CORPORATIONS

CHAPTER 101

HOUSE BILL NO. 1412

(Representatives Jensen, Poolman)
(Senator Grindberg)

SECURITIES REGISTRATION

AN ACT to create and enact a new subsection to section 10-04-06 of the North Dakota Century Code, relating to a "test the waters" exemption to registration of securities; to amend and reenact subsection 4 of section 10-04-03 of the North Dakota Century Code, relating to deposit of security fees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 10-04-03 of the North Dakota Century Code is amended and reenacted as follows:

4. All fees collected under this chapter ~~shall~~ must be ~~turned~~ deposited in ~~to~~ the general fund of the state treasury, except civil penalties collected from enforcement actions for the purpose of distribution to aggrieved investors may be deposited in a special securities protection fund. All other civil penalties collected, including those collected for the reasonable expenses for the administration of a particular case, must be deposited in the general fund.

SECTION 2. A new subsection to section 10-04-06 of the North Dakota Century Code is created and enacted as follows:

The distribution of a prospectus or similar disclosure document by an issuer to "test the waters" with an offer of a security for the sole purpose of discussing possible business strategies or economic development or soliciting potential indications of interest from prospective purchasers if the issuer:

a. Is organized under the laws of this state and operates its principal place of business in this state or is a person who is a member of the North Dakota private capital investment network or multistate angel capital electronic network who has registered with the commissioner and who offers, sells, purchases, or exchanges only securities that are registered with the commissioner or the securities and exchange commission.

b. Does not engage in or propose activities for petroleum exploration, oil production, extractive mining, or any blind pool offering without a specific business purpose.

c. Discusses potential business strategies and economic development or solicits indications of potential interest in a project or business only within a period of twelve months after receiving approval from the commissioner and does not pay a commission or fee to any person for soliciting a potential investor or prospective purchaser in this state or involving a resident of this state unless the person who receives the commission or fee is registered as a dealer or sales agent in this state.

d. Intends to file an application to register securities in this state or to receive approval for an exemption under subsection 9 and the issuer intends to offer and sell securities described in section 3(a)11 of the federal Securities Act of 1933, in regulation A or rule 504 of regulation D of the securities and exchange commission, in a small corporate offering registration, or in a state or federal securities registration for a private placement involving only accredited investors as defined by the securities and exchange commission.

e. Files a solicitation of interest form and copies of any advertising or marketing materials, including scripts for use in telephone, television, electronic, or computer publications, for approval by the commissioner at least ten business days before the issuer begins soliciting indications of interest from potential purchasers and at least ten business days before publishing or distributing any materials or information to any person.

f. Obtains approval of the commissioner for any amendments or changes in filed forms, marketing materials, or advertisements at least ten business days before distributing the amended marketing materials or amended advertising information to any person.

g. Stops all communications with prospective investors made in reliance on this exemption immediately after filing an application to register or qualify the securities with the commissioner or with the securities and exchange commission.

h. Does not accept money or sign completed contracts for sales of securities with any person while soliciting indications of interest and does not complete any sales of securities until at least ten business days after completing a securities registration in this state.

i. Includes the name, address, and telephone number of the chief executive officer of the issuer, a general description of the business and products, and the following statements in any published notice, marketing materials, or broadcast scripts:

NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED UNTIL AFTER THESE SECURITIES ARE REGISTERED OR QUALIFIED WITH THE SECURITIES COMMISSIONER OF THIS STATE AND WITH THE SECURITIES AND EXCHANGE COMMISSION.

NO SALES OF THESE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED

UNTIL AFTER DELIVERY OF A PROSPECTUS THAT INCLUDES ADDITIONAL INFORMATION ABOUT THE OFFERING.

A PROSPECTIVE INVESTOR WHO EXPRESSES AN INTEREST IN THIS INVESTMENT OR PROJECT IS NOT OBLIGATED OR COMMITTED TO INVEST MONEY OR PURCHASE SECURITIES.

j. Does not know and, in the exercise of reasonable care, could not have know that the issuer or any officer, director, ten percent shareholder, promoter, partner, manager or agent of the issuer has:

(1) Been the subject of or filed a registration statement that is the subject of a stop order, administrative enforcement order, judgment, injunction, or restraining order issued by any federal or state securities agency, any court of competent jurisdiction, or the United States postal service and which prohibits, denies, or revokes the registration, offer, sale, or purchase or a security, franchise, commodity, or other financial transaction or which involves fraud, deceit, misstatements of material facts, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or similar deceptive acts; or

(2) Been convicted of any felony or misdemeanor involving the offer, purchase, or sale of a security, franchise, commodity, or financial transaction, or any felony or misdemeanor involving fraud, deceit, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or a similar financial crime.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 8, 1997
Filed April 8, 1997

CHAPTER 102

HOUSE BILL NO. 1320

(Representatives Froseth, Schmidt, Warner)
(Senator Tomac)

COOPERATIVE ARTICLES AND NAMES

AN ACT to create and enact a new subsection to section 10-15-05, sections 10-15-08.1, 10-15-08.2, and a new subsection to section 10-15-12.1 of the North Dakota Century Code, relating to the articles of association of a cooperative and cooperative names; and to amend and reenact sections 10-15-07, 10-15-36, and 10-15-54 of the North Dakota Century Code, relating to cooperative existence, annual reports, and fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 10-15-05 of the North Dakota Century Code is created and enacted as follows:

The effective date of the cooperative if a later date than that on which the certificate of association is issued by the secretary of state. A later effective date may not be later than ninety days after the date on which the certificate of association is issued.

SECTION 2. AMENDMENT. Section 10-15-07 of the North Dakota Century Code is amended and reenacted as follows:

10-15-07. Filing articles of association - Cooperative existence. An original of the articles of association, duly signed and acknowledged, must be delivered to the secretary of state for filing. The legal corporate existence of a cooperative begins when the ~~original articles are so delivered~~ certificate of association is issued by the secretary of state or on a later date as specified in the articles of association. The secretary of state shall stamp on the articles of association the date of filing and provide to the cooperative a certificate of the filing.

SECTION 3. Section 10-15-08.1 of the North Dakota Century Code is created and enacted as follows:

10-15-08.1. Cooperative name.

1. The cooperative name:

   a. Must be expressed in English letters or characters.

   b. May contain the word "corporation" or "incorporated" or an abbreviation of either of those words.

   c. May not contain a word or phrase that indicates or implies that it is organized for a purpose other than one or more business purposes for which a cooperative association may be organized under this chapter.

d. May not be the same as, or deceptively similar to, the name of a domestic or foreign corporation, limited liability company, limited liability partnership, or limited partnership, whether profit or nonprofit, authorized to do business in this state, or a name the right to which is, at the time of organization, in some manner reserved, or is a fictitious name registered with the secretary of state as provided in chapter 45-11, or is a trade name registered with the secretary of state as provided in chapter 47-25, unless there is filed with the articles:

(1) A written consent to use the name obtained from the domestic or foreign corporation, limited liability company, limited liability partnership, or limited partnership authorized to do business in this state having a deceptively similar name, or the holder of a reserved name, registered trade name or fictitious name; or

(2) A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

2. The secretary of state shall determine whether a cooperative name is deceptively similar to another name for purposes of this chapter.

3. This section and section 10-15-08.2 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.

4. A cooperative that is involuntarily dissolved by the secretary of state under section 10-15-36 may reacquire the right to use that name by reinstating the cooperative within the time provided in section 10-15-36 or by refiling articles of association, unless the name has been adopted for use or reserved by another person, in which case the filing must be rejected unless the filing is accompanied by a written consent or judgment as provided in subdivision d of subsection 1. A cooperative that is unable to reacquire the use of its name shall adopt a new name that complies with this section.

SECTION 4. Section 10-15-08.2 of the North Dakota Century Code is created and enacted as follows:

10-15-08.2. Reserved name.

1. The exclusive right to the use of a name otherwise permitted by section 10-15-08.1 may be reserved by any person.

2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in section 10-15-54. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.

3. The right to the exclusive use of a cooperative name reserved under this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in section 10-15-54.

4. The right to the exclusive use of a cooperative name reserved under this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, with the fees provided in section 10-15-54.

5. The secretary of state may accept for filing a legible facsimile copy of the signed original of any request for a reserved name which is the same size as the original document and which meets all other requirements of this section.

6. The secretary of state may destroy all reserved name requests and the reserved name requests index one year after expiration.

SECTION 5. A new subsection to section 10-15-12.1 of the North Dakota Century Code is created and enacted as follows:

The fee prescribed in section 10-15-54 for change of registered office may be refunded when in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

SECTION 6. AMENDMENT. Section 10-15-36 of the North Dakota Century Code is amended and reenacted as follows:

10-15-36. Annual reports - Filing thereof - Fees - Penalties.

1. A cooperative and a foreign cooperative shall file an annual report signed by a principal officer or the general manager setting forth:

   a. Its name and complete address of its principal place of business.

   b. The names and addresses of its directors and principal officers.

   c. A statement, by class and par value, of the amount of stock which it has authority to issue, and the amount issued.

   d. A statement as to the general type of business engaged in during the prior year.

2. Such annual report must be made on forms prescribed by the secretary of state, and the information therein contained must be given as of the date of the execution of the report.

3. The annual report must be d~~elivered~~ ~~to~~ filed with the secretary of state ~~between~~ ~~January~~ ~~first~~ ~~and~~ on or before March thirty-first of each year following incorporation. A fee of twenty dollars must be paid to the secretary of state for filing the report. If the report does not conform to requirements, it must be returned to the cooperative for necessary corrections. The penalties for failure to file such report do not apply if it is corrected and returned within thirty days after the annual report was returned by the secretary of state. The secretary of state may extend the filing date for the annual report of any cooperative if a written application for an extension is received on or before March thirty-first.

4. Any report filed after March thirty-first may be filed only upon payment to the secretary of state of the following fees:

   a. If filed prior to May first, twenty-five dollars.

   b. If filed thereafter but not later than the following March thirty-first, thirty-five dollars.

5. If the report is not filed before May first, the secretary of state shall notify any cooperative or foreign cooperative failing to file its annual report that the cooperative is not in good standing and that it may be dissolved or its authority may be revoked. If the cooperative or foreign cooperative files its annual report after the notice with a fee of t~~wenty-five~~ thirty-five dollars, the secretary of state will restore the certificate of incorporation or authority to good standing. Until restored to good standing, the secretary of state may not accept for filing any document respecting such cooperative except those incident to its dissolution or withdrawal. If the annual report of a cooperative is not filed on or before March thirty-first of the year following the year a cooperative is found to be not in good standing, the cooperative ceases to exist and is considered involuntarily dissolved by operation of law. The secretary of state shall note the dissolution of the cooperative on the records of the secretary of state and shall give notice of the action to the dissolved cooperative. Notice by the secretary of state must be mailed to the last reported address of the principal place of business.

   If the annual report of a foreign cooperative is not filed on or before March thirty-first of the year following the year it is found to be not in good standing, the foreign cooperative forfeits its authority to transact business in North Dakota. The secretary of state shall note the revocation on the records of the secretary of state and shall give notice of the action to the revoked foreign cooperative. Notice by the secretary of state must be mailed to the last reported address of the principal place of business. The secretary of state's determination that a certificate of authority must be revoked under this section is final.

6. A cooperative which was dissolved for failure to file an annual report, or a foreign cooperative whose authority was forfeited for failure to file an annual report, may be reinstated by filing the past due annual report and paying fifty dollars. The fees must be paid and the report filed within one year following the date of the involuntary dissolution or revocation.

Reinstatement under this section does not affect the rights or liability of any person for the time from the dissolution or revocation to the reinstatement.

7. Proof to the satisfaction of the secretary of state that on or before any of the filing dates prescribed by this section, the report was postmarked by the United States postal service or other carrier service, in a sealed, properly addressed, postage prepaid envelope must be deemed to comply with this requirement. When a filing date falls on a Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day complies with this requirement.

8. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

SECTION 7. 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.

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. Filing any other document or statement, or issuing any other certificate, twenty dollars.

Approved March 26, 1997
Filed March 26, 1997

CHAPTER 103

SENATE BILL NO. 2344

(Senator W. Stenehjem)
(Representative Kretschmar)

CORPORATION AND LLC REVISIONS

AN ACT to create and enact sections 10-19.1-41.1, 10-19.1-72.1, 10-19.1-73.2, 10-19.1-73.3, 10-19.1-75.1, 10-19.1-75.2, 10-19.1-76.1, 10-19.1-76.2, 10-19.1-76.3, 10-19.1-85.1, 10-19.1-132, 10-19.1-133, 10-19.1-134, 10-19.1-135, 10-19.1-136, 10-19.1-137, 10-19.1-138, 10-19.1-139, 10-19.1-140, 10-19.1-141, 10-19.1-142, 10-19.1-143, 10-19.1-144, 10-19.1-145, 10-19.1-146, 10-19.1-147, 10-19.1-148, 10-19.1-149, 10-19.1-150, 10-19.1-151, 10-19.1-152, 10-32-39.1, 10-32-40.1, 10-32-40.2, 10-32-43.1, 10-32-43.2, 10-32-48.1, 10-32-52.1, 10-32-78.1, 10-32-130.1, 10-32-130.2, 10-32-156, 57-38-07.2, and 57-38.1-17.3 of the North Dakota Century Code, relating to the North Dakota Business Corporation Act - General Provisions, the Limited Liability Company Act, limited liability partnerships, income tax, and the Uniform Division of Income Tax Act; to amend and reenact sections 10-06.1-17, 10-19.1-01, 10-19.1-10, 10-19.1-13, 10-19.1-14, 10-19.1-15, 10-19.1-16, 10-19.1-25, 10-19.1-26, 10-19.1-30, 10-19.1-31, 10-19.1-35, 10-19.1-40, 10-19.1-41, 10-19.1-42, 10-19.1-43, 10-19.1-47, 10-19.1-48, 10-19.1-50, 10-19.1-51, 10-19.1-52, 10-19.1-53, 10-19.1-55, 10-19.1-56, 10-19.1-57, 10-19.1-58, 10-19.1-59, 10-19.1-60, 10-19.1-66, 10-19.1-71, 10-19.1-72, 10-19.1-73, 10-19.1-74, 10-19.1-75, 10-19.1-76, 10-19.1-81, 10-19.1-82, 10-19.1-83, 10-19.1-85, 10-19.1-86, 10-19.1-87, 10-19.1-89, 10-19.1-90, 10-19.1-91, 10-19.1-92, 10-19.1-95, 10-19.1-110, 10-19.1-110.1, 10-19.1-115, 10-19.1-117, 10-19.1-123, 10-19.1-124, 10-19.1-127, 10-31-01, 10-31-02, 10-31-02.1, 10-31-02.2, 10-31-03, 10-31-04, 10-31-05, 10-31-07, 10-31-07.1, 10-31-07.2, 10-31-07.3, 10-31-12, 10-31-13, 10-31-13.1, 10-32-02, 10-32-06, 10-32-07, 10-32-10, 10-32-11, 10-32-12, 10-32-13, 10-32-15, 10-32-16, 10-32-17, 10-32-19, 10-32-22, 10-32-23, 10-32-28, 10-32-31, 10-32-32, 10-32-34, 10-32-37, 10-32-38, 10-32-39, 10-32-40, 10-32-42, 10-32-43, 10-32-44, 10-32-47, 10-32-48, subsection 1 of section 10-32-50, sections 10-32-51, 10-32-52, 10-32-53, 10-32-54, 10-32-55, 10-32-56, 10-32-58, 10-32-64, 10-32-66, 10-32-67, 10-32-68, 10-32-72, 10-32-77, 10-32-78, 10-32-79, 10-32-80, 10-32-81, 10-32-83, 10-32-84, 10-32-85, 10-32-86, 10-32-87, 10-32-88, 10-32-89, 10-32-91, 10-32-92, 10-32-93, 10-32-94, 10-32-95, 10-32-96, 10-32-97, 10-32-99, 10-32-100, 10-32-101, 10-32-102, 10-32-103, 10-32-104, 10-32-105, 10-32-106, 10-32-107, 10-32-108, 10-32-109, 10-32-110, 10-32-113, 10-32-114, 10-32-115, 10-32-117, 10-32-119, 10-32-121, 10-32-122, 10-32-127, 10-32-135, 10-32-136, 10-32-137, 10-32-138, 10-32-139, 10-32-140, 10-32-141, 10-32-142, 10-32-143, 10-32-144, 10-32-145, 10-32-146, 10-32-147, 10-32-148, 10-32-149, 10-32-150, 10-32-152, 10-32-153, 10-32-154, 10-32-155, 45-10.1-01, 45-10.1-02, 45-10.1-03, 45-10.1-04, 45-10.1-07.1, 45-10.1-08, 45-10.1-51, 45-10.1-52, 45-10.1-53, 45-10.1-54, 45-10.1-55, 45-10.1-56, 45-10.1-57, 45-10.1-58, 45-20-01, 45-22-01, 45-22-03, 45-22-04, 45-22-05, 45-22-06, 45-22-07, 45-22-08, 45-22-11, 45-22-12, 45-22-13, 45-22-14, 45-22-16, 45-22-17, 45-22-18, 45-22-20, 45-22-22, 45-22-23, 45-22-24, 45-22-25, 45-22-26, 45-22-27, 57-38-07.1, and 57-38.1-17.2 of the North Dakota Century Code, relating to corporations or limited liability company farming, the Business Corporation Act, the Professional

Organizations Act, the Limited Liability Company Act, the Uniform Limited Partnership Act, events causing dissolution and winding up of partnership business, limited liability partnerships, income tax, and the Uniform Division of Income Tax Act; to repeal sections 10-19.1-54, 10-19.1-73.1, 10-19.1-77, 10-19.1-78, 10-19.1-79, 10-19.1-80, chapters 10-22, 10-23, sections 10-32-41, 10-32-45, 10-32-46, 10-32-90, and 10-32-151 of the North Dakota Century Code, relating to the North Dakota Business Corporation Act - General Provisions, the North Dakota Business Corporation Act - Foreign Corporations, the North Dakota Business Corporation Act - Administration, Reports, Fees, Effect, and the Limited Liability Company Act; and to provide penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-17. Annual report - Contents - Filing requirements. ~~Prior to~~ Before April fifteenth of each year, every corporation engaged in farming or ranching after June 30, 1981, and every limited liability company engaged in farming or ranching shall file with the secretary of state a report executed by its president, a vice president, secretary, or treasurer containing all of the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.

2. 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.

3. With respect to each corporation:

   a. A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

   b. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and services, if any, within a class.

4. With respect to each shareholder or member:

   a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;

   b. The number of shares or membership interests or percentage of shares or membership interests owned by each;

   c. The relationship of each;

   d. A statement of whether each is a citizen or permanent resident alien of the United States; and

   e. A statement of whether at least one is an individual residing on or operating the farm or ranch.

~~4.~~ 5. With respect to management:

a. If a corporation, then the names and addresses of the officers and members of the board of directors; or

b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.

~~5.~~ 6. 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. The statement must also designate which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].

~~6.~~ 7. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years or for each year of its existence if less than five years.

~~7.~~ 8. A statement of the percentage of gross income of the corporation or limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.

~~8.~~ 9. A corporation engaged in farming which fails to file an annual report is subject to the penalties provided in section ~~10-23-02~~ 10-19.1-147 except that the penalties must be calculated from the date of the report required by this section.

~~9.~~ 10. A limited liability company engaged in farming which fails to file an annual report is subject to the penalties provided in subsections 5 and 6 of section 10-32-149 except that the penalties must be calculated from the date of the report required by this section.

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 the purposes of this chapter, unless the context clearly indicates that a different meaning is intended:

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

2. "Address" means ~~mailing address.~~:

a. In the case of a registered office or principal executive office, the ~~term means the office~~ 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 demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, and articles of dissolution.

b. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.

4. "Board" or "board of directors" means the board of directors of a corporation.

5. "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.

6. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.

7. "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.

~~7.~~ 8. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.

~~8.~~ 9. "Constituent corporation" means a domestic or foreign corporation that is a party to a merger or exchange.

~~9.~~ 10. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.

~~10.~~ 11. "Director" means a member of the board.

~~11.~~ 12. "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares~~. A distribution~~, and may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.

~~12.~~ 13. "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.

~~13.~~ 14. "Filed with the secretary of state" means that either a signed original or a legible facsimile copy of a signed original of a request for reserved name; or a signed original of ~~a document~~ all other documents meeting the applicable requirements of this chapter, together with the fees provided in ~~chapter 10-23~~ section 10-19.1-147, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law. The secretary of state shall then endorse on the original the word "filed" and the month, day, and year, and record the document in the office of the secretary of state.

~~14.~~ 15. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose ~~or purposes~~ for which a corporation may be incorporated under this chapter.

~~15.~~ 16. "Foreign limited liability company" means a limited liability company organized for profit 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.

~~16.~~ 17. "Good faith" means honesty in fact in the conduct of ~~the~~ an act or transaction ~~concerned~~.

~~17.~~ 18. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

~~18.~~ 19. ~~A person "knows"~~ "Knows" or has "knowledge" ~~of a fact when~~ means the person has actual knowledge of ~~it~~ a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.

~~19.~~ 20. "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; ~~an executor of a will; an administrator of an estate;~~ a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator ~~of the person or estate of a person~~.

~~20.~~ 21. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.

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

~~21.~~ 23. "Notice" is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation.

a. In all other cases, "notice" is given to a person:

(1) When mailed to the person at an address designated by the person or at the last known address of the person; or

(2) When handed to the person; or

(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 ~~therein~~ there.

b. Notice ~~by mail~~ is given by mail when deposited in the United States mail with sufficient postage affixed.

c. Notice is deemed received when it is given.

~~22.~~ 24. "Officer" means ~~a person~~ an individual who is eighteen years of age or more who is elected, appointed, or otherwise designated as an officer by the board~~, and any other person~~, or deemed elected as an officer pursuant to section 10-19.1-56.

~~23.~~ 25. "Organization" means ~~a~~, whether domestic or foreign, a corporation incorporated in or authorized to do business in this state under this or another chapter of this code, limited liability company, partnership, limited partnership, limited liability partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

~~24.~~ 26. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.

~~25.~~ 27. "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.

~~26.~~ 28. "Ownership interests" means:

a. Shares in the case of a corporation; and

b. Membership interests in the case of a nonprofit corporation or limited liability company; and

c. Similar interests in other organizations.

~~27.~~ 29. "Parent" of a specified corporation means a corporation or limited liability company that directly, or indirectly through related corporations or limited liability companies, owns more than fifty percent of the voting

power of the shares entitled to vote for directors of the specified corporation.

~~28.~~ 30. "Principal executive office" means an office where the elected or appointed president of a corporation has an office~~.~~ ~~If~~, or if the corporation has no elected or appointed president ~~"principal executive office" means~~, then the registered office of the corporation.

~~29.~~ "~~Related organization" of a specified corporation means:~~

~~a. A parent or subsidiary of the specified corporation;~~

~~b. Another subsidiary of a parent of the specified corporation;~~

~~c. A limited liability company owning, directly or indirectly, more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation;~~

~~d. A 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 by the specified corporation;~~

~~e. A 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 by either:~~

~~(1) A parent of the specified corporation; or~~

~~(2) A limited liability company owning, directly or indirectly, more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation; or.~~

~~f. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly by a limited liability company owning, directly or indirectly, more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.~~

31. "Registered office" means the place in this state designated in the articles as the registered office of the corporation.

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.

~~30.~~ 33. "Security" has the meaning given it in subsection 13 of section 10-04-02.

~~31.~~ 34. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

~~32.~~ 35. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.

~~33.~~ 36. "Shareholder" means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.

~~34.~~ 37. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and~~,~~ ~~with~~:

a. With respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors or the holders of the required proportion or number of the voting power of the shares present and entitled to vote~~. A signature on~~; and

b. With respect to a document not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

~~35.~~ 38. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~36.~~ 39. "Subsidiary" of a specified corporation means:

a. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related corporations or limited liability companies, by the specified corporation; or

b. A 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.

~~37.~~ 40. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.

~~38.~~ 41. "Vote" includes authorization by written action.

~~39.~~ 42. "Written action" means a written document signed by all of the persons required to take the action d~~escribed. The term also means~~, or the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the

person signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

SECTION 3. 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 ~~the corporation~~ incorporation if a later date than that on which the certificate of incorporation is issued by the secretary of state~~.~~ ~~A later effective date~~, 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.

   b. Any provision authorizing the issuance of stocks or bonds in violation of section 9 of article XII of the Constitution of North Dakota.

3. The following provisions govern a corporation unless modified in the articles:

   a. A corporation has general business purposes as provided in section 10-19.1-08.

   b. A corporation has perpetual existence and certain powers as provided in section 10-19.1-26.

   c. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-19.1-31.

   d. The affirmative vote of a majority of directors present is required for an action of the board as provided in section 10-19.1-46.

   e. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-19.1-47.

   f. The board may authorize the issuance of securities and rights to purchase securities as provided in subsection 1 of section 10-19.1-61.

g. All shares are common shares entitled to vote and are of one class and one series as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.

h. All shares have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.

i. The par value of shares is fixed at one cent per share for certain purposes and may be fixed by the board for certain other purposes as provided in subdivisions a and b of subsection 2 of section 10-19.1-61.

j. The board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits and determine the value of nonmonetary consideration as provided in subsection 1 of section 10-19.1-63.

k. Shares of a class or series may not be issued to holders of shares of another class or series to effectuate share dividends or splits, unless authorized by a majority of the voting power of the shares of the same class or series as the shares to be issued as provided in subsection 1 of section 10-19.1-63.

l. A corporation may issue rights to purchase securities whose terms, provisions, and conditions are fixed by the board as provided in section 10-19.1-64.

m. The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except where this chapter requires the affirmative vote of a majority of the voting power of all shares entitled to vote as provided in subsection 1 of section 10-19.1-74.

n. Shares of a corporation acquired by the corporation may be reissued as provided in subsection 1 of section 10-19.1-93.

o. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding shares entitled to vote of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision c of subsection 3 of section 10-19.1-98.

p. An exchange need not be approved by shareholders of the acquiring corporation unless the outstanding participating shares of that corporation will be increased by more than twenty percent immediately after the exchange as provided in subdivision d of subsection 3 of section 10-19.1-98.

q. Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 3 of section 10-19.1-77.

r. The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval as provided in section 10-19.1-61.1.

4. The following provisions govern a corporation unless modified either in the articles or in the bylaws:

   a. ~~Directors serve~~ 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. ~~The~~ A director may call a board meeting, and the notice of ~~a board~~ the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-19.1-43.

   g. A majority of the board is a quorum for a board meeting as provided in section 10-19.1-45.

   h. A committee must consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present as provided in subsection 2 of section 10-19.1-48.

   i. The board may establish a special litigation committee as provided in section 10-19.1-48.

   j. Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-19.1-59.

   k. Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions as provided in section 10-19.1-71.

   l. No fewer than ten nor more than fifty days' notice is required for a meeting of shareholders as provided in subsection 3 of section 10-19.1-73.

   m. The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting as provided in section 10-19.1-76.

   n. The board may fix a date up to fifty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting as provided in subsection 1 of section 10-19.1-77.

o. Indemnification of certain persons is required as provided in section 10-19.1-91.

p. The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-19.1-92.

5. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board fixing a greater than majority director or shareholder vote or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, 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 ~~10-19.1-54~~ 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 4 of section 10-19.1-73.

q. A larger than majority vote may be required for shareholder action as provided in section 10-19.1-74.

r. Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection 4 of section 10-19.1-77.

s. Corporate actions giving rise to dissenter rights may be designated as provided in subdivision d of subsection 1 of section 10-19.1-87.

t. The rights and priorities of persons to receive distributions may be established as provided in section 10-19.1-92.

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. The articles may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the corporation.

7. It is not necessary to set forth in the articles any of the corporate powers granted by this chapter.

SECTION 4. 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", ~~or~~ "limited", or ~~must contain~~ an abbreviation of one or more of these words~~, or the word "company" or the abbreviation "Co."~~.

c. May not contain a word or phrase that indicates or implies that it ~~is incorporated for a purpose other than one or more business purposes for which a corporation~~ may not be incorporated under this chapter.

d. ~~May not be the same as, or deceptively similar to, the name of a domestic or foreign corporation, limited liability company, or limited partnership, whether profit or nonprofit, authorized to do business in this state, or a name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14 or is a fictitious name registered with the office of the~~

~~secretary of state in the manner provided in chapter 45-11 or is a trade name registered with the office of the secretary of state in the manner provided in chapter 47-25, unless there is filed with the articles:~~

~~(1) The written consent of the domestic or foreign corporation, limited liability company, limited partnership, or partnership authorized to do business in this state having a deceptively similar name or the holder of a reserved name or registered trade name to use the deceptively similar name; or~~

~~(2) A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.~~

~~This subsection does not affect the right of a domestic corporation existing on July 1, 1985, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.~~ May not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal business purpose for which a corporation may 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 document which complies with subsection 2 of this section, 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; or

(e) A limited liability partnership; or

(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, 45-10.1-03, 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. 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.

4. A corporation that is merged with another domestic or foreign ~~corporation~~ organization, or that is incorporated by the reorganization of one or more domestic or foreign ~~corporations~~ organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic ~~corporation~~ organization all or substantially all of the assets of another domestic or foreign ~~corporation~~ organization including its name, may have the same name as that used in this state by any of the other ~~corporations~~ organizations, if the other ~~corporation~~ ~~was~~ organization:

a. Was incorporated, organized, formed, or registered under the laws of~~, or is~~ 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, 45-10.1-03, 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.

5. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence~~, but~~. 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.

6. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section ~~10-23-02.2~~ 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 ~~pursuant to subdivision d of subsection 1~~. 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 10-19.1-127; or

c. By reinstating pursuant to section 10-19.1-146,

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 shall adopt a new corporate name which complies with the provisions of this section.

7. 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.

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

SECTION 5. AMENDMENT. Section 10-19.1-14 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-14. Reserved name.

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-19.1-13 may be reserved by any person.

2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in ~~chapter 10-23.~~ section 10-19.1-147:

a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.

b. The reservation may be renewed for successive twelve-month periods.

3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in ~~chapter 10-23~~ section 10-19.1-147.

4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, together with the fees provided in ~~chapter 10-23~~ section 10-19.1-147.

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

6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 6. 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.

1. A corporation shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business or the principal executive office of the corporation.

2. A corporation shall ~~designate in its articles~~ appoint and continuously maintain a registered agent~~. The registered agent~~ who may be ~~an~~:

   a. An individual residing in this state~~, a~~;

   b. A domestic corporation whether incorporated under this chapter or under another provision of this code or domestic limited liability company~~,~~; or ~~a~~

   c. A foreign corporation whether authorized to do business or conduct activities under this chapter or another provision of this 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 ~~chapter 10-23~~ section 10-19.1-147.

SECTION 7. 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.

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 ~~chapter 10-23~~ 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 1, 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. The fee prescribed in ~~chapter 10-23~~ 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.

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

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

1. Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganization of corporations, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and to put it into effect, so long as the articles as amended contain only provisions which might be lawfully contained in original articles at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended ~~for such purpose so as~~ to:

a. Change the corporate name, period of duration, or corporate purposes of the corporation.

b. Repeal, alter, or amend the bylaws of the corporation.

c. Change the aggregate number of shares, or shares of any class, which the corporation has the authority to issue.

d. Change the preferences, limitations, relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part thereof, whether issued or unissued.

e. Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof.

f. Constitute or reconstitute and classify or reclassify board and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:

a. Articles of amendment approved by decree or order of the court must be executed and verified by the person or persons designated or appointed by the court for that purpose and must set forth the name of the corporation, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, and the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation under the provisions of an applicable statute of the United States.

b. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law and that all fees have been paid as provided in ~~chapter 10-23~~ section 10-19.1-147, the original must be recorded in the office of the secretary of state.

3. The articles of amendment become effective upon their acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.

4. The articles are amended accordingly with the same effect as if the amendment had been adopted by unanimous action of the directors and shareholders.

SECTION 9. AMENDMENT. Section 10-19.1-26 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-26. ~~Powers~~ General powers.

1. A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.

2. A corporation has perpetual duration.

3. A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.

4. A corporation may purchase, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest t~~herein~~ in property, wherever situated.

5. A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest t~~herein~~ in property, wherever situated.

6. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of ~~and otherwise~~, use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality t~~hereof~~.

7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income.

8. A corporation may invest and reinvest its funds.

9. A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.

10. A corporation may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.

11. Except as otherwise prohibited by law, a corporation may make donations, irrespective of corporate benefit, for the public welfare; for social, community, charitable, religious, educational, scientific, civic, literary, ~~and~~ testing ~~for~~, and public safety purposes~~, and for similar or related purposes~~; for the purpose of fostering national or international amateur sports competition; ~~and for~~ the prevention of cruelty to children and animals; and for similar or related purposes.

12. A corporation may pay pensions, retirement allowances, and compensation for past services ~~to and for the benefit of~~, and establish~~, maintain, continue, and carry out, wholly or partially at the expense of the corporation,~~ employee or incentive benefit plans, trusts, and provisions ~~to or~~ for the benefit of~~, any or all of~~ its and its related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for ~~and on behalf of~~ a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

13. A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control ~~with or to others~~.

14. A corporation may provide for its benefit life insurance and other insurance with respect to the services of ~~any or all of~~ its officers, directors, employees, and agents, or on the life of a shareholder for the purpose of acquiring at the death of the shareholder any or all shares in the corporation owned by the shareholder.

15. A corporation may have, alter at pleasure, and use a corporate seal as provided in section 10-19.1-27.

16. A corporation may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the corporation as provided in section 10-19.1-31.

17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in section 10-19.1-48 and fix their compensation.

18. A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties and fix their compensation.

19. A corporation may issue securities and rights to purchase securities as provided in sections 10-19.1-61 through 10-19.1-69.

20. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-19.1-89.

21. A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 10-19.1-90.

22. A corporation shall indemnify those persons identified in section 10-19.1-91 against certain expenses and liabilities only as provided in section 10-19.1-91 and may indemnify other persons.

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

24. A corporation may acquire an ownership interest in another organization.

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

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

10-19.1-30. Organization.

1. If the first board is not named in the articles, the incorporators may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected or until shares are issued, whichever occurs first.

2. After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall, within a reasonable time, either

hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation, including amending the articles, electing directors, adopting bylaws, electing officers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a corporate seal, approving forms of certificates or transaction statements for shares of the corporation, adopting a fiscal year for the corporation, accepting subscriptions for and issuing shares of the corporation, and making any appropriate tax elections. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting. Incorporators and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board pursuant to subsection 5 of section 10-19.1-43.

SECTION 11. AMENDMENT. Section 10-19.1-31 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-31. Bylaws.

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management ~~of the business~~ or the regulation of the affairs of the corporation not inconsistent with law or the articles.

2. Initial bylaws may be adopted by the first board or by the incorporators, pursuant to section 10-19.1-30. Unless reserved by the articles to the shareholders, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the shareholders, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws, the board may not adopt, amend, or repeal a bylaw fixing a quorum for meetings of shareholders, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors.

3. ~~If~~ Unless the articles or bylaws provided otherwise, a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote may propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board ~~and the~~.

   a. The resolution ~~sets~~ must set forth the ~~provision or~~ provisions proposed for adoption, amendment, or repeal~~, the~~.

   b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2, 3, and 4 of section 10-19.1-19, for amendment of the articles.

c. The provisions of this subsection regarding shareholder proposed amendments shall not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules ~~promulgated thereunder,~~ in which case the federal securities laws or rules ~~promulgated thereunder~~ shall govern.

d. The articles or bylaws may impose different or additional requirements for the shareholders to adopt, amend, or repeal the bylaws.

SECTION 12. AMENDMENT. Section 10-19.1-35 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-35. Terms.

1. With respect to length of terms:

a. Unless fixed terms are provided for in the articles or bylaws, a director serves for an indefinite term that expires at the next regular meeting of the shareholders.

(1) A fixed term of a director, other than an ex officio director, may not exceed five years. ~~A~~

(2) An ex officio director serves as long as the director holds the office or position designated in the articles or bylaws.

b. Unless the articles or bylaws provide otherwise, a director holds office until expiration of the term for which the director was elected or appointed and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the director.

c. A decrease in the number of directors or term of office does not shorten an incumbent director's term.

d. Except as provided in the articles or bylaws, the term of a director filling a vacancy expires at the end of the unexpired term that the director is filling.

2. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the groups need not be uniform.

SECTION 13. AMENDMENT. Section 10-19.1-40 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-40. Resignation.

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

2. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

SECTION 14. AMENDMENT. Section 10-19.1-41 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-41. ~~Removal~~ 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 or all of the directors may be removed at any time, with or without cause, by the affirmative vote of the holders of the proportion or number of the voting power of the shares of the classes or series the director represents sufficient to elect them. If less than the entire board is to be removed, no one of the directors may be removed if the votes of a sufficient number of shares are cast against the director's removal which, if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which the director is a part, would be sufficient to elect the director. Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

4. New directors may be elected at a meeting at which directors are removed.

SECTION 15. Section 10-19.1-41.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-41.1. Removal of directors by judicial proceeding.

1. The district court of the county where the principal executive office of a corporation is located may remove any director of the corporation from office in a proceeding commenced either by the corporation or its shareholders holding at least ten percent of the voting power of any class of shares, if the court finds:

   a. The director engaged in fraudulent or dishonest conduct or gross abuse of authority or discretion, with respect to the corporation;

b. A final judgment has been entered finding that the director has violated section 10-19.1-50; and

c. Removal is in the best interest of the corporation.

2. The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

3. If the shareholders commence a preceding under subdivision a, then the corporation shall be made a party defendant.

SECTION 16. AMENDMENT. Section 10-19.1-42 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-42. Vacancies.

1. Unless different rules for filling vacancies are provided for in the articles or bylaws:

   a. Vacancies on the board resulting from the death, resignation, removal, or disqualification of a director may be filled by the affirmative vote of a majority of the remaining directors, even though the remaining directors constitute less than a quorum; and

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

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

3. A vacancy that will occur at a specific later date may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

SECTION 17. AMENDMENT. Section 10-19.1-43 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-43. Board meetings.

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

2. A board meeting may be conducted by:

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

~~meeting~~. Participation in a meeting by ~~that~~ this means c~~onstitutes~~ is personal presence ~~in person~~ at the meeting; or

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

3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to subsection 2 of section 10-19.1-30, at least three days' notice, to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

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

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

SECTION 18. AMENDMENT. Section 10-19.1-47 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-47. Action without meeting.

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

2. The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.

3. When written action is permitted to be taken by less than all directors, all directors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions ~~taken~~ t~~hereby~~.

SECTION 19. AMENDMENT. Section 10-19.1-48 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-48. Committees.

1. A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights or remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

2. Committee members must be individuals. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee must consist of one or more persons, who need not be directors, appointed by ~~affirmative vote of a majority of the directors present~~ the board.

3. Sections 10-19.1-43, 10-19.1-44, and 10-19.1-45 apply to committees and members of committees to the same extent as those sections apply to the board and directors.

4. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any director.

5. The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 10-19.1-50.

6. Committee members are deemed to be directors for purposes of sections 10-19.1-50, 10-19.1-51, and 10-19.1-91.

SECTION 20. AMENDMENT. Section 10-19.1-50 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-50. Standard of conduct for directors.

1. A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.

2. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

   a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

   b. Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or

c. A committee of the board upon which the director does not serve, duly established in accordance with section 10-19.1-48 as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

3. Subsection 2 does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by ~~subdivision a~~ subsection 2 unwarranted.

4. A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:

a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate thereafter in the meeting, in which case the director shall not be considered to be present at the meeting for any purpose of this chapter;

b. Votes against the action at the meeting; or

c. Is prohibited ~~by section 10-19.1-51~~ from voting on the action:

(1) By the articles;

(2) By the bylaws;

(3) As the result of a decision to approve, ratify, or authorize a transaction pursuant to section 10-19.1-51; or

(4) By a conflict of interest policy adopted by the board.

5. 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. The articles may not eliminate or limit the liability of a director:

a. For any breach of the director's duty of loyalty to the corporation or its shareholders;

b. For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

c. Under section 10-19.1-95 or 10-04-17;

d. For any transaction from which the director derived an improper personal benefit; or

e. For any act or omission occurring prior to the date when the provision in the articles eliminating or limiting liability becomes effective.

6. In discharging the duties of the position of director, a director may, in considering the best interests of the corporation, consider the interests of the corporation's employees, customers, suppliers, and creditors, the economy of the state and nation, community and societal considerations,

and the long-term as well as the short-term interests of the corporation and its shareholders including the possibility that these interests may be best served by the continued independence of the corporation.

SECTION 21. AMENDMENT. Section 10-19.1-51 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-51. Director conflicts of interest.

1. A contract or other transaction between a corporation and ~~one~~:

   a. One or more of its directors~~, or between a corporation and an~~ or a member of the family of a director;

   b. A director or governor of a related organization, or a member of the family of a director or governor of a related organization; or

   c. An organization in or of which ~~one or more~~ the corporation's director, or a member of the family of its ~~directors are directors, officers, or legal representatives~~ director, is a director, officer, governor, manager, or representative or ~~have~~ has a material financial interest,

   is not void or voidable because the director ~~or directors~~ or the other ~~organizations are parties~~ individual or organization is a party or because the director ~~or directors are~~ is present at the meeting of the shareholders or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if at least one of the requirements of subsection 2 is satisfied.

2. The contract or transaction described in subsection 1 is not void or voidable if:

   a. The contract or transaction was, and the person asserting the validity of the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;

   b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the shareholders and the contract or transaction is approved in good faith by:

      (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors; or

      (2) The unanimous affirmative vote of the holder of all outstanding shares, whether or not entitled to vote;

   c. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or

d. The contract or transaction is a distribution described in subsection 1 of section 10-19.1-92 or a merger or exchange described in subsection 1 or 2 of section 10-19.1-96.

~~2.~~ 3. For purposes of this section:

a. A director does not have a material financial interest in a resolution fixing the compensation of a director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, is not void or voidable or considered to be a contract or other transaction between a corporation ~~and one or more of its directors for purposes of this section~~ even though the director receiving the compensation fixed by the resolution is present and voting at the meeting of the board or a committee at which the resolution is authorized, approved, or ratified, or even though other directors voting upon the resolution are also receiving compensation from the corporation; ~~and~~

b. A director has a material financial interest in each organization in which the director, ~~or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters, and brothers and sisters of the spouse of a director, or any combination of them have a material financial interest. A contract or other transaction between a corporation and the spouse, parents, children and spouses of children, brothers and sisters, spouses of brothers and sisters, and brothers and sisters of the spouse of a director, or any combination of them, is considered to be a transaction between the corporation and the director~~ or a member of the family of the director, has a material financial interest; and

c. A "member of the family" of a director is a spouse, parent, child, child of a spouse, brother, sister, or the spouse of any of these.

4. The procedures described under subdivisions a, b, and c of subsection 2 are not required if the contract or other transaction is between related organizations.

SECTION 22. AMENDMENT. Section 10-19.1-52 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-52. Officers. The officers of a corporation must be individuals who are eighteen years of age or more and shall consist of a president, ~~one or more vice presidents as may be prescribed by the bylaws,~~ a secretary, and a treasurer~~, each~~ and may also include one or more vice presidents and any other officers or agents as may be prescribed by the bylaws. Each of ~~whom~~ the officers must be elected by the board at ~~such~~ a time and in ~~such~~ a manner as may be provided in the bylaws unless the articles or bylaws provide that the shareholders may elect the officers.

SECTION 23. AMENDMENT. Section 10-19.1-53 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-53. Duties of officers and agents. Unless the articles, bylaws, or a resolution adopted by the board and not inconsistent with the articles or bylaws, provides otherwise, the officers shall have the following duties.

1. The president shall:

a. Have general active management for the business of the corporation;

b. When present, preside at all meetings of the board and of shareholders;

c. See that all orders and resolutions of the board are carried into effect;

d. Sign and deliver in the name of the corporation, any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the board to some officer or agent of the corporation;

e. Maintain records of and, whenever necessary, certify all proceedings of the board and the shareholders; and

f. Perform other duties prescribed by the board.

2. The vice president, if any, or, if there is more than one, the vice presidents in the order determined by the board, shall:

a. In the absence or disability of the president, perform the duties and exercise the powers of the president; and

b. Shall perform other duties and shall have other powers as the board may from time to time prescribe.

