of its adoption, creation, or issuance; or
  - b. Ninety days after the first public announcement that a number of shares have been tendered into an offer to purchase any and all shares of the corporation, which number of shares tendered represents at least a majority of the outstanding shares of each class or series of shares entitled to vote generally for the election

of directors when added to those shares owned beneficially or of record by the person or group of persons making the offer or by any affiliates of that person or group of persons.

2. If authorized by a vote of its shareholders, a publicly traded corporation may:
  - a. Adopt, create, or issue a poison pill that will be in effect for a period not longer than the shorter of:
    - (1) Two years; and
    - (2) The period set forth in subdivision b of subsection 1; or
  - b. Extend the period during which a poison pill adopted, created, or issued pursuant to subsection 1 will be in effect to not longer in the aggregate than the period set forth in subdivision a.
3. A publicly traded corporation may not adopt, create, or issue a poison pill without the approval of its shareholders until after it has held a regular meeting of shareholders after its most recent prior poison pill has expired or been redeemed and otherwise ceased to be of any force or effect. The date of the regular meeting of shareholders must:
  - a. Comply with section 10-35-12;
  - b. Be at least ninety days after the date on which the prior poison pill expired, was redeemed, or otherwise ceased to be of any force or effect; and
  - c. If the corporation has an advance notice requirement adopted pursuant to section 10-35-07, give the shareholders the full period of time required by subsection 4 of section 10-35-07 in which to provide notice to the corporation of an intention to nominate candidates for election at the meeting.

**10-35-23. Protection of power of current directors over poison pill.** A poison pill adopted, created, or issued by a publicly traded corporation, with or without the approval of its shareholders, may not include a provision that limits in any way the power of the board of directors, as it may be constituted at any point in time, to take any action at any time with respect to the poison pill, including without limitation what is commonly referred to as a "dead hand", "no hand", or "slow hand" provision.

**10-35-24. Minimum share ownership triggering level for poison pills.** A poison pill adopted, created, or issued by a publicly traded corporation, with or without the approval of its shareholders, may not provide that beneficial ownership or announcement of an intention to seek beneficial ownership by a person or group of persons of shares equal to less than twenty percent of the total number of outstanding shares of all classes and series of shares of the corporation will result, either immediately or after the passage of a period of time, in:

1. A distribution or distribution date for rights certificates or other securities as defined in subdivision d of subsection 5 of section 10-35-02;

2. The person or group of persons becoming what is commonly referred to as an "acquiring person" or "adverse person" or otherwise having the status of a person intended to be diluted or subject to dilution by the poison pill;
3. What is commonly referred to as a "flip-in" or "flip-over" event or the poison pill otherwise being triggered or becoming operative; or
4. The poison pill otherwise having a dilutive, discriminatory, or other adverse effect on the person or group of persons.

#### **10-35-25. Optional restrictions or prohibitions on poison pills.**

1. A provision of the articles or bylaws of a publicly traded corporation may restrict or prohibit the corporation from adopting, creating, or issuing a poison pill. Such a provision may provide for the effect it has on a poison pill in force at the time of the provision's adoption.
2. A provision of the articles or bylaws adopted pursuant to subsection 1 at a time when a publicly traded corporation has a poison pill in effect must be adopted by the affirmative vote of a majority of the outstanding shares entitled to vote on adoption of the provision. In every other instance, a provision of the articles or bylaws adopted pursuant to subsection 1 must be adopted by the affirmative vote of a majority of the votes cast by holders of shares entitled to vote on adoption of the provision.