3. The treasurer shall:

a. Keep accurate financial records for the corporation;

b. Deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;

c. Endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers;

d. Disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;

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

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

4. The secretary shall:

a. Attend all meetings of the board, all meetings of the shareholders, and when required, all meetings of standing committees;

b. Record all proceedings of the meetings;

c. Give, or cause to be given, notice of all meetings of the shareholders and meetings of the board; and

d. Perform other duties prescribed by the board.

~~3.~~ 5. All other officers and agents of the corporation, as between themselves and the corporation, have the authority and shall perform the duties in the management of the corporation as may be provided in the articles or bylaws, or as may be determined by resolution of the board not inconsistent with the articles and bylaws.

SECTION 24. AMENDMENT. Section 10-19.1-55 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 25. AMENDMENT. Section 10-19.1-56 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 26. AMENDMENT. Section 10-19.1-57 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-57. Contract rights. The election or appointment of ~~a person~~ an individual as an officer or agent does not, of itself, create contract rights. However, a corporation may enter into a contract with an officer or agent. The resignation or removal of an officer or agent is without prejudice to any contractual rights or obligations. The fact that the contract may be for a term that is longer than the terms of the directors who authorized or approved the contract does not make the contract void or voidable.

SECTION 27. AMENDMENT. Section 10-19.1-58 of the North Dakota Century Code is amended and reenacted as follows:

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

1. An officer may resign at any time by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is specified in the notice.

2. ~~An~~ Except as otherwise provided in the articles and bylaws, an officer may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the directors present, subject to the provisions of a shareholder control agreement. The removal is without prejudice to any contractual rights of the officer.

3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause may, or in the case of the president or treasurer must, be filled for the unexpired portion of the term in the manner provided in the articles or bylaws, or determined by the board, or pursuant to section 10-19.1-56.

SECTION 28. AMENDMENT. Section 10-19.1-59 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 29. AMENDMENT. Section 10-19.1-60 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 30. AMENDMENT. Section 10-19.1-66 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The shares of a corporation must be represented by certificates signed by the president, or by a vice president, and by the secretary, or by an assistant secretary of the corporation.

2. If a person signs or has a facsimile signature placed upon a certificate while an officer, transfer agent, or registrar of a corporation, the certificate may be issued by the corporation, even if the person has ceased to have that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of its issue.

3. Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class must set forth upon the face or back of the certificate, or must state that the corporation will furnish to any shareholders upon request and without charge, a full or summary statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class or series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board to fix and determine the

relative rights and preferences of subsequent series. Each certificate representing shares must state upon its face:

a. The name of the corporation.

b. That the corporation is organized under the laws of this state.

c. The name of the person to whom issued.

d. The number and class of shares, and the designation of the series, if any, which such certificate represents.

e. The par value of such share represented by such certificate, or a statement that the shares are without par value.

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

5. Unless uncertificated shares are prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any, or all classes and series of its shares will be uncertificated shares.

a. The resolution 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. 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 31. AMENDMENT. Section 10-19.1-71 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-71. Regular meetings of shareholders.

1. Regular meetings of shareholders may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles or bylaws or by subsection 2.

2. If a regular meeting of shareholders has not been held during the i~~mmediately~~ ~~preceding~~ earlier of six months after the fiscal year end of the corporation or fifteen months~~,~~ ~~a~~ after its last meeting:

a. A shareholder or shareholders holding five percent or more of the voting power of all shares entitled to vote may demand a regular meeting of shareholders by written notice of demand given to the president or secretary of the corporation.

b. Within thirty days after receipt of the demand by one of those officers, the board shall cause a regular meeting of shareholders to

be called and held at the expense of the corporation on notice no later than ninety days after receipt of the demand.

c. If the board fails to cause a regular meeting to be called as required by this subsection, the ~~shareholder or~~ shareholders making the demand may call the ~~regular~~ meeting by giving notice as required by section 10-19.1-73.

d. All necessary expenses of the notice and the meeting must be paid by the corporation.

3. A regular meeting, if any, must be held on the ~~day or~~ date and at the time and place fixed by, or in a manner authorized by, the articles or bylaws, except that a meeting called by or at the demand of a shareholder pursuant to subsection 2 must be held in the county where the principal executive office of the corporation is located.

4. At each regular meeting of shareholders t~~here~~:

a. There must be an election of qualified successors for directors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting.

b. No other particular business is required to be transacted ~~at a regular meeting~~.

c. Any business appropriate for action by the shareholders may be transacted ~~at a regular meeting~~.

5. Failure to hold a meeting in accordance with the articles or bylaws does not affect the validity of a corporate action.

SECTION 32. AMENDMENT. Section 10-19.1-72 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-72. Special meetings of shareholders.

1. Special meetings of the shareholders may be called for any purpose or purposes at any time, by:

a. The president;

b. Two or more directors;

c. A person authorized in the articles or bylaws to call special meetings; or

d. A shareholder or shareholders holding ten percent or more of the voting power of all shares entitled to vote, except that a special meeting for the purpose of considering any action to directly or indirectly facilitate or effect a business combination, including any action to change or otherwise affect the composition of the board of directors for that purpose, must be called by twenty-five percent or more of the voting power of all shares entitled to vote.

2. A shareholder or shareholders holding the voting power specified in subdivision d of subsection 1 may demand a special meeting of shareholders by written notice of demand given to the president or secretary of the corporation and containing the purposes of the meeting.

   a. Within thirty days after receipt by one of those officers of the demand, the board shall cause a special meeting of shareholders to be called and held on notice no later than ninety days after receipt of the demand.

   b. If the board fails to cause a special meeting to be called as required by this subsection, the shareholder or shareholders making the demand may call the special meeting by giving notice as required by section 10-19.1-73.

   c. All necessary expenses of the notice and the meeting shall be paid by the corporation.

3. Special meetings must be held on the date and at the time and place fixed by the president, the board, or a person authorized by the articles or bylaws to call a meeting, except that a special meeting called by or at the demand of a shareholder or shareholders pursuant to subsection 2 must be held in the county where the principal executive office is located.

4. The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the corporation, unless all of the shareholders have waived notice of the meeting in accordance with subsection 4 of section 10-19.1-73.

SECTION 33. Section 10-19.1-72.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-72.1. Court-ordered meeting of shareholders.

1. The district court of the county where the principal executive office of a corporation is located may order a meeting to be held:

   a. On application of a shareholder or shareholders holding five percent or more of the voting power of all shares entitled to vote, if a meeting was not held within the earlier of:

      (1) Six months after the fiscal yearend of the corporation; or

      (2) Fifteen months after its last meeting; or

   b. On application of a voting shareholder who signed a demand for a special meeting valid under section 10-19.1-72 or a person entitled to call a special meeting if:

      (1) Notice of the special meeting was not given within thirty days after the date the demand was delivered to a corporate officer; or

(2) The special meeting was not held in accordance with the notice.

2. The court may:

a. Fix the time and place of the meeting;

b. Specify a record date for determining shareholders entitled to notice of and to vote at the meeting;

c. Prescribe the form and content of the meeting notice;

d. Fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters; and

e. Enter other orders necessary to accomplish the purposes of the meeting.

3. If the court orders a meeting it may also order the corporation to pay the costs of the shareholder, including reasonable attorneys' fees, incurred to obtain the order.

SECTION 34. AMENDMENT. Section 10-19.1-73 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-73. Notice.

1. Except as otherwise provided in this chapter, notice of all meetings of shareholders must be given to every holder of shares entitled to vote unless:

a. The meeting is an adjourned meeting to be held not more than one hundred twenty days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; or

b. The following have been mailed by first-class mail to a shareholder at the address in the corporate records and returned nondeliverable:

(1) Two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings; or

(2) All payments of ~~dividends~~ distributions, provided there were at least two sent during a twelve-month period.

An action or meeting that is taken or held without notice under subdivision b has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to the corporation, the notice requirement is reinstated.

2. If notice of an adjourned meeting is required under subdivision a of subsection 1, then the date for determination of shares entitled to notice

of and entitled to vote at the adjourned meeting must comply with subsection 1 of section ~~10-19.1-77~~ 10-19.1-73.2, except that if the date of the meeting is set by court order, the court may provide that the original date of determination will continue in effect or may fix a new date.

3. ~~If~~ The notice:

a. In all instances where a specific minimum notice period has not otherwise been fixed by law, ~~the notice~~ must be given at least ten days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than fifty days before the date of the meeting~~.~~;

~~4.~~ b. ~~The notice must~~ Must contain the date, time, and place of the meeting~~,~~;

c. Must contain the information with respect to dissenters' rights required by subsection 2 of section 10-19.1-88, if applicable~~, and any other information required by this chapter. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles or bylaws or deemed necessary or desirable by the board or by any other person or persons calling the meeting.~~;

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

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

f. Must contain any other information:

(1) Required by the articles or bylaws, or this chapter;

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

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

~~5.~~ 4. A shareholder may waive notice of a meeting of shareholders.

a. A waiver of notice by a shareholder entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, or by attendance.

b. Attendance by a shareholder at a meeting is a waiver of notice of that meeting, except where the shareholder objects ~~at~~:

(1) At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened~~,~~; or ~~objects before~~

(2) Before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

SECTION 35. Section 10-19.1-73.2 of the North Dakota Century Code is created and enacted as follows:

10-19.1-73.2. Voting rights.

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

2. A determination of the holders of shares entitled to notice and to vote at a meeting of shareholders is effective for an adjournment of the meeting unless the board fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than fifty days after the record date for determining shareholders entitled to notice of the original meeting.

3. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may:

   a. Maintain the original record date for notice and voting; or

   b. Fix a new record date for notice and voting.

4. A resolution approved by the affirmative vote of a majority of the directors present may establish a procedure whereby a shareholder may certify in writing to the corporation that all or a portion of the shares registered in the name of the shareholder are held for the account of one or more beneficial owners. Upon receipt by the corporation of the writing, the persons specified as beneficial owners, rather than the actual shareholder, are deemed the shareholders for the purposes specified in the writing.

5. Unless otherwise provided in the articles or bylaws, or in the terms of the shares, a shareholder has one vote for each share held.

6. The articles may give or prescribe the manner of giving a creditor, securityholder, or other person a right to vote under this section.

7. Shares owned by two or more shareholders may be voted by any one of them unless the corporation receives written notice from any one of them denying the authority of that person to vote those shares.

8. Except as provided in subsection 7, a holder of shares entitled to vote may vote any portion of the shares in any way the shareholder chooses. If a shareholder votes without designating the proportion or number of shares voted in a particular way, the shareholder is deemed to have voted all of the shares in that way.

SECTION 36. Section 10-19.1-73.3 of the North Dakota Century Code is created and enacted as follows:

10-19.1-73.3. Voting list.

1. After fixing a record date for notice of and voting at a meeting, a corporation shall prepare an alphabetical list of the names of its shareholders entitled to notice and to vote. The list must show the address and number of shares each shareholder is entitled to vote at the meeting.

2. The list of shareholders must be available for inspection by a shareholder with voting rights for the purpose of communication with other shareholders concerning the meeting, beginning two business days after the meeting notice is given and continuing through the meeting, at the principal executive office of the corporation or at a reasonable place identified in the meeting notice in the city where the meeting will be held.

   a. The list must also be available at the meeting.

   b. A shareholder, a shareholder's agent, or attorney is entitled on written demand to inspect and to copy the list, at a reasonable time and at the shareholder's expense, during the period it is available for inspection and at any time during the meeting or an adjournment.

3. If the corporation refuses to allow a shareholder with voting rights, the shareholder's agent, or attorney to inspect the list of shareholders before or at the meeting, the district court of the county where the principal executive office of the corporation is located, on application of the shareholder, may:

   a. Order the inspection or copying at the corporation's expense;

   b. Postpone the meeting until the inspection or copying is complete; or

   c. Order the corporation to pay the shareholder's costs, including reasonable attorneys' fees, incurred to obtain the order.

4. Unless a written demand to inspect and copy a shareholder list has been made under subsection 2 before the shareholder meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

5. A shareholder, agent, or attorney who gains access to a shareholder list under this section may not use or give it to another for use of the shareholder list for any purpose other than a proper purpose. Upon application of the corporation, the district court may issue a protective order or order other relief necessary to enforce this subsection.

SECTION 37. AMENDMENT. Section 10-19.1-74 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-74. Act of the shareholders.

1. ~~The~~ Unless this chapter or the articles require a greater vote or voting by class, the shareholders shall take action by the affirmative vote of the holders of the greater of:

   a. A majority of the voting power of the shares present and entitled to vote on that item of business; or

   b. A majority of the voting power of the minimum number of shares entitled to vote that would constitute a quorum for the transaction of business at the meeting~~, except where this chapter or the articles require a larger proportion or number~~.

   If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

2. ~~In any case where a class or series of shares is entitled by this chapter, the articles, the bylaws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares present of that class or series as is required pursuant to subsection 1, unless the articles require a larger proportion. Unless otherwise stated in the articles or bylaws in the case of voting as a class or series, the minimum percentage of the number of shares of the class or series which must be present shall be equal to the minimum percentage of all outstanding shares entitled to vote required to be present under section 10-19.1-76.~~ Unless otherwise provided in the articles or bylaws, shareholders may take action at a meeting by:

   a. Voice or ballot;

   b. Action without a meeting pursuant to section 10-19.1-75;

   c. Written ballot pursuant to section 10-19.1-75.1; or

   d. Electronic communication pursuant to section 10-19.1-75.2.

SECTION 38. AMENDMENT. Section 10-19.1-75 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-75. Action without a meeting. An action required or permitted to be taken at a meeting of the shareholders may be taken without a meeting by written action signed by all of the shareholders entitled to vote on that action.

1. If the articles so provide, any action may be taken by written action signed 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.

2. The written action is effective when it has been signed by ~~all of those~~ the required shareholders, unless a different effective time is provided in the written action.

3. When written action is permitted to be taken by less than all shareholders, all shareholders must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. 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.

4. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the officers signing the certificate must indicate the action was taken under this section.

SECTION 39. Section 10-19.1-75.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-75.1. Action by written ballot.

1. Except as provided in subsection 5 and unless prohibited or limited by the articles or bylaws, an action that may be taken at a regular or special meeting of shareholders may be taken without a meeting if the corporation mails or delivers a written ballot to every shareholder entitled to vote on the matter.

2. A written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.

3. Approval by written ballot under this section is valid only if:

   a. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and

   b. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

4. Solicitations for votes by written ballot must:

   a. Indicate the number of responses needed to meet the quorum requirements;

   b. State the percentage of approvals necessary to approve each matter other than election of directors; and

   c. Specify the time by which a ballot must be received by the corporation in order to be counted.

5. Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

SECTION 40. Section 10-19.1-75.2 of the North Dakota Century Code is created and enacted as follows:

10-19.1-75.2. Electronic communications.

1. A conference among the shareholders by any means of communication through which the participants may simultaneously hear each other during the conference constitutes a regular or special meeting of shareholders:

a. If the same notice is given of the conference as would be required for a meeting; and

b. If the number of shares held by the shareholders participating in the conference would be sufficient to constitute a quorum at a meeting.

2. Participation in a conference meeting the requirements of subsection 1 constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-19.1-80 are met.

3. A shareholder may participate in a regular or special meeting of shareholders not described in subsection 1 by any means of communication through which the shareholder, other participants, and all persons physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-19.1-80 are met.

4. Waiver of notice of a meeting by means of communication described in subsection 1 or 3 may be given in the manner provided in subsection 4 of section 10-19.1-73. Participation in a meeting by means of communications described in subsection 1 or 3 is a waiver of notice of that meeting, except where the shareholder objects:

a. At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or

b. Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 41. AMENDMENT. Section 10-19.1-76 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-76. Quorum. ~~The~~

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

2. Except as provided in subdivision b, a quorum is necessary for the transaction of business at a meeting of shareholders.

a. If a quorum is not present, a meeting may be adjourned from time to time for that reason.

b. If a quorum has been present at a meeting and shareholders have withdrawn from the meeting so that less than a quorum remains,

the shareholders still present may continue to transact business until adjournment.

SECTION 42. Section 10-19.1-76.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-76.1. Voting of shares by organizations and legal representatives.

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

2. Except as provided in subsection 3, shares of a corporation registered in the name of a subsidiary are not entitled to be voted on any matter.

3. Shares of a corporation in the name of or under the control of the corporation or a subsidiary in a fiduciary capacity are not entitled to be voted on any matter, except to the extent that the settlor or beneficial owner possesses and exercises a right to vote or gives the corporation or, with respect to shares in the name of or under control of a subsidiary, the subsidiary, binding instructions on how to vote the shares.

4. Shares under the control of a person in a capacity as a personal representative, an administrator, executor, guardian, conservator, or attorney in fact may be voted by the person, either in person or by proxy, without registration of those shares in the name of the person. Shares registered in the name of a trustee of a trust or in the name of a custodian may be voted by the person, either in person or by proxy, but a trustee of a trust or a custodian may not vote shares held by the person unless they are registered in the name of the person.

5. Shares registered in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or either in person or by proxy. Shares under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without registering the shares in the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.

6. Shares registered in the name of an organization not described in subsections 1 through 5 may be voted either in person or by proxy by the legal representative of that organization.

7. A shareholder whose shares are pledged may vote those shares until the shares are registered in the name of the pledgee. If the corporation pledges its own shares under subsection 1 of section 10-19.1-93, the corporation may not vote the shares at a meeting or otherwise.

SECTION 43. Section 10-19.1-76.2 of the North Dakota Century Code is created and enacted as follows:

10-19.1-76.2. Proxies.

1. At or before the meeting the appointment is to be effective a shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy with an officer authorized to tabulate votes.

a. A written appointment of a proxy may be signed by the shareholder or authorized by the shareholder by transmission of a telegraph, cablegram, or other means of electronic transmission, provided the corporation has no reason to believe the telegram, cablegram, or other electronic transmission was not authorized by the shareholder.

b. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile, telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

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

2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest, including a security interest, in the shares or in the corporation. A shareholder who revokes a proxy is not liable in any way for damages, restitution, or other claim.

3. An appointment may be revoked at will, unless the appointment is coupled with an interest, in which case it may not be revoked except in accordance with the terms of an agreement, if any, between the parties to the appointment. Appointment of a proxy is revoked by the person appointing the proxy by:

a. Attending a meeting and voting in person; or

b. Signing and delivering to the officer or agent authorized to tabulate proxy votes either:

(1) A writing stating the appointment of the proxy is revoked; or

(2) A later appointment.

4. Revocation in either manner provided in subsection 3 revokes all earlier proxy appointments and is effective when filed with an officer of the corporation.

5. The death or incapacity of a person appointing a proxy does not affect the right of the corporation to accept the authority of the proxy, unless written notice of the death or incapacity is received by an officer authorized to tabulate votes before the proxy exercises authority under that appointment.

6. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a shareholder:

a. Any one of them may vote the shares on each item of business in accordance with specific instructions contained in the appointment; and

b. If no specific instructions are contained in the appointment with respect to voting the shares on a particular item of business, the shares must be voted as a majority of the proxies determine. If the proxies are equally divided, the shares may not be voted.

7. Subject to section 10-19.1-76.3 and an express restriction, limitation, or specific reservation of authority of the proxy appearing on the appointment, the corporation may accept a vote or action by the proxy as the action of the shareholder. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the shareholder or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

8. If a proxy is given authority by a shareholder 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 for purposes of subsection 1 of section 10-19.1-74, only with respect to those items of business for which the proxy has authority to vote. 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.

SECTION 44. Section 10-19.1-76.3 of the North Dakota Century Code is created and enacted as follows:

10-19.1-76.3. Acceptance of shareholder act by the corporation.

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the record name of a shareholder, the corporation if acting in good faith may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder.

2. Unless the articles or bylaws provide otherwise, if the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a shareholder, the corporation if acting in good faith may accept the vote, consent waiver, or proxy appointment and give it effect as the act of the shareholder if:

a. The shareholder is an organization and the name signed purports to be that of an officer, manager, or agent of the organization;

b. The name signed purports to be that of an administrator, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

c. The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder, and, if the corporation requests, evidence of this status acceptable to the corporation has been

presented with respect to the vote, consent, waiver, or proxy appointment;

d. The name signed purports to be that of a pledgee, beneficial owner, or attorney in fact of the shareholder, and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or

e. Two or more persons hold the shares as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.

3. The corporation may reject a vote, consent, waiver, or proxy appointment if the officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

4. The corporation or its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section is not liable in damages to the shareholder for the consequences of the acceptance or rejection.

5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

SECTION 45. AMENDMENT. Section 10-19.1-81 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-81. Voting trusts.

1. Shares in a corporation may be transferred to a trustee pursuant to written agreement, for the purpose of conferring on the trustee the right to vote and otherwise represent the beneficial owner of those shares for a period not exceeding ten years, except that if the agreement is made in connection with an indebtedness of the corporation, the voting trust may extend until the indebtedness is discharged. Unless otherwise specified in the agreement, the voting trust may be terminated at any time by the beneficial owners of a majority of the voting power of the shares held by the trustee. A signed original of the agreement must be filed with the corporation.

2. Unless otherwise provided in the trust agreement, if there are two or more trustees, the manner of voting is determined as provided in subsection 5 of section ~~10-19.1-77~~ 10-19.1-73.2.

SECTION 46. AMENDMENT. Section 10-19.1-82 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-82. Shareholder voting agreements. A written agreement solely among persons who are then shareholders or subscribers for shares to be issued, relating to the voting of their shares, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of

section ~~10-19.1-80~~ 10-19.1-76.2 regarding proxies and is not subject to the provisions of section ~~10-19.1-81~~ 10-19.1-73.2 regarding voting trusts.

SECTION 47. AMENDMENT. Section 10-19.1-83 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-83. Shareholder control agreements.

1. A written agreement solely among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subsections 2 and 3.

2. A written agreement ~~solely~~ among persons described in subsection 1 which relates to the control of or the liquidation and dissolution of the corporation, the relations among them, or any phase of the business and affairs of the corporation, including the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued.

3. The agreement is enforceable by the persons described in subsection 1 who are parties to it and is binding upon and enforceable against only those persons and other persons having knowledge of the existence of the agreement. A signed original of the agreement must be filed with the corporation. The existence and location of a copy of the agreement must be noted conspicuously on the face or back of each certificate for shares issued by the corporation and on each transaction statement. A shareholder, a beneficial owner of shares, or another person having a security interest in shares has the right upon written demand to obtain a copy of the agreement from the corporation at the expense of the corporation.

4. ~~The effect of an agreement authorized by this section is to relieve the board and the director or directors in their capacities as directors of, and to impose upon the parties to the agreement, the liability for acts or omissions imposed by law upon directors to the extent that and so long as the discretion or powers of the directors in the management of the business and affairs of the corporation are exercised by the shareholders under a provision in the agreement.~~ If an agreement authorized by this section takes away from any person any of the authority and responsibility which that person would otherwise possess under this chapter, the effect of the agreement is also:

   a. To relieve that person of liability imposed by law for acts and omissions in the possession or exercise of that authority and responsibility; and

   b. To impose that liability on the person or persons possessing the authority and responsibility under the agreement.

5. A shareholder is not liable pursuant to ~~this~~ subsection 4 by virtue of a shareholder vote, if the shareholder had no right to vote on the action.

~~5.~~ 6. This section does not apply to, limit, or restrict agreements otherwise valid, nor is the procedure set forth in this section the exclusive method of agreement among shareholders or between the shareholders and the corporation with respect to any of the matters described in this section.

SECTION 48. AMENDMENT. Section 10-19.1-85 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-85. Financial statements.

1. A corporation shall, upon the written request of a shareholder, prepare annual financial statements within one hundred eighty days after the close of the corporation's fiscal year~~.~~ ~~The financial statements shall include~~ including at least a balance sheet as of the end of ~~each~~ the fiscal year and a statement of income for the fiscal year, ~~which must be~~ prepared on the basis of accounting methods reasonable in the circumstances ~~and~~. The financial statements may be consolidated statements of the corporation and one or more of its subsidiaries.

   a. ~~In the case of~~ If the statements are audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements~~; in other cases,~~.

   b. If these statements are not audited by a public accountant, each copy must be accompanied by a statement of the treasurer or other person in charge of the corporation's financial records ~~stating~~:

      (1) Stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances~~, describing~~;

      (2) Describing the basis of presentation~~,~~; and ~~describing~~

      (3) Describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

2. Upon written request by a shareholder, a corporation shall furnish its most recent annual financial statements as required under subsection 1 no later than ten business days after receipt of a shareholder's written request. "Furnish" for purposes of this subsection means that the corporation shall deliver or mail, postage prepaid, the financial statements to the address specified by the requesting shareholder.

SECTION 49. Section 10-19.1-85.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-85.1. Equitable remedies. If a corporation or an officer or director of the corporation violates this chapter, a court in this state, in an action brought by a shareholder of the corporation may grant equitable relief it considers just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the shareholders.

SECTION 50. AMENDMENT. Section 10-19.1-86 of the North Dakota Century Code is amended and reenacted as follows:

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

1. In any action thereafter instituted in the right of any domestic or foreign corporation by the holder or holders of record of shares of the corporation or voting trust certificates, the court having jurisdiction, upon final judgment and finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in defense of such action.

2. In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of record of less than five percent of the outstanding shares of any class of the corporation or voting trust certificates, unless the shares or voting trust certificates so held have a market value in excess of twenty-five thousand dollars, the corporation in whose right such action is brought is entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable.

   a. Market value must be determined on the date the plaintiff institutes the action or, in the case of an intervenor, on the date the intervenor becomes a party to the action.

   b. The amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive.

   c. The corporation has recourse to such security in such amount as the court having jurisdiction determines upon the termination of the action, whether or not the court finds the action was brought without reasonable cause.

SECTION 51. 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. 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; or

(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;

b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation ~~not made in the usual or regular course of its business~~, but not including a transaction permitted without shareholder approval in subsection 1 of section 10-19.1-104, or a disposition in dissolution described in subsection 2 of section 10-19.1-109 or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;

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

d. A plan of exchange, whether under this chapter or under chapter 10-32, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to vote on the plan; or

e. 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 the surviving corporation in a merger if the shares of the shareholder are not entitled to be voted on the merger.

4. The shareholders of a corporation who have a right under this section to obtain payment for their shares do not have a right at law or in equity to have a corporate action described in subsection 1 set aside or rescinded, except when the corporate action is fraudulent with regard to the complaining shareholder or the corporation.

SECTION 52. AMENDMENT. Section 10-19.1-89 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A corporation may lend money to, guarantee or pledge its assets as security for an obligation of, become a surety for, or otherwise financially assist any person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the ~~affirmative vote of a majority of the directors present~~ board and:

   a. Is in the usual and regular course of business of the corporation;

   b. Is with, or for the benefit of, a related organization, an organization in which the corporation has a financial interest, ~~all organizations~~ a person or organization with which the corporation has a business relationship in the usual and regular course of business, or an organization to which the corporation has the power to make donations~~, any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the corporation~~;

   c. Is with, or for the benefit of, an officer or director or other employee of the corporation or a ~~subsidiary, including an officer or employee who is a director of the corporation or a subsidiary~~ related organization, and may reasonably be expected, in the judgment of the board, to benefit the corporation; or

   d. Whether or not any separate consideration has been paid or promised to the corporation has been approved by:

      (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested person or persons; or

      (2) The unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote.

2. A loan, guaranty, surety contract, or other financial assistance under subsection 1 may be with or without interest and may be unsecured or may be secured in any manner, including a grant of a security interest in shares of the corporation.

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

SECTION 53. AMENDMENT. Section 10-19.1-90 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 54. AMENDMENT. Section 10-19.1-91 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-91. Indemnification.

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

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

   b. "Official capacity" means:

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

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

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

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

   d. "Special legal counsel" means counsel who has not represented the corporation or a related organization, or a director, officer, member of a committee of the board, or employee whose indemnification is in issue.

2. Subject to subsection 5, a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines including excise taxes assessed against the person with respect to an

employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines including excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omission;

b. Acted in good faith;

c. Received no improper personal benefit and section 10-19.1-51, if applicable, has been satisfied;

d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

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

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

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

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

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

5. The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2, 3, and 4 including monetary limits on indemnification or advances for expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring prior to the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.

6. This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorneys' fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

7. All determinations whether indemnification of a person is required because the criteria provided in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:

a. By the board by a majority of a quorum, if the directors who are at the time parties to the proceeding are not counted for determining either a majority or the presence of a quorum;

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

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

d. If a determination is not made under subdivisions a, b, and c, by the shareholders, ~~but the shares held by parties to the proceeding may not be counted in determining the presence of a quorum and are not considered to be present and entitled to vote on the~~

~~determination~~ other than the shareholders who are a party to the proceeding; or

e. If an adverse determination is made under subdivisions a through d, or under subsection 8, or if no determination is made under subdivisions a through d, or under subsection 8, within sixty days after:

(1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or

(2) A request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

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

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

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

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

11. Nothing in this section may be construed to limit the power of the corporation to indemnify other persons by contract or otherwise.

SECTION 55. AMENDMENT. Section 10-19.1-92 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-92. Distributions.

1. The board may authorize and cause the corporation to make a distribution only if the board determines, in accordance with

subsection 2, that the corporation will be able to pay its debts in the ordinary course of business after making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous.

a. The corporation may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.

b. The effect of a distribution on the ability of the corporation to pay its debts in the ordinary course of business after making the distribution must be measured in accordance with subsection 3.

c. The right of the board to authorize, and the corporation to make, distributions may be prohibited, limited, or restricted by, or the rights and priorities of persons to receive distributions may be established by, the articles or bylaws or an agreement.

2. A determination that the corporation will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-19.1-50 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 10-19.1-50 or 10-19.1-95 will accrue if the requirements of this subsection have been met.

3. With respect to the effect of a distribution:

a. In the case of a distribution made by a corporation in connection with a purchase, redemption, or other acquisition of its shares, the effect of the distribution must be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the corporation, or as of the date on which the shareholder ceases to be a shareholder of the corporation with respect to the shares, whichever is the earliest.

b. The effect of any other distribution must be measured as of the date of its authorization if payment occurs one hundred twenty days or less following the date of authorization, or as of the date of payment if payment occurs more than one hundred twenty days following the date of authorization.

c. The provisions of chapter 13-02.1 do not apply to distributions made by a corporation governed by this chapter.

4. Indebtedness of a corporation incurred or issued in a distribution in accordance with this section to a shareholder who as a result of the transaction is no longer a shareholder is on a parity with the indebtedness of the corporation to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the corporation or a related organization, or subject to any other agreement between the corporation and the shareholder.

5. A distribution may be made to the holders of a class or series of shares only if:

a. All amounts payable to the holders of shares having a preference for the payment of that kind of distribution are paid; and

b. The payment of the distribution does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights, unless ~~the~~:

(1) The distribution is made to those shareholders in the order and to the extent of their respective priorities; or

(2) The holders of shares who do not receive distributions in that order give notice to the corporation of their agreement to waive their right to that distribution.

6. A determination that the payment of the distribution described in subsection 5 does not reduce the remaining net assets of the corporation below the aggregate preferential amount payable in the event of liquidation to the holders of shares having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-19.1-50 on the basis of financial information prepared in accordance with accounting methods, a fair valuation, or other methods reasonable in the circumstances. Liability under section 10-19.1-50 or 10-19.1-94 will not arise if the requirements of this subsection are met.

~~6.~~ 7. If the money or property available for distribution is insufficient to satisfy all preferences, the distributions shall be made pro rata according to the order of priority of preferences by classes and by series within those classes.

SECTION 56. AMENDMENT. Section 10-19.1-95 of the North Dakota Century Code is amended and reenacted as follows:

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

1. In addition to any other liabilities, a director who is present and votes for or fails to vote against, except a director who is prohibited by section 10-19.1-51 from voting on the distribution, or ~~who~~ consents in writing to, a distribution made in violation of subsection 1 or 5 of section 10-19.1-92 or a restriction contained in the articles or bylaws or an agreement, and who fails to comply with the standard of conduct provided in section 10-19.1-50, is liable to the corporation, its receiver or any other person winding up its affairs, jointly and severally with all other directors so liable and to other directors under subsection 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 10-19.1-92.

2. A director against whom an action is brought under this section with respect to a distribution may implead in that action all shareholders who received the distribution and may compel pro rata contribution from them in that action to the extent provided in subsection 1 of section 10-19.1-94.

3. A director against whom an action is brought under this section with respect to a distribution may implead in that action all other directors

who voted for or consented in writing to the distribution and who failed to comply with the standard of conduct provided in section 10-19.1-50, and may compel pro rata contribution from them in that action.

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

SECTION 57. AMENDMENT. Section 10-19.1-110 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-110. Dissolution procedure for corporations that give notice to creditors and claimants.

~~1.~~ When a notice of intent to dissolve has been filed with the secretary of state~~,~~ the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or noncontingent.

1. If notice to creditors and claimants is given, it must be given by ~~publishing~~:

   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 ~~by giving~~

   b. Giving written notice to known creditors and claimants pursuant to subsection 21 of section 10-19.1-01.

2. The notice to creditors and claimants must contain:

   a. A statement that the corporation is in the process of dissolving;

   b. A statement that the corporation has filed with the secretary of state a notice of intent to dissolve;

   c. The date of filing the notice of intent to dissolve;

   d. The address of the office to which written claims against the corporation must be presented; and

   e. The date by which all the claims must be received, which must be the later of ninety days after published notice or, with respect to a particular known creditor or claimant, ninety days after the date on which written notice was given to that creditor or claimant. Published notice is deemed given on the date of first publication for the purpose of determining this date.

3. With respect to claims against ~~corporations~~ a corporation that ~~give~~ gave notice to creditors and claimants:

   a. ~~A~~ The corporation ~~that gives notice to creditors and claimants~~ has thirty days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice to accept or reject the claim by giving written

notice to the person submitting it. A claim not expressly rejected in this manner is deemed accepted.

b. A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has:

(1) Sixty days from the date of rejection;

(2) One hundred eighty days from the date the corporation filed with the secretary of state the notice of intent to dissolve; or

(3) Ninety days after the date on which notice was given to the creditor or claimant,

whichever is longer, to pursue any other remedies with respect to the claim.

c. A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is barred from suing on that claim or otherwise realizing upon it or enforcing it, except as provided in section 10-19.1-124.

d. A creditor or claimant whose claim is rejected by the corporation under subdivision b is barred from suing on that claim or otherwise realizing upon or enforcing it, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in subdivision b.

4. Articles of dissolution for a corporation dissolving under this section that has given notice to creditors and claimants under this section must be filed with the secretary of state after:

a. The ninety-day period in subdivision e of subsection 2 has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or

b. The longest of the periods described in subdivision b of subsection 3 has expired and there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3.

5. The articles of dissolution for a corporation that has given notice to creditors and claimants under this section must state:

a. The last date on which the notice was given and:

(1) That the payment of all creditors and claimants filing a claim within the ninety-day period in subdivision e of subsection 2 has been made or provided for; or

(2) The date on which the longest of the periods described in subdivision b of subsection 3 expired;

b. That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with

subsection 5 of section 10-19.1-92, or that adequate provision has been made for that distribution; and

c. That there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

SECTION 58. AMENDMENT. Section 10-19.1-110.1 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-110.1. Dissolution procedure for corporations that do not give notice to creditors and claimants. When a notice of intent to dissolve has been filed with the secretary of state and the corporation has elected not to give notice to creditors and claimants in the manner provided in section 10-19.1-100:

1. Articles of dissolution for a corporation that has not given notice to creditors and claimants in the manner provided in section 10-19.1-110 ~~must~~:

   a. Must be filed with the secretary of state after:

   ~~a.~~ (1) The payment of claims of all known creditors and claimants has been made or provided for; or

   ~~b.~~ (2) At least two years have elapsed from the date of filing the notice of intent to dissolve~~.~~; and

~~2. The articles of dissolution must~~

   b. Must state:

   ~~a.~~ (1) If the articles of dissolution are being filed pursuant to paragraph 1 of subdivision a of subsection 1, that all known debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made for payment or discharge;

   ~~b.~~ (2) That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with subsection 5 of section 10-19.1-92, or that adequate provision has been made for that distribution; and

   ~~c.~~ (3) That there are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

~~3.~~ 2. With respect to claims against ~~corporations~~ a corporation that ~~do~~ does not give notice:

   a. If a corporation has paid or provided for all known creditors or claimants at the time articles of dissolution are filed, a creditor or

claimant who does not file a claim or pursue a remedy, in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.

b. If the corporation has not paid or provided for all known creditors and claimants at the time articles of dissolution are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 10-19.1-124.

SECTION 59. AMENDMENT. Section 10-19.1-115 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-115. Involuntary dissolution.

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

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

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

      (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs ~~and~~, the shareholders are unable to break the deadlock, 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 or illegally toward one or more shareholders in their capacities as shareholders or directors of any corporation or as officers or employees of a closely held corporation;

      (3) The directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation or as officers or employees of a closely held corporation;

      (4) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;

      (5) The corporate assets are being misapplied or wasted; or

      (6) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-19.1-124;

c. In an action by a creditor when:

(1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or

(2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or

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

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

3. In an action under subdivision b of subsection 1 involving a corporation that is not a publicly held corporation at the time the action is commenced and in which one or more of the circumstances described in that subdivision is established, the court, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, may order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under the circumstances of the case.

a. The purchase price of any shares so sold must be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court. However, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms as set forth, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.

b. Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under subsection 6 of section 10-19.1-88.

c. If the parties are unable to agree on fair value within forty days of entry of the order, the court shall determine the fair value of the shares under the provisions of subsection 10 of section 10-19.1-88 and may allow interest or costs as provided in subsections 1 and 11 of section 10-19.1-88.

d. The purchase price must be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within forty days of entry of the order, as ordered by the court. Upon entry of an order for the sale of shares under this subsection and

provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus any additional costs, expenses, and fees as may be awarded, will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as may be awarded.

4. In determining whether to order equitable relief or dissolution, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other. For purposes of this section, any written agreement, including an employment agreement and a buy-sell agreement, between or among shareholders or between or among one or more shareholders and the corporation is presumed to reflect the parties' reasonable expectation concerning the matters dealt with in the agreement.

5. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buyout, or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.

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

7. Proceedings under this section must be brought in a court within the county in which the r~~egistered~~ principal executive office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

SECTION 60. AMENDMENT. Section 10-19.1-117 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A receiver must be ~~a natural person or a domestic corporation or a foreign corporation~~ an individual, a domestic organization, or a foreign organization authorized to transact business or conduct activities in this state. A receiver shall give bond as directed by the court with the sureties required by the court.

2. A receiver may sue and defend in all courts as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction of the corporation and its property.

SECTION 61. AMENDMENT. Section 10-19.1-123 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-123. Deposit with ~~state treasurer~~ administrator of abandoned property of amount due certain shareholders - Appropriation. Upon dissolution of a corporation, the portion of the assets distributable to a ~~shareholder~~ person who is unknown or cannot be found~~, or who is under disability, if there is no person legally competent to receive the distributive portion~~, must be reduced to money and deposited with the ~~state~~ ~~treasurer~~ administrator of abandoned property for disposition pursuant to chapter 47-30.1. The amount deposited is appropriated to the ~~state~~ ~~treasurer~~ administrator of abandoned property and must be paid over to the ~~shareholder~~ person or a legal representative, upon proof satisfactory to the ~~state~~ ~~treasurer~~ administrator of abandoned property of a right to payment.

SECTION 62. AMENDMENT. Section 10-19.1-124 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-124. Claims barred - Exceptions.

1. ~~Except as provided in this section, a creditor or claimant whose claims are barred under section 10-19.1-110, 10-19.1-110.1, or 10-19.1-119 includes a person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, and all those claiming through or under the creditor or claimant.~~ A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within the time provided in section 10-19.1-110, 10-19.1-110.1, 10-19.1-114, 10-19.1-115, or 10-19.1-119, or has not begun a legal, administrative, or arbitration proceeding before the beginning of the dissolution proceedings, and a person claiming through or under the creditor or claimant, is barred from bringing that claim or otherwise realizing upon or enforcing it, except as provided in this section.

2. At any time within one year after articles of dissolution have been filed with the secretary of state, or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:

   a. Against the corporation to the extent of undistributed assets; or

   b. If the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability is limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder, but in no event may a shareholder's liability exceed the amount which that shareholder actually received in the dissolution.

3. All known contractual debts, obligations, and liabilities incurred in the course of winding up the corporation's affairs shall be paid by the corporation before the distribution of assets to a shareholder. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy against the officers and directors of the corporation who are responsible for, but who fail to cause the corporation to pay or make provision for, payment of the debts,

obligations, and liabilities, or against shareholders to the extent permitted under section 10-19.1-94. This subsection does not apply to dissolution under the supervision or order of a court.

SECTION 63. AMENDMENT. Section 10-19.1-127 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-127. Extension after duration expired.

1. A corporation whose period of duration as provided in the articles has expired and which has continued to do business despite that expiration may reinstate its articles and extend the period of ~~corporate~~ duration, including making the duration perpetual, within one year after the date of expiration by filing an amendment to the articles as set forth in this section.

2. An amendment to the articles ~~is~~ must be approved by the ~~affirmative vote of a majority of the directors present~~ board must include:

   a. The date on which the period of duration expired under the articles;

   b. A statement that the period of duration will be perpetual or, if some shorter period is to be provided, the date to which the period of duration is extended; and

   c. A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration.

3. The amendment to the articles must be presented, after notice, ~~to~~ at a meeting of the shareholders. The amendment is adopted when approved by the shareholders pursuant to section 10-19.1-19.

4. Articles of amendment, together with any fees and delinquent filings and reports, conforming to section 10-19.1-21 must be filed with the secretary of state.

SECTION 64. Section 10-19.1-132 of the North Dakota Century Code is created and enacted as follows:

10-19.1-132. Foreign corporation - Governing law.

1. Subject to the constitution of this state, the laws of the jurisdiction under which a foreign corporation is incorporated govern its incorporation and internal activities.

   a. Nothing in this chapter authorizes this state to regulate the incorporation or internal activities of a foreign corporation.

   b. A foreign corporation may not be denied a certificate of authority to conduct activities in this state by reason of any difference between the laws of the jurisdiction under which the foreign corporation was incorporated and the laws of this state.

2. A foreign corporation holding a valid certificate of authority in this state has no greater rights and privileges than a domestic corporation. The certificate of authority does not authorize the foreign corporation to

exercise any of its powers or purposes that a domestic corporation is forbidden by law to exercise in this state.

3. A foreign corporation may not be denied a certificate of authority to conduct activities in this state by reason of any difference between the laws of the jurisdiction under which the foreign corporation is incorporated and the laws of this state.

SECTION 65. Section 10-19.1-133 of the North Dakota Century Code is created and enacted as follows:

Foreign corporation - Name. A foreign corporation may apply for a certificate of authority under any name that would be available to a domestic corporation, whether or not the name is the name under which it is authorized in its jurisdiction of incorporation. A trade name must be registered as provided in chapter 47-25 when applying for a certificate of authority under a name different from the name authorized in the jurisdiction of incorporation.

SECTION 66. Section 10-19.1-134 of the North Dakota Century Code is created and enacted as follows:

10-19.1-134. Foreign corporation - Admission of foreign corporation - Transacting business - Obtaining licenses and permits. A foreign corporation may not:

1. Transact business in this state or obtain any license or permit required by this state until it has procured a certificate of authority from the secretary of state.

2. Transact any business in this state prohibited to a domestic corporation incorporated under this chapter.

3. Be denied a certificate of authority because the laws of the state or country where the corporation is incorporated differ from the laws of this state.

SECTION 67. Section 10-19.1-135 of the North Dakota Century Code is created and enacted 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 of the proposed registered office of the foreign corporation in this state;

f. The name of the proposed registered agent in this state, as defined under section 10-19.1-15;

g. The purpose of the corporation which it proposes to pursue in transacting business in this state;

h. The names and addresses of the directors and officers of the foreign corporation; and

i. 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 68. Section 10-19.1-136 of the North Dakota Century Code is created and enacted as follows:

10-19.1-136. Foreign corporation - Issuance of certificate of authority. If the secretary of state finds an application for a certificate of authority conforms to law and all fees have been paid, the secretary shall:

1. Endorse on the application the word "filed" and the date of the filing;

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

3. Issue to the corporation or its representative a certificate of authority to transact business in this state.

SECTION 69. Section 10-19.1-137 of the North Dakota Century Code is created and enacted as follows:

10-19.1-137. Foreign corporation - Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign corporation was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign corporation shall promptly file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and, in the case of a change in its name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. In the case of a dissolution, a foreign corporation need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated.

SECTION 70. Section 10-19.1-138 of the North Dakota Century Code is created and enacted 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:

1. 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.

SECTION 71. Section 10-19.1-139 of the North Dakota Century Code is created and enacted as follows:

10-19.1-139. Foreign corporation - Merger of foreign corporation authorized to transact business in this state. Whenever a foreign corporation authorized to transact business in this state is a party to a statutory merger permitted by the laws of the jurisdiction under which it is incorporated, and the corporation is not the surviving organization, the surviving organization shall, within thirty days after the merger becomes effective, file with the secretary of state a certified statement of merger duly authenticated by the proper officer of the state or country where the statutory merger was effected. Any foreign organization which is the surviving organization in a merger and which will continue to transact business in this state, shall procure a new certificate of authority.

SECTION 72. Section 10-19.1-140 of the North Dakota Century Code is created and enacted as follows:

10-19.1-140. Foreign corporation - Certificate of withdrawal.

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;

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.

2. The filing with the secretary of state of a certificate of dissolution, or a certificate of merger if the corporation is not the surviving organization, from the proper officer of the state or country under the laws of which the corporation is incorporated constitutes a valid application of withdrawal and the authority of the corporation to transact business in this state shall cease upon filing of the certificate.

SECTION 73. Section 10-19.1-141 of the North Dakota Century Code is created and enacted as follows:

10-10.1-141. 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:

a. The foreign corporation has failed to:

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

(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 document submitted by the foreign corporation pursuant to this chapter.

2. Except for the annual report for which the certificate of authority may be revoked 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 office in this state or, if the foreign corporation 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 corporation has failed to file the report of change regarding the registered office or the registered agent, to file any amendment, or to 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 of revocation and shall mail the certificate to the principal executive office of the foreign corporation.

SECTION 74. Section 10-19.1-142 of the North Dakota Century Code is created and enacted as follows:

10-19.1-142. Foreign corporation - Transaction of business without certificate of authority.

1. A foreign corporation transacting business in this state may not maintain any claim, action, suit, or proceeding in any court of this state until it possesses a certificate of authority.

2. The failure of a foreign corporation to obtain a certificate of authority does not impair the validity of any contract or act of the foreign corporation or prevent the foreign corporation from defending any claim, action, suit, or proceeding in any court of this state.

3. A foreign corporation, by transacting business in this state without a certificate of authority, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.

4. A foreign corporation that transacts business in this state without a valid certificate of authority is liable to the state for the years or parts of years during which it transacted business in this state without the certificate in an amount equal to all fees that would have been imposed by this chapter upon that corporation had it duly obtained the certificate, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

5. A foreign corporation that transacts business in this state without a valid certificate of authority is subject to a civil penalty, payable to the state, and not to exceed five thousand dollars. Each director and each officer or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign corporation that does not have a certificate is subject to a civil penalty, payable to the state, and not to exceed one thousand dollars.

6. The civil penalties set forth in subsection 5 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign corporation or any of its members, directors, officers, or agents have transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign corporation and the further exercise of any rights and privileges by the corporation in this state. The foreign corporation must be enjoined from transacting

business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign corporation has otherwise complied with the provisions of this chapter.

7. A member of a foreign corporation is not liable for the debts and obligations of the corporation solely by reason of the corporation having transacted business in this state without a valid certificate of authority.

SECTION 75. Section 10-19.1-143 of the North Dakota Century Code is created and enacted as follows:

10-19.1-143. Foreign corporation - Transactions not constituting transacting business.

1. The following activities of a foreign corporation, among others, do not constitute transacting business within the meaning of this chapter:

   a. Maintaining, defending, or settling any proceeding;

   b. Holding meetings of its shareholders or carrying on any other activities concerning its internal activities;

   c. Maintaining bank accounts;

   d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign corporation's own securities or maintaining trustees or depositories with respect to those securities;

   e. Selling through independent contractors;

   f. Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts;

   g. Creating or acquiring indebtedness, mortgages, and security interest in real or personal property;

   h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts; or

   i. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.

2. The term "transacting business" as used in this section has no effect on personal jurisdiction under the North Dakota Rules of Civil Procedure.

3. For purposes of this section, any foreign corporation that owns income-producing real or tangible personal property in this state, other than property exempted under subsection 1, will be considered transacting business in this state.

4. The list of activities in subsection 1 is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign corporation to service of process or taxation in this state or to regulation under any other law of this state.

SECTION 76. Section 10-19.1-144 of the North Dakota Century Code is created and enacted as follows:

10-19.1-144. Foreign corporation - Action by attorney general. The attorney general may bring an action to restrain a foreign corporation from transacting business in this state in violation of this chapter.

SECTION 77. Section 10-19.1-145 of the North Dakota Century Code is created and enacted 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. 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, notices, or demand.

SECTION 78. Section 10-19.1-146 of the North Dakota Century Code is created and enacted 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 prescribed by 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 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 amount of shareholders' equity in the corporation or foreign corporation. Shareholders' equity is the net difference between total assets and total liabilities and may include the sum of the following:

      (1) Consideration received for issued shares;

(2) Additional paid-in capital;

(3) Capital surplus;

(4) Undivided profits;

(5) Retained earnings or retained deficit;

(6) Unrealized holding gains or losses;

(7) Consideration paid for treasury shares; and

(8) Any other amounts the corporation has transferred to shareholders' equity.

h. Irrespective of the manner of its designation by the laws under which a foreign corporation is incorporated, the shareholders' equity of a foreign corporation must be determined on the same basis and in the same manner as the shareholders' equity of a domestic corporation, for the purpose of computing fees and other charges imposed by this chapter.

i. 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 herein provided for the filing of the annual report and the gross amount thereof accumulated by the corporation at or from places of business in this state. If, on December thirty-first preceding the time herein provided 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, then the statement with respect to total gross income must be furnished for the period between the date of incorporation or the date of its authorization to transact business in this state and December thirty-first.

j. Any additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess the proper amount of fees payable by 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 subdivisions g, i, and j 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 prescribed in subsection 37 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 subdivisions g, i, and j of subsection 1 to any person, except a person who 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 the state for correction, then the penalties prescribed 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. Within three months after the date provided in 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 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.

SECTION 79. Section 10-19.1-147 of the North Dakota Century Code is created and enacted as follows:

10-19.1-147. Fees for filing documents - 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 dollars.

2. Filing articles of amendment, twenty dollars.

3. Filing restated articles of incorporation, thirty dollars.

4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.

5. Filing articles of abandonment of merger, fifty dollars.

6. Filing an application to reserve a corporate name, ten dollars.

7. Filing a notice of transfer of a reserved corporate name, ten dollars.

8. Filing a cancellation of reserved corporate name, ten dollars.

9. Filing a consent to use of name, ten dollars.

10. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.

11. Filing a statement of change of address of registered office by registered agent, ten dollars for each corporation affected by such change.

12. Filing a registered agent's consent to serve in such capacity, ten dollars.

13. Filing a resignation as registered agent, ten dollars.

14. Filing a statement of the establishment of a series of shares, twenty dollars.

15. Filing a statement of cancellation of shares, twenty dollars.

16. Filing a statement reduction of stated capital, twenty dollars.

17. Filing a statement of intent to dissolve, ten dollars.

18. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.

19. Filing articles of dissolution, twenty dollars.

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 dollars.

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.

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.

23. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.

24. Filing an annual report of a corporation or foreign corporation, twenty-five dollars. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:

    a. Within ninety days after the date provided in subsection 3 of section 10-19.1-146, twenty dollars;

    b. Thereafter, sixty dollars; and

    c. 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.

25. Filing any process, notice, or demand for service, twenty-five dollars.

26. Furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar for every four pages or fraction thereof and fifteen dollars for the certificate and affixing the seal thereto.

27. License fee of fifty dollars for the first fifty thousand dollars of a corporation's authorized shares, or fraction thereof, 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. Thereafter, a corporation may postpone the payment for any additional amount until the filing of an annual report after the unpaid shares are issued. Any additional amount must be paid in increments of ten thousand dollars of its authorized shares.

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

28. 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 its business transacted within this state, and the denominator of which must be the sum of the value of all of its property wherever located and the gross receipts of the foreign corporation derived from its 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 its 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.

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

SECTION 80. Section 10-19.1-148 of the North Dakota Century Code is created and enacted as follows:

10-19.1-148. 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 corporation or foreign 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 corporation has complied with all provisions of this chapter applicable to the corporation.

   a. The interrogatory must be answered within thirty days after mailing, or within any additional time as must 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 corporation, it must be answered by the president, vice president, secretary, or assistant secretary of the corporation.

   c. The secretary of state is not required to file any document to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose the document 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, an interrogatory and answers thereto, which discloses a violation of this chapter.

   e. Each officer, director, or employee of a corporation or foreign corporation who fails or refuses within the time provided by subdivision a of subsection 2 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 document required by this chapter to be approved by the secretary of state before the document may be filed, then the secretary of state shall give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection.

   a. From such rejection the person may appeal to the district court of the county in which the registered office of such corporation is, or is proposed to be, situated by filing with the clerk of the court a petition setting forth a copy of the document sought to be filed and a copy of the written rejection of the document 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 revokes the certificate of authority to transact business in this state of any foreign corporation, pursuant to section 10-19.1-141, then the foreign corporation may appeal to the district court of the county where the registered office of the foreign corporation in this state is situated by filing with the clerk of the court a petition setting forth a copy of the corporation's certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state. The matter must be tried de novo by the court. 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.

5. 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.

SECTION 81. Section 10-10.1-149 of the North Dakota Century Code is created and enacted as follows:

10-19.1-149. Secretary of state - Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of documents filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated.

2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated.

SECTION 82. Section 10-19.1-150 of the North Dakota Century Code is created and enacted as follows:

10-19.1-150. Secretary of state - Forms to be furnished by the secretary of state. All reports required by this chapter to be filed in the office of the secretary of state must be made on forms prescribed by the secretary of state. Forms for all other documents to be filed in the office of the secretary of state may be furnished by the secretary of state upon request. However, the use of such documents, unless otherwise specifically required by law, is not mandatory.

SECTION 83. Section 10-19.1-151 of the North Dakota Century Code is created and enacted as follows:

10-19.1-151. Miscellaneous - Foreign trade zones.

1. As used in this section, unless the context otherwise requires:

   a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an act to provide for the establishment, operation, and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for

other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934 [48 Stat. 998; 19 U.S.C. 81a et seq.].

b. "Private corporation" means a corporation authorized under this chapter, one of the purposes of which is to establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.

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

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

SECTION 84. Section 10-19.1-152 of the North Dakota Century Code is created and enacted as follows:

10-19.1-152. Audit reports and audit of corporations receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any corporation that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the corporation, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the corporation's taxable year. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any corporation required to submit an annual report under this section.

SECTION 85. AMENDMENT. Section 10-31-01 of the North Dakota Century Code is amended and reenacted as follows:

10-31-01. Definitions. As used in this chapter, unless the context otherwise requires:

1. "Create" means to form an organization by:

   a. Incorporating a professional corporation;

   b. Organizing a professional limited liability company; or

   c. Registering a professional limited liability partnership.

2. "Executive" means an officer or a director of a professional corporation, a manager or a governor of a professional limited liability company, or a partner of a professional limited liability partnership.

3. "Foreign limited liability partnership" has the meaning set forth in section 45-22-01.4.

4. "Foreign professional organization" means a professional organization that is created under laws other than the laws of this state for purposes for which a professional organization may be created under this chapter.

~~4.~~ 5. "Owner" means a shareholder of a professional corporation, a member of a professional limited liability company, or a partner of a limited liability partnership.

~~5.~~ 6. "Professional corporation" or "corporation" means a corporation that is incorporated under this chapter for the ~~sole and specific~~ purpose of rendering professional service and which has as its shareholders only individuals who themselves are licensed or otherwise legally authorized within this state to render the same professional service as the corporation or nonlicensed employees as provided in section 10-31-07.1.

~~6.~~ 7. "Professional limited liability company" or "limited liability company" means a limited liability company that is organized under this chapter for the ~~sole and specific~~ purpose of rendering professional service and which has as its members only individuals who themselves are licensed or otherwise legally authorized within this state to render the same professional service as the limited liability company or nonlicensed employees as provided in section 10-31-07.2.

~~7.~~ 8. "Professional limited liability partnership" or "limited liability partnership" means a limited liability partnership that is registered under this chapter for the ~~sole and specific~~ purpose of rendering professional service, is not a foreign limited liability partnership, and has as its partners only individuals who are licensed or otherwise legally authorized within this state to render the same professional service as the limited liability partnership or nonlicensed employees as provided in section 10-31-07.1.

~~8.~~ 9. "Professional organization" or "organization" means:

a. A professional corporation that is incorporated under this chapter;

b. A professional limited liability company that is organized under this chapter; or

c. A professional limited liability partnership that is registered under this chapter.

~~9.~~ 10. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which ~~prior to~~ before the passage of this chapter could not be performed by a corporation, limited liability company, or a limited liability partnership.

SECTION 86. AMENDMENT. Section 10-31-02 of the North Dakota Century Code is amended and reenacted as follows:

10-31-02. Articles of incorporation.

1. One or more individuals may incorporate a professional organization in the form of a corporation for the practice of a profession by filing articles of incorporation with the secretary of state. The articles of

incorporation must meet the requirements of chapter 10-19.1 and contain the following:

a. The profession to be practiced through the professional corporation; and

b. The names and residence addresses of all of the original shareholders of the professional corporation who will practice the profession in this state.

2. At the time the articles of incorporation are filed with the secretary of state, the professional corporation also shall file a certificate from the regulating board of the profession involved that each of the directors and shareholders of voting shares who will practice the profession in this state, if any, is licensed to practice the profession in this state.

SECTION 87. AMENDMENT. Section 10-31-02.1 of the North Dakota Century Code is amended and reenacted as follows:

10-31-02.1. Articles of organization.

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

a. The profession to be practiced through the professional limited liability company; and

b. The names and residence addresses of all of the original members of the professional limited liability company who will practice the profession in this state.

2. At the time the articles of organization are filed with the secretary of state, the professional limited liability company also shall file a certificate from the regulating board of the profession involved that each of the governors and members who will practice the profession in this state, if any, is licensed to practice the profession in this state.

SECTION 88. AMENDMENT. Section 10-31-02.2 of the North Dakota Century Code is amended and reenacted as follows:

10-31-02.2. Registration.

1. Two or more individuals may register a professional organization in the form of a limited liability partnership or a foreign professional organization in the form of a foreign limited liability partnership for the practice of a profession by filing ~~a~~ the registration required under section 45-22-3 with the secretary of state. The registration must meet the requirements of chapter 45-22, and contain the following:

a. The profession to be practiced through the professional limited liability partnership or foreign limited liability partnership; and

b. The names and residence addresses of all of the ~~original~~ partners of the professional limited liability partnership or foreign limited liability partnership who will practice the profession in this state.

2. At the time the registration is filed with the secretary of state, the professional limited liability partnership or foreign limited liability partnership also shall file a certificate from the regulating board of the profession involved that each of the partners who will practice the profession in this state is licensed to practice the profession in this state.

SECTION 89. AMENDMENT. Section 10-31-03 of the North Dakota Century Code is amended and reenacted as follows:

10-31-03. Applicability of ~~chapters~~ chapter 10-19.1~~, 10-22, and 10-23~~. ~~Chapters~~ Chapter 10-19.1~~, 10-22, and 10-23~~ ~~apply~~ applies to a professional organization that is created in the form of a corporation and which enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other corporations except where inconsistent with the letter and purpose of this chapter. This chapter takes precedence in the event of any conflict with ~~chapters~~ chapter 10-19.1~~, 10-22, and 10-23~~.

SECTION 90. AMENDMENT. Section 10-31-04 of the North Dakota Century Code is amended and reenacted as follows:

10-31-04. Purpose for which created.

1. A professional organization may be created pursuant to this chapter only for the purpose of rendering one specific type of professional service and services ancillary ~~to~~ thereto or for the purpose of rendering two or more kinds of professional services that are specifically authorized to be practiced in combination under the licensing laws of each of the professional services to be practiced by a licensed individual or partnership of licensed individuals and ancillary services. This subsection does not preclude an organization created pursuant to this chapter from rendering more than one specific type of professional service if the services rendered are set forth in chapters 43-03 and 43-19.1 or if the services rendered are set forth in chapters 43-26 and 43-40.

2. A professional organization may not engage in any business other than rendering the professional service for which it was created to render and services ancillary thereto. However, a professional organization may own real and personal property necessary or appropriate for rendering the type of professional services it was created to render and may invest its funds in real estate mortgages, stocks, bonds, membership interests, and any other type of investment.

SECTION 91. AMENDMENT. Section 10-31-05 of the North Dakota Century Code is amended and reenacted as follows:

10-31-05. Name.

1. The name of a professional organization:

   a. In the form of a corporation incorporated under this chapter must contain:

(1) The word "chartered";

(2) The word "limited" or the abbreviation "Ltd.";

(3) The words "professional corporation" or either the abbreviation "P.C." or the abbreviation "PC", either of which may be used interchangeably for all purposes authorized by chapter 10-31, including real estate matters, contracts, and filings with the secretary of state; or

(4) The words "professional association" or either the abbreviation "P.A." or the abbreviation "PA", either of which may be used interchangeably for all purposes authorized by chapter 10-31, including real estate matters, contracts, and filings with the secretary of state.

b. In the form of a limited liability company organized under this chapter must contain:

(1) The words "professional limited liability company" or "limited liability company";

(2) The abbreviations:

(a) "P.L.C." or "PLC", either of which may be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state; ~~or~~

~~(3)~~ (b) ~~The abbreviations~~ "P.L.L.C." or "PLLC", either of which may be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state; or

(c) "L.L.C." or "LLC", either of which may be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state.

c. In the form of a limited liability partnership registered under this chapter shall contain:

(1) The words "professional limited liability partnership"; or

(2) The abbreviations:

(a) "P.L.L.P." or "PLLP", either of which may be use d interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state; or

(b) "L.L.P." or "LLP", either of which may be used interchangeably for all purposes authorized by chapter 10-31 including real estate matters, contracts, and filings with the secretary of state.

2. The use of ~~the word "company", "corporation", "incorporated", "limited liability company", "limited liability partnership", or~~ any other word, abbreviation, affix, or prefix indicating that it is a corporation, limited liability company, or limited liability partnership in the name of an organization created under this chapter, other than the words and abbreviations set forth in subsection 1, is prohibited.

SECTION 92. AMENDMENT. Section 10-31-07 of the North Dakota Century Code is amended and reenacted as follows:

10-31-07. Issuance and transfer of shares. A professional organization in the form of a corporation may issue its shares only to ~~individuals~~ persons who are licensed to render the same specific professional services as those for which the corporation was incorporated or as provided by section 10-31-07.1. A shareholder may voluntarily transfer shares in a professional corporation only to ~~the corporation or to an individual~~ a person owning or eligible to own the same type of shares as the ~~individual~~ person making the transfer. The issuance of any shares in violation of this section is void. The voluntary transfer of any shares in violation of this section is void. No share may be transferred upon the books of the professional corporation or issued by the professional corporation until there is presented to and filed with the corporation a certificate from the regulating board stating that the ~~individual~~ person to whom the transfer is to be made or the share issued is licensed to render the same specific professional services as those for which the corporation was incorporated.

SECTION 93. AMENDMENT. Section 10-31-07.1 of the North Dakota Century Code is amended and reenacted as follows:

10-31-07.1. Retirement plan trust - Voting and nonvoting ~~stock~~ shares. A professional corporation may establish a retirement plan trust which allows the corporation to contribute nonvoting shares for nonlicensed employees and voting shares for licensed employees.

SECTION 94. AMENDMENT. Section 10-31-07.2 of the North Dakota Century Code is amended and reenacted as follows:

10-31-07.2. Issuance and transfer of membership interests. A professional organization in the form of a limited liability company may issue membership interests only to ~~individuals~~ persons who are licensed to render the same specific professional services as those for which the company was organized. A member may voluntarily transfer membership interests in a professional limited liability company only to ~~the professional limited liability company or to an individual~~ a person owning or eligible to own a membership interest. The reflection of any membership interests in the required records of the professional limited liability company in violation of this section is void. The voluntary transfer of any membership interests in violation of this section is void. No membership interest may be reflected in the required records of the professional limited liability company until there is presented to and filed with the limited liability company a certificate from the regulating board stating that the ~~individual~~ person to whom the transfer is to be made or the membership interest issued is licensed to render the same specific professional services as those for which the limited liability company was organized.

SECTION 95. AMENDMENT. Section 10-31-07.3 of the North Dakota Century Code is amended and reenacted as follows:

10-31-07.3. Issuance and transfer of partnership interests. A professional organization in the form of a limited liability partnership may issue partnership interests only to ~~individuals~~ persons who are licensed to render the same specific professional services as those for which the partnership was registered. A partner may voluntarily transfer partnership interests in a professional limited liability partnership only to ~~the professional limited liability partnership or an individual~~ a person owning or eligible to own a partnership interest. The issuance of any partnership interests issued in violation of this section is void. The voluntary transfer of any partnership interests in violation of this section is void. No partnership interest may be transferred upon the books of the professional limited liability partnership or issued by the professional limited liability partnership until there is presented to and filed with the limited liability partnership a certificate from the regulating board stating that the ~~individual~~ person to whom the transfer is to be made or the partnership interest issued is licensed to render the same specific professional services as those for which the limited liability partnership was registered.

SECTION 96. AMENDMENT. Section 10-31-12 of the North Dakota Century Code is amended and reenacted as follows:

10-31-12. Death of last or only shareholder - Amendment of articles of incorporation - Involuntary dissolution.

1. In the event of the death of the last or only shareholder of a professional corporation whose shares pass to heirs by intestate succession, to devisees under a last will and testament, or otherwise pass by operation of law to an individual not legally qualified to render the professional services which the professional corporation was incorporated to perform, the heirs, devisees, or personal representative of the deceased shareholder, within six months after the date of death of the last or only shareholder, may amend the articles of incorporation to provide that the corporation must continue as a ~~general~~ corporation under ~~chapters~~ chapter 10-19.1~~, 10-22, and 10-23~~.

2. The death of the last or only shareholder of a professional corporation and the failure of the heirs, devisees, or personal representative to make an amendment within six months after the death is a ground for the involuntary dissolution of the professional corporation.

3. When notified of the facts, the secretary of state shall certify immediately the facts to the attorney general who shall take immediate appropriate action to dissolve the professional corporation.

SECTION 97. AMENDMENT. Section 10-31-13 of the North Dakota Century Code is amended and reenacted as follows:

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

1. With respect to a professional organization in the form of a corporation:

   a. Each corporation incorporated under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by ~~chapters~~ chapter 10-19.1~~, 10-22, and 10-23~~ giving the name and residence addresses of all officers, directors, and shareholders of the corporation as of the thirtieth day of June next

preceding the filing of the report. With respect to shares, the report shall include:

(1) A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class; and

(2) 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.

b. ~~Attached to this~~ The report must ~~be~~ include a ~~form certifying~~ statement that all directors and shareholders of voting shares who practice in this state are licensed to render the same specific professional services as those for which the corporation was incorporated. ~~This certificate~~ The report must be:

(1) Made on a form as prescribed and furnished by the secretary of state;

(2) Signed by the president or vice president ~~and attested by the secretary or assistant secretary~~ of the corporation; and

(3) ~~Sworn to before a notary public by the individuals executing the certificate; and~~

~~(4)~~ Accompanied by the filing fee prescribed in chapter ~~10-23~~ 10-19.1.

c. A copy of the ~~certificate~~ report must be filed at the same time with the regulatory board that licenses the shareholders described in the ~~certificate~~ report. No filing fee may be charged by the regulatory board.

d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulating board.

2. With respect to a professional organization in the form of a limited liability company:

a. Each limited liability company organized under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter 10-32 giving the name and residence address of all managers, governors, and members of the organization as of the thirtieth day of June next preceding the filing of the report.

b. ~~Attached to this~~ The report must ~~be~~ include a ~~form certifying~~ statement that all governors and members holding voting membership interests who practice in this state are licensed to render the same specific professional services as those for which the

limited liability company was organized. This c~~ertificate~~ report must be:

(1) Made on a form as prescribed and furnished by the secretary of state;

(2) Signed by the president ~~and attested by the secretary~~ or vice president of the limited liability company; and

(3) ~~Sworn before a notary public by the individuals executing the certificate; and~~

~~(4)~~ Accompanied by the filing fee prescribed in section 10-32-180.

c. A copy of the c~~ertificate~~ report must be filed at the same time with the regulatory board that licenses the members described in the c~~ertificate~~ report. No filing fee may be charged by the regulatory board.

d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulatory board.

3. With respect to a professional organization in the form of a limited liability partnership:

a. The renewal registration filed with the secretary of state pursuant to chapter 45-22 must include the name and residence address of all partners of the organization as of the thirtieth day of June next preceding the filing of the renewal registration.

b. ~~Attached to the~~ The renewal registration must ~~be~~ include a ~~form certifying~~ statement that all partners holding voting partnership interests who practice in this state are licensed to render the same specific professional services as those for which the limited liability partnership was registered. ~~This certificate~~ The renewal registration shall be:

(1) Made on a form prescribed and furnished by the secretary of state;

(2) Signed by ~~two~~ a managing ~~partners~~ partner of the limited liability partnership; and

(3) ~~Sworn before a notary public by the individuals executing the certificate; and~~

~~(4)~~ Accompanied by the filing fee prescribed in section 45-22-22.

c. A copy of the c~~ertificate~~ renewal registration must be filed at the same time with the regulatory board that licenses the partners described in the c~~ertificate~~ renewal registration. No filing fee may be charged by the regulatory board.

d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulating board.

SECTION 98. AMENDMENT. Section 10-31-13.1 of the North Dakota Century Code is amended and reenacted as follows:

10-31-13.1. Foreign professional organizations - Practice in the state.

1. A foreign professional organization may practice a profession in this state only through executives, owners, employees, and agents who are licensed to practice the profession in this state. ~~The provisions of this chapter with respect to the practice of a profession by a professional organization apply to a foreign professional organization.~~ The practice of a profession in this state by a foreign professional organization is subject to the laws and regulations of this state governing the practice of such professional service.

2. The certificate of authority of a foreign professional organization may be revoked by the secretary of state as provided in this chapter, if the foreign professional organization fails to comply with this chapter.

3. This chapter does not prohibit the practice of a profession in this state by an individual who is an executive, owner, employee, or agent of a foreign professional organization, if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional organization.

4. This section applies regardless of whether the foreign professional organization is authorized to practice a profession in this state.

5. A foreign professional organization may render only one specific type of professional service and services ancillary thereto in this state. A foreign professional organization may not engage in any business in this state other than rendering the professional service it is authorized to render and services ancillary thereto.

6. a. The provisions of chapter 10-19.1, applicable to foreign corporations, apply to a foreign professional organization rendering professional services in this state in the form of a foreign corporation. Such a foreign professional organization enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other foreign corporations doing business in this state, except where inconsistent with the letter and purpose of the provisions of this chapter applicable to foreign professional organizations.

   b. A foreign professional organization rendering professional services in this state in the form of a foreign corporation shall include in its application for a certificate of authority under section 10-19.1-135 or its annual report under section 10-19.1-146 the following information:

(1) The profession to be practiced by the foreign corporation;

(2) The names and residence addresses of all directors and shareholders of the corporation who practice the profession in this state; and

(3) In an application for a certificate of authority, a certificate from the regulating board of the profession involved that all directors and shareholders who practice the profession in this state are licensed in this state to render the same professional service as those for which the corporation was formed; and in an annual report, a statement that all directors and shareholders who practice the profession in this state are licensed in this state to render the same professional service as those for which the corporation was formed.

7. a. The provisions of chapter 10-32 applicable to foreign limited liability companies apply to a foreign professional organization rendering professional services in this state in the form of a foreign limited liability company. Such a foreign professional organization enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other foreign limited liability companies doing business in this state, except where inconsistent with the letter and purpose of the provisions of this chapter applicable to foreign professional organizations.

b. A foreign professional organization rendering professional services in this state in the form of a foreign limited liability company shall include in its application for a certificate of authority under section 10-32-138 or its annual report under section 10-32-149 the following information:

(1) The profession to be practiced by the foreign limited liability company;

(2) The names and residence addresses of all members or managers of the limited liability company who practice the profession in this state; and

(3) In an application for a certificate of authority, a certificate from the regulating board of the profession involved that all members or managers who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability company was formed; and in an annual report, a statement that all members or managers who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability company was formed.

8. a. The provisions of chapter 45-22 applicable to foreign limited liability partnerships apply to a foreign professional organization rendering professional services in this state in the form of a foreign limited liability partnership. Such a foreign professional organization enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other foreign limited liability

partnerships doing business in this state, except where inconsistent with the letter and purpose of the provisions of this chapter applicable to foreign professional organizations.

b. A foreign professional organization rendering professional services in this state in the form of a foreign limited liability partnership shall include in its registration or renewal registration under section 45-22-03 the following information:

(1) The profession to be practiced by the foreign limited liability partnership;

(2) The names and residence addresses of all partners of the limited liability partnership who practice the profession in this state; and

(3) In a registration, a certificate from the regulating board of the profession involved that all partners who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability partnership was formed; and in a renewal registration, a statement that all partners who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability partnership was formed.

9. The name of a foreign professional organization rendering professional services in this state shall contain words or abbreviations required or authorized by the laws of the jurisdiction in which the foreign professional organization is incorporated, organized, or originally registered.

SECTION 99. AMENDMENT. Section 10-32-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Acquiring organization" means the foreign or domestic limited liability company or foreign or domestic corporation that acquires in an exchange the shares of a domestic or foreign corporation or the membership interests of a limited liability company.

2. "Address" means ~~mailing address, including a zip code.~~:

a. In the case of a registered office or principal executive office, ~~the term means~~ the mailing address ~~and~~, 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. "Agreement to give t~~ransfer~~ dissolution avoidance consent" means a member-control agreement under section 10-32-50, or a part of a member-control agreement, under which the members agree in advance ~~to give any~~ that if, in the future, the continued membership of any member is terminated through an event covered in the agreement, then

each remaining member shall give dissolution avoidance consent ~~referred to in subsection 2 of section 10-32-32~~.

4. "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, and articles of termination.

   b. In the case of a foreign limited liability company, the term includes all documents 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.

5. "Board" or "board of governors" means the board of governors of a limited liability company.

6. "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.

7. "Business continuation agreement" means a member-control agreement under section 10-32-50, or a part of a member-control agreement, made before or after the limited liability company has incurred an event of dissolution, under which the members:

   a. Agree that, despite any dissolution, winding up and termination of the limited liability company as a legal entity, its business will be continued in a successor organization through a merger, transfer of assets, transfer of membership interests, or otherwise; and

   b. Specify the terms and conditions under which the business continuation will occur.

8. "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.

9. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.

10. "Constituent organization" means a limited liability company or a domestic or foreign corporation that is a party to a merger or an exchange.

11. "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.

12. "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.

13. "Dissolution" means that the limited liability company has 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 its affairs and to terminate its existence as a legal entity.

14. "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.

15. "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 its members in respect of membership interests. A distribution 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.

16. "Domestic corporation" means a corporation other than a foreign corporation organized for profit and incorporated under or governed by chapter 10-19.1.

17. "Filed with the secretary of state" means ~~that a signed original of a document together with the fees provided in section 10-32-150, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law. The secretary of state shall endorse on the original the word "Filed" and the month, day, and year of filing, and record the document in the office of the secretary of state.~~:

a. That either of the following has been delivered to the secretary of state and has been determined by the secretary of state to conform to law:

(1) A signed original or a legible facsimile copy of a signed original of a request for reserved name; or

(2) A signed original of all other documents, meeting the applicable requirements of this chapter, together with the fees provided in section 10-33-141.

b. That the secretary of state shall then:

(1) Endorse on the original the word "filed" and the month, day, and year; and

(2) Record the document in the office of the secretary of state.

18. "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.

19. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose ~~or purposes~~ for which a corporation may be incorporated under chapter 10-19.1.

20. "Foreign limited liability company" means a limited liability company organized for profit which is organized under laws other than the laws of this state for a purpose ~~or purposes~~ for which a limited liability company may be organized under this chapter.

21. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

22. "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.

23. "Governing board" means:

a. The board of governors in the case of a limited liability company; and

b. The board of directors in the case of a corporation.

24. "Governor" means an individual serving on the board of governors.

25. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute ~~if~~:

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

    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.

26. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.

27. "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; ~~an executor of a will; an administrator of an estate;~~ a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator ~~of the person or estate of a person~~.

28. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under this chapter.

29. "Manager" means ~~a person~~:

    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 of governors; and ~~any other person~~

    b. An individual considered elected as a manager pursuant to section 10-32-92.

30. "Member" means a person reflected in the required records of a limited liability company as the owner of some governance rights of a membership interest of the limited liability company.

31. "Membership interest" means ~~a~~:

    a. A member's interest in a limited liability company consisting of a member's financial rights~~, a~~;

    b. A member's right to assign financial rights as provided in section 10-32-31~~, a~~;

    c. A member's governance rights~~,~~; and ~~a~~

    d. A member's right to assign governance rights as provided in section 10-32-32.

32. "Notice" is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company 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.

a. In all other cases, notice is given to a person:

(1) When mailed to the person at an address designated by th e person or at the last known address of the person;

(2) When handed to the person; or

(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.

b. Notice by mail is given when deposited in the United States mail with sufficient postage affixed.

c. Notice is considered received when it is given.

33. "Operating agreement" means rules, resolutions, or other provisions, regardless how designated, that:

a. Relate to the management of the business or the regulation of the affairs of the limited liability company; and

b. Have been made expressly part of the operating agreement by the action, taken from time to time under section 10-32-69, by the board of governors or the members.

34. "Organization" means ~~a~~, whether domestic or foreign, a limited liability company, corporation, partnership, limited partnership, limited liability partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

35. "Owners" means:

a. Members in the case of a limited liability company; and

b. Shareholders in the case of a corporation.

36. "Ownership interests" means:

a. Membership interests in the case of a limited liability company; and

b. Shares in the case of a corporation.

37. "Parent" of a specified limited liability company means a limited liability company or corporation that directly or indirectly owns more than fifty

percent of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.

38. "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.

39. "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, ~~"principal executive office" means~~ the registered office of the limited liability company.

40. "Registered office" means the place in this state designated in the articles ~~of organization~~ as the registered office of the limited liability company.

41. "Related organization" ~~of a specified limited liability company means a parent or subsidiary of the specified limited liability company or another subsidiary of a parent of the specified limited liability company~~ 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.

42. "Required records" are those records required to be maintained under section 10-32-51.

43. "Security" has the meaning given it in subsection 13 of section 10-04-02.

44. "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.

45. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and, with respect to a document ~~required~~:

    a. Required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles of organization or operating agreement or a resolution approved by the affirmative vote of the required proportion or number of governors or the required proportion of the voting power of membership interests present and entitled to vote~~. A signature on a document not~~; and

    b. Not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

46. "Subsidiary" of a specified limited liability company means:

    a. A 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 by the specified limited liability company; or

    b. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly by the specified limited liability company.

47. "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.

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

49. "Termination" means the end of a limited liability company's existence 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. Is 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.

50. "Vote" includes authorization by written action.

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

52. "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the persons signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

SECTION 100. AMENDMENT. Section 10-32-06 of the North Dakota Century Code is amended and reenacted as follows:

10-32-06. Two-member requirement. ~~A~~ Unless otherwise provided in the articles of organization, a limited liability company must have two or more members at the time of its formation. ~~A~~ Unless a one-member limited liability company is authorized in the articles of organization, a limited liability company must be dissolved under subdivision e of subsection 1 of section 10-32-109 whenever the limited liability company ceases to have at least two members unless the remaining member admits a new member within ninety days of the termination of the continued membership of the former member.

SECTION 101. 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 principal executive office;

   c. The address of the registered office of the limited liability company and the name of its registered agent at that address;

   d. The name and address of each organizer;

   e. 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;

   f. A statement stating in years that the limited period of existence for the limited liability company must be a period of thirty years or less 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;

   ~~f.~~ g. A statement as to whether upon the occurrence of any event under subdivision e of subsection 1 of section 10-32-109 that terminates the continued membership of a member in the limited liability company, the remaining members will have the power to avoid dissolution by giving dissolution avoidance consent; ~~and~~

~~g.~~ h. A statement as to whether the members have the power to enter into a business continuation agreement~~.~~; and

i. A statement as to whether fewer than two members shall be permitted.

2. The following provisions govern a limited liability company unless modified in the articles of organization or a member central agreement under section 10-32-50:

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 operating agreement is vested in the board of governors ~~(~~as provided in 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 a majority of governors present is required for an action of the board of governors ~~(~~as provided in section 10-32-83~~)~~;

f. A written action by the board of governors 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 of governors ~~(~~as provided in subdivision b of subsection 5 of section 10-32-56~~)~~;

j. The restatement of value of previous contributions is to be determined according to a specified process ~~(~~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 of governors ~~(~~as provided in section 10-32-37~~)~~;

l. The affirmative vote of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting is required for an action of the members, except where this chapter requires the affirmative vote of a majority of the voting power of all membership interests entitled to vote ~~(~~as provided in subsection 1 of section 10-32-43~~)~~;

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 10-32-45~~)~~;

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~~)~~; ~~and~~

t. Unanimous consent is required to avoid dissolution ~~(~~as provided in subdivision e of subsection 1 of section 10-32-109~~)~~.; and

u. A limited liability company dissolves upon an occurrence of an event that terminates the continued membership of any member as provided in subsection 1 of section 10-32-109.

3. The following provisions govern a limited liability company unless modified either in the articles of organization, a member central agreement under section 10-32-50, or in the operating agreement:

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 of governors ~~(~~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 of governor vacancies ~~(~~as provided in section 10-32-79~~)~~;

e. If the board of governors 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. ~~A governor may call a board of governors meeting, and the~~ The notice of ~~the~~ a board of governors 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 of governors is a quorum for a board meeting (as provided in section 10-32-82);

h. A committee consists 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);

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 of governors 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 of governors 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 where 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 of governors 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 subsection 1 of section 10-32-45);

p. Indemnification of certain persons is required (as provided in section 10-32-99);

q. The board of governors 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 operating agreement or an act of the board of governors (as provided in section 10-32-61).

4. The following provisions relating to the management of the business or the regulation of the affairs of a limited liability company may be included either in the articles of organization, a member central agreement under section 10-32-50, or, except for naming persons to serve as the first board of governors, fixing a greater than majority governor or member vote, establishing the rights and priorities for

distributions and the rights to share in profits and losses, or giving or prescribing the manner of giving voting rights to persons other than members otherwise than pursuant to the articles of organization, or eliminating or limiting a governor's personal liability, in the operating agreement:

a. The persons to serve as the first board of governors 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 ~~day or~~ date, time, and place of board of governors 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 of governor action ~~(~~as provided in section 10-32-83~~)~~;

h. Authority to sign and deliver certain documents 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 ~~10-32-90)~~ 10-32-88;

j. Additional powers, rights, duties, and responsibilities may be given to managers ~~(~~as provided in section ~~10-32-91)~~ 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 ~~day or~~ 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 10-32-45~~)~~;

q. Limited liability company actions giving rise to dissenter 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 its 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. 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. It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by this chapter.

SECTION 102. 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 a word or phrase that indicates or implies that it may not be organized under this chapter;

d. May not contain the word "corporation" or "incorporated" and may not contain the abbreviation of either or both of these words;

~~d.~~ e. May not contain a word or phrase that indicates or implies that it is organized for a purpose other than a legal business purpose for which a limited liability company may be organized under this chapter~~;~~ ~~and~~.

~~e. May not be the same as, or deceptively similar to, the name of a domestic or foreign limited liability company, corporation, or limited partnership, whether profit or nonprofit, authorized to do business in this state, or a name the right to which is, at the time of organization, reserved in the manner provided in section 10-32-11, or is a fictitious name registered with the office of the secretary of state in the manner provided in chapter 45-11 or is a trade name registered with the office of the secretary of state in the manner provided in chapter 47-25 unless there is filed with the articles of organization one of the following:~~

~~(1) The written consent of the domestic or foreign limited liability company, corporation, or limited partnership authorized to~~

~~do business in this state having a deceptively similar name or the holder of a reserved name or registered trade name to use the deceptively similar name; or~~

~~(2) A certified copy of a final judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.~~

f. 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 document which complies with subsection 2 of this section, of:

(a) Another limited liability company;

(b) A corporation;

(c) A limited partnership; or

(d) A limited liability partnership; or

(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, 45-10.1-03, 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.

This subsection does not affect the right of a domestic limited liability company existing on the effective date of this chapter, or a foreign limited liability company authorized to do business in this state on that date to continue the use of its name.

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, 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.

~~4.~~ 5. A limited liability company that is merged with another limited liability company or domestic or foreign corporation, or that is organized by the reorganization of one or more limited liability companies or domestic or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a limited liability company all or substantially all of the assets of another limited liability company or domestic or foreign corporation including its name, may have the same name as that used in this state by any of the other limited liability companies or domestic or foreign corporations, if the other limited liability company or domestic or foreign corporation ~~was~~:

a. Was organized or incorporated under the laws of~~, or is~~ 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, 45-10.1-03, 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.

~~5.~~ 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~~, but~~. 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, amending pursuant to section 10-32-130.1, or reinstating pursuant to section 10-32-149, 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.

SECTION 103. AMENDMENT. Section 10-32-11 of the North Dakota Century Code is amended and reenacted as follows:

10-32-11. Reserved name.

1. The exclusive right to the use of a limited liability company name otherwise permitted by section 10-32-10 may be reserved by any person.

2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 10-32-150.

   a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.

   b. The reservation may be renewed for successive twelve-month periods.

3. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 10-32-150.

4. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation together with the fees provided in section 10-32-150.

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

6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 104. AMENDMENT. Section 10-32-12 of the North Dakota Century Code is amended and reenacted as follows:

10-32-12. Registered office and agent.

1. A limited liability company shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business, or the principal executive office of the limited liability company.

2. A limited liability company shall ~~designate in its articles of organization~~ appoint and continuously maintain a registered agent. The registered agent may be an individual residing in this state, a domestic corporation or a domestic limited liability company, or a foreign corporation or foreign limited liability company authorized to transact 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 105. 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.

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 of governors.

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 ~~e or~~ 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.

SECTION 106. AMENDMENT. Section 10-32-15 of the North Dakota Century Code is amended and reenacted as follows:

10-32-15. Procedure for amendment before contribution. Before any contribution is reflected in the required records of a limited liability company, the articles of organization may be amended pursuant to section 10-32-67 by the

organizers or by the board of governors. The articles of organization may also be amended by the board of governors to change or cancel a statement pursuant to subsection 6 of section 10-32-56 establishing or fixing the rights and preferences of a class or series of membership interests before any contribution pertaining to that class or series is reflected in the required records of the limited liability company by filing articles of amendment or a statement of cancellation, as appropriate, with the secretary of state.

SECTION 107. AMENDMENT. Section 10-32-16 of the North Dakota Century Code is amended and reenacted as follows:

10-32-16. Procedure for amendment after contribution.

1. ~~After~~ Except as otherwise provided in section 10-32-15, after any contribution has been reflected in the required records of a limited liability company, the articles of organization may be amended in the manner set forth in this section.

2. A resolution approved by the affirmative vote of a majority of the governors present, or proposed by a member or members owning five percent or more of the voting power of the members entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the members of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the members and voted upon at one meeting, but the same or substantially the same amendment proposed by a member or members need not be submitted to the members or be voted upon at more than one meeting during a fifteen-month period. The resolution may amend the articles of organization in their entirety to restate and supersede the original articles of organization and all amendments to them.

3. Written notice of the members' meeting setting forth the substance of the proposed amendment must be given to each member entitled to vote in the manner provided in section 10-32-40 for the giving of notice of meetings of members.