#### **10-35-26. Adoption of antitakeover provisions.**

1. The articles or bylaws of a publicly traded corporation may not contain an antitakeover provision unless it has been approved by the required vote.
2. As used in this section:
  - a. Except as provided in subdivision b, "antitakeover provision" means a provision that:
    - (1) Would block an acquisition by any person or group of persons of beneficial ownership of any shares of the corporation or a change in control of the corporation absent compliance with the provision;
    - (2) Restricts the price that may be paid by any person or group of persons in an acquisition of beneficial ownership of any shares of the corporation;
    - (3) Restricts the terms of a transaction after the occurrence of a change in control of the corporation or limits the price that may be paid in such a transaction, when it may be conducted, or how it must be approved by the directors or shareholders;
    - (4) Requires an approval of the directors or shareholders in addition to, or in a different manner from, whatever approvals are required under this chapter and chapter

- 10-19.1 for a transaction involving an acquisition by any person or group of persons of beneficial ownership of any shares of the corporation or a change in control of the corporation;
- (5) Requires the approval of a nongovernmental third party for an acquisition by any person or group of persons of beneficial ownership of any shares of the corporation or a transaction that would involve a change in control of the corporation;
- (6) Requires the corporation, directly or indirectly, to take an action that it would not have been required to take if it had not been the subject of an acquisition by any person or group of persons of beneficial ownership of any of its shares or a transaction that would involve a change in control of the corporation;
- (7) Limits, directly or indirectly, the power of the corporation if it is the subject of an acquisition by any person or group of persons of beneficial ownership of any of its shares or a transaction that would involve a change in control of the corporation to take an action that the corporation would have had the power to take, without that limit, if the acquisition of beneficial ownership or transaction had not occurred;
- (8) Changes or limits the voting rights of any shares of the corporation following a transaction involving an acquisition by any person or group of persons of beneficial ownership of any shares of the corporation or a change in control of the corporation;
- (9) Would give any beneficial or record owner of shares of the corporation a direct right of action against a person or group of persons with respect to the acquisition by the person or group of persons of beneficial ownership of any shares in the corporation or control of the corporation; or
- (10) Is designed or intended to operate as, or that has the effect of, what is commonly referred to, either on July 1, 2007, or at any time thereafter, as a "business combination", "control share acquisition", "control share cash out", "freeze out", "fair price", "disgorgement", or other "antitakeover" provision.
- b. "Antitakeover provision" does not include a provision in the terms of a class or series of shares:
- (1) If the shares are issuable upon the exercise of a poison pill, but only so long as the shares of the class or series are not issued by the corporation except pursuant to the exercise of a poison pill; or
- (2) Which serves to protect dividend, interest, sinking fund, conversion, exchange, or other rights of the shares, or to protect against the issuance of additional securities that would be on a parity with or superior to the shares.

- c. "Control" has the same meaning as in the rules and regulations of the commission under the Exchange Act.

**10-35-27. Liberal construction.** The provisions of this chapter and of chapter 10-19.1 must be liberally construed to protect and enhance the rights of shareholders in publicly traded corporations.

**10-35-28. Annual report - Franchise fee.**

1. Instead of filing an annual report under section 10-19.1-146, each publicly traded corporation shall file under this section, within the time provided in section 10-35-29, an annual report setting forth:
  - a. The name of the publicly traded corporation;
  - b. A statement that it is a publicly traded corporation;
  - c. The name of the publicly traded corporation's registered agent and the address of the registered office of the publicly traded corporation;
  - d. The address of the principal executive office of the publicly traded corporation;
  - e. A brief statement of the character of the business, if any, in which the publicly traded corporation is actually engaged in this state; and
  - f. The names and respective business addresses of the executive officers and directors of the publicly traded corporation.
2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 52 of section 10-19.1-01, the articles or the bylaws, or by a resolution approved by the affirmative vote of the required proportion or number of the directors. If the publicly traded corporation is in the hands of a receiver or trustee, it must be signed on behalf of the publicly traded corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.
3. Instead of the fees provided for annual report filings in section 10-19.1-147, the secretary of state shall collect a franchise fee with the annual report from every publicly traded corporation for each calendar year in an amount equal to sixty dollars for each ten thousand shares of authorized capital stock of the publicly traded corporation.
  - a. In the case of a publicly traded corporation that has not been a publicly traded corporation during an entire twelve-month calendar year, the amount of the publicly traded corporation franchise fee due, as provided in this section, shall be prorated on a monthly basis for the portion of the year during which the publicly traded corporation was a publicly traded corporation. For this purpose, any portion of a month shall be regarded as a whole month.