4. The proposed amendment is adopted:

   a. When approved by the affirmative vote of the ~~owners of a majority of the voting power of the members present and entitled to vote~~ members required by section 10-32-42; or

   b. If the articles of organization provide for a specified proportion equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion equal to or larger than the majority necessary to transact a specified type of business at a meeting, the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles of organization is the larger of:

      (1) The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at

a meeting immediately before the effectiveness of the proposed amendment; or

(2) The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

SECTION 108. AMENDMENT. Section 10-32-17 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Effect an exchange, reclassification, or cancellation of all or part of the membership interests of the class or series;

2. Effect an exchange, or create a right of exchange, of all or any part of the membership interests of another class or series for the membership interests of the class or series;

3. Change the rights or preferences of the membership interests of the class or series;

4. Change the membership interests of the class or series into the same or a different number of membership interests of ~~the same or~~ another class or series;

5. Create a new class or series of membership interests having rights and preferences prior and superior to the membership interests of that class or series, or increase the rights and preferences or the number of membership interests, of a class or series having rights and preferences prior or superior to the membership interests of that class or series;

6. Divide the membership interests of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the membership interests of each series or authorize the board of governors to do so;

7. Limit or deny any existing preemptive rights of the membership interests of the class or series; or

8. Cancel or otherwise affect distributions on the membership interests of the class or series.

SECTION 109. AMENDMENT. Section 10-32-19 of the North Dakota Century Code is amended and reenacted as follows:

10-32-19. Effect of amendment.

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

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

3. When effective under section 10-32-21, an amendment restating the articles in their entirety supersedes the original articles and all amendments to the original articles.

SECTION 110. AMENDMENT. Section 10-32-22 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Whenever a plan of reorganization of a limited liability company has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the limited liability company, pursuant to the provisions of any applicable statute of the United States relating to reorganization ~~or~~ of limited liability companies, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and to put it into effect, so long as the articles as amended contain only provisions which might be lawfully contained in original articles of organization at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended ~~for such purpose so as~~ to:

   a. Change the limited liability company name, period of duration, or organizational purposes of the limited liability company.

   b. Repeal, alter, or amend the operating agreement of the limited liability company.

   c. Change the preferences, limitations, relative rights in respect of all or any part of the membership interests of the limited liability company, and classify, reclassify, or cancel all or any part thereof.

   d. Authorize the issuance of bonds, debentures, or other obligations of the limited liability company, whether convertible into membership interests of any class or bearing warrants or other evidence of optional rights to purchase or subscribe for membership interests of any class, and fix the terms and conditions thereof.

   e. Constitute or reconstitute and classify or reclassify the board of governors and appoint governors and managers in place of or in addition to all or any of the governors or managers then in office.

2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:

   a. Articles of amendment approved by decree or order of the court must be executed and verified in duplicate by the person or persons designated or appointed by the court for that purpose and must set forth the name of the limited liability company, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in

which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the limited liability company pursuant to the provisions of an applicable statute of the United States.

b. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in section 10-32-150, then the articles of amendment must be recorded in the office of the secretary of state.

3. The articles of amendment become effective upon their acceptance by the secretary of state or at any other time within thirty days after their acceptance if the articles of amendment so provide.

4. The articles are deemed to be amended accordingly, without any action by the governors or members of the limited liability company and with the same effect as if the amendment had been adopted by the unanimous action of the governors and members.

SECTION 111. AMENDMENT. Section 10-32-23 of the North Dakota Century Code is amended and reenacted as follows:

10-32-23. ~~Powers~~ General powers.

1. A limited liability company has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles of organization.

2. A limited liability company has a limited duration of thirty years from the date the articles of organization are filed with the secretary of state, unless the articles of organization state a shorter or longer duration.

3. A limited liability company may sue and be sued, and complain, defend, and participate as a party or otherwise in any legal, administrative, or arbitration proceeding in its limited liability company name.

4. A limited liability company may purchase, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest in property, wherever situated.

5. A limited liability company may sell, convey, mortgage, create a security interest in, encumber, assign, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in this property, wherever situated.

6. A limited liability company may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of ~~and otherwise~~, use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality t~~hereof~~.

7. A limited liability company may make contracts and incur liabilities, borrow money, and secure any of its obligations by mortgage of or

creation of a security interest in or other encumbrance or assignment of all or any of its property, franchises, and income.

8. A limited liability company may invest and reinvest its funds.

9. A limited liability company may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the limited liability company, as security for the payment of money loaned, advanced, or invested.

10. A limited liability company may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.

11. Except as otherwise prohibited by law, a limited liability company may make donations, irrespective of limited liability company benefit, for:

    a. The public welfare;

    b. Social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes and for similar or related purposes;

    c. ~~For the~~ The purpose of fostering national or international amateur sports competition; and

    d. The prevention of cruelty to children and animals.

12. A limited liability company may pay pensions, retirement allowances, and compensation for past services ~~to and for the benefit of,~~ and establish~~, maintain, continue, and carry out, wholly or partially at the expense of the limited liability company,~~ employee or incentive benefit plans, trusts, and provisions ~~to or~~ for the benefit of ~~, any or all of~~ its and its related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for ~~and on behalf of~~ a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

13. A limited liability company may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating limited liability company would have power to conduct by itself, whether or not the participation involves sharing or delegation of control ~~with or to others~~.

14. A limited liability company may provide for its benefit life insurance and other insurance with respect to the services of ~~any or all of~~ its members, managers, governors, employees, and agents, or on the life of a member for the purpose of acquiring at the death of the member any or all membership interests in the limited liability company owned by the member.

15. A limited liability company may have, alter at its pleasure, and use a limited liability company seal as provided in section 10-32-24.

16. A limited liability company may adopt, amend, and repeal an operating agreement relating to the management of the business or the regulation of the affairs of the limited liability company as provided in section 10-32-68.

17. A limited liability company may establish committees of the board of governors, elect or appoint persons to the committees, and define their duties as provided in section 10-32-85 and fix their compensation.

18. A limited liability company may elect or appoint managers, employees, and agents of the limited liability company and define their duties and fix their compensation.

19. A limited liability company may accept contributions under section 10-32-56 and may enter into contribution agreements under section 10-32-58 and contribution allowance agreements under section 10-32-59.

20. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-32-97.

21. A limited liability company may make advances as provided in section 10-32-98.

22. A limited liability company shall indemnify those persons against certain expenses and liabilities only as provided in section 10-32-99.

23. A limited liability company may conduct all or part of its business under one or more trade names.

24. A limited liability company may acquire an ownership interest in another organization.

25. A limited liability company may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the limited liability company is organized.

[1] **SECTION 112. AMENDMENT.** Section 10-32-28 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A membership interest is personal property. A member has no interest in specific limited liability company property. All property of the limited liability company is property of the limited liability company itself.

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[1] Section 10-32-28 was also amended by section 2 of Senate Bill No. 2099, chapter 362.

2. At the request of any member, the limited liability company shall state in writing the particular membership interest owned by that member as of the moment the limited liability company makes the statement.

   a. The statement must describe the member's right to vote, to share in profits and losses, and to share in distributions, restrictions on assignments of financial rights under subsection 3 of section 10-32-31 or governance rights under subsection 6 of section 10-32-32, then in effect, as well as any assignment of the member's rights then in effect other than a security interest.

   b. The statement is not a certificated security, is not a negotiable instrument, and may not serve as a vehicle by which a transfer of any membership interest may be effected.

3. Notwithstanding any other provision of law, for the purpose of any law relating to security interests, a membership interest, governance rights, and financial rights are each a general intangible, as defined in section 41-09-06, and not a certificated security as defined in subdivision a of subsection 1 of section 41-08-02, an uncertificated security as defined in subdivision b of subsection 1 of section 41-08-02, chattel paper as defined in subdivision b of subsection 1 of section 41-09-05, an instrument as defined in subdivision i of subsection 1 of section 41-09-05, or an account as defined in section 41-09-06.

SECTION 113. AMENDMENT. Section 10-32-31 of the North Dakota Century Code is amended and reenacted as follows:

10-32-31. Assignment of financial rights.

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

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

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

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

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

4. Subject to subsection 5, a written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner, including a pledgee or a legal representative. Unless noted conspicuously in the required records, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.

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

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

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

10-32-32. Assignment of ~~a complete membership interest and of~~ governance rights ~~coupled with an assignment of financial rights~~.

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

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

   a. Except as otherwise provided in the articles of organization, any other assignment of any governance rights is effective only if all the members, other than the member seeking to make the assignment, approve the assignment by unanimous written consent~~, unless the articles of organization provide for written consent by fewer than all members~~.

   b. Subject to subsection 6, a member may grant a security interest in a complete membership interest or governance rights without obtaining the consent required by this subsection.

      (1) However, a secured party may not take or assign ownership of governance rights without first obtaining the consent required by this subsection.

      (2) If a secured party has a security interest in both a member's financial rights and governance rights, including a security

interest in a complete membership interest, this subsection's requirement that the secured party obtain consent applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights.

3. When an assignment of governance rights is effective under subsection 2:

   a. If the assignment is not a security interest, the assignee becomes a member, if not already a member; and

   b. If the assignor does not retain any governance rights, the assignor ceases to be a member, and the written consent required under subsection 2, also constitutes the dissolution avoidance consent necessary to avoid dissolution that would otherwise ensue under subdivision e of subsection 1 of section 10-32-109 on account of the assignor ceasing to be a member if the consent required to avoid dissolution is not greater than the consent required under subsection 2.

4. When an assignment other than a security interest is effective under subsection 2, unless the written consent under subsection 2 otherwise provides:

   a. The assignee is liable in proportion to the interest assigned for the obligations of the assignor under section 10-32-56, including liability for unperformed promises that have been reflected as contributions in the required records, and section 10-32-65 existing at the time of transfer, except to the extent that, at the time the assignee became a member, the liability was unknown to the assignee, and could not be ascertained from the required records; and

   b. The assignor is not released from liability to the limited liability company for obligations of the assignor existing at the time of transfer under sections 10-32-56 and 10-32-65.

5. If any purported or attempted assignment of governance rights is ineffective for failure to obtain the consent required in subsection 2:

   a. The purported or attempted assignment is ineffective in its entirety; and

   b. Any assignment of financial rights that accompanied the purported or attempted assignment of governance rights is void.

6. Restrictions on the transfer of governance rights may be imposed following the same procedures and under the same conditions as stated in subsections 3 and 4 of section 10-32-31 for restricting the transfer of financial rights.

7. Notwithstanding any provision of law, articles of organization, member-control agreement, operating agreement, other agreement, resolution, or action to the contrary, a security interest in a member's full membership interest or governance rights may be foreclosed and otherwise enforced, and a secured party may assign a member's complete membership interest or governance rights in accordance with

title 41, all without the consent or approval of the member whose full membership interest or governance rights are the subject of the security interest.

SECTION 115. AMENDMENT. Section 10-32-34 of the North Dakota Century Code is amended and reenacted as follows:

10-32-34. Rights of judgment creditor. On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge a member's or an assignee's financial rights with payment of the unsatisfied amount of the judgment with interest.

1. To the extent so charged, the judgment creditor has only the rights of an assignee of a member's financial rights under section 10-32-31.

2. This chapter does not deprive any member or assignee of financial rights of the benefit of any exemption laws applicable to the membership interest.

3. This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

SECTION 116. AMENDMENT. Section 10-32-37 of the North Dakota Century Code is amended and reenacted as follows:

10-32-37. Preemptive rights.

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 denied or limited in the articles of organization or by the board of governors pursuant to subdivision b of subsection 5 of section 10-32-56.

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

3. A member has a preemptive right whenever the limited liability company proposes to accept contributions from other persons, or to make contribution allowance agreements with other persons, pertaining to membership interests of the same series or class as the series or class owned by the member.

4. ~~No~~ Unless otherwise provided in the articles of organization, no preemptive rights pursuant to this section arise as to contributions to be accepted from others or as to contribution allowance agreements to be made with others when the contribution is:

   a. To be made in a form other than money;

   b. To be made or reflected pursuant to a plan of merger;

   c. To be made or reflected pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the

owners of a majority of the voting power of all membership interests entitled to vote;

d. To be made pursuant to a previously made contribution allowance agreement; or

e. To be made or reflected pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.

5. The extent to which each member may make a new contribution, or obtain the right to make a new contribution under a contribution allowance agreement, by exercise of a preemptive right as to any class or series is the ratio that the value of that member's contributions, as reflected in the required records as pertaining to that class or series before the contribution, bears to the total value of all members' contributions reflected in the required records as pertaining to that class or series before the new contribution.

6. A member may waive a preemptive right in writing. The waiver is binding upon the member whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed contribution or contribution allowance agreement described in the waiver.

7. When proposing to accept new contributions, or to make contribution allowance agreements, with respect to which members have preemptive rights under this section, the board of governors shall cause notice to be given to each member entitled to preemptive rights. The notice must be given at least ten days before the date by which the member must exercise a preemptive right and must contain:

a. The extent of the member's preemptive right, being:

(1) In the case of a preemptive right to make a contribution, the amount of the contribution to be made; and

(2) In the case of a preemptive right to make a contribution allowance agreement, the amount of the contribution to be allowed under that contribution allowance agreement;

b. The method used to determine the extent of the member's preemptive right;

c. The terms and conditions upon which the member may make a contribution or make a contribution allowance agreement; and

d. The time within which and the method by which the member must exercise the right.

8. If a member does not exercise preemptive rights to make a contribution or to make a contribution allowance agreement, then for a period not exceeding one year after the date fixed by the board of governors for the exercise of those preemptive rights and to the extent of the preemptive rights not exercised, the board of governors may accept contributions or

make contribution allowance agreements on terms no less favorable to the limited liability company than those offered to the member.

9. ~~No~~ If the members of a limited liability company are entitled to cumulative voting in the election of governors, no amendment to the articles of organization that has the effect of denying, limiting, or modifying the preemptive rights provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of governors under cumulative voting are cast against the amendment.

SECTION 117. AMENDMENT. Section 10-32-38 of the North Dakota Century Code is amended and reenacted as follows:

10-32-38. Regular meetings of members.

1. Regular meetings of members may be held on an annual or other less frequent periodic basis, but need not be held unless required by the articles of organization or operating agreement or by subsection 2.

2. If a regular meeting of members has not been held ~~during~~ within the i~~mmediately~~ ~~preceding~~ earlier of six months after the fiscal yearend of the corporation or fifteen months~~, a~~ after its last meeting:

   a. A member or members owning five percent or more of the voting power of all members entitled to vote may demand a regular meeting of members by written notice of demand given to the president or the secretary of the limited liability company.

   b. Within thirty days after receipt of the demand by one of those managers, the board of governors shall cause a regular meeting of members to be called and held on notice no later than ninety days after receipt of the demand.

   c. If the board of governors fails to cause a regular meeting to be called and held as required by this subsection, the member or members making the demand may call the regular meeting by giving notice as required by section 10-32-40.

   d. All necessary expenses of the notice and the meeting must be paid by the limited liability company.

3. A regular meeting, if any, must be held on the ~~day or~~ date and at the time and place fixed by, or in a manner authorized by, the articles or operating agreement, except that a meeting called by or at the demand of a member pursuant to subsection 2 must be held in the county where the principal executive office of the limited liability company is located.

4. At each regular meeting of members t~~here~~:

   a. There must be an election of qualified successors for governors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting.

   b. No other particular business is required to be transacted at a regular meeting.

c. Any business appropriate for action by the members may be transacted at a regular meeting.

SECTION 118. AMENDMENT. Section 10-32-39 of the North Dakota Century Code is amended and reenacted as follows:

10-32-39. Special meetings of members.

1. Special meetings of the members may be called for any purpose or purposes at any time, by:

   a. The president;

   b. Two or more governors;

   c. A person authorized in the articles or operating agreement to call special meetings; or

   d. A member or members owning ten percent or more of the voting power of all membership interests entitled to vote.

2. A member or members owning ten percent or more of the voting power of all membership interests entitled to vote, may demand a special meeting of members by written notice of demand given to the president or secretary of the limited liability company and containing the purposes of the meeting.

   a. Within thirty days after receipt of the demand by one of those managers, the board of governors shall cause a special meeting of members to be called and held on notice no later than ninety days after receipt of the demand, all at the expense of the limited liability company.

   b. If the board of governors fails to cause a special meeting to be called and held as required by this subsection, the member or members making the demand may call the meeting by giving notice as required by section 10-32-40.

   c. All necessary expenses of the notice and the meeting must be paid by the limited liability company.

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

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

SECTION 119. Section 10-32-39.1 of the North Dakota Century Code is created and enacted as follows:

10-32-39.1. Court-ordered meeting of members.

1. The district court of the county where the principal executive office of a limited liability company is located may order a meeting to be held:

   a. On application of a member or members holding five percent or more of the voting power of all membership interests entitled to vote, if a meeting was not held within the earlier of six months after the fiscal yearend of the limited liability company or fifteen months after its last meeting; or

   b. On application of a voting member who signed a demand for a special meeting valid under section 10-32-39 or a person entitled to call a special meeting if:

      (1) Notice of the special meeting was not given within thirty days after the date the demand was delivered to a manager; or

      (2) The special meeting was not held in accordance with the notice.

2. The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purposes of the meeting.

3. If the court orders a meeting, it may also order the limited liability company to pay the costs of the member, including reasonable attorneys' fees incurred to obtain the order.

SECTION 120. AMENDMENT. Section 10-32-40 of the North Dakota Century Code is amended and reenacted as follows:

10-32-40. Notice.

1. Except as otherwise provided in this chapter, notice of all meetings of members must be given to every owner of membership interests entitled to vote, ~~except where the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment.~~ unless:

   a. The meeting is an adjourned meeting to be held not more than one hundred twenty days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; or

   b. The following have been mailed by first-class mail to a member at the address in the limited liability company records and returned nondeliverable:

(1) Two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings; or

(2) All payments of distribution sent during a twelve-month period, provided there were at least two sent during the twelve-month period.

c. An action or meeting that is taken or held without notice under subdivision b has the same force and effect as if notice was given. If the member delivers a written notice of the member's current address to the limited liability company, the notice requirement is reinstated.

2. If notice of an adjourned meeting is required under subdivision a of subsection 1, then the date for determination of membership interests entitled to notice of and entitled to vote at the adjourned meeting must comply with subsection 1 of section 1-019.1-73.2, except, if the date of the meeting is set by court order, the court may provide that the original date of determination will continue in effect or may fix a new date.

3. The notice:

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

~~3.~~ b. The notice must contain the date, time, and place of the meeting~~, and any other information required by this chapter. In the case of a special meeting, the notice must contain a statement of the purposes of the meeting. The notice may also contain any other information required by the articles of organization or operating agreement or considered necessary or desirable by the board of governors or by any other person or persons calling the meeting.~~;

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

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

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

f. Must contain any other information:

(1) Required by the articles of organization, operating agreement, or this chapter;

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

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

4. A member may waive notice of a meeting of members.

   a. A waiver of notice by a member entitled to notice is effective ~~whether~~:

      (1) Whether given before, at, or after the meeting~~,~~; and ~~whether~~

      (2) Whether given in writing, or by attendance.

   b. Attendance by a member at a meeting is a waiver of notice of that meeting, except where the member ~~objects~~:

      (1) Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened~~,~~; or ~~objects~~

      (2) Objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

SECTION 121. Section 10-32-40.1 of the North Dakota Century Code is created and enacted as follows:

10-32-40.1. Voting rights.

1. The board of governors may fix a date not more than fifty days, or a shorter time period provided in the articles of organization or operating agreement, before the date of a meeting of members as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members.

2. A determination of the owners of membership interests entitled to notice and to vote at a meeting of members is effective for an adjournment of the meeting unless the board of governors fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than fifty days after the record date for determining members entitled to notice of the original meeting.

3. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting:

   a. It must provide the original record date for notice and voting continues in effect; or

   b. It may fix a new record date for notice and voting.

4. A resolution approved by the affirmative vote of a majority of the governors present may establish a procedure whereby a member may certify in writing to the limited liability company that all or a portion of the membership interest registered in the name of the member are held for the account of one or more beneficial owners. Upon receipt by the limited liability company of the writing, the persons specified as beneficial owners, rather than the actual member, are deemed the members for the purposes specified in the writing.

5. Unless otherwise provided in the articles or by the board of governors under subsections 5 and 6 of section 10-32-56, members have voting power in proportion to the value of the contributions of the members as reflected in the required records.

6. The articles of organization may give or prescribe the manner of giving a creditor, securityholder, or other person a right to vote under this section, but no prescription under this subsection may have the effect of transferring from an assignor of financial rights to the assignee the assignor's voting rights.

7. Membership interests owned by two or more members may be voted by any one of them unless the limited liability company receives written notice from any one of them denying the authority of that person to vote those membership interests.

8. Except as provided in subsection 7, an owner of a membership interest entitled to vote may vote any portion of the membership interest in any way the member chooses. If a member votes without designating the proportion voted in a particular way, the member is considered to have voted all of the membership interest in that way.

SECTION 122. Section 10-32-40.2 of the North Dakota Century Code is created and enacted as follows:

10-32-40.2. Voting list.

1. After fixing a record date for notice of and voting at a meeting, a limited liability company shall prepare an alphabetical list of the names of its members who are entitled to notice and to vote. The list must show the address and the voting power of each member.

2. The list of members must be available for inspection by a member with voting rights for the purpose of communication with other members concerning the meeting, beginning two business days after the meeting notice is given and continuing through the meeting, at the principal executive office of the limited liability company or at a reasonable place identified in the meeting notice in the city where the meeting will be held.

   a. The list also must be available at the meeting.

   b. A member, a member's agent, or the attorney of the member or member's agent is entitled on written demand to inspect and to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection and at any time during the meeting or an adjournment.

3. If the limited liability company refuses to allow a member with voting rights, the member's agent, or the attorney of the member or member's agent to inspect the list of members before or at the meeting, the district court of the county where the principal executive office of the limited liability company is located, on application of the member, may:

   a. Order the inspection or copying at the limited liability company's expense;

b. Postpone the meeting until the inspection or copying is complete; or

c. Order the limited liability company to pay the member's costs, including reasonable attorneys' fees, incurred to obtain the order.

4. Unless a written demand to inspect and copy a membership list has been made under subsection 2 before the membership meeting and a limited liability company improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

5. A member, agent, or attorney who gains access to a membership list under this section may not use or give to another for use the membership list for any purpose other than a proper purpose. Upon application of the limited liability company, the district court may issue a protective order or order other relief necessary to enforce this subsection.

SECTION 123. AMENDMENT. Section 10-32-42 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The members shall take action by the affirmative vote of the owners of the greater of a majority of the voting power of the membership interests present and entitled to vote on that item of business ~~except where this chapter or the articles of organization require a larger proportion~~ or a majority of the voting power of the membership interests with voting rights that would constitute the minimum voting power needed for a quorum for the transaction of business at a meeting. If the articles require a larger proportion than is required by this chapter for a particular action, the articles control.

2. In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, the operating agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests as is required pursuant to subsection 1.

3. Unless otherwise provided in the article or operating agreement, members may take action at a meeting by voice or ballot, action without a meeting pursuant to section 10-32-43, written ballot pursuant to section 10-32-43.1, or by electronic communication pursuant to section 10-32-43.2.

SECTION 124. AMENDMENT. Section 10-32-43 of the North Dakota Century Code is amended and reenacted as follows:

10-32-43. Action without a meeting.

1. An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed by all of the members entitled to vote on that action. If the articles so provide, any action may be taken by written action signed 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.

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 written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. 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.

4. 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 indicate that the action was taken under this section.

SECTION 125. Section 10-32-43.1 of the North Dakota Century Code is created and enacted as follows:

10-32-43.1. Action by written ballot.

1. Except as provided in subsection 5, and unless prohibited or limited by the articles or operating agreement, an action that may be taken at a regular or special meeting of members may be taken without a meeting if the limited liability company mails or delivers a written ballot to every member entitled to vote on the matter.

2. A written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.

3. Approval by written ballot under this section is valid only if:

   a. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and

   b. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

4. Solicitations for votes by written ballot must:

   a. Indicate the number of responses needed to meet the quorum requirements;

   b. State the percentage of approvals necessary to approve each matter other than election of governors; and

   c. Specify the time by which a ballot must be received by the limited liability company in order to be counted.

5. Except as otherwise provided in the articles or operating agreement, a written ballot may not be revoked.

SECTION 126. Section 10-32-43.2 of the North Dakota Century Code is created and enacted as follows:

10-32-43.2. Electronic communications.

1. A conference among members by any means of communication through which the participants may simultaneously hear each other during the conference constitutes a regular or special meeting of members if the same notice is given of the conference as would be required for a meeting and the membership interests held by the members participating in the conference would be sufficient to constitute a quorum at a meeting. Participation in a conference by this means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-32-48 are met.

2. A member may participate in a regular or special meeting of members not described in subsection 1 by any means of communication through which the member, other participants, and all participants physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-32-48 are met.

3. Waiver of notice of a meeting by means of communication described in subsections 1 and 2 may be given in the manner provided in subsection 4 of section 10-32-40. Participation in a meeting by means of communication described in subsections 1 and 2 is a waiver of notice of that meeting, except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 127. AMENDMENT. Section 10-32-44 of the North Dakota Century Code is amended and reenacted as follows:

10-32-44. Quorum. ~~The~~

1. A quorum for a meeting of members is the owners of a majority of the voting power of the membership interests entitled to vote at ~~a~~ the meeting ~~are a quorum for the transaction of business, unless a larger or smaller proportion is provided in the articles or operating agreement. In no event may a quorum consist of less than one-third of the membership interests entitled to vote at the meeting. If a quorum is present when a duly called or held meeting is convened, the members present may continue to transact business until adjournment, even though the withdrawal of members originally present leaves less than the proportion otherwise required for a quorum~~.

2. Except as provided in subdivision b, a quorum is necessary for the transaction of business at a meeting of members.

   a. If a quorum is not present, a meeting may be adjourned from time to time for that reason.

   b. If a quorum has been present at a meeting and members have withdrawn from the meeting so that less than a quorum remains, the members still present may continue to transact business until adjournment.

SECTION 128. AMENDMENT. Section 10-32-47 of the North Dakota Century Code is amended and reenacted as follows:

10-32-47. Voting by organizations and legal representatives.

1. Membership interests of a limited liability company reflected in the required records as being owned by another domestic or foreign organization may be voted by the president or another legal representative of that organization.

2. Except as provided in subsection 3, membership interests of a limited liability company reflected in the required records as being owned by a subsidiary are not entitled to ~~vote~~ be voted on any matter.

3. Membership interests of a limited liability company in the name of, or under the control of, the limited liability company or a subsidiary in a fiduciary capacity are not entitled to vote on any matter, except to the extent that the settlor or beneficiary possesses and exercises a right to ~~vote~~ be voted or gives the limited liability company or, with respect to membership interests in the name of or under the control of a subsidiary, binding instructions on how to vote the membership interests.

4. Subject to section 10-32-35, membership interests under the control of a person in a capacity as a personal representative, administrator, executor, guardian, conservator, or the like may be voted by the person, either in person or by proxy, without reflecting in the required records those membership interests in the name of the person.

5. Subject to section 10-32-35, membership interests reflected in the required records in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Membership interests under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without reflecting in the required records the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.

6. Membership interests reflected in the required records in the name of an organization not described in subsections 1 through 5 may be voted either in person or by proxy by the legal representative of that organization.

7. The grant of a security interest in a membership interest does not entitle the holders of the security interest to vote except as provided in section 10-32-32.

SECTION 129. AMENDMENT. Section 10-32-48 of the North Dakota Century Code is amended and reenacted as follows:

10-32-48. Proxies.

1. A member may cast or authorize the casting of a vote by filing a written appointment of a proxy with a manager of the limited liability company at or before the meeting at which the appointment is to be effective.

a. A written appointment of a proxy may be signed by the member or authorized by the member by transmission of a telegram, cablegram, or other means of electronic transmission~~. The telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which it can be determined~~, provided the limited liability company has no reason to believe that the telegram, cablegram, or other electronic transmission was not authorized by the member.

b. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.

c. An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or otherwise authorized by any one of them, unless the limited liability company receives from any one of those members written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable and any agreement purporting to grant an irrevocable proxy is void. A member who revokes a proxy is not liable in any way for damages, restitution, or other claim.

3. An appointment may be ~~terminated~~ revoked at will. ~~Termination may be made by filing written notice of the termination of the appointment with a manager of the limited liability company, or by filing a new written appointment of a proxy with a manager of the limited liability company. Termination~~ Appointment of a proxy is revoked by the person appointing the proxy by attending a meeting and voting in person or signing and delivering to the manager or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked or a later appointment. Revocation in either manner revokes all prior proxy appointments and is effective when filed with a manager of the limited liability company.

4. The death or incapacity of a person appointing a proxy does not revoke or affect the right of the limited liability company to accept the authority of the proxy, unless written notice of the death or incapacity is received by a manager ~~of the limited liability company~~ authorized to tabulate votes before the proxy exercises the authority under that appointment.

5. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member:

a. Any one of them may vote the membership interests on each item of business in accordance with specific instructions contained in the appointment; and

b. If no specific instructions are contained in the appointment with respect to voting the membership interests on a particular item of

business, the membership interests must be voted as a majority of the proxies determine. If the proxies are equally divided, the membership interests must not be voted.

6. ~~Unless the appointment of a proxy contains a~~ Subject to section 10-32-48.1 and an express restriction, limitation, or specific reservation of authority of the proxy appearing in the appointment, the limited liability company may accept a vote or action ~~taken by a person named in the appointment~~ by the proxy as the action of the member. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

7. If a proxy is given authority by a member to vote on less than all items of business considered at a meeting of members, the member is considered to be present and entitled to vote by the proxy for purposes of subsection 1 of section 10-32-42 only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a member 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.

8. A member may not grant any proxy to any person who is an assignee of any member's financial rights and who is not also a member.

SECTION 130. Section 10-32-48.1 of the North Dakota Century Code is created and enacted as follows:

10-32-48.1. Acceptance of member act by the limited liability company.

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the record name of a member, the limited liability company, if acting in good faith, may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

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

   a. The member is an organization and the name signed purports to be that of an officer, manager, or agent of the organization;

   b. The name signed purports to be that of an administrator, guardian, or conservator representing the member and, if the limited liability company requests, evidence of fiduciary status acceptable to the limited liability company has been presented with respect to the vote, consent, waiver, or proxy appointment;

   c. The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the limited liability company requests, evidence of this status acceptable to the limited liability company has been presented with respect to the vote, consent, waiver, or proxy appointment;

d. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and if the limited liability company requests, evidence acceptable to the limited liability company of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; or

e. Two or more persons hold the membership interests as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.

3. The limited liability company may reject a vote, consent, waiver, or proxy appointment if the manager or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

4. The limited liability company or its manager or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section is not liable in damages to the member for the consequences of the acceptance or rejection.

5. Limited liability company action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

SECTION 131. AMENDMENT. Subsection 1 of section 10-32-50 of the North Dakota Century Code is amended and reenacted as follows:

1. A written agreement among persons who are then members or who have signed contribution agreements, relating to the control of any phase of the business and affairs of the limited liability company, its liquidation, dissolution, and termination, or the relations among members or persons who have signed contribution agreements is valid as provided in subsection 2.

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

   b. A member-control agreement may waive, in whole or in part, a member's dissenting rights under sections 10-32-54 and 10-32-55, but may not waive dissenters' rights under subdivision a of subsection 2 of section 10-32-131.

   c. A member-control agreement may not include an agreement to give transfer consent.

   d. A member-control agreement may include a business continuation agreement only if the articles of organization grant the members the power to enter into business continuation agreements ~~and only if~~

~~entered into after the limited liability company has incurred an event of dissolution~~.

SECTION 132. AMENDMENT. Section 10-32-51 of the North Dakota Century Code is amended and reenacted as follows:

10-32-51. Required records and information.

1. A limited liability company shall keep at its principal executive office, or at another place or places within the United States determined by the board of governors:

   a. A current list of the full name and last-known business, residence, or mailing address of each member, each governor, and the president;

   b. A current list of the full name and last-known business, residence, or mailing address of each assignee of financial rights other than a secured party and a description of the rights assigned;

   c. A copy of the articles of organization and all amendments to the articles;

   d. Copies of any currently effective written operating agreement;

   e. Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years;

   f. Financial statements required by section 10-32-52;

   g. Records of all proceedings of members for the last three years;

   h. Records of all proceedings of the board of governors for the last three years;

   i. Reports made to members generally within the last three years;

   j. Member-control agreements described in section 10-32-50;

   k. A statement of all contributions accepted under subsection 3 of section 10-32-56 including for each contribution:

      (1) The identity of the member to whom the contribution relates;

      (2) The class or series to which the contribution pertains;

      (3) The amount of cash accepted by the limited liability company or promised to be paid to the limited liability company;

      (4) A description of any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company; and

      (5) The value accorded under subsection 4 of section 10-32-56 to:

(a) Any other property transferred or promised to be transferred to the limited liability company; and

(b) Any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company;

l. A statement of all contribution agreements made under section 10-32-58, including for each contribution agreement:

(1) The identity of the would-be contributor;

(2) The class or series to which the future contribution pertains; and

(3) As to each future contribution to be made, the same information as subdivision k of subsection 1 requires for contributions already accepted;

m. A statement of all contribution allowance agreements made under section 10-32-59, including for each contribution allowance agreement:

(1) The identity of the would-be contributor;

(2) The class or series to which the future contribution would pertain; and

(3) As to each future contribution allowed to be made, the same information as subdivision k of subsection 1 requires for contributions already accepted;

n. An explanation of any restatement of value made under section 10-32-57;

o. Any written consents obtained from members under this chapter;

p. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsections 6 through 8 of section 10-32-56.

2. A member of a limited liability company has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the limited liability company shall make available within ten days after receipt by a manager of the limited liability company of the written demand, all documents referred to in subsection 1.

3. A member of a limited liability company who has been a member for at least six months immediately preceding the member's demand or who is the holder of record of at least five percent of all membership interests of the limited liability company has a right, upon written demand, to examine and copy, in person or by a legal representative, other limited liability company records at any reasonable time only if the member demonstrates a proper purpose for the examination. A "proper

purpose" is one reasonably related to the person's interest as a member of a limited liability company.

4. On application of the limited liability company, a court in this state may issue a protective order permitting the limited liability company to withhold portions of the records of proceedings of the board of governors for a reasonable period of time, not to exceed twelve months, in order to prevent premature disclosure of confidential information that would be likely to cause competitive injury to the limited liability company. A protective order may be renewed for successive reasonable periods of time, each not to exceed twelve months and in total not to exceed thirty-six months, for good cause shown. In the event a protective order is issued, the statute of limitations for any action that the member might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the limited liability company, it shall award reasonable expenses, including attorney's fees and disbursements, to the member. This subsection does not limit the right of a court to grant other protective orders or impose other reasonable restrictions on the nature of the limited liability company records that may be copied or examined under subsections 2 and 3 or the use or distribution of the records by the demanding member.

5. A member who has gained access under this section to any limited liability company record may not use or furnish to another for use the limited liability company record or a portion of the contents for any purpose other than a proper purpose. Upon application of the limited liability company, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subsection.

6. Copies of the information referred to in subsection 1 must be furnished at the expense of the limited liability company. In all other cases, the limited liability company may charge the requesting party a reasonable fee to cover the expenses of providing the copy.

7. The records maintained by a limited liability company may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or microimages, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A limited liability company shall convert any of the records referred to in subsections 2 and 3 upon the request of a person entitled to inspect them, and the expense of the conversion must be borne by the person who bears the expense of copying pursuant to subsection 6. A copy of the conversion is admissible in evidence, and is acceptable for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

SECTION 133. AMENDMENT. Section 10-32-52 of the North Dakota Century Code is amended and reenacted as follows:

10-32-52. Financial statements.

1. A limited liability company shall, upon written request by a member, ~~furnish~~ prepare annual financial statements within one hundred eighty days after the close of the limited liability company's fiscal year, including at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, prepared on the basis of accounting methods reasonable in the circumstances. The financial statements may be consolidated statements of the limited liability company and one or more of its subsidiaries. ~~In the case of~~

   a. If the statements are audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements~~; in other cases,~~.

   b. If the statements are not audited by a public accountant each copy must be accompanied by a statement of the treasurer or other person in charge of the limited liability company's financial records ~~stating~~:

      (1) Stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances~~, describing~~;

      (2) Describing the basis of presentation~~,~~; and ~~describing~~

      (3) Describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

2. Upon written request by a member, a limited liability company shall furnish its most recent annual financial statements as required under subsection 1 no later than ten business days after receipt of a member's written request. "Furnish" for purposes of this subsection means that the limited liability company shall deliver or mail, postage prepaid, the financial statements to the address specified by the requesting member.

SECTION 134. Section 10-32-52.1 of the North Dakota Century Code is created and enacted as follows:

10-32-52.1. Equitable remedies. If a limited liability company or a manager or governor of the limited liability company violates this chapter, a court in this state, in an action brought by a member of the limited liability company, may grant equitable relief it considers just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the member.

SECTION 135. AMENDMENT. Section 10-32-53 of the North Dakota Century Code is amended and reenacted as follows:

10-32-53. Actions by members. No action may be brought in this state for violations of this chapter by a member in the right of a domestic or foreign limited liability company unless the plaintiff is a member at the time of the transaction of which the plaintiff complains, or the plaintiff's membership interests thereafter devolved upon the plaintiff by operation of law from a person who was a member at such time.

1. In any action thereafter instituted in the right of any domestic or foreign limited liability company by the member, the court having jurisdiction,

upon final judgment and finding that the action was brought without reasonable cause, may require the plaintiff to pay the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in defense of such action.

2. In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign limited liability company by the owner of less than five percent of the membership interests, unless the membership interest of such owner has a market value in excess of twenty-five thousand dollars, the limited liability company in whose ~~rights~~ right such action is brought is entitled at any time before final judgment to require the plaintiff to give security for the reasonable expenses, including attorney's fees, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable.

   a. Market value must be determined on the date the plaintiff institutes the action or, in the case of an intervenor, on the date the intervenor becomes a party to the action.

   b. The amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive.

   c. The limited liability company has recourse to such security in such amount as the court having jurisdiction determines upon the termination of the action, whether or not the court finds the action was brought without reasonable cause.

SECTION 136. AMENDMENT. Section 10-32-54 of the North Dakota Century Code is amended and reenacted as follows:

10-32-54. Rights of dissenting members.

1. Subject to a member-control agreement under section 10-32-50, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:

   a. An amendment of the articles of organization that materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:

      (1) Alters or abolishes a preferential right of the membership interests;

      (2) Creates, alters, or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests;

      (3) Alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;

      (4) Excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or

limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;

(5) Changes a member's right to resign or retire;

(6) Establishes or changes the conditions for or consequences of expulsion;

(7) Changes the statement required under subdivision ~~e~~ f of subsection 1 of section 10-32-07; or

(8) Changes the statement required under subdivision ~~f~~ g of subsection 1 of section 10-32-07~~.~~ ;

b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company ~~not made in the usual or regular course of its business~~, but not including a transaction permitted without member approval under section 10-32-108, a disposition in dissolution described in subsection 4 of section 10-32-113, ~~or~~ a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with their respective membership interests within one year after the date of disposition;

c. A plan of merger to which the limited liability company is a party, except as provided in paragraph 1 of subdivision a of subsection 2 of section 10-32-131 and subject to subsection 3 of section 10-32-131;

d. A plan of exchange to which the limited liability company is a party as the organization whose ownership interests will be acquired by the acquiring organization, if the membership interests being acquired are entitled to be voted on the plan;

e. Any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, the operating agreement, or a resolution approved by the board of governors directs that dissenting members may obtain payment for their membership interests; or

f. A resolution of the board of governors under subsection 2 of section 10-32-131 to implement a business continuation agreement.

2. The members of a limited liability company who have a right under this section to obtain payment for their membership interests do not have a right at law or in equity to have a limited liability company action described in subsection 1 set aside or rescinded, except when the limited liability company action is fraudulent with regard to the complaining member or the limited liability company.

SECTION 137. AMENDMENT. Section 10-32-55 of the North Dakota Century Code is amended and reenacted as follows:

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

1. For purposes of this section:

   a. "Limited liability company" means a limited liability company whose members have obtained rights to dissent under subsection 1 of section 10-32-54 and includes any successor by merger.

   b. "Fair value of the membership interests" means the value of the membership interests of a limited liability company immediately before the effective date of the limited liability company action referred to in subsection 1 of section 10-32-54.

   c. "Interest" means interest beginning five days after the effective date of the limited liability company action referred to in subsection 1 of section 10-32-54, up to and including the date of payment, calculated at the rate provided in section 28-20-34 for interest on verdicts and judgments.

   d. "Member" includes a former member when dissenters' rights exist because:

      (1) The membership of that former member has terminated causing dissolution; and

      (2) The dissolved limited liability company has then either entered into a winding-up merger under subsection 3 of section 10-32-112 or has disposed of its assets pursuant to a business continuation agreement under subsection 2 of section 10-32-131.

2. If a limited liability company calls a member meeting at which any action described in subsection 1 of section 10-32-54 is to be voted upon, the notice of the meeting must inform each member of the right to dissent and must include a copy of section 10-32-54 and this section and, if applicable, subsections 2 and 3 of section 10-32-131. For members who have assigned some or all of their financial rights, the description must also include the procedures under subsection 8.

3. If the proposed action must be approved by the members, a member who wishes to exercise dissenters' rights must file with the limited liability company before the vote on the proposed action a written notice of intent to demand the fair value of the membership interests owned by the member and must not vote the membership interests in favor of the proposed action.

4. After the proposed action has been approved by the board of governors and, if necessary, the members, the limited liability company shall send to all members who have complied with subsection 3 and to all members entitled to dissent if no member vote was required, a notice that contains:

   a. The address to which a demand for payment must be sent in order to obtain payment and the date by which the demand must be received;

   b. A form to be used to certify the date on which the member acquired the membership interests and to demand payment; and

c. A copy of section 10-32-54, this section and, if applicable, subsections 2 and 3 of section 10-32-131.

5. In order to receive the fair value of the membership interests, a dissenting member must demand payment within thirty days after the notice required by subsection 4 was given, but the dissenter retains all other rights of a member until the proposed action takes effect.

6. After the limited liability company action takes effect, or after the limited liability company receives a valid demand for payment, whichever is later, the limited liability company shall remit to each dissenting member who has complied with subsections 3, 4, and 5, the amount the limited liability company estimates to be the fair value of the membership interests, plus interest, accompanied by:

   a. The limited liability company's closing balance sheet and statement of income for a fiscal year ending not more than sixteen months before the effective date of the limited liability company action, together with the latest available interim financial statements;

   b. An estimate by the limited liability company of the fair value of the membership interests and a brief description of the method used to reach the estimate; and

   c. A copy of section 10-32-54, this section~~,~~ and, if applicable, subsections 2 and 3 of section 10-32-131.

7. The limited liability company may withhold the remittance described in subsection 6 from a person who was not a member on the date the action dissented from was first announced to the public. If the dissenter has complied with subsections 3, 4, and 5, the limited liability company shall forward to the dissenter the materials described in subsection 6, a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept that amount in full satisfaction. The dissenter may decline the offer and demand payment under subsection 8. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subsections 9 and 10 apply.

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

9. If the limited liability company receives a demand under subsection 8, it shall, within sixty days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after discussion with the limited liability company or file in court a petition requesting that the court determine the fair value of the membership interests, plus interest. The petition must be filed in the county in which the registered office of the limited liability company is located, except that a surviving foreign corporation that receives a demand relating to

the membership interests of a constituent limited liability company shall file the petition in the county in this state in which the last registered office of the constituent limited liability company was located. The petition must name as parties all dissenters who have demanded payment under subsection 8 and who have not reached agreement with the limited liability company. The limited liability company shall, after filing the petition, serve all parties with a summons and copy of the petition under the rules of civil procedure. Nonresidents of this state may be served by registered or certified mail or by publication as provided by law. Except as otherwise provided, the rules of civil procedure apply to this proceeding. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court considers proper, to receive evidence on and recommend the amount of the fair value of the membership interests. The court shall determine whether the member or members in question have fully complied with the requirements of this section and shall determine the fair value of the membership interests, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the limited liability company or by a dissenter. The fair value of the membership interests as determined by the court is binding on all members, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the membership interests as determined by the court, plus interest, exceeds the amount, if any, remitted under subsections 5, 6, and 7, but is not liable to the limited liability company for the amount, if any, by which the amount, if any, remitted to the dissenter under subsection 5 exceeds the fair value of the membership interests as determined by the court, plus interest.

10. The court shall determine the costs and expenses of a proceeding under subsection 9, including the reasonable expenses and compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the limited liability company, except that the court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment is found to be arbitrary, vexatious, or not in good faith.

11. If the court finds that the limited liability company has failed to comply substantially with this section, the court may assess all fees and expenses of any experts or attorneys as the court considers equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.

12. The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.

13. When an assignment of some or all of the financial rights of a membership interest is in effect, then as to that membership interest the provisions of subsections 1 through 12 must be followed subject to the following revisions:

    a. All rights to be exercised and actions to be taken by a member under subsection 2 must be taken by the member and not by any assignee of the member's financial rights. As between the limited

liability company and the assignees, the actions taken or omitted by the member bind the assignees.

b. Instead of remitting a payment under subsection 6, the limited liability company shall forward to the dissenter member:

(1) An offer to pay the fair value of the membership interests with that amount to be allocated among and paid to the member and the assignees of financial rights according to the terms of the assignments reflected in the required records; and

(2) A statement of that allocation.

c. If the dissenter member accepts the amount of the offer made under subdivision b but disputes the allocation, the dissenter shall promptly so notify the limited liability company and promptly after the notification bring an action to determine the proper allocation. The suit must be filed in the county in which the registered office of the limited liability company is located, or in the case of a surviving foreign corporation that is complying with this section following a merger or an exchange with a constituent limited liability company the suit must be filed in the county in this state in which the last registered office of the constituent limited liability company was located. The suit must name as parties the member, the limited liability company, and all assignees of the member's financial rights. Upon being served with the action, the limited liability company shall promptly pay into the court the amount offered under subdivision b and shall then be dismissed from the action.

d. If the dissenter considers the amount offered under subdivision b inadequate, the dissenter may decline the offer and demand payment under subsection 8. If the dissenter makes demand, subsections 9 and 10 apply, with the court having jurisdiction also to determine the correctness of the allocation.

e. If the member fails to take action under either subdivision c or d, then:

(1) As to the limited liability company, both the member and the assignees of the member's financial rights are limited to the amount and allocation offered under subdivision b; and

(2) The limited liability company discharges its obligation of payment by making payment according to the amount and allocation offered under subdivision b.

SECTION 138. AMENDMENT. Section 10-32-56 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Subject to any restrictions in the articles of organization and only when authorized by the board of governors, a limited liability company may accept contributions under subsections 2 and 3, make contribution agreements under section 10-32-58, and make contribution allowance agreements under section 10-32-59.

2. A person may make a contribution to a limited liability company by paying money or transferring the ownership of an interest in property to the limited liability company for rendering services to or for the benefit of the limited liability company.

3. No purported contribution is to be treated or considered as a contribution, unless:

   a. The board of governors accepts the contribution on behalf of the limited liability company and in that acceptance describes the contribution and states the value being accorded to the contribution; and

   b. The fact of contribution and the contribution's accorded value are both reflected in the required records of the limited liability company.

4. The determinations of the board of governors as to the amount or fair value or the fairness to the limited liability company of the contribution accepted or to be accepted by the limited liability company or the terms of payment or performance, including under a contribution agreement in section 10-32-58, and a contribution allowance agreement in section 10-32-59, 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. Governors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the limited liability company, or overvalue property or services received or to be received by the limited liability company as a contribution, are jointly and severally liable to the limited liability company for the benefit of the then members who did not consent to and are damaged by the action, to the extent of the damages of those members. A governor against whom a claim is asserted pursuant to this subsection, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other governors who are liable under this subsection.

5. All the membership interests of a limited liability company must:

   a. Be of one class, without series, unless the articles of organization establish, or authorize the board of governors to establish, more than one class or series within classes;

   b. Be ordinary membership interests entitled to vote as provided in section 10-32-45, and have equal rights and preferences in all matters not otherwise provided for by the board of governors unless and to the extent that the articles of organization have fixed the relative rights and preferences of different classes and series; and

   c. Share profits and losses as provided in section 10-32-36 and be entitled to distributions as provided in sections 10-32-60 and 10-32-61 and subdivision c of subsection 1 of section 10-32-131.

6. Subject to any restrictions in the articles of organization, the power granted in subsection 5 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a

class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series established in the articles of organization or by resolution of the board of governors.

7. A statement executed by a manager setting forth the name of the limited liability company and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed with the secretary of state together with the fees provided in section 10-32-150 before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles of organization. The resolution is effective when the statement has been filed with the secretary of state unless the statement specifies a later effective date within thirty days of filing the statement with the secretary of state.

8. Without limiting the authority granted in this section, a limited liability company may have membership interests of a class or series:

   a. Subject to the right of the limited liability company to redeem any of those membership interests at the price fixed for their redemption by the articles of organization or by the board of governors;

   b. Entitling the members to cumulative, partially cumulative, or noncumulative distributions;

   c. Having preference over any class or series of membership interests for the payment of distributions of any or all kinds;

   d. Convertible into membership interests of any other class or any series of the same or another class; or

   e. Having full, partial, or no voting rights, except as provided in section 10-32-17.

SECTION 139. AMENDMENT. Section 10-32-58 of the North Dakota Century Code is amended and reenacted as follows:

10-32-58. Contribution agreements.

1. A contribution agreement, whether made before or after the formation of the limited liability company, is not enforceable against the would-be contributor unless it is in writing and signed by the would-be contributor.

2. ~~A~~ Unless otherwise provided in the contribution agreement, or unless all of the would-be contributors and, if in existence, the limited liability company, consent to a shorter or longer period, a contribution agreement is irrevocable for a period of six months ~~unless the contribution agreement provides for, or unless all other would-be contributors who are a party to a contribution consent to, an earlier revocation~~.

3. A contribution agreement, whether made before or after the formation of a limited liability company, must be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times

determined by the board of governors, but a call made by the board of governors for payment or performance on contributions must be uniform for all membership interests of the same class or for all membership interests of the same series.

4. Unless otherwise provided in the contribution agreement, in the event of default in the payment or performance of an installment or call when due, the limited liability company may proceed to collect the amount due in the same manner as a debt due the limited liability company ~~or, if the amount due remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent would-be contributor, the board of governors may declare a forfeiture of the contribution agreement or cancel it in accordance with this subsection~~. If a would-be contributor does not make a required contribution of property or services, the limited liability company shall require the would-be contributor to contribute cash equal to that portion of the value, as stated in the limited liability company required records, of the contribution that has not been made.

5. ~~Upon forfeiture of a contribution agreement~~ If the amount due under a contribution agreement remains unpaid for a period of twenty days after the written notice of demand for payment has been given to the delinquent would-be contributor, the membership interests that were subject to the contribution agreement may be offered for sale by the limited liability company for a price in money equaling or exceeding the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale. ~~Any excess of net proceeds realized by the limited liability company over the sum of the amount owed by the delinquent would-be contributor plus the expenses incidental to the sale must be paid to the delinquent would-be contributor or to a legal representative. The payment must not exceed the amount of contribution actually made by the delinquent would-be contributor.~~

   a. If the membership interests that were subject to the contribution agreement are sold pursuant to this subsection, the limited liability company shall pay to the delinquent would-be contributor or to the delinquent would-be contributor's representatives the lesser of:

      (1) The excess of net proceeds realized by the limited liability company over the sum of the amount owed by the delinquent would-be contributor plus the expenses incidental to the sales; or

      (2) The amount actually paid by the delinquent would-be contributor.

   b. If the membership interests that were subject to the contribution agreement are not sold pursuant to this subsection, the limited liability company may collect the amount due in the same manner as a debt due to the limited liability company or cancel the contribution agreement pursuant to subsection 6.

6. ~~If, within twenty days after the limited liability company offers to sell the membership interests that were subject to the defaulted contribution agreement, no prospective purchaser offers to purchase the membership~~

interests for a money price sufficient to pay the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale, or if the limited liability company has refunded to the would-be contributor or a legal representative a portion of the contribution agreement price actually paid, the contribution agreement may be canceled and the limited liability company may retain the portion of the contribution agreement price actually paid that does not exceed ten percent of the contribution agreement price. If the amount due under a contribution agreement remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent would-be contributor and the membership interests that were subject to the contribution agreement have not been sold pursuant to subsection 5, the limited liability company:

a. May cancel the contribution agreement;

b. May retain the portion of the contribution agreement price actually paid that does not exceed ten percent of the contribution agreement; and

c. Shall refund to the delinquent would-be contributor or the delinquent would-be contributor's legal representatives that portion of the contribution agreement price actually paid that exceeds ten percent of the contribution price.

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

SECTION 140. AMENDMENT. Section 10-32-64 of the North Dakota Century Code is amended and reenacted as follows:

10-32-64. Limitations on distribution.

1. The board of governors may authorize and cause the limited liability company to make a distribution only if the board of governors determines, in accordance with subsection 2, that the limited liability company will be able to pay its debts in the ordinary course of business after making the distribution and the board of governors does not know before the distribution is made that the determination was or has become erroneous, and the.

   a. The limited liability company may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.

   b. The effect of a distribution on the ability of the limited liability company to pay its debts in the ordinary course of business after making the distribution must be measured in accordance with subsection 3.

   c. The right of the board of governors to authorize, and the limited liability company to make, distributions may be prohibited, limited, or restricted by the articles of organization or operating agreement or an agreement.

2. A determination that the limited liability company will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-32-86 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 10-32-66 or 10-32-86 will accrue if the requirements of this subsection have been met.

3. In the case of a distribution made by a limited liability company in connection with a redemption of its membership interests, the effect of the distribution must be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the limited liability company, or as of the date on which the member ceases to be a member of the limited liability company, whichever is the earliest. The effect of any other distribution must be measured as of the date of its authorization if payment occurs one hundred twenty days or less following the date of authorization, or as of the date of payment if payment occurs more than one hundred twenty days following the date of authorization. The provisions of chapter 13-02.1 do not apply to distributions made by a limited liability company governed by this chapter.

4. Indebtedness of a limited liability company incurred or issued in a distribution in accordance with this section to a member who as a result of the transaction is no longer a member is on a parity with the indebtedness of the limited liability company to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the limited liability company or a related organization, or subject to any other agreement between the limited liability company and the member.

5. A distribution may be made to the owners of a class or series of membership interests only if:

   a. All amounts payable to the owners of membership interests having a preference for the payment of that kind of distribution, other than those owners who give notice to the limited liability company of their agreement to waive their rights to that payment, are paid; and

   b. The payment of the distribution does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of liquidation to the owners of membership interests having preferential rights, unless the distribution is made to those members in the order and to the extent of their respective priorities or the owners of membership interests who do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.

6. A determination that the payment of the distribution described in subsection 5 does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of termination to the owners of membership interests having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-32-86

on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. Liability under section 10-32-66 or 10-32-86 will not arise if the requirements of this subsection are met.

~~6.~~ 7. If the money or property available for distribution is insufficient to satisfy all preferences, the distributions must be made pro rata according to the order of priority of preferences by classes and by series within those classes unless those owners who do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.

SECTION 141. AMENDMENT. Section 10-32-66 of the North Dakota Century Code is amended and reenacted as follows:

10-32-66. Liability of governors for illegal distributions.

1. In addition to any other liabilities, a governor who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of subsections 1 or 4 of section 10-32-64 or a restriction contained in the articles of organization or operating agreement or an agreement, and ~~who~~ fails to comply with the standard of conduct provided in section 10-32-86, is liable to the limited liability company, its receiver or any other person winding up its affairs, jointly and severally with all other governors so liable and to other governors under subsection 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 10-32-64.

2. A governor against whom an action is brought under this section with respect to a distribution may implead in that action all members who received the distribution and may compel pro rata contribution from them in that action to the extent provided in subsection 1 of section 10-32-65.

3. A governor against whom an action is brought under this section with respect to a distribution may implead in that action all other governors who voted for or consented in writing to the distribution and may compel pro rata contribution from them in that action.

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

SECTION 142. AMENDMENT. Section 10-32-67 of the North Dakota Century Code is amended and reenacted as follows:

10-32-67. Organization.

1. If the first board of governors is not named in the articles of organization, the organizers may elect the first board of governors or may act as governors with all of the powers, rights, duties, and liabilities of governors, until governors are elected or until a contribution is accepted, whichever occurs first.

2. After the issuance of the certificate of organization, the organizers or the governors named in the articles of organization shall either hold an organizational meeting at the call of a majority of the organizers or of

the governors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the limited liability company, including, without limitation, amending the articles, electing governors, adopting an operating agreement, electing managers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a limited liability company seal, adopting a fiscal year for the limited liability company, contracting to receive and accept contributions, and making any appropriate tax elections.

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

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

SECTION 143. AMENDMENT. Section 10-32-68 of the North Dakota Century Code is amended and reenacted as follows:

10-32-68. Operating agreement.

1. A limited liability company may, but need not, have an operating agreement. The operating agreement may contain any provision relating to the management of the business or the regulation of the affairs of the limited liability company not inconsistent with law or the articles of organization. An act of the board under subsection 2 and of the members under subsection 3 will be considered part of the operating agreement only if the act expressly states that it is intended to constitute or revise the operating agreement.

2. An initial operating agreement may be adopted pursuant to section 10-32-67 by the organizers or by the first board of governors. Unless reserved by the articles of organization to the members, the power to adopt, amend, or repeal the operating agreement is vested in the board of governors. The power of the board of governors is subject to the power of the members, exercisable in the manner provided in subsection 3, to adopt, amend, or repeal the operating agreement adopted, amended, or repealed by the board of governors. After the adoption of the initial operating agreement, the board of governors may not adopt, amend, or repeal an operating agreement provision fixing a quorum for meetings of members, prescribing procedures for removing governors or filling vacancies in the board of governors, or fixing the number of governors or their classifications, qualifications, or terms of office, but may adopt or amend an operating agreement provision to increase the number of governors.

3. ~~If~~ Unless the articles or operating agreement provides otherwise, members owning five percent or more of the voting power of the members entitled to vote may propose a resolution for action by the members to adopt, amend, or repeal operating agreement provisions adopted, amended, or repealed by the board of governors and the

resolution ~~sets~~ must set forth the provision or provisions proposed for adoption, amendment, or repeal, the limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2 through 4 of section 10-32-16, for amendment of the articles of organization. The articles or operating agreement may impose different or additional requirements for the members to adopt, amend, or repeal the operating agreement.

SECTION 144. AMENDMENT. Section 10-32-72 of the North Dakota Century Code is amended and reenacted as follows:

10-32-72. Terms.

1. With respect to length of terms:

   a. Unless fixed terms are provided for in the articles or operating agreement, a governor serves for an indefinite term that expires at the next regular meeting of the members.

      (1) A fixed term of a governor, other than an ex officio governor, must not exceed five years. ~~A governor holds office for the term for which the governor was elected and until a successor is elected and has qualified, or until the earlier death, resignation, removal, or disqualification of the governor.~~

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

   b. Unless the articles or operating agreement provides otherwise, a governor holds office until expiration of the term for which the governor was elected or appointed and until a successor is elected and has qualified or until the earlier death, resignation, removal, or disqualification of the governor.

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

   d. Except as provided in the articles or operating agreement, the term of a governor filling a vacancy expires at the end of the unexpired term that the director is filling.

2. The articles or operating agreement may provide for staggering the terms of governors by dividing the total number of governors into groups.

SECTION 145. AMENDMENT. Section 10-32-77 of the North Dakota Century Code is amended and reenacted as follows:

10-32-77. Resignation.

1. A governor may resign at any time by giving written notice to the limited liability company. The resignation is effective without acceptance when the notice is given to the limited liability company, unless a later effective time is specified in the notice.

2. If a resignation is made effective at a later time, the board may fill the pending vacancy before the effective time if the board of governors provides that the successor does not take office until the effective time.

SECTION 146. AMENDMENT. Section 10-32-78 of the North Dakota Century Code is amended and reenacted as follows:

10-32-78. ~~Removal~~ Nonjudicial removal of governors.

1. The provisions of this section apply unless modified by the articles of organization or the operating agreement.

2. A governor may be removed at any time, with or without cause, if:

   a. The governor was named by the board of governors to fill a vacancy;

   b. The members have not elected governors 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 governors present affirmatively votes to remove the governor.

3. Any one or all of the governors may be removed at any time, with or without cause, by the affirmative vote of the owners of the proportion of the voting power of the membership interests of the classes or series the governor represents sufficient to elect them. If less than the entire board of governors is to be removed, no one of the governors may be removed if the votes cast against the governor's removal which, if then cumulatively voted at the election of the entire board of governors, or if there be classes of governors at an election of the class of governors of which the governor is a part, would be sufficient to elect the governor. Whenever the members of any class are entitled to elect one or more governors by the provisions of the articles of the organization, the provisions of this section apply, in respect to the removal of a governor or governors so elected, to the vote of the members of that class and not to the vote of the members as a whole.

4. New governors may be elected at a meeting at which governors are removed.

SECTION 147. Section 10-32-78.1 of the North Dakota Century Code is created and enacted as follows:

10-32-78.1. Removal of governors by judicial proceeding.

1. The district court of the county where the principal executive office of a limited liability company is located may remove any governor of the limited liability company from office in a proceeding commenced either by the limited liability company, its members holding at least ten percent of the voting power of any class of membership interests, or the attorney general, if the court finds that:

   a. The governor engaged in fraudulent, dishonest conduct, or gross abuse of authority or discretion with respect to the limited liability

company or a final judgment has been entered finding that the governor has violated section 10-33-86; and

b. Removal is in the best interest of the limited liability company.

2. The court that removes a governor may bar the governor from serving on the board of governors for a period prescribed by the court.

3. If members or the attorney general commence a proceeding under subsection a, then the limited liability company shall be made a party defendant.

SECTION 148. AMENDMENT. Section 10-32-79 of the North Dakota Century Code is amended and reenacted as follows:

10-32-79. Vacancies.

1. Unless different rules for filling vacancies are provided for in the articles or operating agreement:

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

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

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

3. A vacancy that will occur at a specific later date may be filled before the vacancy occurs but the new governor may not take office until the vacancy occurs.

SECTION 149. AMENDMENT. Section 10-32-80 of the North Dakota Century Code is amended and reenacted as follows:

10-32-80. Board of governors meetings.

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

2. A board of governors meeting may be conducted by:

   a. A conference among governors using any means of communication through which the governors may simultaneously hear each other during the conference constitutes a board of governors meeting, if the same notice is given of the conference as would be required by

subsection 3 for a meeting, and if the number of governors participating in the conference ~~would be sufficient to constitute~~ is a quorum ~~at a meeting~~. Participation in a meeting by ~~that~~ this means constitutes personal presence ~~in person~~ at the meeting; or

b. By any means of communication through which the governor, other governors so participating, and all governors physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by ~~that~~ this means constitutes personal presence ~~in person~~ at the meeting.

3. Unless the articles of organization or operating agreement provide for a different time period, a governor may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings under subsection 2 of section 10-32-67, at least three days' notice to all governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or operating agreement require it.

4. If the ~~day or~~ date, time, and place of a board of governors meeting have been provided in the articles or operating agreement, or announced at a previous meeting of the board of governors, no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

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

SECTION 150. AMENDMENT. Section 10-32-81 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 151. AMENDMENT. Section 10-32-83 of the North Dakota Century Code is amended and reenacted as follows:

10-32-83. Act of the board of governors. The board of governors shall take action by the affirmative vote of the greater of a majority of governors present at a duly held meeting at the time the action is taken or a majority of the minimum proportion or number of governors that would constitute a quorum for the transaction of business at a meeting, except where this chapter or the articles require

the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

SECTION 152. AMENDMENT. Section 10-32-84 of the North Dakota Century Code is amended and reenacted as follows:

10-32-84. Action without a meeting.

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

2. The written action is effective when signed by the required number of governors, unless a different effective time is provided in the written action.

3. When written action is permitted to be taken by less than all governors, all governors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A governor who does not sign or consent to the written action has no liability for the action or actions ~~taken~~ t~~hereby~~.

SECTION 153. AMENDMENT. Section 10-32-85 of the North Dakota Century Code is amended and reenacted as follows:

10-32-85. Committees.

1. A resolution approved by the affirmative vote of a majority of the board of governors may establish committees having the authority of the board in the management of the business of the limited liability company only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent governors or other independent persons to consider legal rights or remedies of the limited liability company and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board of governors.

2. Committee members must be individuals. Unless the articles or operating agreement provide for a different membership or manner of appointment, a committee consists of one or more persons, who need not be governors, appointed by ~~affirmative vote of a majority of the governors present~~ the board.

3. Sections 10-32-80 through 10-32-84 apply to committees and members of committees to the same extent as those sections apply to the board of governors and governors.

4. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any governor.

5. The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a governor with the standard of conduct set forth in section 10-32-86.

6. Committee members are considered to be governors for purposes of sections 10-32-86, 10-32-87, and 10-32-99.

SECTION 154. AMENDMENT. Section 10-32-86 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A governor shall discharge the duties of the position of governor in good faith, in a manner the governor reasonably believes to be in the best interests of the limited liability company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a governor of the limited liability company.

2. A governor is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

   a. One or more managers or employees of the limited liability company whom the governor reasonably believes to be reliable and competent in the matters presented;

   b. Counsel, public accountants, or other persons as to matters that the governor reasonably believes are within the person's professional or expert competence; or

   c. A committee of the board of governors upon which the governor does not serve, duly established in accordance with section 10-32-85, as to matters within its designated authority, if the governor reasonably believes the committee to merit confidence.

3. Subsection 2 does not apply to a governor who has knowledge concerning the matter in question that makes the reliance otherwise permitted by subsection 2 unwarranted.

4. A governor who is present at a meeting of the board of governors when an action is approved by the affirmative vote of a majority of the governors present is presumed to have assented to the action approved, unless the governor:

   a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection, in which case the governor is not considered to be present at the meeting for any purpose of this chapter;

   b. Votes against the action at the meeting; or

   c. Is prohibited ~~by section 10-32-87~~ from voting on the action by the articles; by the operating agreement; as the result of the decision to

approve, ratify, or authorize a transaction pursuant to section 10-32-87; or by a conflict of interest policy adopted by the board.

5. A governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles of organization. The articles may not eliminate or limit the liability of a governor:

   a. For any breach of the governor's duty of loyalty to the limited liability company or its members;

   b. For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;

   c. Under section 10-32-66;

   d. For any transaction from which the governor derived an improper personal benefit; or

   e. For any act or omission occurring before the date when the provision in the articles of organization eliminating or limiting liability becomes effective.

6. In discharging the duties of the position of governor, a governor may, in considering the best interests of the limited liability company, consider the interests of the limited liability company's employees, customers, suppliers, and creditors, the economy of the state and nation, community and societal considerations, and the long-term as well as short-term interests of the limited liability company and its members including the possibility that these interests may be best served by the continued independence of the limited liability company.

SECTION 155. AMENDMENT. Section 10-32-87 of the North Dakota Century Code is amended and reenacted as follows:

10-32-87. Governor conflicts of interest.

1. A contract or other transaction between a limited liability company and one or more of its governors~~, or between a limited liability company and an organization in or of which one or more of its governors are governors, directors, managers, officers, or legal representatives~~ or a member of the family of the governor; a director of a related organization or a member of the family of a director of a related organization; or an organization in or of which the limited liability company's governor or a member of the family of the governor is a governor, director, manager, officer, or legal representative or ~~have~~ has a material financial interest, is not void or voidable because the governor ~~or governors~~ or the other ~~organizations are parties~~ organization is a party or because the governor ~~or governors are~~ is present at the meeting of the members or the board of governors or a committee at which the contract or transaction is authorized, approved, or ratified, if at least one of the requirements of subsection 2 is satisfied.

2. The contract or transaction described in subsection 1 is not void or voidable if:

a. The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the limited liability company at the time it was authorized, approved, or ratified;

b. The material facts as to the contract or transaction and as to the manager's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by ~~the holders of a majority of the membership interests, but membership interests owned by the interested governor may not be counted in determining the presence of a quorum and may not be voted~~:

(1) The owners of two-thirds of the voting power of membership interests entitled to vote that are owned by persons other than the interested governor; or

(2) The unanimous affirmative vote of all members, whether or not entitled to vote;

c. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the board of governors or a committee, and the board of governors or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board of governors or committee, but the interested governor is not counted in determining the presence of a quorum and may not vote; or

d. The contract or transaction is a distribution described in subsection 1 of section 10-32-64 or a merger or exchange described in subsection 1 or 2 of section 10-32-100.

~~2.~~ 3. For purposes of this section:

a. A governor does not have a material financial interest in a resolution fixing the compensation of the governor or fixing the compensation of another governor as a governor, manager, employee, or agent of the limited liability company, even though the first governor is also receiving compensation from the limited liability company; and

b. A governor has a material financial interest in each organization in which the governor, ~~or the spouse, parents, children and spouses of children, brothers and sisters and spouses of brothers and sisters of the governor, or any combination of them have~~ or a member of the family of the governor, has a material financial interest. A "member of the family" of the governor is a spouse, parent, child, child of a spouse, brother, sister, or the spouse of any of these individuals.

4. The procedures described under subdivisions a, b, and c of subsection 2 are not required if the contract or transaction is between related parties.

SECTION 156. AMENDMENT. Section 10-32-88 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 157. AMENDMENT. Section 10-32-89 of the North Dakota Century Code is amended and reenacted as follows:

10-32-89. Duties of managers and agents. Unless the articles, operating agreement, or a resolution adopted by the board of governors and not inconsistent with the articles or operating agreement, provides otherwise, the managers shall have the following duties:

1. ~~Unless the articles of organization or the operating agreement provides otherwise, the~~ The president shall:

   a. Have general active management for the business of the limited liability company;

   b. When present, preside at all meetings of the board of governors and of the members;

   c. See that all orders and resolutions of the board of governors are carried into effect;

   d. Sign and deliver in the name of the limited liability company any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the limited liability company, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or operating agreement or the board of governors to some other manager or agent of the limited liability company;

   e. Maintain records of and, whenever necessary, certify all proceedings of the board of governors and members; and

   f. Perform other duties prescribed by the board of governors.

2. ~~Unless the articles of organization or the operating agreement provides otherwise, the~~ The vice president, if any, or if there is more than one, the vice presidents in the order determined by the board of governors shall:

   a. In the absence or disability of the president, perform the duties and exercise the powers of the president; and

   b. Perform other duties and have other powers as the board of governors may from time to time prescribe.

3. The treasurer shall:

   a. Keep accurate financial records for the limited liability company;

b. Deposit all money, drafts, and checks in the name of and to the credit of the limited liability company in the banks and depositories designated by the board of governors;

c. Endorse for deposit all notes, checks, and drafts received by the limited liability company as ordered by the board of governors, making proper vouchers for them;

d. Disburse limited liability company funds and issue checks and drafts in the name of the limited liability company, as ordered by the board of governors;

e. Give to the president and the board of governors, whenever requested, an account of all transactions by the treasurer and of the financial condition of the limited liability company; and

f. Perform other duties prescribed by the board of governors or by the president.

~~3.~~ 4. The secretary, if any, shall:

a. Attend all meetings of the board of governors, all meetings of the members, and, when required, all meetings of standing committees;

b. Record all proceedings of the meetings;

c. Give, or cause to be given, notice of all meetings of the members and meetings of the board of governors; and

d. Perform other duties prescribed by the board of governors.

5. Any other managers and agents of the limited liability company, as between themselves and the limited liability company, have the authority and shall perform the duties in the management of the limited liability company as may be provided in the articles ~~of organization~~ or the operating agreement, or as may be determined by resolution of the board not inconsistent with the articles ~~of organization~~ or the operating agreement.

SECTION 158. AMENDMENT. Section 10-32-91 of the North Dakota Century Code is amended and reenacted as follows:

10-32-91. Multiple managerial positions. Any number of managerial positions or functions of those positions may be held or exercised by the same ~~person~~ individual. If a document must be signed by ~~persons~~ individuals holding different positions or functions and ~~a person~~ an individual holds or exercises more than one of those positions or functions, that ~~person~~ individual may sign the document in more than one capacity, but only if the document indicates each capacity in which the ~~person~~ individual signs.

SECTION 159. AMENDMENT. Section 10-32-92 of the North Dakota Century Code is amended and reenacted as follows:

10-32-92. Managers deemed elected. In the absence of an election or appointment of managers by the board of governors, the ~~person~~ individual or

~~persons~~ individuals exercising the functions of the principal managers of the limited liability company are deemed to have been elected to those offices.

SECTION 160. AMENDMENT. Section 10-32-93 of the North Dakota Century Code is amended and reenacted as follows:

10-32-93. Contract rights. The election or appointment of ~~a person~~ an individual as a manager or agent does not, of itself, create contract rights. However, a limited liability company may enter into a contract with a manager or agent. The resignation or removal of the manager or agent is without prejudice to any contractual rights or obligations.

SECTION 161. AMENDMENT. Section 10-32-94 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A manager may resign at any time by giving written notice to the limited liability company. The resignation is effective without acceptance when the notice is given to the limited liability company, unless a later effective date is specified in the notice.

2. ~~A~~ Except as otherwise provided in the articles or operating 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 is without prejudice to any contractual rights of the officer.

3. A vacancy in an office because of death, resignation, removal, ~~or~~ disqualification or other cause, may, or in the case of the president or treasurer, must be filled for the unexpired portion of the term in the manner provided in the articles or operating agreement, or determined by the board of governors, or pursuant to section 10-32-92.

SECTION 162. AMENDMENT. Section 10-32-95 of the North Dakota Century Code is amended and reenacted as follows:

10-32-95. Delegation. Unless prohibited by the articles or operating agreement or by a resolution ~~approved by the affirmative vote of a majority of the governors present~~ adopted by the board of governors, a manager elected or appointed by the board of governors may, without the approval of the board, delegate some or all of the duties and powers of an office to other ~~persons~~ individuals. A manager who delegates the duties or powers of an office remains subject to the standard of conduct for a manager with respect to the discharge of all duties and powers so delegated.

SECTION 163. AMENDMENT. Section 10-32-96 of the North Dakota Century Code is amended and reenacted as follows:

10-32-96. Standard of conduct for managers. A manager shall discharge the duties of an office in good faith, in a manner the manager reasonably believes to be in the best interests of the limited liability company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. ~~A person~~ An individual exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section

10-32-95 is considered a manager for purposes of this section and sections 10-32-53 and 10-32-99.

SECTION 164. AMENDMENT. Section 10-32-97 of the North Dakota Century Code is amended and reenacted as follows:

10-32-97. Loans, guarantees, and suretyship.

1. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the affirmative vote of a majority of the governors present and:

   a. Is in the usual and regular course of business of the limited liability company;

   b. Is with, or for the benefit of, a related organization, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has a b~~usiness~~ relationship in the usual and regular course of its business, or an organization to which the limited liability company has the power to make donations any of which relationships constitute consideration sufficient to make the loan, guaranty, suretyship, or other financial assistance so approved enforceable against the limited liability company;

   c. Is with, or for the benefit of, a member who provides services to the limited liability company, or a manager or other employee of the limited liability company or a subsidiary, including a member, manager, or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of governors, to benefit the limited liability company; or

   d. ~~Has~~ Whether or not separate consideration has been promised to the limited liability company, has been approved by the owners of two-thirds of the voting power of persons other than the interested person or persons.

2. A loan, guarantee, surety contract, or other financial assistance under subsection 1 may be with or without interest and may be unsecured or may be secured in any manner, including, without limitation, a grant of a security interest in a member's financial rights in the limited liability company.

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

SECTION 165. AMENDMENT. Section 10-32-99 of the North Dakota Century Code is amended and reenacted as follows:

10-32-99. Indemnification.

1. For purposes of this section:

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

b. "Official capacity" means:

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

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

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

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

d. "Special legal counsel" means counsel who has not represented the limited liability company or a related organization, or a governor, manager, member of a committee of the board of governors, employee, or agent whose indemnification is in issue.

2. Subject to the provisions of subsection 5, a limited liability company shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by

the person in connection with the proceeding with respect to the same acts or omissions;

b. Acted in good faith;

c. Received no improper personal benefit and section 10-32-87, if applicable, has been satisfied;

d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the limited liability company, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the limited liability company. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the limited liability company if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

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

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

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

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

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

5. The articles of organization or operating agreement either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2 through 4 including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring before the effective date of a provision in the articles of organization or the date of adoption of a provision in the operating agreement establishing the prohibition or limit on indemnification or advances.

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

7. All indemnification determinations must be made:

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

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

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

   d. If a determination is not made under subdivisions a through c, by the members, ~~excluding the votes of membership interests held by parties~~ other than the members who are a party to the proceeding; or

   e. If an adverse determination is made under subdivisions a through d or under subsection 8, or if no determination is made under subdivisions a through d or under subsection 8 within sixty days after the ~~termination of a proceeding or after a~~ later to occur of the termination of a proceeding; or a written request for indemnification to the limited liability company; or a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the

burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

8. With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a governor, manager, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the limited liability company, the determination whether indemnification of this person is required because the criteria set forth in subsections 2 and 3 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 may be made by an annually appointed committee of the board of governors, having at least one member who is a governor. The committee shall report at least annually to the board of governors concerning its actions.

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

10. A limited liability company that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the limited liability company shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members as part of the annual financial statements furnished to members pursuant to section 10-32-52 covering the period when the indemnification or advance was paid or accrued under the accounting method of the limited liability company reflected in the financial statements.

11. Nothing in this section may be construed to limit the power of the limited liability company to indemnify other persons by contract or otherwise.

SECTION 166. 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 or a domestic corporation pursuant to a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-106; and

   b. 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.

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 or domestic corporation pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106.

~~3.~~ b. A domestic corporation 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 sections 10-32-101 through 10-32-106.

~~4.~~ c. 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.

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

~~6.~~ 4. A limited liability company may participate in a merger only as permitted by this section.

SECTION 167. AMENDMENT. Section 10-32-101 of the North Dakota Century Code is amended and reenacted as follows:

10-32-101. Plan of merger or exchange.

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;

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.

2. The procedure authorized by this section does not limit the power of a limited liability company to acquire all or part of the ownership interests of one or more classes or series of any other organization through a negotiated agreement with the owners or otherwise.

SECTION 168. 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 must be approved by the affirmative vote of a majority of the board members present at a meeting of the governing board of each constituent organization and must then be submitted at a regular or special meeting to the ~~members~~ owners of each constituent organization ~~at a regular or a special meeting~~ 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. 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 10-19.1-98 for notice of meetings of shareholders in the case of a domestic 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. 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. Except as provided in subsection 3, 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 articles of incorporation, as the case may be, 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 of the ownership interests of the class or series if the plan of merger ~~or exchange~~ effects a cancellation 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 the case may be, 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 shareholders of a surviving corporation is not required if:

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

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

   c. The ~~number of~~ voting power of the outstanding shares of the corporation entitled to vote immediately after the merger, plus the ~~number of~~ voting power of the outstanding shares of the corporation entitled to vote issuable on conversion of s~~ecurities other than shares~~ or on the exercise of rights to purchase securities issued ~~by virtue of the terms of~~ in the transaction, will not exceed by more than twenty percent, the ~~number of~~ voting power of the outstanding shares of the corporation entitled to vote immediately before the transaction; and

   d. The number of participating shares of the corporation immediately after the merger, plus the number of participating shares of the corporation 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 shares of the corporation immediately before the transaction. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

SECTION 169. AMENDMENT. Section 10-32-103 of the North Dakota Century Code is amended and reenacted as follows:

10-32-103. Articles of merger - Certificate.

1. Upon receiving the approval required by section 10-32-102, articles of merger must be prepared that contain:

   a. The plan of merger; and

   b. For each constituent organization either:

      (1) A statement that the plan has been approved by a vote of the shareholders pursuant to subsection 2 of section 10-19.1-98 or the members pursuant to subsection 2 or 3 of section 10-32-102; or

(2) A statement that a vote of the shareholders is not required by virtue of subsection 3 of section 10-19.1-98 or that a vote of the members is not required by virtue of subsection 4 of section 10-32-102.

2. The articles of merger must be signed on behalf of each constituent organization and filed with the secretary of state, together with the fees provided in section 10-32-150.

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

SECTION 170. 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. A parent owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary ~~may merge the subsidiary into itself without a vote of the owners of either constituent organization.~~ directly, or indirectly through related corporations or limited liability companies:

   a. May merge the subsidiary into itself; or 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 corporations or limited liability companies, without a vote of the owners of itself or any subsidiary; or

   b. May merge itself, or itself and one or more subsidiaries, into one of the subsidiaries under this section.

2. A resolution approved by the affirmative vote of a majority of the directors or ~~managers~~ governors of the parent present must set forth a plan of merger that contains:

   a. The name of the subsidiary ~~and~~ or subsidiaries, the name of the parent, and the name of the surviving constituent organization; ~~and~~

   b. The manner and basis of converting the ownership interests of the subsidiary into ownership interests of the parent 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 for 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 the parent is a constituent organization but is not the surviving constituent organization in a merger, the resolution is not effective unless it 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 or in accordance with the laws under which it is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.

~~2.~~ 4. A copy of the plan of merger must be mailed to each ~~member~~ owner, other than the parent, of ~~the~~ each subsidiary that is a constituent organization to the merger.

~~3.~~ 5. Articles of merger must be prepared that contain:

a. The plan of merger;

b. The number of outstanding ownership interests of each class and series of ~~the~~ each subsidiary and the number of ownership interests of each class and series owned by the parent directly or indirectly, through related constituent organizations; and

c. The date a copy of the plan of merger was mailed to the owners, other than the parent, of ~~the~~ each subsidiary that is a constituent organization in the merger, and

d. A statement that the plan of merger has been approved by the parent under this section.

~~4.~~ 6. Within thirty days after a copy of the plan of merger is mailed to the owners of ~~the~~ each subsidiary that is a constituent organization to the merger, or upon waiver of the mailing by the ~~holders~~ owners of all outstanding ownership interests, 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.

~~5.~~ 7. The secretary of state shall issue a certificate of merger to the parent or its legal representative. The certificate must contain the effective date of merger.

8. 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, the owners of each domestic subsidiary have dissenter's rights under section 10-19.1-87 or under section 10-32-54, without regard to subsection 3 of section 10-19.1-87 and section 10-19.1-88 or to subsection 2 of section 10-32-54 or section 10-22-55. 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 dissenter's 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, that owner of the parent has dissenter's rights as provided under sections 10-19.1-87 and 10-19.1-88 or under sections 10-32-54 and 10-32-55. Except as provided in this subsection, sections 10-19.1-87 and 10-19.1-88 and sections 10-32-54 and 10-32-55 do not apply to any merger affected under this section.

9. 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 171. 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 has been 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, it may be abandoned:

   a. 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 affirmative vote of the owners of a majority of the voting power of the ownership interests entitled to vote and, if the owners of a constituent organization are not entitled to vote on the approval of the plan under section 10-32-102, the governing board of that constituent organization has approved the abandonment by the affirmative vote of a majority of the board members present;

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

   c. Pursuant to subsection 2.

2. If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned, a resolution abandoning the plan of merger or exchange may be approved by the affirmative vote of a majority of the board members present, 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, the constituent organizations or any one of them, in the case of abandonment under subdivision b of subsection 1, or the abandoning 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. If the plan is abandoned under subsection 2, the text of the resolution approved by the affirmative vote of a majority of the board members present abandoning the plan.

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

SECTION 172. AMENDMENT. Section 10-32-106 of the North Dakota Century Code is amended and reenacted as follows:

10-32-106. Effective date of merger or exchange and effect.

1. A merger is effective when the articles of merger are filed with the secretary of state or on a later date specified in the articles of merger. An exchange is effective on the date specified in the plan of exchange.

2. When a merger becomes effective:

   a. The constituent organizations become a single ~~entity~~ constituent organization, the surviving ~~limited liability company or corporation, as the case may be~~ constituent 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 surviving limited liability company 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 domestic corporation, the surviving domestic corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a domestic corporation;

   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 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, if the organization no longer exists, by its last officers or managers, as the case may be.

(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 173. 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 ~~organization~~ limited liability company or foreign corporation.

1. A limited liability company may merge with or participate in an exchange with a foreign corporation or a foreign limited liability company 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 state under which the foreign corporation or foreign limited liability company is incorporated or organized; and

b. With respect to an exchange, the constituent organization whose ownership interests will be acquired is either a limited liability company or a domestic corporation, whether or not the exchange is permitted by the laws of the state under which the foreign

corporation or foreign limited liability company is incorporated or organized.

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 shall comply with the applicable provisions of the laws under which it was incorporated or organized or by which it is governed.

3. If the surviving organization in a merger will be a domestic limited liability company, it 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 and will transact business in this state, it shall comply, as the case may be, with the provisions of chapter 10-22 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 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 its agent to accept service of process in any proceeding, and an address to which process may be forwarded; and

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

SECTION 174. AMENDMENT. Section 10-32-108 of the North Dakota Century Code is amended and reenacted as follows:

10-32-108. Transfer of assets - When permitted.

1. A limited liability company may, by affirmative vote of a majority of the governors present, ~~may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business and grant a mortgage of or security interest in and otherwise encumber and assign for purposes of security all or substantially all of its property and assets whether or not in the usual and regular course of its business,~~ upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board of governors considers expedient, ~~in which case no~~ and without member approval ~~is required~~:

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 all of the shares of which are owned by a limited liability company.

2. A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its goodwill, 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 of governors considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote. Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting. The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company.

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 managers or authorized agents, or, if the limited liability company no longer exists, by its last managers.

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.

SECTION 175. AMENDMENT. Section 10-32-109 of the North Dakota Century Code is amended and reenacted as follows:

10-32-109. Methods of dissolution.

1. A limited liability company dissolves upon the occurrence of any of the following events:

a. When the period fixed in the articles of organization for the duration of the limited liability company expires;

b. By order of a court pursuant to sections 10-32-119 and 10-32-122;

c. By action of the organizers pursuant to section 10-32-110;

d. By action of the members pursuant to section 10-32-111; ~~or~~

e. ~~Upon~~ Except as otherwise provided in the articles of organization, upon the occurrence of an event that terminates the continued

membership of a member in the limited liability company, including:

(1) Death of any member;

(2) Retirement of any member;

(3) Resignation of any member;

(4) Redemption of a member's complete membership interest;

(5) Assignment of a member's governance rights under section 10-32-32 which leaves the assignor with no governance rights;

(6) A buyout of a member's membership interest under section 10-32-119 that leaves that member with no governance rights;

(7) Expulsion of any member;

(8) Bankruptcy of any member;

(9) Dissolution of any member;

(10) A merger in which the limited liability company is not the surviving organization;

(11) An exchange in which the limited liability company is not the acquiring organization; or

(12) The occurrence of any other event that terminates the continued membership of a member in the limited liability company, but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member if:

(a) Either there are at least two remaining members or a new member is admitted as provided in section 10-32-06; and

(b) The existence and business of the limited liability company is continued either by the consent of all remaining members under a right to consent stated in the articles of organization and the consent is obtained no later than ninety days after the termination of the continued membership, or under a separate right to continue stated in the articles of organization; or

f. When terminated by the secretary of state pursuant to section 10-32-149.

2. A limited liability company dissolved by one of the dissolution events specified in subsection 1 must be wound up and terminated under the following dissolution provisions:

a. When a limited liability company is dissolved under subdivision a of subsection 1 by reason of the expiration of its limited period of

duration, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131;

b. When a limited liability company is dissolved under subdivision b of subsection 1 by reason of a court order, the limited liability company must be wound up and terminated under sections 10-32-119 through 10-32-126;

c. When a limited liability company is dissolved under subdivision c of subsection 1 by its organizers, the limited liability company must be wound up and terminated under section 10-32-110 and sections 10-32-112 through 10-32-118;

d. When a limited liability company is dissolved under subdivision d of subsection 1 by its members, the limited liability company must be wound up and terminated under sections 10-32-111 through 10-32-118 and section 10-32-131; and

e. When a limited liability company is dissolved under subdivision e of subsection 1 by reason of a termination of the continued membership of a member, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131.

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

SECTION 176. AMENDMENT. Section 10-32-110 of the North Dakota Century Code is amended and reenacted as follows:

10-32-110. Voluntary dissolution and termination by organizers. A limited liability company that has not accepted contributions may be dissolved and terminated by the organizers in the manner set forth in this section.

1. A majority of the organizers <u>or governors</u> shall sign articles of dissolution and termination containing:

   a. The name of the limited liability company;

   b. The date of organization;

   c. A statement that contributions have not been accepted; and

   d. A statement that no debts remain unpaid.