- b. In no case shall the publicly traded corporation franchise fee imposed by this section be more than eighty thousand dollars or less than sixty dollars.
- c. If a publicly traded corporation changes during a calendar year the number of shares of its authorized capital stock, the total annual publicly traded corporation franchise fee payable as provided in this section shall be arrived at by adding together the franchise fees calculated as set forth in this section as prorated for the several periods of the year during which each distinct authorized amount of shares of capital stock was in effect.
- d. For the purpose of computing the franchise fee imposed by this section, the authorized capital stock of a publicly traded corporation shall be considered to be the total number of shares of all classes and series that the public corporation is authorized to issue, whether or not the number of shares that may be outstanding at any one time is a lesser number.
- e. Except as provided in this subsection, the publicly traded corporation franchise fee shall be in addition to any other taxes or fees imposed by this state on the publicly traded corporation.

**10-35-29. Filing of annual report and payment of publicly traded corporation franchise fee.**

- 1. Except for the first annual report and publicly traded corporation franchise fee, the annual report and publicly traded corporation franchise fee must be delivered to the secretary of state before December second of each year. The first annual report and payment of the publicly traded corporation franchise fee must be delivered before the date provided in the year following the calendar year in which the statement described in subdivision b of subsection 6 of section 10-35-02 takes effect.
- 2. An annual report and publicly traded corporation franchise fee in a sealed envelope postmarked by the United States postal service before the date provided in subsection 1, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in subsection 1, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.
- 3. The secretary of state must file the annual report if the annual report conforms to the requirements of section 10-35-28 and the publicly traded corporation franchise fee has been paid.
  - a. If the annual report does not conform or adequate payment has not been made, the secretary of state must notify the publicly traded corporation of any necessary corrections or payment.
  - b. If the annual report is corrected and filed with the payment before the date provided in subsection 1, or within thirty days after the publicly traded corporation was notified of corrections or payment by the secretary of state, then the penalties provided in section

10-35-31 for failure to file an annual report within the time provided do not apply.

4. The secretary of state may extend the annual report filing date provided in subsection 1 for a period not to exceed eleven months after the filing date provided in subsection 1 if a written application for an extension is delivered before the date provided in subsection 1.

**10-35-30. Collection of publicly traded corporation franchise fee - Preferred debt.**

The publicly traded corporation franchise fee shall be a debt due from the publicly traded corporation to the state for which an action at law may be maintained after the same shall have been in arrears for a period of one month. The publicly traded corporation franchise fee shall also be a preferred debt in case of insolvency.

**10-35-31. Penalties - Administrative dissolution.**

1. The secretary of state shall charge and collect additional fees for late filing of the annual report and payment of the publicly traded corporation franchise fee as follows:
  - a. Within ninety days after the date provided in subsection 1 of section 10-35-29, two hundred fifty dollars.
  - b. Ninety days after the date provided in subsection 1 of section 10-35-29, the publicly traded corporation becomes not in good standing. The secretary of state shall notify the publicly traded corporation that its certificate of incorporation is not in good standing and that it may be dissolved as provided in subsection 2.
    - (1) The secretary of state shall mail the notice of impending dissolution to the last registered agent at the last registered office of record.
    - (2) If the publicly traded corporation files its annual report after the notice is mailed, together with the publicly traded corporation franchise fee and a late filing penalty of one thousand dollars, then the secretary of state shall restore its certificate of incorporation to good standing.
2. A publicly traded corporation that fails to file its annual report or to pay the publicly traded corporation franchise fee due within one year after the date provided in subsection 1 of section 10-35-29 ceases to exist as a corporation and is considered involuntarily dissolved by operation of law.
  - a. The secretary of state shall note the dissolution of the certificate of incorporation of the publicly traded corporation on the records of the secretary of state and shall give notice of the action to the dissolved publicly traded corporation.
  - b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record.