2. The articles of dissolution and termination must be filed with the secretary of state together with the fees provided in section 10-32-150.

3. When the articles of dissolution and termination have been filed with the secretary of state, the limited liability company is terminated.

4. The secretary of state shall issue to the terminated limited liability company or its legal representative a certificate of termination that contains:

   a. The name of the limited liability company;

   b. The date the articles of dissolution and termination were filed with the secretary of state; and

   c. A statement that the limited liability company is terminated.

SECTION 177. AMENDMENT. Section 10-32-113 of the North Dakota Century Code is amended and reenacted as follows:

10-32-113. Procedure in winding up.

1. If the business of the limited liability company is wound up and terminated by merging the dissolved limited liability company into a successor organization:

   a. The procedures stated in sections 10-32-100 through 10-32-107 must be followed;

   b. Sections 10-32-114 through 10-32-116 and sections 10-32-128 and 10-32-129 do not apply; and

   c. Once the merger is effective, a creditor or claimant of the terminated limited liability company, and all those claiming through or under the creditor or claimant, are barred from suing the terminated limited liability company on that claim or otherwise realizing upon or enforcing it against the terminated limited liability company, but the creditor, claimant, and those claiming under the creditor and claimant, may, if not otherwise barred by law, assert their claims against the surviving organization of the merger.

2. If the business of the limited liability company is to be wound up and terminated other than by merging the dissolved limited liability company into a successor organization, the procedures stated in subsections 3 through 5 must be followed.

3. When a notice of dissolution has been filed with the secretary of state, the board of governors, or the managers acting under the direction of the board of governors, shall proceed as soon as possible:

   a. To give notice to creditors and claimants under section 10-32-114 or to proceed under section 10-32-115;

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

c. Except as provided in sections 10-32-114, 10-32-115, and 10-32-128, to pay or make provision for the payment of all known debts, obligations, and liabilities of the limited liability company according to their priorities under section 10-32-131.

4. Notwithstanding section 10-32-108, when a notice of dissolution has been filed with the secretary of state, the governors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolved limited liability company without a vote of the members.

5. All tangible or intangible property, including money, remaining after the discharge of, or after making adequate provision for the discharge of, the debts, obligations, and liabilities of the limited liability company must be distributed to the members in accordance with section 10-32-131.

SECTION 178. AMENDMENT. Section 10-32-114 of the North Dakota Century Code is amended and reenacted as follows:

10-32-114. Winding-up procedure for limited liability companies that give notice to creditors and claimants.

~~1.~~ When a notice of dissolution has been filed with the secretary of state, and the business of the limited liability company is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under subsection 3 of section 10-32-112, then the limited liability company may give notice of the filing to each creditor of and claimant against the limited liability company known or unknown, present or future, and contingent or noncontingent.

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

2. The notice to creditors and claimants must contain:

a. A statement that the limited liability company has dissolved and is in the process of winding up its affairs;

b. A statement that the limited liability company has filed with the secretary of state a notice of dissolution;

c. The date of filing the notice of dissolution;

d. The address of the office to which written claims against the limited liability company must be presented; and

e. The date by which all claims must be received, which must be the later of ninety days after published notice or, with respect to a particular known creditor or claimant, ninety days after the date on which written notice was given to that creditor or claimant.

Published notice is considered given on the date of first publication for the purpose of determining this date.

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

   a. A statement that the business of the dissolved limited liability company is being continued by a successor organization;

   b. The name and address of the successor organization;

   c. An undertaking by the successor organization to assume all the liabilities of the dissolved limited liability company; and

   d. A statement that creditors of the dissolved limited liability company do not need to file claims against the limited liability company in order to preserve their rights to enforce those claims against the successor organization.

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

4. With respect to a limited liability company that gives notice to creditors and claimants:

   a. ~~A~~ The limited liability company ~~that gives notice to creditors and claimants~~ has thirty days from the receipt of each claim filed according to the procedures set forth by the limited liability company on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is considered accepted.

   b. A creditor or claimant to whom notice is given and whose claim is rejected by the limited liability company has sixty days from the date of rejection, or one hundred eighty days from the date the limited liability company filed with the secretary of state the notice of dissolution, whichever is longer, to pursue any other remedies with respect to the claim.

   c. A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the limited liability company on or before the date set forth in the notice is barred from suing the dissolved limited liability company on that claim or otherwise realizing upon or enforcing it against the dissolved limited liability company, except as provided in section 10-32-128. If the dissolved limited liability company gave the additional information referred to in subsection 3, nothing in this section bars the creditor or claimant from seeking to enforce its rights against the successor organization.

   d. A creditor or claimant whose claim is rejected by the limited liability company under subdivision b is barred from suing on that

claim or otherwise realizing upon or enforcing it whether against the dissolved limited liability company or any successor organization, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in subdivision b.

5. Articles of termination for a limited liability company dissolving under this section that has given notice to creditors and claimants under this section must be filed with the secretary of state along with the fees provided in section 10-32-150 after:

   a. The ninety-day period in subdivision e of subsection 2 has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or

   b. The longest of the periods described in subdivision b of subsection 4 has expired and there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company commenced within the time provided in subdivision b of subsection 4.

6. The articles of termination for a limited liability company that has given notice to creditors and claimants under this section must state:

   a. The last date on which the notice was given and that the payment of all creditors and claimants filing a claim within the ninety-day period in subdivision e of subsection 2 has been made or provided for, or the date on which the longest of the periods described in subdivision b of subsection 4 expired;

   b. That the remaining property, assets, and claims of the limited liability company have been distributed in accordance with section 10-32-131, or that adequate provision has been made for that distribution; and

   c. That there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company commenced within the time provided in subdivision b of subsection 4 or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

SECTION 179. AMENDMENT. Section 10-32-115 of the North Dakota Century Code is amended and reenacted as follows:

10-32-115. Winding-up procedure for limited liability companies that do not give notice to creditors and claimants. When a notice of intent to dissolve has been filed with the secretary of state and the limited liability company elected not to give notice to creditors and claimants in the manner provided in section 10-32-114:

1. Articles of termination for a limited liability company whose business is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under subsection 3 of section 10-32-112 and that has not given notice to creditors and claimants in the manner provided in section 10-32-114 must be filed with the secretary of state after:

a. The payment of claims of all known creditors and claimants has been made or provided for; or

b. At least two years have elapsed from the date of filing the notice of dissolution.

2. The articles of termination for a limited liability company that has not given notice to creditors and claimants in the manner provided under section 10-32-114 must state:

a. If articles of termination are being filed pursuant to subdivision a of subsection 1 that all known debts, obligations, and liabilities of the limited liability company have been paid and discharged or that adequate provision has been made for payment or discharge;

b. That the remaining property, assets, and claims of the limited liability company have been distributed in accordance with section 10-32-131 or that adequate provision has been made for that distribution; and

c. That there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

3. If the limited liability company has paid or provided for all known creditors or claimants at the time articles of termination are filed, a creditor or claimant who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of dissolution is barred from suing on that claim or otherwise realizing upon or enforcing it.

4. If the limited liability company has not paid or provided for all known creditors and claimants at the time articles of termination are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of dissolution is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 10-32-128.

SECTION 180. AMENDMENT. Section 10-32-117 of the North Dakota Century Code is amended and reenacted as follows:

10-32-117. Filing of article of termination - Effective date of termination ~~and certificate~~ - Certificate of termination.

1. An original of the articles of termination must be filed with the secretary of state. If the secretary of state finds the articles of termination conform to the filing requirements of the chapter and all fees have been paid under section 10-32-150, the secretary of state shall issue a certificate of termination.

2. When the articles of termination have been filed with the secretary of state, the limited liability company is terminated.

~~2.~~ 3. The secretary of state shall issue to the dissolved limited liability company or its legal representative a certificate of termination that contains:

a. The name of the limited liability company;

b. The date the articles of termination were filed with the secretary of state; and

c. A statement that the limited liability company is terminated.

SECTION 181. AMENDMENT. Section 10-32-119 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A court may grant any equitable relief it considers just and reasonable in the circumstances or may dissolve, wind up, and terminate a limited liability company:

a. In a supervised voluntary winding up and termination pursuant to section 10-32-118;

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

(1) The governors or the persons having the authority otherwise vested in the board of governors are deadlocked in the management of the affairs of the limited liability company and the members are unable to break the deadlock;

(2) The governors or those in control of the limited liability company have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members~~,~~ or governors~~,~~ of any limited liability company or as managers~~,~~ or employees of a closely held limited liability company;

(3) The members of the limited liability company 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 governors whose terms have expired or would have expired upon the election and qualification of their successors;

(4) The limited liability company assets are being misapplied or wasted; or

(5) An event of dissolution has occurred under subdivision a, d, or e of subsection 1 of section 10-32-109 but the limited liability company is not acting to wind up its affairs;

c. In an action by a creditor when:

(1) The claim of the creditor has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or

(2) The limited liability company has admitted in writing that the claim of the creditor is due and owing and it is established that the limited liability company is unable to pay its debts in the ordinary course of business; or

d. In an action by the attorney general to dissolve the limited liability company in accordance with section 10-32-122 when it is established that a decree of termination is appropriate.

2. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the financial condition of the limited liability company but may not refuse to order any particular form of relief solely on the grounds that the limited liability company has accumulated or current operating profits.

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

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

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

~~5.~~ 6. In deciding whether to order winding up through liquidation, the court shall consider whether lesser relief suggested by one or more parties, or provided in a business continuation agreement, such as any form of equitable relief, or a buyout or partial liquidation coupled with the continuation of the business of the dissolved limited liability company through a successor organization, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.

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

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

SECTION 182. AMENDMENT. Section 10-32-121 of the North Dakota Century Code is amended and reenacted as follows:

10-32-121. Qualifications of receivers and powers.

1. A receiver must be an individual or a domestic or foreign organization authorized to transact business or conduct activities in this state. A receiver shall give bond as directed by the court with the sureties required by the court.

2. A receiver may sue and defend in all courts as receiver of the limited liability company. The court appointing the receiver has exclusive jurisdiction of the limited liability company and its property.

SECTION 183. AMENDMENT. Section 10-32-122 of the North Dakota Century Code is amended and reenacted as follows:

10-32-122. Action by attorney general.

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;

   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; ~~or~~

   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; 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.

2. An action must not be commenced under this section until thirty days after notice to the limited liability company 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 limited liability company has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles of organization or the operating agreement or by performance of or abstention from the act, the attorney general shall give the limited liability company thirty additional days in which to effect the correction before filing the action.

SECTION 184. AMENDMENT. Section 10-32-127 of the North Dakota Century Code is amended and reenacted as follows:

10-32-127. Deposit with ~~state treasurer~~ administrator of abandoned property of amount due certain ~~members~~ persons. Upon termination of a limited liability company, the portion of the assets distributable to a ~~member~~ person who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive ~~the distributive portion~~ it, must be reduced to money and deposited with the ~~state treasurer~~ administrator of abandoned property for disposition pursuant to chapter 47-30.1. The amount deposited is appropriated to the ~~state treasurer~~ administrator of abandoned property and must be paid over to the ~~member~~ person or a legal representative, upon proof satisfactory to the ~~state treasurer~~ administrator of abandoned property of a right to payment.

SECTION 185. Section 10-32-130.1 of the North Dakota Century Code is created and enacted as follows:

10-32-130.1. Extension after duration expired.

1. A limited liability company whose period of duration as provided in the articles has expired and which has continued to do business despite that expiration may reinstate its articles and extend the period of duration within one year after the date of expiration by filing an amendment to the articles as set forth in this section.

2. An amendment to the articles must be approved by the board of governors and must include:

   a. The date the period of duration expired under the articles;

   b. The date to which the period of duration is extended; and

   c. A statement that the limited liability company has been in continuous operation since before the date of expiration of its original period of duration.

3. The amendment to the articles must be presented, after notice, at a meeting of the members. The amendment is adopted when approved by the members pursuant to section 10-32-16.

4. Articles of amendment, together with any fees and delinquent filings and reports, conforming to section 10-32-18 must be filed with the secretary of state.

SECTION 186. Section 10-32-130.2 of the North Dakota Century Code is created and enacted as follows:

10-32-130.2. Effect of extension. Filing with the secretary of state of articles of amendment extending the period of duration of a limited liability company:

1. Relates back to the date of expiration of the original period of duration of the limited liability company as provided in the articles;

2. Validates contracts or other acts within the authority of the articles, and the limited liability company is liable for those contracts or acts; and

3. Restores to the limited liability company all the assets and rights of the limited liability company to the extent they were held by the limited liability company before expiration of its original period of duration, except those sold or otherwise distributed after that time.

SECTION 187. AMENDMENT. Section 10-32-135 of the North Dakota Century Code is amended and reenacted as follows:

10-32-135. Foreign limited liability company - Governing law.

1. Subject to the constitution of this state, the laws of the jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members. A foreign limited liability company may not be denied a certificate of authority to transact business in this state by reason of any difference between those laws and the laws of this state.

2. A foreign limited liability company holding a valid certificate of authority in this state has no greater rights and privileges than a domestic limited liability company. The certificate of authority does not authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

SECTION 188. AMENDMENT. Section 10-32-136 of the North Dakota Century Code is amended and reenacted as follows:

10-32-136. Foreign limited liability company - Name. A foreign limited liability company may apply for a certificate of authority under any name that would be available to a domestic limited liability company, whether or not the name is the name under which it is authorized in its jurisdiction of organization. A trade name must be registered as provided in chapter 47-25 when applying for the certificate of authority under a name other than the name as authorized in the jurisdiction of origin.

SECTION 189. AMENDMENT. Section 10-32-137 of the North Dakota Century Code is amended and reenacted as follows:

10-32-137. Foreign limited liability company - Admission of foreign limited liability company - Transacting business ~~and obtaining~~ - Obtaining licenses and permits. ~~No~~ A foreign limited liability company may t~~ransact~~ not:

1. Transact business in this state or obtain any license or permit required by this state until it has procured a certificate of authority from the secretary of state. ~~No foreign limited liability company may transact~~

2. Transact in this state any business that is prohibited to a domestic limited liability company organized under this chapter. ~~A foreign limited liability company may not be~~

3. Be denied a certificate of authority because the laws of the state or country where the limited liability company is organized differ from the laws of this state. ~~Nothing in this chapter authorizes this state to regulate the organization or internal affairs of a foreign limited liability company.~~

SECTION 190. 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 ~~and~~ b~~usiness~~ ~~address~~ of the proposed registered agent in this state, which agent must be ~~an~~ ~~individual~~ r~~esident~~ ~~of~~ ~~this~~ ~~state,~~ ~~a~~ ~~domestic~~ ~~corporation,~~ ~~or~~ ~~a~~ ~~foreign~~ ~~corporation~~ ~~having~~ ~~a~~ ~~place~~ ~~of~~ ~~business~~ ~~in,~~ ~~and~~ ~~authorized~~ ~~to~~ ~~do~~ b~~usiness~~ ~~in,~~ ~~this~~ ~~state~~ as defined in section 10-32-12;

   d. The address of the ~~principal~~ ~~executive~~ proposed registered office of the foreign limited liability company in this state; ~~and~~

   e. The date the foreign limited liability company expires in the jurisdiction of its organization;

   f. The purpose the foreign limited liability company proposes to pursue in transacting its business in this state;

   g. The names and addresses of the governors and managers of the foreign limited liability company; and

   h. 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 limited liability company is organized and the consent of the designated registered agent for service of process to serve in that capacity.

SECTION 191. AMENDMENT. Section 10-32-139 of the North Dakota Century Code is amended and reenacted as follows:

10-32-139. Foreign limited liability company - Issuance of certificate of authority. If the secretary of state finds that an application for a certificate of authority conforms to law and all fees have been paid, the secretary shall:

1. Endorse on the application the word "filed" and the date of the filing;

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

3. Issue to the limited liability company or its representative, a certificate of authority to transact business in this state.

SECTION 192. AMENDMENT. Section 10-32-140 of the North Dakota Century Code is amended and reenacted as follows:

10-32-140. Foreign limited liability company - Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign limited liability company was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited liability company shall promptly file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and in the case of a change in its name, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized. In the case of a termination or merger, a foreign limited liability company that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized.

SECTION 193. 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. A foreign limited liability company authorized to transact business in this state shall:

1. Appoint and continuously maintain a registered agent in the same manner as provided in section 10-32-12; ~~or~~ and

2. File a report upon any change in the ~~name or business~~ address of ~~its~~ the registered ~~agent~~ 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.

SECTION 194. AMENDMENT. Section 10-32-142 of the North Dakota Century Code is amended and reenacted as follows:

10-32-142. Foreign limited liability company - Merger of foreign limited liability company authorized to transact business in this state. Whenever a foreign limited liability company authorized to transact business in this state is a party to a statutory merger permitted by the laws of the state or country under which it is organized, and the limited liability company is not the surviving organization, the surviving organization shall, within thirty days after the merger becomes effective, file with the secretary of state a certified statement of merger duly authenticated by the proper officer of the state or country where the statutory merger was effected. ~~It is not necessary for any~~ Any foreign organization, which is the surviving organization in a merger and which will continue to transact business in this state, ~~to~~ shall procure either a new or amended certificate of authority ~~to transact business in this state unless the name of the organization is changed thereby or unless the organization desires to pursue in this state purposes other than those which it is authorized to transact in this state~~.

SECTION 195. AMENDMENT. Section 10-32-143 of the North Dakota Century Code is amended and reenacted as follows:

10-32-143. Foreign limited liability company - Certificate of withdrawal.

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 limited liability company and the state or country under the laws of which it is organized;

   b. That the limited liability company is not transacting business in this state;

   c. That the limited liability company surrenders its authority to transact business in this state;

   d. That the 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 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 limited liability company was authorized to transact business in this state; and

   e. A post-office address to which a person may mail a copy of any process against the limited liability company.

2. The filing with the secretary of state of a certificate of termination, or a certificate of merger if the limited liability company is not the surviving organization, from the proper officer of the state or country under the laws of which the limited liability company is organized constitutes a valid application of withdrawal and the authority of the limited liability company to transact business in this state shall cease upon filing of the certificate.

SECTION 196. 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:

   a. The foreign limited liability company has failed to appoint and maintain a registered agent as required by this chapter, file a report upon any change in the name or business address of the registered agent, or 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 document submitted by the foreign limited liability company pursuant to this chapter.

2. 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 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 the report of change regarding the registered agent, to file any amendment, or to 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 of revocation and shall mail the certificate to the principal executive office of the foreign limited liability company.

SECTION 197. AMENDMENT. Section 10-32-145 of the North Dakota Century Code is amended and reenacted as follows:

10-32-145. Foreign limited liability company - Transaction of business without certificate of authority.

1. A foreign limited liability company transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it possesses a certificate of authority.

2. The failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.

3. A foreign limited liability company, by transacting business in this state without a certificate of authority, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.

4. A foreign limited liability company that transacts business in this state without a valid certificate of authority is liable to the state for the years or parts of years during which it transacted business in this state without the certificate in an amount equal to all fees that would have been imposed by this chapter upon that limited liability company had it duly obtained the certificate, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

5. A foreign limited liability company that transacts business in this state without a valid certificate of authority is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each governor

or, in the absence of governors, each member or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited liability company that does not have a certificate is subject to a civil penalty, payable to the state, not to exceed one thousand dollars.

6. The civil penalties set forth in subsection 5 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign limited liability company or any of its members, governors, or agents have transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign limited liability company and the further exercise of any limited liability company's rights and privileges in this state. The foreign limited liability company must be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign limited liability company has otherwise complied with the provisions of this chapter.

7. A member of a foreign limited liability company is not liable for the debts and obligations of the limited liability company solely by reason of the company's having transacted business in this state without a valid certificate of authority.

SECTION 198. AMENDMENT. Section 10-32-146 of the North Dakota Century Code is amended and reenacted as follows:

10-32-146. Foreign limited liability company - Transactions not constituting transacting business.

1. The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of this chapter:

   a. Maintaining, defending, or settling any proceeding;

   b. Holding meetings of its members or carrying on any other activities concerning its internal affairs;

   c. Maintaining bank accounts;

   d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositories with respect to those securities;

   e. Selling through independent contractors;

   f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;

   g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;

i. Holding, protecting, renting, maintaining, and operating real or personal property in this state so acquired;

j. Selling or transferring title to property in this state to any person; or

k. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.

2. The term "transacting business" as used in this section has no effect on personal jurisdiction under the North Dakota Rules of Civil Procedure.

3. For purposes of this section, any foreign limited liability company that owns income-producing real or tangible personal property in this state, other than property exempted under subsection 1, will be considered transacting business in this state.

4. The list of activities in subsection 1 is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

SECTION 199. AMENDMENT. Section 10-32-147 of the North Dakota Century Code is amended and reenacted as follows:

10-32-147. Foreign limited liability company - Action by attorney general. The attorney general may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of this chapter.

SECTION 200. 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. 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.

SECTION 201. 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 prescribed 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 ~~at least two~~ 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 prescribed in subsection 46 of section 10-32-02, ~~or if~~ the articles, operating agreement, 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, it 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 all annual reports provided for in this section after they have been 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 prescribed in this subsection, penalties for the failure to file a report within the time provided do not apply~~,~~ if ~~a~~ 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. ~~Each limited liability company or foreign limited liability company that fails or refuses to file its annual report for any year within the time prescribed by subsection 3 must pay an additional fee of fifty dollars. A limited liability company that fails to file its annual report, along with the statutory filing and penalty fees within six months after November fifteenth, ceases to exist and is considered involuntarily terminated by operation of law. The secretary of state shall revoke the certificate of authority to transact business of any foreign limited liability company which fails to file its annual report, along with the statutory filing and penalty fees within six months after November fifteenth. The secretary of state's determination that a certificate of authority must be revoked under this section is final.~~

~~5.~~ 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 ~~4~~ 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 prescribed by section 10-32-150 ~~and the late filing penalty fee as prescribed by subsection 4~~, the secretary of state will restore its certificate of organization or certificate of authority to good standing.

~~6.~~ 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.

~~7.~~ 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 ~~North Dakota~~ 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.

~~8.~~ 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 ~~one hundred twenty-five dollar fee~~ reinstatement fee as prescribed in section 10-32-150. The fees must be paid and the report filed within one year following ~~November fifteenth for the past-due report~~ the involuntary dissolution or revocation. Reinstatement under this ~~section~~ subsection does not affect the rights or liability for the time from the termination or revocation to the reinstatement.

SECTION 202. 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.

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

a. Filing articles of organization and issuing a certificate of organization, one hundred twenty-five dollars.

b. Filing articles of amendment, fifty dollars.

c. Filing restated articles of organization, one hundred twenty-five dollars.

d. Filing articles of merger and issuing a certificate of merger, fifty dollars.

e. Filing abandonment of merger or exchange, fifty dollars.

f. Filing an application to reserve a name, ten dollars.

g. Filing a notice of transfer of a reserved name, ten dollars.

h. Filing a cancellation of reserved name, ten dollars.

i. Filing a consent to use of name, ten dollars.

j. Filing a statement of change of address of registered office or change of registered agent or both, ten dollars.

k. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited liability company affected by such change.

l. Filing a registered agent's consent to serve in such capacity, ten dollars.

m. Filing a resignation as registered agent, ten dollars.

n. Filing a resolution for the establishment of a class or series of membership interest, fifty dollars.

o. Filing a notice of dissolution, ten dollars.

p. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.

q. Filing articles of dissolution and termination, twenty dollars.

r. 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 dollars.

s. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.

t. 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, twenty dollars.

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

v. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars~~; any other statement or report of either, ten dollars~~. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:

(1) After the date prescribed 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.

w. Filing any process, notice, or demand for service, ~~twenty~~ twenty-five dollars.

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

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

a. Furnishing a copy of any document, instrument, or paper relating to a limited liability company or a foreign limited liability company, one dollar for every four pages, or fraction thereof.

b. A certificate certifying a copy or reciting facts related to a limited liability company or a foreign limited liability company, twenty dollars.

c. Each page of any document or form sent by electronic transmission, one dollar.

SECTION 203. AMENDMENT. Section 10-32-152 of the North Dakota Century Code is amended and reenacted as follows:

10-32-152. Secretary of state - Powers - Enforcement - 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 limited liability company, domestic or foreign, subject to the provisions of this chapter and to any manager or governor thereof, such interrogatories as may be reasonably necessary and proper to ascertain whether such limited liability company has complied with all provisions of this chapter applicable to such limited liability company.

   a. Such interrogatories must be answered within thirty days after mailing, or within such additional time as must be fixed by the secretary of state. The answers to such interrogatories must be full and complete and must be made in writing and under oath.

   b. If such interrogatories be directed:

      (1) To an individual, they must be answered by that individual; or

      (2) To a limited liability company, they must be answered by the president, vice president, secretary, or assistant secretary of the limited liability company.

   c. The secretary of state need not file any document to which such interrogatories relate until such interrogatories have been answered, and not then if the answers disclose that such document is not in conformity with the provisions of this chapter.

   d. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto, which disclose a violation of any of the provisions of this chapter.

   e. Each manager or governor of a limited liability company, domestic or foreign, who fails or refuses within the time provided by subdivision a of subsection 2 to answer truthfully and fully all interrogatories propounded to that person by the secretary of state is guilty of an infraction.

   f. Interrogatories propounded by the secretary of state and the answers thereto are not open to public inspection. The secretary of state may not disclose any facts or information obtained from such

interrogatories or answers except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.

3. If the secretary of state rejects any document required by this chapter to be approved by the secretary of state before the same may be filed, then the secretary of state shall~~, within ten days after receipt of the document,~~ give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection.

   a. From such rejection such person may appeal to the district court of the county in which the registered office of such limited liability company is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the document sought to be filed and a copy of the written rejection of the document 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 such action as the court may deem proper.

4. If the secretary of state revokes the certificate of authority to transact business in this state of any foreign limited liability company, pursuant to the provisions of section 10-32-144, such foreign limited liability company may appeal to district court of the county where the registered office of such limited liability company in this state is situated by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state. The matter 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 such action as the court may deem proper.

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

SECTION 204. AMENDMENT. Section 10-32-153 of the North Dakota Century Code is amended and reenacted as follows:

10-32-153. Secretary of state - Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of documents filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated.

2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability companies which would not appear from a certified copy of any of the foregoing documents or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated therein.

SECTION 205. AMENDMENT. Section 10-32-154 of the North Dakota Century Code is amended and reenacted as follows:

10-32-154. Secretary of state - Forms ~~to be furnished by the secretary of state~~. All reports required by this chapter to be filed in the office of the secretary of state must be made on forms ~~which must be~~ prescribed ~~and furnished~~ by the secretary of state. Forms for all other documents to be filed in the office of the secretary of state ~~must~~ may be furnished by the secretary of state upon request. However, the use of such documents, unless otherwise specifically required by law, is not mandatory.

SECTION 206. AMENDMENT. Section 10-32-155 of the North Dakota Century Code is amended and reenacted as follows:

10-32-155. Miscellaneous - Foreign trade zones.

1. As used in this section, unless the context otherwise requires:

   a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an act to provide for the establishment, operation and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934.

   b. "Private organization" means a limited liability company authorized under this chapter or corporation authorized under chapter 10-19.1, one of the purposes of which is to establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.

   c. "Public corporation" means:

      (1) This state;

      (2) Any political subdivision of this state;

      (3) Any municipality of this state;

      (4) Any public agency:

         (a) Of this state;

         (b) Of any political subdivision of this state; or

         (c) Any municipality of this state; or

      (5) Any other corporate instrumentality of this state.

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

SECTION 207. Section 10-32-156 of the North Dakota Century Code is created and enacted as follows:

10-32-156. Miscellaneous - Audit reports and audit of limited liability companies receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any limited liability company that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the limited liability company, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the limited liability company's taxable year. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any limited liability company required to submit an annual report under this section.

SECTION 208. AMENDMENT. Section 45-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "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 all other cases, the mailing address, including a zip code.

2. "Certificate of limited partnership" means the certificate referred to in section 45-10.1-08, and the certificate as amended or restated.

~~2.~~ 3. "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 partner contributes to a limited partnership in his capacity as a partner.

~~3.~~ 4. "Event of withdrawal of a general partner" means an event that causes a person to cease to be a general partner as provided in section 45-10.1-26.

5. "Filed with the secretary of state" means:

   a. That either:

      (1) A signed original or a legible facsimile copy of a signed original of a request for reserved name; or

      (2) A signed original of all other documents meeting the applicable requirements of this chapter together with the fees provided in section 45-10.1-15 has been delivered to the secretary of state and has been determined by the secretary of state to conform to law.

   b. That the secretary of state shall then:

(1) Endorse on the original the word "filed" and the month, day, and year; and

(2) Record the document in the office of the secretary of state.

~~4.~~ 6. "Foreign limited partnership" means a partnership formed under the laws of any state other than this state and having as partners one or more general partners and one or more limited partners.

~~5.~~ 7. "General partner" means a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement and named in the certificate of limited partnership as a general partner.

~~6.~~ 8. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

~~7.~~ 9. "Limited partnership" and "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

10. "Notice":

a. Is given to a limited partnership or to a partner of the limited partnership when in writing and mailed or delivered to the limited partnership or the partner at the registered office or principal executive office of the limited partnership.

b. In all other cases, is given to a person:

(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; or

(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 residing there.

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

d. Is deemed received when it is given.

~~8.~~ 11. "Partner" means a general or limited partner.

~~9.~~ 12. "Partnership agreement" means any valid agreement, written or oral, of the partners as to the affairs of a limited partnership and the conduct of its business.

~~10.~~ 13. "Partnership interest" means a partner's share of the profits and losses of a limited partnership and the right to receive distributions of partnership assets.

~~11. "Person" means a natural person, partnership, limited partnership, trust, estate, association, corporation, or limited liability company.~~

14. "Principal executive office" means:

a. An office from which the limited partnership conducts business; or

b. If the limited partnership has no office from which it conducts business, then the registered office of the limited partnership.

15. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and:

a. With respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

b. With respect to a document that is not required by this chapter to be filed with the secretary of state, means that the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

~~12.~~ 16. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

SECTION 209. AMENDMENT. Section 45-10.1-02 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-02. (102) ~~Name~~ Limited partnership name.

1. The name of each limited partnership as set forth in its certificate of limited partnership:

a. Must be in the English language or in another language expressed in English letters or characters.

~~1.~~ b. Must contain without abbreviation the words "limited partnership"~~.~~ or the abbreviation "L.P." or "LP", 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;

~~2.~~ c. May not contain the name of a limited partner unless:

~~a.~~ (1) It is also the name of a general partner~~, the corporate name of a corporate general partner or the limited liability company name of a limited liability company general partner~~; or

~~b.~~ (2) The business of the limited partnership had been carried on under that name before the admission of that limited partner.

d. May not contain a word or phrase that indicates or implies it may not be organized under this chapter.

e. May not contain a word or phrase indicating or implying it is organized for a purpose other than a legal business purpose for which a limited partnership may be organized under this chapter.

~~3.~~ f. May not contain ~~any~~ a word or phrase indicating or implying ~~that~~ it is organized other than for a purpose stated in its certificate of limited partnership.

~~4.~~ g. May not contain the word "corporation", "company", ~~or~~ "incorporated", "limited liability company", "limited liability partnership", or any abbreviation of those words.

~~5. May not be the same as or deceptively similar to the name of any corporation, limited liability company, or limited partnership organized under the laws of this state or licensed or registered as a foreign corporation, foreign limited liability company, or limited partnership in this state, or a trade name or fictitious name certificate on file with the secretary of state, unless there is filed with the certificate of limited partnership a written consent of the holder of the similar name to use the name proposed by the limited partnership.~~

h. 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 document in compliance with subsection 2 of this section, of:

(a) Another limited partnership;

(b) A corporation;

(c) A limited liability company; or

(d) A limited liability partnership; or

(2) A name the right to which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, 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 partnership name is deceptively similar to another name for purposes of this chapter.

3. If the secretary of state determines a limited partnership name is deceptively similar to another name for purposes of this chapter, then the limited partnership name may not be used unless there is filed with the articles:

   a. The written consent of the holder of the registered trade name or 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. Subsection 3 does not affect the right of a domestic limited partnership existing on the effective date of this chapter, or a foreign limited partnership authorized to do business in this state on that date to continue the use of its name.

5. This section and section 45-10.1-03 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 limited partnership that is merged with another domestic or foreign organization, or that is organized by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic organization all or substantially all of the assets of another domestic or foreign organization including its name, may include in its name the name of any of the other organizations, if the other organization:

   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, 45-10.1-03, 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 limited partnership in violation of this section does not affect or vitiate its limited partnership existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited partnership from doing business under a name assumed in violation of this section, although its certificate of limited partnership may have been filed with the secretary of state.

SECTION 210. AMENDMENT. Section 45-10.1-03 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-03. (103) ~~Reservation of~~ Reserved name.

1. The exclusive right to the use of a limited partnership name otherwise permitted by section 45-10.1-02 may be reserved by~~:~~

   ~~a. Any person intending to organize a limited partnership under this chapter and to adopt that name.~~

   ~~b. Any domestic limited partnership or any foreign limited partnership registered in this state which, in either case, intends to adopt that name.~~

   ~~c. Any foreign limited partnership intending to register in this state and adopt that name.~~

   ~~d. Any person intending to organize a foreign limited partnership and intending to have it register in this state and adopt that name~~ any person.

2. The reservation must be made by filing with the secretary of state ~~an application, executed by the applicant, to reserve a specified name. If the secretary of state finds that the name is available for use by a domestic or foreign limited partnership, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of one hundred twenty days~~ a request that the name be reserved, together with the fees provided in section 45-10.1-15:

   a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.

   b. The reservation may be renewed for successive twelve-month periods.

3. The right to the exclusive use of a r~~eserved~~ limited partnership name reserved pursuant to this section may be transferred to ~~any other~~ another person by or on behalf of the applicant for whom the name was reserved by filing in the office of the secretary of state a notice of the transfer, ~~executed by the applicant for whom the name was reserved~~ and specifying the name and address of the transferee, together with fees provided in section 45-10.1-15.

4. The right to the exclusive use of a limited partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation, together with the fees provided in section 45-10.1-15.

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

6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 211. AMENDMENT. Section 45-10.1-04 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-04. (104) ~~Specified~~ Registered office ~~and~~ - Registered agent. ~~Each limited partnership shall continuously maintain in this state:~~

1. ~~An office, which may but need not be a place of its business in this state, at which shall be kept the records required by section 45-10.1-05 to be maintained.~~ A limited partnership shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business or the principal executive office of the limited partnership.

2. ~~An agent for service of process on the limited partnership, which 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 in this state.~~ 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.

SECTION 212. AMENDMENT. Section 45-10.1-07.1 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-07.1. Registration of general partner. A general partner must be registered separately with the secretary of state at the time of filing a certificate of limited partnership or the registration of foreign limited partnership whenever that general partner is either a domestic or foreign:

1. Corporation;

2. Limited liability company;

3. Limited liability partnership;

4. Limited partnership;

~~4.~~ 5. General partnership using a fictitious name; or

~~5.~~ 6. Any other organization that has a registration responsibility with the secretary of state.

SECTION 213. AMENDMENT. Section 45-10.1-08 of the North Dakota Century Code is amended and reenacted as follows:

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

1. In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the secretary of state. The certificate must set forth:

   a. The name of the limited partnership.

   b. The general character of its business.

   c. The address of the office and the name and address of the agent for service of process required to be maintained by section 45-10.1-04.

   d. The name and address of the principal place of business of each general partner.

   e. ~~The latest date upon which the limited partnership is to dissolve.~~

   ~~f.~~ Any other matters the general partners determine to include therein.

2. A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the secretary of state or at any later time specified in the certificate of limited partnership if, in either case, there has been substantial compliance with the requirements of this section.

SECTION 214. AMENDMENT. Section 45-10.1-51 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 215. AMENDMENT. Section 45-10.1-52 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-52. (902) Foreign limited partnership - Registration. Before transacting business in this state, a foreign limited partnership shall register with the secretary of state. In order to register, a foreign limited partnership shall submit to the secretary of state, on forms prescribed and furnished by the secretary of state, an application for registration as a foreign limited partnership, signed and sworn to by a general partner and setting forth all of the following:

1. The name of the foreign limited partnership and, if different, the name under which it proposes to register and transact business in this state.

2. The state and date of its formation.

3. The general character of the business it proposes to transact in this state.

4. The name and address of any agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; 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 having a place of business in, and authorized to do business in, this state.

5. A statement that the secretary of state is appointed the agent of the foreign limited partnership for service of process if the agent's authority has been revoked or if the agent cannot be found or served with the exercise of reasonable diligence.

6. The address of the principal office of the foreign limited partnership.

7. The name and address of the principal place of business of each general partner.

8. The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with an undertaking by the foreign limited partnership to keep those records until the foreign limited partnership's registration in this state is canceled or withdrawn.

The application must be accompanied by a certificate of identification, existence, and status of a foreign limited partnership, duly certified by the proper officer of the state or country under the laws of which it is organized.

SECTION 216. AMENDMENT. Section 45-10.1-53 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-53. (903) Foreign limited partnership - Filing of registration. If the secretary of state finds that an application for registration conforms to law and all requisite fees have been paid, the secretary of state shall:

1. Endorse on the application the word "Filed", and the month, day, and year of the filing.

2. File the application in the office of the secretary of state.

SECTION 217. AMENDMENT. Section 45-10.1-54 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-54. (904) Foreign limited partnership - Name. A foreign limited partnership may register with the secretary of state under any name, whether or not it is the name under which it is registered in its state of organization, that includes without abbreviation the words "limited partnership" and that could be registered by a domestic limited partnership.

SECTION 218. AMENDMENT. Section 45-10.1-55 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If any statement in the application for registration of a foreign limited partnership was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the secretary of state a certificate, signed and sworn to by a general partner, correcting the statement.

2. A foreign limited partnership that amends its name and is the owner of a trademark, or uses a fictitious name registered with the secretary of state, or is a general partner of another limited partnership on file with the secretary of state, must effect a change of name in each of such registrations simultaneously with the filing of the certificate amending the registration of foreign limited partnership.

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

4. A foreign limited partnership must notify the secretary of state in writing whenever a general partner changes the address of its principal place of business. A corporate annual report filed by the secretary of state that reflects a change of address of a general partner may serve as such notice. This notice is not subject to the amendment fee prescribed in 45-10.1-15.

SECTION 219. AMENDMENT. Section 45-10.1-56 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-56. (906) Foreign limited partnership - Cancellation of registration. A foreign limited partnership may cancel its registration by filing with the secretary of state a certificate of cancellation signed and sworn to by a general partner. A cancellation does not terminate the authority of the secretary of state to accept service of process on the foreign limited partnership with respect to claims for relief arising out of the transactions of business in this state.

SECTION 220. AMENDMENT. Section 45-10.1-57 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-57. (907) Foreign limited partnership - Transaction of business without registration.

1. A foreign limited partnership transacting business in this state may not maintain any action or proceeding in any court of this state until it has registered in this state.

2. The failure of a foreign limited partnership to register in this state does not impair the validity of any contract or act of the foreign limited

partnership or prevent the foreign limited partnership from defending any action or proceeding in any court of this state.

3. A limited partner of a foreign limited partnership is not liable as a general partner of the foreign limited partnership solely by reason of having transacted business in this state without registration.

4. A foreign limited partnership, by transacting business in this state without registration, appoints the secretary of state as its agent for service of process with respect to claims for relief arising out of the transaction of business in this state.

5. Without excluding other activities which may constitute transacting business in this state, a foreign limited partnership shall not be considered to be transacting business in this state, for the purposes of this chapter only, by reason of carrying on in this state any one or more of the following activities:

   a. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.

   b. Holding meetings of its partners or carrying on other activities concerning its internal affairs.

   c. Maintaining bank accounts.

   d. Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities.

   e. Effecting sales through independent contractors.

   f. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts.

   g. Creating evidences of debt, mortgages, or liens on real or personal property.

   h. Securing or collecting debts or enforcing any rights in property securing the same.

   i. Transacting any business in interstate commerce.

   j. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

   This subsection does not establish a standard for activities which may or may not subject a foreign limited partnership to taxation or service of process.

SECTION 221. AMENDMENT. Section 45-10.1-58 of the North Dakota Century Code is amended and reenacted as follows:

45-10.1-58. (908) Foreign limited partnership - Action by secretary of state. The secretary of state may revoke the registration of a foreign limited partnership for transacting business in this state in violation of sections 45-10.1-52 through 45-10.1-58, or that has failed to file a renewal statement as required by section 45-10.1-14. The secretary of state may not revoke the registration of a foreign limited partnership unless the secretary of state has given the foreign limited partnership not less than sixty days' notice by mail addressed to its registered office in this state and the principal office of record, and the foreign limited partnership has failed to remedy the deficiency prior to revocation.

SECTION 222. AMENDMENT. Section 45-20-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-20-01. (801) ~~(Effective January 1, 1996)~~ Events causing dissolution and winding up of partnership business. A partnership is dissolved, and its business must be wound up, only upon the occurrence of any of the following events:

1. In a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under subsections 2 through 10 of section 45-18-01, of that partner's express will to withdraw as a partner, or on a later date specified by the partner.

2. In a partnership for a definite term or particular undertaking:

   a. ~~The expiration of~~ Within ninety days after a partner's dissociation by death or otherwise under subsections 6 through 10 of section 45-18-01 or wrongful dissociation under subsection 2 of section 45-18-02, ~~unless before that time a majority in interest of the remaining partners, including partners who have rightfully dissociated pursuant to subdivision a of subsection 2 of section 45-18-02, agree to continue the partnership~~ the express will of at least half of the remaining partners to wind up the partnership business, for which purpose a partner's rightful dissociation under paragraph 1 of subdivision b of subsection 2 of section 45-18-02 constitutes the expression of that partner's will to wind up the partnership business;

   b. The express will of all of the partners to wind up the partnership business; or

   c. The expiration of the term or the completion of the undertaking.

3. An event agreed to in the partnership agreement resulting in the winding up of the partnership business.

4. An event that makes it unlawful for all or substantially all of the business of the partnership to be continued, but a cure of illegality within ninety days after notice to the partnership of the event is effective retroactively to the date of the event for purposes of this section.

5. On application by a partner, a judicial determination that:

   a. The economic purpose of the partnership is likely to be unreasonably frustrated;

b. Another partner has engaged in conduct relating to the partnership business which makes it not reasonably practicable to carry on the business in partnership with that partner; or

c. It is not otherwise reasonably practicable to carry on the partnership business in conformity with the partnership agreement.

6. On application by a transferee of a partner's transferable interest, a judicial determination that it is equitable to wind up the partnership business:

a. After the expiration of the term or completion of the undertaking, if the partnership was for a definite term or particular undertaking at the time of the transfer or entry of the charging order that gave rise to the transfer; or

b. At any time, if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer.

SECTION 223. AMENDMENT. Section 45-22-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Address" means ~~mailing address. In the case of a registered office or principal executive office, the term means the office address, which may not be a post-office box~~:

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

2. "Domestic limited liability partnership" means a general partnership that is organized under the laws of this state with a registration or a renewal registration in effect and which is not a foreign limited liability partnership.

3. "Filed with the secretary of state" means ~~that a signed original of a document, together with the fees provided in section 45-22-23, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law~~:

a. That either:

(1) A signed original or a legible facsimile copy of a signed original of a request for reserved name; or

(2) A signed original of all other documents meeting the applicable requirements of this chapter, together with the fees provided in section 45-22-23, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law.

b. That the secretary of state shall then:

(1) Endorse on the original the word "filed" and the month, day, and year; and

(2) Record the document in the office of the secretary of state.

4. "Foreign limited liability partnership" means a limited liability partnership:

a. Which is organized under laws other than the laws of this state for a purpose or purposes for which a limited liability partnership may be organized under this chapter;

b. With a registration or renewal registration in effect; and

c. ~~Which continuously maintains its limited liability partnership status~~ In good standing in its jurisdiction of origin ~~during all periods of registration and renewal registration~~.

5. "General partnership" means an association of two or more persons to carry on as coowners of a business for profit formed under North Dakota law, predecessor law, or comparable law of another jurisdiction.

6. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability partnership status of the foreign limited liability partnership was created.

7. "Limited liability partnership" ~~and "partnership" mean either:~~

~~a. A~~ means a domestic limited liability partnership~~; or~~

~~b. A foreign limited liability partnership~~.