3. A publicly traded corporation dissolved for failure to file an annual report or to pay a publicly traded corporation franchise fee due may be reinstated within one year following the dissolution by:
  - a. Filing a past-due annual report with the publicly traded corporation franchise fee due;
  - b. Paying a late filing penalty of one thousand dollars; and
  - c. Paying a reinstatement fee of one hundred thirty-five dollars.
4. Reinstatement under this subsection does not affect the rights or liabilities arising during the time from the dissolution to the reinstatement.
5. Fees paid to the secretary of state according to this chapter are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-35-28 or the annual report lacks sufficient payment as required by section 10-35-28 or as required by this section.

#### **10-35-32. Secretary of state - Powers - Enforcement - Penalty - Appeal.**

1. The secretary of state has the power and authority reasonably necessary to efficiently administer this chapter and to perform the duties imposed thereby.
2. The secretary of state may propound to any publicly traded corporation that is subject to this chapter and to any officer, director, or employee thereof, any interrogatory reasonably necessary and proper to ascertain whether the publicly traded corporation has complied with all provisions of this chapter applicable to the publicly traded corporation.
  - a. The interrogatory must be answered within thirty days after mailing or within any additional time as may be fixed by the secretary of state. The answer to the interrogatory must be full and complete and must be made in writing and under oath.
  - b. If the interrogatory is directed:
    - (1) To an individual, it must be answered by that individual; or
    - (2) To a publicly traded corporation, it must be answered by the president, vice president, secretary, or assistant secretary of the publicly traded corporation.
  - c. The secretary of state is not required to file any record to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose the record is not in conformity with this chapter.
  - d. The secretary of state shall certify to the attorney general, for action the attorney general may deem appropriate, any interrogatory and answers thereto, which discloses a violation of this chapter.

- e. Each officer, director, or employee of a publicly traded corporation who fails or refuses within the time provided by subdivision a to answer truthfully and fully an interrogatory propounded to that person by the secretary of state is guilty of an infraction.
  - f. An interrogatory propounded by the secretary of state and the answers are not open to public inspection. The secretary of state may not disclose any facts or information obtained from the interrogatory or answers except insofar as permitted by law or insofar as required for evidence in any criminal proceedings or other action by this state.
3. If the secretary of state rejects any record required by this chapter to be approved by the secretary of state before the record may be filed, then the secretary of state shall give written notice of the rejection to the person that delivered the record, specifying the reasons for rejection.
- a. Within thirty days after the service of the notice of denial, the publicly traded corporation may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of court a petition setting forth a copy of the record sought to be filed and a copy of the written rejection of the record by the secretary of state.
  - b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.
4. If the secretary of state dissolves a publicly traded corporation pursuant to subsection 2 of section 10-35-31, then the publicly traded corporation may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of court a petition, including:
- a. A copy of the publicly traded corporation's articles of incorporation; and
  - b. A copy of the notice of dissolution given by the secretary of state.
5. The district court shall try the matter de novo. The court shall sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.
6. If the court order sought is one for reinstatement of a publicly traded corporation that has been dissolved as provided in subsection 2 of section 10-35-31, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the publicly traded corporation to:
- a. File all past-due annual reports;
  - b. Pay the publicly traded corporation franchise fees to the secretary of state for each annual report as provided in subsection 3 of section 10-35-28; and
  - c. Pay the reinstatement fee to the secretary of state as provided in subsection 3 of section 10-35-31.

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

**10-35-33. Funds received.** Ten percent of the fees received by the secretary of state for filing records of a publicly traded corporation as provided for in section 10-19.1-147 or this chapter must be deposited in the secretary of state's general services operating fund to pay the cost to administer this chapter.

**SECTION 2. AMENDMENT.** Section 54-09-08 of the North Dakota Century Code is amended and reenacted as follows:

**54-09-08. Secretary of state's general services operating fund.** The secretary of state's general services operating fund is a special fund in the state treasury. Moneys in the fund are to be used pursuant to legislative appropriations for the provision of services under section 16.1-02-15, subsection 6 of section 41-09-94, subsection 9 of section 54-09-04, and sections 10-35-33, 54-09-10, and 54-09-11. At the close of each biennium, the secretary of state shall transfer any unobligated balance remaining in the fund exceeding seventy-five thousand dollars to the general fund.

Approved April 10, 2007

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