~~7.~~ 8. "Managing ~~partners~~ partner" means one of the partners charged with the management in this state of the limited liability partnership or foreign limited liability partnership and if no partners are so specifically designated, then all partners.

~~8.~~ 9. "Notice" ~~is~~:

a. Is given to a limited liability partnership or to a partner of the partnership when in writing and mailed or delivered to the partnership or the partner at the registered office or principal executive office of the partnership~~.~~; and

~~a.~~ b. In all other cases, ~~"notice"~~ is given to a person:

(1) When mailed to the person at an address designated by the person or at the last known address of the person; or

(2) When handed to the person; or

(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 therein.

~~b.~~ c. ~~Notice by mail is~~ Is given when deposited in the United States mail with sufficient postage affixed.

~~c.~~ d. ~~Notice is~~ Is deemed received when it is given.

~~9.~~ 10. "Originally registered" and "original registration" refers to the j~~urisdiction in which the limited liability partnership status of the foreign limited liability partnership was created~~ document establishing the limited liability partnership status of the foreign limited liability partnership in its jurisdiction of origin.

~~10~~ 11. "Principal executive office" means ~~an~~:

a. An office ~~where~~ from which the limited liability partnership conducts business~~.~~; or

b. If the limited liability partnership has no office from which it conducts business, then the ~~term means the~~ registered office of the partnership.

~~11.~~ 12. "Register" means the act of filing with the secretary of state which causes:

a. A domestic limited liability partnership to be created; or

b. A foreign limited liability partnership to be authorized to transact business in this state.

~~12.~~ 13. "Registered office" means the place in this state designated as the registered office of the limited liability partnership.

~~13.~~ 14. "Registration" means the document which, when filed with the secretary of state, causes:

a. A domestic limited liability partnership to be created; or

b. A foreign limited liability partnership to be authorized to do business in this state.

~~14.~~ 15. "Renewal registration" means the document by which the status of a domestic limited liability partnership or a foreign limited liability partnership is extended for an additional one-year period.

~~15.~~ 16. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11~~, and, with~~:

a. With respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by

a person authorized to do so by this chapter, 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~~. A signature on~~; and

b. With respect to a document not required by this chapter to be filed with the secretary of state the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

[2] **SECTION 224. AMENDMENT.** Section 45-22-03 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-03. Registration.

1. In determining whether the underlying general partnership necessary for registration as a domestic limited liability partnership has been formed, the rules set forth in section 45-14-01 apply.

2. A limited liability partnership or foreign limited liability partnership must have in effect and filed with the secretary of state a registration that complies with this section.

   a. For one year from its date of filing, the registration of:

      (1) A domestic limited liability partnership establishes its status as a domestic limited liability partnership; and

      (2) A foreign limited liability partnership authorizes it to transact business in this state.

      Unless a renewal registration is properly filed with the secretary of state, the registration is subject to revocation by the secretary of state as provided in section 45-22-16.

   b. The limited liability partnership or foreign limited liability partnership may file a renewal registration that complies with this section no earlier than sixty days before the expiration of the one-year period.

      (1) A ~~limited liability partnership~~ registration may be renewed for successive one-year periods.

      (2) A proper renewal registration extends the registration of a limited liability partnership or foreign limited liability partnership for another one-year period, measured from the end of the previous one-year period.

      (3) Unless a renewal registration is properly filed with the secretary of state, the registration shall be subject to

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[2] Section 45-22-03 was also amended by section 34 of Senate Bill No. 2046, chapter 51.

revocation by the secretary of state as provided in section 45-22-16.

3. A registration or renewal registration 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) The address of the principal executive office of the domestic limited liability partnership.

(4) The address of the registered office of the domestic limited liability partnership and the name of its registered agent at that address.

(5) The name and address of each managing partner.

(6) An acknowledgment that the status of limited liability partnership will automatically expire, unless the partnership files a proper renewal registration.

(7) An acknowledgment that other jurisdictions, including other jurisdictions that have limited liability partnership statutes, may not provide any limited liability shield or may not provide as broad a limited liability shield as does this chapter.

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 it proposes to transact business in this state.

(2) The jurisdiction of its original registration.

(3) The date on which the foreign limited liability partnership expires in the jurisdiction of its origin.

(4) The nature of the business to be transacted in this state.

(5) The address of the principal executive office of the foreign limited liability partnership.

(6) The address of the registered office of the foreign limited liability partnership and the name of its registered agent at that address.

(7) The name and address of each managing partner.

(8) An acknowledgment that the status of limited liability partnership in this state will automatically expire:

(a) Unless the foreign limited liability partnership files a proper renewal registration; and

(b) Unless the foreign limited liability partnership continuously maintains its limited liability partnership status in its 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.

4. An original of the registration or renewal registration must be filed with the secretary of state.

a. If the secretary of state finds that the registration or renewal registration conforms to law and that the fees provided in section 45-22-22 have been paid, the secretary of state shall endorse on the original the word "filed" and the day, month, and year of the filing and shall file the original in the office of the secretary of state.

b. If any statement in the registration or renewal registration was false when made or becomes inaccurate after the registration or renewal registration is filed, making the registration or renewal registration false or inaccurate in any respect:

(1) The limited liability partnership or foreign limited liability partnership shall file promptly with the secretary of state an amended or corrected registration or renewal registration or reflect the changes on its next renewal registration; and

(2) With respect to foreign limited liability partnerships:

(a) In the case of a change in its name, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability partnership is originally registered; or

(b) In the case of a termination or merger:

[1] A foreign limited liability partnership that is not the surviving organization need not file an amended registration but, within thirty days after the merger or termination becomes effective, shall file with the secretary of state a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability partnership is originally registered.

[2] It is not necessary for any foreign limited liability partnership, which is the surviving organization in a merger, to procure either a new or amended registration unless the name of the foreign limited liability partnership is changed or unless the foreign limited liability partnership desires to

pursue in this state purposes other than those which it is authorized to transact in this state.

c. With respect to renewals:

(1) A renewal registration received by the secretary of state in a sealed envelope postmarked by the United States postal service on or before the lapse, or a renewal registration in a sealed packet with a verified shipment date by any other carrier service on or before the lapse, and properly addressed to the secretary of state is deemed to be in compliance with the requirement for timely delivery. When a lapse falls on a Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is in compliance with this requirement.

(2) The secretary of state must file the renewal registration if the renewal registration conforms to the requirements of this section.

(3) If the renewal registration does not conform, the registration must be returned to the limited liability partnership or foreign limited liability partnership for any necessary corrections. If the corrected renewal registration is filed after the lapse date, but within thirty days after it is returned for correction, the penalties for failure to file the renewal registration within the time required do not apply.

(4) Each limited liability partnership or foreign limited liability partnership that fails or refuses to file its renewal registration on or before the lapse date of a registration, must pay an additional late renewal fee as provided in section 45-22-22.

d. The secretary of state may destroy any registrations and renewal registrations which have been on file for seven years.

5. A managing partner must be separately registered with the secretary of state at the time of the registration of a limited liability partnership whenever that managing partner is either a domestic or foreign:

a. Corporation;

b. Limited liability company;

c. Limited partnership;

d. Limited liability partnership; or

e. General partnership using a fictitious name.

6. With respect to a domestic limited liability partnership:

a. A general partnership's decision to file a registration is an ordinary matter that may be decided by a majority of the partners.

b. The decision to withdraw or not renew a registration may be undertaken only with the consent of all of the partners.

7. A general partnership that registers as a limited liability partnership is not deemed to have dissolved as a result of the registration.

8. If a limited liability partnership or foreign limited liability partnership dissolves without winding up its business or changes its jurisdiction of origin, a partnership which is a successor to such limited liability partnership or foreign limited liability partnership and which intends to be a limited liability partnership or foreign limited liability partnership shall not be required to file a new registration or renewal and shall be deemed to have filed any documents required or permitted under this section which were filed by the predecessor partnership.

SECTION 225. AMENDMENT. Section 45-22-04 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-04. Limited liability partnership - Name.

1. The name of a limited liability partnership:

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 partnership" or either the abbreviation "L.L.P." or the abbreviation "LLP", either of which abbreviations can be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state, or any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of original registration.

c. May not contain a word or phrase that indicates or implies that it may not be formed under this chapter.

d. May not contain a word or phrase that indicates or implies that it is formed for a purpose other than one or more business purposes for which a partnership may be formed under North Dakota law.

~~d. May not be the same as, or deceptively similar to, the name of a domestic or foreign corporation, limited liability company, limited partnership or limited liability partnership, whether for profit or nonprofit, authorized to do business in this state, or a name the right to which is, at the time of formation, reserved in the manner provided in section 45-22-05 or is a fictitious name registered with the office of the secretary of state in the manner provided in chapter 45-11 or is a trade name registered with the office of the secretary of state in the manner provided in chapter 47-25, unless there is filed with the registration:~~

~~(1) The written consent of the domestic or foreign corporation, limited liability company, limited partnership, limited liability partnership or partnership authorized to do business in the state having a deceptively similar name or the holder of a~~

~~reserved name or registered trade name to use the deceptively similar name; or~~

~~(2) A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.~~

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 registration a document which complies with subsection 2 of this section, or:

(a) Another limited liability partnership;

(b) A corporation;

(c) A limited liability company; or

(d) A limited partnership; or

(2) A name, the right to which is at the time of registration reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, 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.

f. Need not be filed as provided in chapter 45-11 except when transacting business under a name other than the name as registered under this chapter.

2. The secretary of state shall determine whether a name is "~~deceptively similar"~~ deceptively similar to another name for purposes of this section.

3. If the secretary of state determines that a limited liability partnership name is deceptively similar to another name for purposes of this chapter, then the limited liability partnership name may not be used unless there is filed with the registration:

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 45-22-05 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 principles of equity.

5. A limited liability partnership that is merged with another domestic or foreign organization, that is registered by the reorganization of one or more domestic or foreign organizations, or that acquires by sale, lease, or other disposition to or exchange with a domestic organization all or substantially all of the assets of another domestic or foreign organization including its name, may have the same name as that used in this state by any of the other organizations, if the other organization:

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, 45-10.1-03, 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.

~~4.~~ 6. The use of a name by a limited liability partnership in violation of this section does not affect or vitiate its limited liability partnership existence. However, a court of this state may, upon application of the state or of an interested or affected person, enjoin the limited liability partnership from doing business under a name assumed in violation of this section, even though its registration may have been filed with the secretary of state.

~~5.~~ 7. With respect to foreign limited liability partnerships:

a. A foreign limited liability partnership may register under any name that would be available to a domestic limited liability partnership, whether or not the name is the same under which it is authorized in its jurisdiction of original registration.

b. A fictitious name certificate must be filed as provided in chapter 45-11 only when registering under a name other than the name as authorized in the jurisdiction of original registration.

SECTION 226. AMENDMENT. Section 45-22-05 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-05. Reserved name.

1. The exclusive right to the use of a limited liability partnership or foreign limited liability partnership name otherwise permitted by section 45-22-04 may be reserved by any person.

2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 45-22-22.

   a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.

   b. The reservation may be renewed for successive twelve-month periods.

3. The right to the exclusive use of limited liability partnership or foreign limited liability partnership name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 45-22-22.

4. The right to the exclusive use of a limited liability partnership or foreign limited liability partnership name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of cancellation together with the fees provided in section 45-22-22.

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

6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

SECTION 227. AMENDMENT. Section 45-22-06 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-06. Failure to use required name. If a person purports to enter into a contract or other undertaking on behalf of a limited liability partnership and with intent to defraud does not disclose to the other party that part of the limited liability partnership's name that complies with subsection 1 of section 45-22-04, then that person is personally liable on the contract or undertaking, unless that person can show in making the contract or accepting the undertaking that the other party had knowledge or notice that the partnership was a limited liability partnership, or did not rely on the partnership being an ordinary general partnership. Any partner of a limited liability partnership who with intent to defraud consents to a person not making the disclosure described in this section is also personally liable on the contract or undertaking, unless that partner can make the showing described in this section.

SECTION 228. AMENDMENT. Section 45-22-07 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-07. Unauthorized assumption of limited liability partnership powers - Liability. A person who assumes to act as a limited liability partnership ~~without a~~

knowing that no registration or renewal registration is in effect ~~is~~ jointly and severally liable for all debts and liabilities incurred or arising as a result.

SECTION 229. AMENDMENT. Section 45-22-08 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-08. Limited liability partnership shield. A partner of a limited liability partnership is not, merely on account of this status, personally liable for anything chargeable to the partnership under sections 45-15-05 and 45-15-06, or for any other debts or obligations of the limited liability partnership, if the charge, debt, or obligation arose or accrued while the partnership had a registration or renewal registration in effect. A registration or renewal registration remains in effect until revoked by the secretary of state pursuant to section 45-22-16. This section does not limit or impair the right of the limited liability partnership or its partners to make claims against any particular partner on the grounds that the particular partner~~:~~

~~1.~~ ~~Has~~ has, in its capacity as a partner, breached a duty to the limited liability partnership or to the other partners~~;~~ ~~or~~

~~2.~~ ~~Is obligated to contribute so that partners share losses of capital according to section 45-16-01 and share the liabilities stated in subsections 2 and 3 of section 45-20-07~~.

SECTION 230. AMENDMENT. Section 45-22-11 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-11. Registered office and agent.

1. A limited liability partnership or foreign limited liability partnership shall continuously ~~shall~~ maintain a registered office in this state. A registered office need not be the same as the principal place of business or the principal executive office of the limited liability partnership or foreign limited liability partnership.

2. A limited liability partnership or foreign limited liability partnership shall ~~designate~~ appoint and continuously maintain a registered agent in its registration who may be.

   a. ~~The registered agent may be an~~ An individual residing in this state~~,~~ ~~a~~;

   b. A domestic corporation, a domestic limited liability company, or a domestic limited liability partnership~~,~~; or ~~a~~

   c. A foreign corporation, foreign limited liability company, or foreign limited liability partnership authorized to transact business in this state.

   ~~b. The registered agent must maintain a business office that is identical with the registered office.~~

~~c.~~ 3. 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 45-22-22.

SECTION 231. AMENDMENT. Section 45-22-12 of the 1995 Supplement to 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 or foreign limited liability partnership 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 45-22-22, a statement containing:

   a. The name of the limited liability partnership or foreign limited liability partnership.

   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.

   f. A statement that the change of registered office or registered agent was authorized by resolution of the partnership.

2. A registered agent may resign by filing with the secretary of state a written notice of resignation, including a statement that a signed copy of the notice has been given to the limited liability partnership or foreign limited liability partnership at its principal executive office, or to a legal representative of the limited liability partnership or foreign limited liability partnership. 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 name of the registered agent~~, as the case may be,~~ of each limited liability partnership or foreign limited liability partnership represented by that agent by filing with the secretary of state a statement for each limited liability partnership or foreign limited liability partnership as required in subsection 1, except that it need be signed only by the registered agent, need not be responsive to subdivision c or f of subsection 1, and must state that a copy of the statement has been mailed to each of those limited liability partnerships or foreign limited liability partnerships or to the legal representative of each of those limited liability partnerships or foreign limited liability partnerships.

4. The fee prescribed in section 45-22-22 for the change of registered office must be refunded when, in the opinion of the secretary of state, the change of address of registered office results from rezoning or postal reassignment.

SECTION 232. AMENDMENT. Section 45-22-13 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-13. Voluntary withdrawal of status.

1. A partnership may end its status as a limited liability partnership or foreign limited liability partnership at any time by filing a withdrawal statement with the secretary of state.

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 its current registration.

      (3) An acknowledgment by the domestic limited liability partnership that the withdrawal ends its limited liability partnership status.

   b. With respect to a foreign limited liability partnership:

      (1) The name of the foreign limited liability partnership.

      (2) The jurisdiction of ~~its original registration~~ 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 its authority to transact business in this state as a foreign limited liability partnership and is withdrawing its current registration.

      (5) An acknowledgment by the foreign limited liability partnership that the withdrawal ends its foreign limited liability partnership status in this state.

      (6) A statement ~~that~~ the foreign limited liability partnership revokes the authority of its registered agent in this state to accept service of process and consents that 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 may be made on the foreign limited liability partnership by service upon the secretary of state.

      (7) A post-office address to which a person may mail a copy of any process against the foreign limited liability partnership.

3. The withdrawal statement may state a delayed withdrawal date, if that date is before the expiration date of the current registration. If the

withdrawal statement does not state an effective date, then the statement is effective when filed.

4. If the foreign limited liability partnership is not the surviving organization in a merger or termination, then the filing with the secretary of state of a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability partnership is originally registered constitutes a valid withdrawal statement.

SECTION 233. AMENDMENT. Section 45-22-14 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-14. Filing after dissolution.

1. A dissolved limited liability partnership or a foreign limited liability partnership that is winding up its affairs may continue its status as a limited liability partnership or foreign limited liability partnership through termination either by:

   a. Continuing to file annual renewal registrations until termination; or

   b. Filing a final renewal registration that, in addition to providing the information required by subsection 3 of section 45-22-03:

      (1) States ~~that~~ the partnership is dissolved and is winding up its affairs.

      (2) Identifies the cause of the dissolution.

      (3) States ~~that~~ the renewal registration is the final renewal registration and will remain in effect until termination.

2. A final renewal registration that complies with subdivision b of subsection 1 must not contain the statement required in:

   a. Paragraph 6 of subdivision a of subsection 3 of section 45-22-03 in the case of a domestic limited liability partnership; or

   b. Paragraph 8 of subdivision b of subsection 3 of section 45-22-03 in the case of a foreign limited liability partnership.

3. When the dissolved limited liability partnership or foreign limited liability partnership has wound up its affairs, it shall file with the secretary of state a termination notice, together with the fees provided in section 45-22-22. The termination notice must:

   a. Contain:

      (1) The name of the limited liability partnership or foreign limited liability partnership.

      (2) A statement ~~that~~ the limited liability partnership or foreign limited liability partnership has dissolved and wound up its affairs.

(3) A statement ~~that~~ the limited liability partnership or foreign limited liability partnership is terminated.

b. Be signed by one former managing partner who has not wrongfully dissolved the partnership or, in the case of a foreign limited liability partnership, by a managing partner.

SECTION 234. AMENDMENT. Section 45-22-16 of the 1995 Supplement to 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 or foreign limited liability partnership may be revoked by the secretary of state upon the occurrence of any of these events:

   a. The limited liability partnership or foreign limited liability partnership has failed:

      (1) To appoint and maintain a registered agent as required by this chapter;

      (2) To file a report upon any change in the name or business address of the registered agent;

      (3) To file any required amendment to its registration; or

      (4) To file a renewal registration as provided in subsection 2 of section 45-22-04.

   b. ~~A~~ An intentional misrepresentation ~~or mistake~~ has been made in any material matter in any registration, report, affidavit, or other document submitted by the limited liability partnership or foreign limited liability partnership pursuant to this chapter.

2. The secretary of state may not revoke the registration of a limited liability partnership or foreign limited liability partnership unless:

   a. The secretary of state has given the limited liability partnership or foreign limited liability partnership at least sixty days' notice of the reason for the pending revocation by mail addressed to its registered office or, if the limited liability partnership or foreign limited liability 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 limited liability partnership or foreign limited liability partnership has failed:

      (1) To appoint and maintain a registered agent as required by this chapter;

      (2) To file the report of change regarding the name or business address of the registered agent;

      (3) To file the required amendment to its registration;

(4) To file a renewal registration as provided in subsection 2 of section 45-22-04; or

(5) To correct the misrepresentation ~~or mistake~~.

3. Upon the expiration of the sixty-day period without the limited liability partnership or foreign limited liability partnership having cured 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 or foreign 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 or foreign limited liability partnership failed to appoint and maintain a registered office in this state, then to its principal executive office.

SECTION 235. AMENDMENT. Section 45-22-17 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-17. Service of process on a limited liability partnership or foreign limited liability partnership.

1. 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 either on the registered agent ~~of the limited liability partnership~~ or on any responsible person found at the registered office ~~of the limited liability partnership~~ or on the secretary of state as provided in this section.

2. 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, the secretary of state is the agent of the limited liability partnership or foreign limited liability partnership on whom the process, notice, or demand may be served.

   a. The return of the sheriff, or affidavit of a person not a party, that no registered agent or responsible person may be found at either the registered office or at the principal place of business ~~of the limited liability partnership~~ in this state is conclusive evidence that the limited liability partnership or foreign limited liability partnership has no registered agent or responsible person at its registered office or at its principal place of business in this state.

   b. Service on the secretary of state of any process, notice, or demand 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 one original and two copies of the process, notice, or demand together with the fees provided in section 45-22-22.

   c. The secretary of state immediately shall forward, by certified mail addressed to the limited liability partnership or foreign limited liability partnership at its registered office or at its principal place of business in this state, a copy of the process, notice, or demand.

d. 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.

3. 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 it.

4. 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 236. AMENDMENT. Section 45-22-18 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-18. Foreign limited liability partnership governing law. The laws of the jurisdiction under which a foreign limited liability partnership is originally registered govern its organization ~~and its~~, internal affairs, and the liability of partners for the debts, obligations, and liabilities of or chargeable to the partnership or another partner or partners. A foreign limited liability partnership may not be denied registration to transact business in this state by reason of any difference between those laws and the laws of this state. A foreign limited liability partnership holding a valid registration in this state has the same, but no greater, rights and privileges as a domestic limited liability partnership. The registration does not authorize the foreign limited liability partnership to exercise any of its powers for purposes that a domestic limited liability partnership is forbidden by law to exercise in this state.

SECTION 237. AMENDMENT. Section 45-22-20 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-20. Transaction of business by a foreign limited liability partnership without registration.

1. A foreign limited liability partnership transacting business in this state may not maintain any cause of action in any court of this state until the partnership has registered with the secretary of state.

2. The failure of a foreign limited liability partnership to register with the secretary of state does not impair the validity of any contract or act of the foreign limited liability partnership or prevent the foreign limited liability partnership from defending any claim for relief in any court of this state.

3. A foreign limited liability partnership, by transacting business in this state without having registered with the secretary of state, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.

~~4. All persons who assume to act as a foreign limited liability partnership without registration are jointly and severally liable for all debts and liabilities incurred or arising in this state as a result.~~

SECTION 238. AMENDMENT. Section 45-22-22 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-22. Fees and charges.

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

   a. Filing a registration as a domestic limited liability partnership, twenty-five dollars. When 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 renewal registration, twenty-five dollars.

   c. Late filing of a renewal registration after the lapse of a registration, twenty dollars. This fee is in addition to the renewal registration fee.

   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 change of address of registered office by registered agent, ten dollars for each limited liability partnership or foreign limited liability partnership affected by such change.

   k. Filing a registered agent's consent to serve in such capacity, ten dollars.

   l. Filing a resignation as registered agent, ten dollars.

   m. Filing a notice of withdrawal, ten dollars.

   n. Filing a certificate of fact stating a merger of a foreign limited liability partnership registered with the secretary of state, fifty dollars.

   o. Filing any other statement of a limited liability partnership, ten dollars.

   p. Filing any process, notice, or demand for service, twenty-five dollars.

   q. Filing a registration as a foreign limited liability partnership, fifty dollars.

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

a. Furnishing a copy of any document, instrument, or paper relating to a limited liability partnership or foreign limited liability partnership, one dollar for every four pages, or fraction thereof.

b. A certificate certifying a copy or reciting facts related to a limited liability partnership or foreign limited liability partnership, twenty dollars.

c. Each page of any document or form sent by electronic transmission, one dollar.

SECTION 239. AMENDMENT. Section 45-22-23 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-23. Powers - Enforcement - Penalty - Appeal.

1. The secretary of state shall administer this chapter.

2. The secretary of state may propound to any limited liability partnership or foreign limited liability partnership subject to this chapter and to any partner, any interrogatory reasonably necessary and proper to ascertain whether the partnership has complied with this chapter.

   a. Any interrogatory must be answered within thirty days after mailing, or within any additional time fixed by the secretary of state. The answers to the interrogatory must be full and complete and be made in writing and under oath.

   b. If an interrogatory is directed:

      (1) To an individual, it must be answered by that individual; or

      (2) To a limited liability partnership or foreign limited liability partnership, it must be answered by a managing partner.

   c. The secretary of state need not file any document to which an interrogatory relates until the interrogatory has been answered, and not then if the answers disclose that such document is not in conformity with this chapter.

   d. The secretary of state shall certify to the attorney general, for any action the attorney general determines appropriate, any interrogatory and answers which disclose a violation of this chapter.

   e. Each managing partner of a limited liability partnership or foreign limited liability partnership who fails or refuses within the time provided by this section to answer truthfully and fully every interrogatory propounded to that person by the secretary of state is guilty of an infraction.

   f. Any interrogatory propounded by the secretary of state and the answers are not open to public inspection under section 44-04-18. The secretary of state may not disclose any facts or information obtained from an interrogatory except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.

3. If the secretary of state rejects any document required by this chapter to be approved by the secretary of state before the document may be filed, the secretary of state, within ten days after receipt of the document, shall give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection. That person may appeal to the district court of the county in which the registered office of the limited liability partnership or foreign limited liability partnership is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the document sought to be filed and a copy of the written rejection of the document by the secretary of state. The court shall try the matter de novo. The court shall either sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.

4. If the secretary of state revokes the registration of any foreign limited liability partnership~~,~~ pursuant to section 45-22-16, the partnership may appeal to district court of the county where the registered office of the partnership in this state is situated by filing with the clerk of such court a petition setting forth a copy of its registration and a copy of the notice of revocation given by the secretary of state. The court shall try the matter de novo. The court shall either sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.

SECTION 240. AMENDMENT. Section 45-22-24 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-24. Certificates and certified copies to be received in evidence.

1. All copies of documents filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated.

2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability partnerships or foreign limited liability partnerships which would not appear from a certified copy of any of the foregoing documents or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated.

SECTION 241. AMENDMENT. Section 45-22-25 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-25. Forms to be furnished by the secretary of state. All renewal registrations must be made on forms prescribed ~~and furnished~~ by the secretary of state. Upon request, the secretary of state ~~shall~~ may furnish forms for all other documents to be filed in the office of the secretary of state. However, the use of these documents, unless otherwise specifically required by law, is not mandatory.

SECTION 242. AMENDMENT. Section 45-22-26 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-26. Audit reports and audit of limited liability partnerships receiving state subsidies for production of alcohol or methanol for combination with gasoline.

Any limited liability partnership or foreign limited liability partnership that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the limited liability partnership or foreign limited liability partnership, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the taxable year of the limited liability partnership or foreign limited liability partnership. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any limited liability partnership or foreign limited liability partnership required to submit an annual report under this section.

SECTION 243. AMENDMENT. Section 45-22-27 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-27. Foreign trade zones.

1. As used in this section, unless the context otherwise requires:

   a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an act to provide for the establishment, operation, and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934 [48 Stat. 998; 19 U.S.C. 81a et seq.], as amended.

   b. "Private limited liability partnership" means a limited liability partnership or foreign limited liability partnership, one of the purposes of which is to establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.

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

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

SECTION 244. AMENDMENT. Section 57-38-07.1 of the North Dakota Century Code is amended and reenacted as follows:

57-38-07.1. Taxation of two or more member limited liability companies. For purposes of this chapter, a limited liability company having two or more members that is formed under either the laws of this state or under similar laws of another state, and that is considered to be a partnership for federal income tax purposes, is considered to be a partnership and the members must be considered to be partners. A limited liability company having two or more members that is not treated as a partnership for federal income tax purposes must be treated as a corporation for state tax purposes.

SECTION 245. Section 57-38-07.2 of the North Dakota Century Code is created and enacted as follows:

57-38-07.2. Taxation of single-member limited liability companies. For purposes of this chapter, a limited liability company having a single member that is formed under either the laws of this state or under similar laws of another state and that is considered to be a corporation for federal income tax purposes, is considered to be a corporation for state tax purposes. A limited liability company having a single member that is not treated as a corporation for federal income tax purposes is disregarded as an entity separate from its owner for state tax purposes.

SECTION 246. AMENDMENT. Section 57-38.1-17.2 of the North Dakota Century Code is amended and reenacted as follows:

57-38.1-17.2. Taxation of two or more member limited liability companies. For purposes of this chapter, a limited liability company having two or more members that is formed under either the laws of this state or under similar laws of another state, and that is considered to be a partnership for federal income tax purposes, is considered to be a partnership and the members must be considered to be partners. A limited liability company having two or more members that is not treated as a partnership for federal income tax purposes must be treated as a corporation for state tax purposes.

SECTION 247. Section 57-38.1-17.3 of the North Dakota Century Code is created and enacted as follows:

57-38.1-17.3. Taxation of single-member limited liability companies. For purposes of this chapter, a limited liability company having a single member that is formed under either the laws of this state or under similar laws of another state and that is considered to be a corporation for federal income tax purposes, is considered to be a corporation for state tax purposes. A limited liability company having a single member that is not treated as a corporation for federal income tax purposes is disregarded as an entity separate from its owner for state tax purposes.

SECTION 248. REPEAL. Sections 10-19.1-54, 10-19.1-73.1, 10-19.1-77, 10-19.1-78, 10-19.1-79, 10-19.1-80, chapters 10-22, 10-23, sections 10-32-41, 10-32-45, 10-32-46, 10-32-90, and 10-32-151 of the North Dakota Century Code are repealed.

Approved April 10, 1997
Filed April 10, 1997

CHAPTER 104

SENATE BILL NO. 2373
(Senator Mathern)

BANK INVESTMENT IN COMMUNITY DEVELOPMENT CORPORATIONS

AN ACT to create and enact a new chapter to title 10 of the North Dakota Century Code, relating to investment in community development corporations by banks.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 10 of the North Dakota Century Code is created and enacted as follows:

Organization.

1. To the extent permitted by federal law, any three or more banks may form a community development corporation by complying with the conditions prescribed in this chapter and subscribing and acknowledging a certificate specifying:

   a. The name, the general nature of its business, and the principal place of transacting its business. The name must distinguish the corporation from all other corporations authorized to do business in the state, and must contain the words "community development corporation".

   b. The period of its duration, which is perpetual.

   c. The name and principal business address of each incorporator.

   d. The names and addresses of those composing its board until the first election.

   e. The highest amount of indebtedness or liability to which the corporation may be subject.

2. The certificate may contain any other lawful provision defining the powers and business of the corporation, its officers, directors, members, and stockholders.

3. One bank may hold no more than forty-nine percent of the stock in the corporation.

Purposes. This chapter is intended to allow all banks, including state-chartered banks, the right to form community development corporations, as defined by the federal office of the comptroller of the currency and the federal reserve. The purpose of the corporation is to assist communities in this state in economic development, housing, the creation of jobs for low and moderate income

persons, and development of community facilities. A special emphasis is to be on rural communities.

Incorporation. Upon the filing of the articles of incorporation with the secretary of state, the secretary of state shall issue to the corporation over the great seal of the state a certificate that the articles containing the required documents have been filed in the secretary of state's office.

Powers of investment corporations. In furtherance of the purposes for which the corporation is organized, and in addition to the powers conferred by the general laws relating to business corporations, a corporation may:

1. Borrow money and otherwise incur indebtedness for any of the purposes of the corporation and issue its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, therefor and secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part thereof.

2. Lend money to, and guarantee, endorse, or act as surety on the bonds, notes, contracts, or other obligations of, or otherwise assist financially, any person, and establish and regulate the terms with respect to any loans or financial assistance and the charges for interest and service connected with the loans or assistance.

3. Purchase, receive, hold, lease, or otherwise acquire, and sell, convey, mortgage, lease, pledge, or otherwise dispose of, upon the terms and conditions as the board of directors determines advisable, property, together with the rights and privileges incidental thereto and the use thereof, including any property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

4. Acquire, by purchase or otherwise, the goodwill, business, rights, property, and other assets, or any part thereof, that may be in furtherance of the corporate purposes provided herein, and assume, undertake, guarantee, or pay the obligations, debts, and liabilities of any person; acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments or for the purpose of disposing of the real estate to others for the construction of industrial plants or other business establishments, and, in furtherance of the corporate purposes, acquire, construct, reconstruct, maintain, operate, sell, lease, or otherwise dispose of industrial plants or business establishments.

5. Acquire, subscribe for, own, hold, sell, or otherwise dispose of the stock, shares, membership interests, bonds, debentures, notes, or other securities and evidences of interest in, or indebtedness of, any person and, while the owner or holder thereof, to exercise all the rights, powers, and privileges of ownership, including the right to vote.

6. Cooperate with and avail itself of the facilities of the department of economic development and finance and any other similar governmental agencies; and cooperate with, assist, and otherwise encourage local organizations in the various communities of the state, the purpose of which are the promotion, assistance, and development of the business prosperity and economic welfare of the communities and of this state.

Board of directors.

1. All the corporate powers of the corporation must be exercised by a board of no fewer than fifteen elected directors who must be residents of this state. The number of directors and their term of office must be determined in the bylaws. If any vacancy occurs in the board of directors, the remaining directors may elect a person to fill the vacancy until the next annual meeting of the corporation.

2. The first board of directors shall adopt bylaws, which remain effective until amended or repealed by action of the board.

3. The first annual meeting must be held at a date to be fixed by the board of directors as soon as reasonably possible after a minimum of twenty-five percent of the capital stock of the corporation has been paid into its treasury. The annual meeting must be called in the manner provided by the bylaws.

Earned surplus. Each year, the corporation shall set apart all of its net earnings as retained earnings. The corporation shall hold part of the retained earnings as a reserve for bad debts. The corporation may use the rest of the retained earnings in the course of its business. The amount held as a reserve for bad debts must be at least the amount recommended by the firm of certified public accountants that the board of directors approves to audit the corporation's financial statements. The board shall establish procedures for investing funds held as a reserve for bad debts.

Obligation limitation. The total obligations of the corporation may not exceed twenty times the amount of the paid-in capital and surplus, not including earned surplus.

Deposit of funds - Loans. The corporation may not deposit any of its funds in any financial institution unless the institution has been designated as a depository by a vote of a majority of the directors, exclusive of any director who is an officer or director of the depository so designated. The corporation may not receive money on deposit. No loans may be made directly or indirectly to any officer of the corporation or to any firm of which the officer is a member or officer.

Preemptive right not authorized. The holders of capital stock as such have no preemptive or preferential right to purchase or subscribe for any part of the unissued capital stock of the corporation of any class or for any new issue of stock of any class, whether now or hereafter authorized or issued, or to purchase or subscribe for any bonds or other obligations, whether or not convertible into stock of any class of the corporation, now or hereafter authorized or issued.

Notes or obligations - Legal investments. Notwithstanding any other statute, the notes or other interest-bearing obligations of a state development corporation, issued in accordance with this chapter and the articles of incorporation and the bylaws of the corporation, are legal investments for any bank that becomes a member of the corporation.

Approved March 19, 1997
Filed March 19, 1997

CHAPTER 105

SENATE BILL NO. 2210

(Senator W. Stenehjem)
(Representative Kretschmar)

NONPROFIT CORPORATIONS

AN ACT to create and enact chapter 10-33 of the North Dakota Century Code, relating to nonprofit corporations; to amend and reenact subsection 2 of section 11-10-24, sections 14-03-09, 15-17-01, 18-05-01, 26.1-14-03, 26.1-17-11, subsection 2 of section 40-01-23, subsection 12 of section 49-23-01, subsection 8 of section 54-01.1-02, section 55-03-01, subsection 2 of section 61-16.1-60, and section 61-35-29 of the North Dakota Century Code, relating to references to the Nonprofit Corporations Act; to repeal chapters 10-24, 10-25, 10-26, 10-27, and 10-28 of the North Dakota Century Code, relating to the Nonprofit Corporations Act; to provide a penalty; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Chapter 10-33 of the North Dakota Century Code is created and enacted as follows:

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

1. "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.

2. "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 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 documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.

3. "Board" means the board of directors of a corporation.

4. "Board member" means an individual serving on the board.

5. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.

6. "Corporation" means a corporation, other than a foreign corporation, that is incorporated under or governed by this chapter.

7. "Director" means a member of the board.

8. "Filed with the secretary of state" means:

   a. The following have been delivered to the secretary of state and have been determined by the secretary of state to conform to law:

      (1) A signed original, or a legible facsimile copy of a signed original, of a request for reserved name; or a signed original of all other documents, meeting the applicable requirements of this chapter; and

      (2) The fees provided for in section 10-33-140;

   b. And the secretary of state has:

      (1) Endorsed on the original the word "filed", and the month, day, and year; and

      (2) Recorded the document in the office of the secretary of state.

9. "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.

10. "Good faith" means honesty in fact in the conduct of an act or transaction.

11. "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.

12. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and successive federal revenue acts.

13. "Knows" or has "knowledge" means the person has actual knowledge of a fact. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.

14. "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.

15. "Member" means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.

16. "Members with voting rights" means members or a class of members that has voting rights with respect to the purpose or matter involved.

17. "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.

18. "Notice":

a. Is given by a member of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation; and

b. In all other cases, is given to a person:

(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; or

(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 therein.

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

d. Is deemed received when it is given.

19. "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.

20. "Organization" means a corporation, whether domestic or foreign, incorporated in or authorized to do business in this state under another chapter of this code; limited liability company; partnership; limited partnership; limited liability partnership; joint venture; association;

business trust; estate; trust; enterprise; or any other legal or commercial entity.

21. "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.

22. "Registered office" means the place in this state designated in the articles of a corporation as the registered office of the corporation.

23. "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.

24. "Signed" means that the signature of a person is placed on a document, as provided in subsection 39 of section 41-01-11, and:

a. With respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles, the bylaws, a resolution approved by the affirmative vote of the required proportion or number of the directors, or the required proportion or number of members with voting rights, if any; and

b. With respect to a document that is not required by this chapter to be filed with the secretary of state, the signature may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

25. "Subsidiary" of a specified corporation means:

a. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly through related corporations or limited liability companies, by the specified corporation; or

b. A 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.

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

27. "Vote" includes authorization by written action.

28. "Written action" means:

a. A written document signed by all of the persons required to take the action; or

b. The counterparts of a written document 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.

10-33-02. Application and election.

1. This chapter applies to all nonprofit corporations incorporated for a purpose for which a corporation might be incorporated under this chapter.

2. A corporation in existence before August 1, 1997, which has incorporated under chapters 10-24, 10-25, 10-26, 10-27, and 10-28 as they existed on July 31, 1997, or any other chapter that provides that corporations incorporated under that chapter and governed by the nonprofit corporation laws of this state, may elect after July 31, 1997, and before August 1, 1998, to become governed by this chapter.

a. If the articles of an electing corporation include a provision prohibited by this chapter or omit a provision required by this chapter or are otherwise inconsistent with this chapter, the electing corporation shall amend its articles to conform to the requirements of this chapter. The appropriate provisions of the corporation's articles or bylaws or the law by which it was governed before the effective date of the election made pursuant to this section control the manner of adoption of the amendment.

b. An election by a corporation to become governed by this chapter must be made by resolution approved by the affirmative vote of the members with voting rights of the same proportion that is required for amendment of the articles of the corporation before the election.

(1) If there are no members with voting rights, the corporation must elect to be governed by this chapter by a resolution adopted by a majority vote of the directors entitled to vote at a meeting of the board, with proper notice given. The notice must include a statement that a purpose of the meeting is to consider an election to become governed by this chapter.

(2) The original of the resolution, and articles of amendment if required, must be filed with the secretary of state.

(a) The resolution and articles of amendment become effective upon acceptance by the secretary of state.

(b) If no amendment of the articles is required, the resolution must state that the articles of the corporation conform to the requirements of this chapter.

c. Upon filing an election pursuant to this section, all provisions of the bylaws that are consistent with this chapter remain or become effective and all provisions of the bylaws that are inconsistent with this chapter cease to be effective.

3. After July 31, 1998, this chapter applies to all existing corporations incorporated under any chapter of this code providing for the incorporation of corporations for a purpose or purposes for which a corporation might be incorporated under this chapter or which are otherwise to be governed by the nonprofit corporation laws of this state.

a. All provisions of the articles and bylaws of the corporation which may be included in the articles or bylaws under this chapter remain in effect, and all provisions of the articles and bylaws of the corporation which are inconsistent with this chapter cease to be effective on August 1, 1998.

b. Any provisions required by this chapter to be contained in the articles that do not appear in the articles are read into them as a matter of law.

10-33-03. Transition. The continuation or completion of any act by a corporation that has not incorporated under, but has become governed by, this chapter, and the continuation or performance of any executed or wholly or partially executory contract, conveyance, or transfer to or by the corporation, if otherwise lawful before the corporation became governed by this chapter, remains valid, and may be continued, completed, consummated, enforced, or terminated as required or permitted by a statute applicable prior to the date on which the corporation became governed by this chapter.

10-33-04. Purposes.

1. Unless otherwise limited in its articles, a corporation has a general purpose of engaging in any lawful nonprofit activity.

2. A corporation may be incorporated under this chapter for any lawful nonprofit purpose, unless another statute requires incorporation under a different law. A corporation of this type engaging in conduct that is regulated by another statute is subject to the limitations of the other statute, except it may not:

a. Be formed for a purpose involving pecuniary gain to its members, other than to members that are nonprofit organizations, subdivisions, units, or agencies of the United States, a state, or a local government; or

b. Pay dividends or other pecuniary remuneration, directly or indirectly, to its members, excluding members that are nonprofit

organizations or subdivisions, units, or agencies of the United States, a state, or a local government.

10-33-05. Incorporators. One or more individuals age eighteen or more may act as incorporators of a corporation by filing with the secretary of state articles of incorporation for the corporation.

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. 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;

   e. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-33-43; and

   f. Members are of one class as provided in section 10-33-57.

4. 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 consists on one or more persons, who need not be directors, appointed by the board as provided in 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. 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 10-31-58;

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. The articles may contain other provisions consistent with law relating to the management or regulation of the affairs of the corporation.

7. It is not necessary to state the corporate powers granted by this chapter in the articles.

8. If there is a conflict between subdivision 3, 4, or 5 and another section of this chapter, the other section controls.

10-33-07. Private foundations - Provisions considered contained in articles.

1. The articles of incorporation of a corporation that is a private foundation as defined in section 509(a) of the Internal Revenue Code and an instrument governing the use, retention, or disposition by the corporation of its income or property must contain the provisions contained in this section. If the articles and instrument do not contain these provisions, they are considered to have incorporated the language in subdivisions a through e with the same effect as though the language was set forth verbatim. Except as provided in subsection 2, these provisions govern the corporation as to the use, retention, and disposition of its income and property regardless of provisions of the articles or instrument or other law of this state to the contrary:

   a. The corporation shall distribute for each of its taxable years amounts at least sufficient to avoid liability for the tax imposed by section 4942(a) of the Internal Revenue Code;

   b. The corporation may not engage in an act of "self-dealing" as defined in section 4941(d) of the Internal Revenue Code that would give rise to liability for the tax imposed by section 4941(a) of the Internal Revenue Code;

   c. The corporation may not retain "excess business holdings" as defined in section 4943(c) of the Internal Revenue Code that would give rise to liability for the tax imposed by section 4943(a) of the Internal Revenue Code;

   d. The corporation may not make investments that would jeopardize the carrying out of the exempt purposes of the corporation, within the meaning of section 4944 of the Internal Revenue Code, so as to give rise to liability for the tax imposed by section 4944(a) of the Internal Revenue Code; and

   e. The corporation may not make a "taxable expenditure" as defined in section 4945(d) of the Internal Revenue Code that would give rise to liability for the tax imposed by section 4945(a) of the Internal Revenue Code.

2. Subsection 1 does not apply to a corporation if a court of competent jurisdiction determines that the application would be contrary to the terms of an instrument described in subsection 1 and that the instrument may not properly be changed to conform to subsection 1.

3. A reference in subsection 1 to a particular section of the Internal Revenue Code includes the corresponding provision of a future United States internal revenue law.

4. This section applies to all corporations that could be governed by this chapter, notwithstanding section 10-33-02.

5. This section does not impair the rights and powers of the attorney general or the courts of this state with respect to a corporation.

10-33-08. Filing of articles of incorporation. An original of the articles of incorporation must be filed with the secretary of state. If the secretary of state finds that the articles of incorporation conform and all fees have been paid under section

10-33-140, the secretary of state shall issue a certificate of incorporation to the incorporators or their representative.

10-33-09. Effective date of incorporation. The corporate existence begins upon the issuance of the certificate of incorporation or at a later date as specified in the articles of incorporation. The certificate of incorporation is conclusive evidence that all conditions precedent and required to be performed by the incorporators have been performed and that the corporation has been incorporated under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

10-33-10. 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 a word or phrase that indicates or implies that it may not be incorporated under this chapter.

   d. May not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than a legal nonprofit purpose for which a corporation may be incorporated under this chapter.

   e. Unless a document in compliance with subsection 2 of this section is filed with the articles, 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 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; or

         (e) A limited liability 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, 45-10.1-03, 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. 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.

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

3. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.

4. 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, 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.

5. A corporation that is merged with another domestic or foreign corporation, or that is incorporated by the reorganization of one or more domestic or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a domestic corporation all or substantially all of the assets of another domestic or foreign corporation including its name, may have the same name as that used in this state by any of the other corporations, if the other corporation was incorporated under the laws of, or is authorized to conduct activities in, this state.

6. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.

7. If a corporation's period of existence has expired or is involuntarily dissolved by the secretary of state pursuant to section 10-33-139, the corporation may reacquire the right to use that name by refiling articles

of incorporation pursuant to section 10-33-08; amending pursuant to section 10-33-118; or reinstating pursuant to section 10-33-139. If the name has been adopted for use or reserved by another person, 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.

10-33-11. Reserved name.

1. The exclusive right to the use of a corporate name otherwise permitted by section 10-33-10 may be reserved by any person.

2. The reservation must be made by filing with the secretary of state a request that the name be reserved, together with the fees provided in section 10-33-140:

   a. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.

   b. The reservation may be renewed for successive twelve-month periods.

3. The right to the exclusive use of a corporate name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee, together with the fees provided in section 10-33-140.

4. The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, together with the fees provided in section 10-33-140.

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

6. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

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

1. A corporation shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business or the principal executive office of the corporation.

2. A corporation shall appoint and continuously maintain a registered agent. The registered agent may be an individual residing in this state, a domestic corporation whether incorporated under this chapter or under another provision 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.

10-33-13. Establishment or 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.

   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.

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 of each corporation represented by that agent by filing with the secretary of state a statement for each corporation as required in subsection 1, 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. The fee prescribed in section 10-33-140 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. The fee prescribed in section 10-33-140 does not apply when the registered agent or registered office is established or changed in the annual report.

10-33-14. Amendment of articles. The articles of a corporation may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be

included in the articles, except that when articles are amended to restate them, the name and address of each incorporator and each initial director may be omitted. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with section 10-33-15.

10-33-15. Procedure for amendment of articles.

1. A majority of incorporators may amend the articles by written action if no directors are named in the original articles, if no directors have been elected, and if there are no members with voting rights. A majority of directors may amend the articles if there are no members with voting rights, if members with voting rights have authorized the board to amend the articles under subsection 3, or if the amendment merely restates the existing articles, as amended. Notice of the meeting and of the proposed amendment must be given to the board. An amendment restating the existing articles may, but need not, be submitted to and approved by the members as provided in subsection 2.

2. Amendments to the articles must be approved by a majority of the directors and by the members with voting rights. If an amendment is initiated by the directors, proper notice of the proposed amendment must precede a member meeting at which the amendment will be considered and must include the substance of the proposed amendment. If an amendment is proposed and approved by the members, the members may demand a special board meeting within fifty days for consideration of the proposed amendment if a regular board meeting would not occur within fifty days.

3. a. The members with voting rights may authorize the board of directors, subject to subdivision c, to exercise from time to time the power of amendment of the articles without member approval.

   b. When the members have authorized the board of directors to amend the articles, the board of directors, by a majority vote, unless the articles, bylaws, or the members' resolution authorizing the board action requires a greater vote, may amend the articles at a meeting of the board. Notice of the meeting and of the proposed amendment must be given to the board.

   c. The members with voting rights voting at a meeting duly called for the purpose may prospectively revoke the authority of the board to exercise the power of the members to amend the articles.

4. Articles or bylaws may require greater than majority approval by the board or approval by greater than a majority of a quorum of the voting members for an action under this section and may limit or prohibit the use of mail ballots by voting members.

5. The articles or bylaws may provide that an amendment also must be approved by the members of a class.

10-33-16. Articles of amendment. When an amendment has been adopted, articles of amendment must be prepared that contain:

1. The name of the corporation.

2. The amendment adopted.

3. The date of the adoption of the amendment pursuant to this chapter.

4. If the amendment restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to them.

5. A statement that the amendment has been adopted pursuant to this chapter.

10-33-17. Effect of amendment.

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

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

3. When effective under section 10-33-19, an amendment restating the articles in their entirety supersedes the original articles and all amendments to the original articles.

10-33-18. Filing articles of amendment. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to the filing requirements of this chapter and that all fees have been paid as provided in section 10-33-140, then the articles of amendment must be recorded in the office of the secretary of state.

10-33-19. Effective date of articles of amendment. The articles of amendment are effective upon acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.

10-33-20. Amendment of articles in court-supervised reorganization.

1. Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganization of corporations, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan, so long as the articles as amended contain only provisions which might be lawfully contained in original articles at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended to:

   a. Change the corporate name, period of duration, or corporate purposes of the corporation.

   b. Repeal, alter, or amend the bylaws of the corporation.

   c. Change the aggregate number of shares, or shares of any class, which the corporation has the authority to issue.

d. Change the preferences, limitations, relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify, or cancel all or any part thereof, whether issued or unissued.

e. Authorize the issuance of bonds, debentures, or other obligations of the corporation, whether convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof.

f. Constitute or reconstitute and classify or reclassify the board and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:

a. Articles of amendment approved by decree or order of the court must be executed and verified by the person or persons designated or appointed by the court for that purpose and must set forth the name of the corporation, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, and the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation under the provisions of an applicable statute of the United States.

b. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to the filing requirements of this chapter and that all fees have been paid as provided in section 10-33-140, the original must be recorded in the office of the secretary of state.

3. The articles of amendment become effective upon their acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.

4. The articles are amended accordingly with the same effect as if the amendment had been adopted by unanimous action of the directors and members.

10-33-21. General powers.

1. A corporation has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles.

2. A corporation has perpetual duration.

3. A corporation may sue and be sued, complain and defend and participate as a party or otherwise in any legal, administrative, or arbitration proceeding, in its corporate name.

4. A corporation may purchase, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest in property, wherever situated.

5. A corporation may sell, convey, mortgage, create a security interest in, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in property, wherever situated.

6. A corporation may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of, use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality.

7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income.

8. A corporation may invest and reinvest its funds.

9. A corporation may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the corporation, as security for the payment of money loaned, advanced, or invested.

10. A corporation may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.

11. Except as otherwise prohibited by law, a corporation may make donations, irrespective of corporate benefit, for:

    a. The public welfare;

    b. Social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes, and for similar or related purposes;

    c. The purpose of fostering national or international amateur sports competition; and

    d. The prevention of cruelty to children and animals, and for similar or related purposes.

12. A corporation may pay pensions, retirement allowances, and compensation for past services and establish employee or incentive benefit plans, trusts, and provisions for the benefit of the corporation and the corporation's related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.

13. A corporation may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating corporation would have power to conduct by itself, whether or not the participation involves sharing or delegation of control.

14. A corporation may provide for its benefit life insurance and other insurance with respect to the services of its officers, directors, employees, and agents, or on the life of a member for the purpose of acquiring, at the death of the member, any membership interests in the corporation owned by the member.

15. A corporation may have, alter at pleasure, and use a corporate seal as provided in section 10-33-22.

16. A corporation may adopt, amend, and repeal bylaws relating to the management of the business or the regulation of the affairs of the corporation as provided in section 10-33-26.

17. A corporation may establish committees of the board of directors, elect or appoint persons to the committees, and define their duties as provided in section 10-33-44 and fix their compensation.

18. A corporation may elect or appoint officers, employees, and agents of the corporation, and define their duties and fix their compensation.

19. A corporation may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-33-82.

20. A corporation may make advances to its directors, officers, and employees and those of its subsidiaries as provided in section 10-33-83.

21. A corporation shall indemnify those persons identified in section 10-33-84 against certain expenses and liabilities only as provided in section 10-33-84 and may indemnify other persons.

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

23. A corporation may take, receive, and hold real and personal property, including the principal and interest of money or other fund, that is given, conveyed, bequeathed, devised to, or vested in the corporation in trust where the corporation or a related organization has a vested or contingent interest in the trust.

24. Except where the trust instrument prescribes otherwise, a corporation may invest trust property or its proceeds in accordance with section 59-02-08.

25. A corporation may be a member of or the owner of the ownership interest in another domestic or foreign organization.

26. A corporation may dissolve and wind up.

27. A corporation may merge and consolidate with other domestic or foreign nonprofit corporations organized for related purposes.

28. A corporation doing business as a hospital may merge with a corporation incorporated for profit and form a corporation under this chapter.

29. A corporation may acquire an owner's interest in another organization.

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

10-33-22. Corporate seal. A corporation may, but need not, have a corporate seal. The use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a document or act. If a corporation has a corporate seal, the use of the seal by the corporation on a document is not necessary.

10-33-23. Defense of ultra vires. No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation is invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer but such lack of capacity or power may be asserted:

1. In a proceeding by a member against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfers sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, may set aside and enjoin the performance of the contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of the contract. However, anticipated profits to be derived from the performance of the contract may not be awarded by the court as a loss or damage sustained.

2. In a proceeding by the corporation, whether acting directly or through a receiver, trustee or other legal representative, or through members in a representative suit, against the incumbent or former officers or directors of the corporation.

3. In a proceeding by the attorney general, as provided in this chapter, to dissolve the corporation or to enjoin the corporation from the transaction of unauthorized business.

10-33-24. Unauthorized assumption of corporate powers - Liability. All persons who assume to act as a corporation without authority are jointly and severally liable for all debts and liabilities incurred or arising as a result.

10-33-25. Organization.

1. If the first board is not named in the articles, the incorporators may elect the first board or may act as directors with all of the powers, rights, duties, and liabilities of directors, until directors are elected.

2. After the issuance of the certificate of incorporation, the incorporators or the directors named in the articles shall, within a reasonable time, either hold an organizational meeting at the call of a majority of the incorporators or of the directors named in the articles, or take written

action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the corporation. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each incorporator or director named, stating the date, time, and place of the meeting. Incorporators and directors may waive notice of an organizational meeting in the same manner that a director may waive notice of meetings of the board pursuant to subsection 5 of section 10-33-39.

10-33-26. Bylaws.

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management or regulation of the affairs of the corporation consistent with law or the articles, including:

   a. The number of directors, and the qualifications, manner of election, powers, duties, and compensation, if any, of directors;

   b. The qualifications of members;

   c. Different classes of membership;

   d. The manner of admission, withdrawal, suspension, and expulsion of members;

   e. Property, voting, and other rights and privileges of members;

   f. The appointment and authority of committees;

   g. The appointment or election, duties, compensation, and tenure of officers;

   h. The time, place, and manner of calling, conducting, and giving notice of member, board, and committee meetings, or of conducting mail ballots;

   i. The making of reports and financial statements to members; or

   j. The number establishing a quorum for meetings of members and the board.

2. Initial bylaws may be adopted by the incorporators or by the first board pursuant to section 10-33-25. Unless reserved by the articles to the members, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the members with voting rights exercisable in the manner provided in subsection 3 to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board. After the adoption of the initial bylaws and if there are members with voting rights, the board may not adopt, amend, or repeal a bylaw fixing a quorum for meetings of members, prescribing procedures for removing directors or filling vacancies in the board, or fixing the number of directors or their classifications, qualifications, or terms of office, but may adopt or amend a bylaw to increase the number of directors. A bylaw amendment to increase or decrease the vote required for a member action must be approved by the members.

3. Unless the articles or bylaws provide otherwise, at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, may propose a resolution for action by the members to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board.

   a. The resolution must contain the provisions proposed for adoption, amendment, or repeal.

   b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in section 10-33-15, for amendment of the articles, except that board approval is not required.

   c. The articles or bylaws may impose different or additional requirements for the members to adopt, amend, or repeal the bylaws.

10-33-27. Board.

1. The business and affairs of a corporation must be managed by or under the direction of a board.

   a. All directors are entitled to vote and have equal rights and preferences except as otherwise provided in the articles or bylaws.

   b. The members of the first board may be named in the articles, designated or appointed pursuant to the articles, or elected by the incorporators under section 10-33-25.

2. No more than forty-nine percent of the individuals serving on the board of any corporation may be financially interested individuals.

3. For the purposes of this section "financially interested individuals" means:

   a. Individuals who have received or are entitled to receive compensation, directly or indirectly, from the corporation for services rendered to it within the previous twelve months, whether as full-time or part-time employees, independent contractors, consultants, or otherwise, excluding any reasonable payments made to directors for serving as directors;

   b. Any parent, child, child of a spouse, brother, or sister, of that individual; or

   c. The spouse of any individual described in subdivision a or b.

4. Failure to comply with the provisions of this section does not affect the validity or enforceability of any transaction entered into by the corporation.

10-33-28. Number. The board must consist of three or more directors, with the number specified in or fixed in accordance with the articles or bylaws. However, if the corporation has either one or two members with voting rights, the number of directors may be less than three but not less than the number of members with

voting rights. The number of directors may be increased or, subject to sections 10-33-36 and 10-33-37, decreased at any time by amendment to or in the manner provided in the articles or bylaws.

10-33-29. Qualifications - Election. Directors must be individuals. The method of election and any additional qualifications for directors may be imposed by or in the manner provided in the articles or bylaws.

10-33-30. Terms.

1. With respect to length of terms:

   a. Directors are elected or appointed and hold office for fixed terms provided for in the articles or bylaws. A fixed term of a director, other than an ex officio director, may not exceed ten years. If the articles or bylaws do not provide for a fixed term, the term is one year. An ex officio director serves as long as the director holds the office or position designated in the articles or bylaws.

   b. Unless the articles or bylaws provide otherwise, a director holds office until expiration of the term for which the director was elected or appointed and until a successor is elected and qualified, or until the earlier death, resignation, removal, or disqualification of the director.

   c. A decrease in the number of directors or term of office does not shorten an incumbent director's term.

   d. Except as provided in the articles or bylaws, the term of a director filling a vacancy expires at the end of the unexpired term that the director is filling.

2. The articles or bylaws may provide for staggering the terms of directors by dividing the total number of directors into groups. The terms of office of the groups need not be uniform.

10-33-31. Acts not void or voidable. The expiration of a director's term with or without the election of a qualified successor does not make prior or subsequent acts of the officers or the board void or voidable.

10-33-32. Compensation. Subject to any limitations in the articles or bylaws, the board may fix the compensation of directors.

10-33-33. Classification of directors.

1. Except as provided in subsection 2, directors may be divided into classes.

2. Directors of a corporation described in subsection 1 of section 10-33-122 may not vote by class except when the articles or bylaws provide that only one class of directors may vote on a particular matter.

10-33-34. Cumulative voting for directors. Unless the articles provide otherwise or except as provided in section 1 of article XII of the Constitution of North Dakota, there is no cumulative voting.

10-33-35. Resignation.

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

2. If a resignation is made effective at a later date, the board may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date.

10-33-36. Nonjudicial removal of directors.

1. This section applies unless a different method of removal is provided for in the articles or bylaws.

2. With respect to an elected director:

   a. If there is a member with voting rights:

      (1) A director may be removed by the board at any time, with or without cause, if:

         (a) The director was named by the board to fill a vacancy;

         (b) The members with voting rights have not elected directors in the interval between the time of the appointment to fill the vacancy and the time of the removal; and

         (c) A majority of the remaining directors present affirmatively vote to remove the director.

      (2) A director may be removed at any time, with or without cause, by those members eligible to elect the director.

   b. If there is no member with voting rights, a director may be removed at any time, with or without cause, by those directors eligible to elect the director.

3. With respect to an appointed director:

   a. Except as otherwise provided in the articles or bylaws, an appointed director may be removed without cause by the person appointing the director.

   b. The person removing the director shall do so by giving written notice of the removal to the director and either the presiding officer of the board or the corporation's president or secretary.

   c. A removal is effective when the notice is effective unless the notice states a future effective date.

4. A new director may be elected at a meeting at which a director is removed.

10-33-37. Removal of directors by judicial proceeding.

1. The district court of the county the principal executive office of a corporation is located in may remove any director of the corporation from office in a proceeding commenced either by the corporation, its members holding at least ten percent of the voting power of any class of shares, or the attorney general, if the court finds:

   a. The director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation;

   b. That the provisions of subsection 2 of section 10-33-27 have been violated; or

   c. Final judgment has been entered finding the director violated section 10-33-45.

2. The court that removes a director may bar the director from serving on the board for a period prescribed by the court.

3. If members or the attorney general commence a proceeding under subdivision a of subsection 1, then the corporation must be made a party defendant.

4. If a corporation or its members commence a proceeding under subsection 1, they must give the attorney general written notice of the proceeding.

10-33-38. Vacancies.

1. Unless the articles or bylaws provide otherwise, and except as provided in this section, if a vacancy occurs on the board, including a vacancy resulting from an increase in the number of directors:

   a. The members with voting rights, if any, may fill the vacancy; or

   b. The remaining members of the board, though less than a quorum, may fill the vacancy.

2. If a vacant office was held by a director elected by a class, chapter, or other organizational unit or by region or other geographic grouping, only members of the class, chapter, unit, or grouping are entitled to vote to fill the vacancy.

3. If a vacant office was held by an appointed director, only the person who appointed the director may fill the vacancy.

4. A vacancy that will occur at a specific later date may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

10-33-39. Board meetings.

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2. If the articles,

bylaws, or board fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.

2. A board meeting may be conducted by:

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

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

3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to subsection 2 of section 10-33-25, at least three days' notice, to all directors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

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

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

10-33-40. Absent directors. If the articles or bylaws so provide, a director may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the director is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as the vote of a director present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting, if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the director has consented or objected.

10-33-41. Quorum. A majority, or a larger or smaller proportion or number provided in the articles or bylaws, of the directors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the directors present may adjourn a meeting from time to time until a quorum is

present. If a quorum is present when a duly called or held meeting is convened, the directors present may continue to transact business until adjournment, even though the withdrawal of a number of directors originally present leaves less than the proportion or number otherwise required for a quorum.

10-33-42. Act of the board. The board shall take action by the affirmative vote of a majority of directors with voting rights present and entitled to vote at a duly held meeting, unless this chapter or the articles or bylaws require the affirmative vote of a larger proportion or number.

10-33-43. Action without meeting.

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

2. The written action is effective when signed by the required number of directors, unless a different effective time is provided in the written action.

3. When written action is permitted to be taken by less than all directors, all directors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A director who does not sign or consent to the written action has no liability for the action or actions.

10-33-44. Committees.

1. A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights or remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.

2. Committee members must be individuals. Unless the articles or bylaws provide for a different membership or manner of appointment, a committee must consist of one or more persons, who need not be directors, appointed by the board.

3. Sections 10-33-39 through 10-33-43 apply to committees and members of committees to the same extent as those sections apply to the board and directors.

4. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any director.

5. The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a director with the standard of conduct set forth in section 10-33-45.

6. Committee members are deemed to be directors for purposes of sections 10-33-45, 10-33-46, and 10-33-84.

10-33-45. Standard of conduct for directors.

1. A director shall discharge the duties of the position of director in good faith, in a manner the director reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a director of the corporation.

2. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

   a. One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

   b. Counsel, public accountants, or other persons as to matters that the director reasonably believes are within the person's professional or expert competence; or

   c. A committee of the board upon which the director does not serve, duly established in accordance with section 10-33-44 as to matters within its designated authority, if the director reasonably believes the committee to merit confidence.

3. Subsection 2 does not apply to a director who has knowledge concerning the matter in question that makes the reliance otherwise permitted by subsection 2 unwarranted.

4. A director who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the directors present is presumed to have assented to the action approved, unless the director:

   a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting, in which case the director may not be considered to be present at the meeting for any purpose of this chapter;

   b. Votes against the action at the meeting; or

   c. Is prohibited from voting on the action:

      (1) By the articles;

      (2) By the bylaws;

      (3) As the result of the decision to approve, ratify, or authorize a transaction pursuant to section 10-33-46; or

      (4) By a conflict of interest policy adopted by the board.

5. A director, regardless of how identified, is not considered to be a trustee with respect to the corporation or with respect to property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.

10-33-46. Director conflicts of interest.

1. A contract or other transaction between a corporation and its director or a member of the family of its director; a director of a related organization, or a member of the family of a director of a related organization; or an organization in or of which the corporation's director, or a member of the family of its director, is a director, officer, or legal representative or has a material financial interest, is not void or voidable because the director or the other individual or organization are parties or because the director is present at the meeting of the members or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if at least one of the requirements of subsection 2 is satisfied.

2. A contract or transaction described in subsection 1 is not void or voidable if:

   a. The contract or transaction was, and the person asserting the validity of the contract or transaction has the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation when it was authorized, approved, or ratified;

   b. The material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by two-thirds of the members entitled to vote, not counting any vote that the interested director might otherwise have, or the unanimous affirmative vote of all members, whether or not entitled to vote;

   c. The material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, not counting any vote that the interested director might otherwise have, and not counting the director in determining the presence of a quorum; or

   d. The contract or transaction is a merger or consolidation described in section 10-33-85.

3. For purposes of this section:

   a. A director does not have a material financial interest in a resolution fixing the compensation of the director or fixing the compensation of another director as a director, officer, employee, or agent of the corporation, even though the first director is also receiving compensation from the corporation;

b. A director has a material financial interest in an organization in which the director, or a member of the family of the director, has a material financial interest; and

c. A "member of the family" of a director is a spouse, parent, child, child of a spouse, brother, sister, or the spouse of any of them.

4. The procedures described under subdivisions a, b, and c of subsection 2 are not required if the contract or other transaction is between related organizations.

10-33-47. Immunity of officers, directors, and trustees. Any person who serves as a director, officer, or trustee of a corporation that is, or would qualify as a nonprofit organization that is described in paragraphs 3, 4, 5, 6, 7, 10, and 19 of section 501(c)(3) of the Internal Revenue Code of 1954, as amended [26 U.S.C. 501(c)(3), (4), (5), (6), (7), (10), and (19)], is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The officer, director, or trustee was acting in good faith and in the scope of that person's official duties as a director, officer, or trustee.

2. The act or omission did not constitute willful misconduct or gross negligence on the part of the officer, director, or trustee.

3. The officer, director, or trustee did not receive or expect to receive reimbursement for or payment of expenses in excess of two thousand dollars per year for expenses actually incurred as a result of providing services as a director, officer, or trustee, and did not receive or expect to receive compensation or anything in lieu of compensation as payment for services provided as a director, officer, or trustee.

10-33-48. Immunity of volunteers.

1. Any person who, on a volunteer basis, provides services or performs duties on behalf of a corporation is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

a. The person who caused the damage or injury was acting in good faith and in the scope of that person's duties as a volunteer for the corporation.

b. The act or omission did not constitute willful misconduct or gross negligence.

2. This section does not grant immunity to any person causing damage as the result of the negligent operation of a motor vehicle.

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

10-33-50. Duties of officers and agents. Unless the articles, bylaws, or a resolution adopted by the board which is not inconsistent with the articles or bylaws, provides otherwise:

1. The president shall:

   a. Have general active management for the business of the corporation;

   b. When present, preside at all meetings of the board and of members;

   c. See that all orders and resolutions of the board are carried into effect;

   d. Sign and deliver in the name of the corporation, any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the corporation, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles or bylaws or by the board to some officer or agent of the corporation;

   e. Maintain records of and, whenever necessary, certify all proceedings of the board and the members; and

   f. Perform other duties prescribed by the board.

2. The vice president, if any, or, if there is more than one, the vice presidents in the order determined by the board, shall:

   a. In the absence or disability of the president, perform the duties and exercise the powers of the president; and

   b. Perform any other duties and shall have such other powers as the board may from time to time prescribe.

3. The treasurer shall:

   a. Keep accurate financial records for the corporation;

   b. Deposit all money, drafts, and checks in the name of and to the credit of the corporation in the banks and depositories designated by the board;

   c. Endorse for deposit all notes, checks, and drafts received by the corporation as ordered by the board, making proper vouchers;

   d. Disburse corporate funds and issue checks and drafts in the name of the corporation, as ordered by the board;

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

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

4. The secretary shall:

a. Attend all meetings of the board, all meetings of the members and, when required, all meetings of standing committees;

b. Record all proceedings of the meetings;

c. Give, or cause to be given, notice of all meetings of the members and meetings of the board; and

d. Perform other duties prescribed by the board.

5. All other officers and agents of the corporation, as between themselves and the corporation, have the authority and shall perform the duties in the management of the corporation as may be provided in the articles or bylaws, or as may be determined by resolution of the board not inconsistent with the articles and bylaws.

10-33-51. Multiple offices. Any number of offices or functions of those offices may be held or exercised by the same individual. If a document must be signed by individuals holding different offices or functions and an individual holds or exercises more than one of those offices or functions, that individual may sign the document in more than one capacity, but only if the document indicates each capacity in which the individual signs.

10-33-52. Officers deemed elected. In the absence of an election or appointment of officers by the board, the individual or individuals exercising the functions of the principal officers of the corporation are deemed to have been elected to those offices.

10-33-53. Contract rights. The election or appointment of an individual as an officer or agent does not, of itself, create contract rights. However, a corporation may enter into a contract with an officer or agent. The resignation or removal of an officer or agent is without prejudice to any contractual rights or obligations. The fact that the contract may be for a term that is longer than the terms of the directors who authorized or approved the contract does not make the contract void or voidable.

10-33-54. Resignation - Removal - Vacancies.

1. An officer may resign by giving written notice to the corporation. The resignation is effective without acceptance when the notice is given to the corporation, unless a later effective date is specified in the notice.

2. Except as otherwise provided in the articles or bylaws, an officer may be removed at any time, with or without cause, by a resolution adopted by the board or by the members, whichever elected or appointed the officer. The removal is without prejudice to any contractual rights of the officer.

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

10-33-55. Delegation. Unless prohibited by the articles or bylaws or by a resolution adopted by the board, an officer elected or appointed by the board, without the approval of the board, may delegate some or all of the duties and

powers of an office to other individuals. An officer who delegates the duties or powers of an office remains subject to the standard of conduct for an officer with respect to the discharge of all duties and powers so delegated.

10-33-56. Standard of conduct for officers.

1. An officer shall discharge the duties of an office in good faith, in a manner the officer reasonably believes to be in the best interests of the corporation, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. An individual exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 10-33-55 is deemed an officer for purposes of this section and sections 10-33-81 and 10-33-84.

2. An officer is not considered to be a trustee with respect to the corporation or with respect to property held or administered by the corporation, including without limit, property that may be subject to restrictions imposed by the donor or transferor of the property.

10-33-57. Members.

1. A corporation may have one or more classes of members or may have no members. In the absence of a provision in its articles or bylaws providing for members, a corporation has no members.

   a. If a corporation has no members, an action for which there is no specific provision of this chapter applicable to a corporation without members and that would otherwise require approval of the members requires only the approval of the board.

   b. A reference in this chapter to a corporation that has no members includes a corporation in which the directors are the only members.

2. A corporation may admit any person as a member.

   a. The articles or bylaws may establish criteria or procedures for admission.

   b. A person may not be admitted as a member without the person's express or implied consent.

      (1) For purposes of this subdivision, consent includes acceptance of membership benefits knowing that the benefits are available only to members, or taking some other affirmative action that confers membership benefits.

      (2) If the articles or bylaws provide that a person who contributes to the corporation is a member, a contribution is consent.

3. Except as provided in its articles or bylaws, a corporation may admit members for no consideration or for consideration as is determined by the board.

4. Members are of one class unless the articles establish, or authorize the bylaws to establish, more than one class. Members are entitled to vote

and have equal rights and preferences except to the extent that the articles or bylaws have fixed or limited the rights and preferences of members or different classes of members or provide for nonvoting members. The articles or bylaws may fix the term of membership.

10-33-58. Membership certificates. A corporation may issue certificates showing membership in the corporation. In lieu of a membership certificate, a corporation may issue preferred or common shares. Shares may be issued upon the terms and conditions that the board considers appropriate.

10-33-59. Transfer of membership.

1. Except as provided in the articles or bylaws, a member of a corporation may not transfer a membership or a right arising from it.

2. Where transfer rights have been provided, a restriction on them is not binding with respect to a member holding a membership issued before the adoption of the restriction unless the restriction is approved by the members and the affected member.

10-33-60. Liability of members - Third parties - Dues, assessments, or fees.

1. A member of a corporation is not, as such, personally liable for the acts, debts, liabilities, or obligations of the corporation.

2. When authority to do so is conferred by the articles or bylaws and subject to any limitations, a corporation may levy dues, assessments, or fees upon its members.

   a. The dues, assessments, or fees may be imposed upon all classes of members alike or differently upon different classes of members.

   b. Members of one or more classes may be exempted.

3. Articles or bylaws may:

   a. Fix the amount of the levy and the method of collection of dues, assessments, or fees;

   b. Authorize the directors to fix the amount from time to time and determine the methods of collection;

   c. Provide for enforcement or collection of dues, assessments, or fees;

   d. Provide for cancellation of membership, on reasonable notice, for nonpayment of dues, assessments, or fees; or

   e. Provide for reinstatement of membership.

10-33-61. Resignation. A member may resign at any time. The resignation of a member does not relieve the member from any obligations the member may have to the corporation for dues, assessments, or fees or charges for goods or services.

10-33-62. Termination.

1. A member may not be expelled or suspended, and a membership may not be terminated or suspended except pursuant to a procedure that is fair and reasonable and is carried out in good faith. This section does not apply to the termination of a membership at the end of a fixed term.

2. A procedure is fair and reasonable when it is fair and reasonable taking into consideration all of the relevant facts and circumstances. In addition, a procedure is fair and reasonable if it provides:

   a. Not less than fifteen days' prior written notice of the expulsion, suspension, or termination, and the reasons for it; and

   b. An opportunity for the member to be heard, orally or in writing, not less than five days before the effective date of the expulsion, suspension, or termination by a person authorized to decide that the proposed expulsion, termination, or suspension not take place.

3. A proceeding challenging an expulsion, suspension, or termination, including a proceeding in which defective notice is alleged, must be commenced within one year after the effective date of the expulsion, suspension, or termination.

4. The expulsion, suspension, or termination of a member does not relieve the member from obligations the member may have to the corporation for dues, assessments, or fees or charges for goods or services.

10-33-63. Purchase of memberships. If authorized in its articles or bylaws, a corporation may buy the membership of a member who resigns or whose membership is terminated for the amount and pursuant to the conditions in the articles or bylaws.

10-33-64. Delegates. A corporation may provide in its articles or bylaws for delegates having some or all the authority of members. The articles or bylaws may set forth provisions relating to:

1. The characteristics, qualifications, rights, limitations, and obligations of the delegates, including their selection and removal;

2. Calling, noticing, holding, and conducting meetings of delegates; and

3. Carrying on corporate activities during and between meetings of delegates.

10-33-65. Annual meetings of voting members.

1. Unless the articles or bylaws provide otherwise, a corporation with voting members shall hold at least an annual meeting of voting members.

2. If an annual meeting of voting members has not been held during the preceding fifteen months, at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, may demand an annual meeting of members by written notice of demand given to the president or the secretary of the corporation. Within thirty days after receipt of the demand, the board shall cause a meeting of members to be called and held at the expense of the corporation on

notice no later than ninety days after receipt of the demand. If the board fails to cause a meeting to be called and held as required by this subsection, the members with voting rights making the demand may call the meeting at the expense of the corporation by giving notice as required by section 10-33-68.

3. An annual meeting of members must be held at the time and place stated in or fixed in accordance with the articles or bylaws. If a place is not stated or if a demand for a meeting is made under subsection 2, the meeting must be held in the county where the principal executive office of the corporation is located.

4. At an annual meeting of members:

   a. There must be an election of successors for directors elected by members and whose terms have expired or whose terms expire at an annual meeting;

   b. There must be a report on the activities and financial condition of the corporation; and

   c. The members shall consider and act upon other matters as may be raised consistent with the notice of meeting requirements.

5. The failure to hold a meeting in accordance with the articles or bylaws does not affect the validity of a corporate action.

10-33-66. Special meetings of voting members.

1. A corporation with voting members shall hold a special meeting of members:

   a. On call of its board or persons authorized to do so by the articles or bylaws; or

   b. If at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, sign, date, and deliver to the president or the secretary one or more written demands for the meeting describing the purpose for which it is to be held.

2. Within thirty days after receipt of a demand for a special meeting from voting members, the board shall cause a special meeting to be called and held on notice no later than ninety days after receipt of the demand. If the board fails to cause a special meeting to be called and held as required by this subsection, a voting member making the demand may call the meeting by giving notice pursuant to section 10-33-68. All necessary expenses of the notice and meeting shall be paid by the corporation.

3. Special meetings of members may be held in or out of this state at the place stated in or fixed in accordance with the articles, bylaws, or by the president or the board. If a special meeting is demanded by the members, the meeting must be held in the county where the principal executive office of the corporation is located.

4. The notice of a special meeting must contain a statement of the purposes of the meeting and may contain other information required by the articles or bylaws or considered necessary or desirable by the board or by another person calling the meeting.

   a. The business transacted at a special meeting is limited to the purposes stated within the notice of the meeting.

   b. Business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the corporation, unless all of the members with voting rights have waived notice of the meeting pursuant to section 10-33-68.

10-33-67. Court-ordered meeting of voting members.

1. The district court of the county where the principal executive office of a corporation is located may order a meeting to be held:

   a. If a meeting was not held within the earlier of six months after the fiscal yearend of the corporation or fifteen months after its last meeting:

      (1) On application of at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less; or

      (2) On application of another person entitled to participate in the annual meeting; or

   b. On application of a voting member who signed a demand for a special meeting valid under section 10-33-66 or a person entitled to call a special meeting if:

      (1) Notice of the special meeting was not given within thirty days after the date the demand was delivered to a corporate officer; or

      (2) The special meeting was not held in accordance with the notice.

2. The court may:

   a. Fix the time and place of the meeting;

   b. Specify a record date for determining members entitled to notice of and to vote at the meeting;

   c. Prescribe the form and content of the meeting notice;

   d. Fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for action on those matters; and

   e. Enter other orders necessary to accomplish the purposes of the meeting.

3. If the court orders a meeting, it may also order the corporation to pay the costs of the member, including reasonable attorneys' fees incurred to obtain the order.

10-33-68. Notice.

1. Except as otherwise provided in this chapter, notice of meetings of members must be given to every voting member as of the record date determined under section 10-33-69 unless:

   a. The meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment, notice is not required unless a new record date for the adjourned meeting is or must be fixed under section 10-33-69; or

   b. Two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings have been mailed to the member by first-class mail and returned undeliverable.

2. An action or meeting that is taken or held without notice under subdivision b of subsection 1 has the same force and effect as if notice was given. If the member delivers a written notice of the member's current address to the corporation, the notice requirement is reinstated.

3. If notice of an adjourned meeting is required under subdivision a of subsection 1, the date for determination of members entitled to notice and entitled to vote at the adjourned meeting must comply with subsection 1 of section 10-33-69, except that if the date of the meeting is set by court order, the court may provide the original date of determination will continue in effect or fix a new date.

4. The notice:

   a. In all cases where a specific minimum notice period has not been fixed by law, must be given at least five days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than fifty days before the date of the meeting;

   b. Must contain the date, time, and place of the meeting;

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

   d. Must contain a statement of the purpose of the meeting, in the case of a special meeting;

   e. Must contain any other information required by the articles or bylaws, this chapter, or considered necessary or desirable by the board; and

   f. May contain any other information considered necessary or desirable by the person calling the meeting.

5. A member may waive notice of a meeting of members.

a. A waiver of notice by a member entitled to notice is effective:

(1) Whether given before, at, or after the meeting; and

(2) Whether given in writing, orally, or by attendance.

b. Attendance by a member at a meeting is a waiver of notice of that meeting, unless the member:

(1) Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or

(2) Objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

10-33-69. Record date - Determining members entitled to notice and vote.

1. The board may fix a date not more than fifty days, or a shorter time period provided in the articles or bylaws, before the date of a meeting of members as the date for the determination of the members entitled to notice of and entitled to vote at the meeting. When a date is fixed, only members with voting rights on that date are entitled to notice of and permitted to vote at that meeting of members.

2. A determination of members entitled to notice and to vote at a membership meeting is effective for an adjournment of the meeting unless the board fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than fifty days after the record date for determining members entitled to notice of the original meeting.

3. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, the court may provide that the original record date for notice and voting continues in effect or the court may fix a new record date for notice and voting.

10-33-70. Members' list for meeting.

1. After fixing a record date for notice of and voting at a meeting, a corporation shall prepare an alphabetical list of the names of its members who are entitled to notice and to vote. The list must show the address and number of votes each member is entitled to vote at the meeting.

2. The list of members must be available for inspection by a member with voting rights for the purpose of communication with other members concerning the meeting, beginning two business days after the meeting notice is given and continuing through the meeting, at the principal executive office of the corporation or at a reasonable place identified in the meeting notice in the city where the meeting will be held.

a. The list also must be available at the meeting.

b. A member, a member's agent, or attorney is entitled on written demand to inspect and to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection and at any time during the meeting or an adjournment.

3. If the corporation refuses to allow a member with voting rights, the member's agent, or attorney to inspect the list of members before or at the meeting, the district court of the county where the principal executive office of the corporation is located, on application of the member, may:

a. Order the inspection or copying at the corporation's expense;

b. Postpone the meeting until the inspection or copying is complete; or

c. Order the corporation to pay the member's costs, including reasonable attorneys' fees, incurred to obtain the order.

4. Unless a written demand to inspect and copy a membership list has been made under subsection 2 before the membership meeting and a corporation improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.

5. A member, agent, or attorney who gains access to a membership list under this section may not use or give to another for use the membership list for any purpose other than a proper purpose. Upon application of the corporation, the district court may issue a protective order or order other relief necessary to enforce this subsection.

10-33-71. Right to vote. Unless the articles or bylaws provide otherwise, each member with voting rights is entitled to one vote on each matter voted on by the members. If a membership stands of record in the names of two or more persons, their acts with respect to voting have the following effect:

1. If only one votes, the act binds all.

2. If more than one votes, the vote must be divided on a pro rata basis.

10-33-72. Act of the members.

1. Unless this chapter or the articles or bylaws require a greater vote or voting by class, the members shall take action by the affirmative vote of the greater of:

a. A majority of the members with voting rights present and entitled to vote on that item of business; or

b. A majority of the voting power of the minimum number of members with voting rights that would constitute a quorum for the transaction of business at the meeting.

If the articles or bylaws require a larger proportion or number than is required by this chapter for a particular action, the articles or bylaws control.

2. Unless otherwise provided in the articles or bylaws, members may take action at a meeting:

   a. By voice or ballot.

   b. By action without a meeting pursuant to section 10-33-73.

   c. By written ballot pursuant to section 10-33-74.

   d. By electronic communication pursuant to section 10-33-75.

10-33-73. Action without a meeting. An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed 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 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.

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 written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. 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.

4. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the certificate must indicate that the action was taken under this section.

10-33-74. Action by written ballot.

1. Except as provided in subsection 5 and unless prohibited or limited by the articles or bylaws, an action that may be taken at a regular or special meeting of members may be taken without a meeting if the corporation mails or delivers a written ballot to every member entitled to vote on the matter.

2. A written ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.

3. Approval by written ballot under this section is valid only if:

   a. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and

   b. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

4. Solicitations for votes by written ballot must:

a. Indicate the number of responses needed to meet the quorum requirements;

b. State the percentage of approvals necessary to approve each matter other than election of directors; and

c. Specify the time by which a ballot must be received by the corporation in order to be counted.

5. Except as otherwise provided in the articles or bylaws, a written ballot may not be revoked.

10-33-75. Electronic communications.

1. A conference among the members by any means of communication through which the participants may simultaneously hear each other during the conference constitutes a regular or special meeting of the members:

a. If the same notice is given of the conference as would be required for a meeting; and

b. If the number of members participating in the conference would be sufficient to constitute a quorum at a meeting.

Participation in a conference by this means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-33-77 are met.

2. A member may participate in a regular or special meeting of members not described in subsection 1 by any means of communication through which the member, other participants, and all persons physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-33-77 are met.

3. Waiver of notice of a meeting by means of communication described in subsections 1 and 2 may be given in the manner provided in subsection 5 of section 10-33-68. Participation in a meeting by means of communications described in subsections 1 and 2 is a waiver of notice of that meeting, except where the member:

a. Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or

b. Objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

10-33-76. Quorum.

1. Unless otherwise provided by the articles or bylaws, a quorum for a meeting of members is ten percent of the members entitled to vote at the meeting.

2. Except as provided in subdivision b, a quorum is necessary for the transaction of business at a meeting of members.

   a. If a quorum is not present, a meeting may be adjourned from time to time for that reason.

   b. If a quorum has been present at a meeting and members have withdrawn from the meeting so that less than a quorum remains, the members still present may continue to transact business until adjournment.

10-33-77. Proxies.

1. If the articles or bylaws permit proxy voting, a member may appoint a proxy to vote or otherwise act for the member by signing an appointment form either personally or by an attorney-in-fact.

2. An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a different period is expressly provided in the appointment. However, a proxy is not valid for more than three years from its date of execution.

3. An appointment of a proxy is revocable by the member. Appointment of a proxy is revoked by the person appointing the proxy by attending a meeting and voting in person, or signing and delivering to the officer or agent authorized to tabulate proxy votes either a writing stating that the appointment of the proxy is revoked, or a later appointment. Revocation in either manner revokes all prior proxy appointments and is effective when filed with an officer of the corporation.

4. The death or incapacity of the member appointing a proxy does not affect the right of the corporation to accept the authority of the proxy unless notice of the death or incapacity is received by an officer authorized to tabulate votes before the proxy exercises authority under the appointment.

5. Subject to section 10-33-78 and an express limitation on the authority of the proxy appearing on the face of the appointment form, a corporation is entitled to accept the vote or other action of the proxy as that of the member making the appointment.

6. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

7. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member, any one of them may vote on each item of business in accordance with specific instructions contained in the appointment, but if no specific instructions are contained in the appointment with respect to voting on a particular item of business, a majority of the proxies have the authority conferred by the instrument. If the proxies are equally divided, they share the vote equally.

10-33-78. Corporation's acceptance of member's act.

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the record name of a member, the corporation if acting in good faith may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.

2. Unless the articles or bylaws provide otherwise, if the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the record name of a member, the corporation if acting in good faith may accept the vote, consent waiver, or proxy appointment and give it effect as the act of the member if:

   a. The member is an organization and the name signed purports to be that of an officer, manager, or agent of the organization;

   b. The name signed purports to be that of an administrator, guardian, or conservator representing the member and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

   c. The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

   d. The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the member and if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; or

   e. Two or more persons hold the membership as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.

3. The corporation may reject a vote, consent, waiver, or proxy appointment if the officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.

4. The corporation or its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section is not liable in damages to the member for the consequences of the acceptance or rejection.

5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

10-33-79. Voting agreements.

1. To the extent permitted in the articles or bylaws, two or more members may provide for how they will vote by signing an agreement for that purpose. An agreement may be valid for a period of up to ten years. The agreement must have a reasonable purpose consistent with the purposes of the corporation.

2. A voting agreement created under this section is specifically enforceable.

3. A voting agreement is not effective until it is filed with the corporation.

10-33-80. Books and records - Financial statement.

1. A corporation shall keep at its principal executive office correct and complete copies of its articles and bylaws, accounting records, voting agreements, and minutes of meetings of members, board of directors, and committees having any of the authority of the board of directors for the last six years.

2. A member or a director, or the agent or attorney of a member or a director, may inspect all documents referred to in subsection 1 or 3 for any proper purpose at any reasonable time. A proper purpose is one reasonably related to the interest of the person as a member or director of the corporation.

3. Upon request, a corporation shall give the member or the director a statement showing the financial result of all operations and transactions affecting income and surplus during its last annual accounting period and a balance sheet containing a summary of its assets and liabilities as of the closing date of the accounting period.

4. A member or director who has gained access under this section to any corporate record may not use or furnish to another for use the corporate record or a portion of the contents for any purpose other than a proper purpose. Upon application of the corporation, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subdivision.

5. The corporation may charge the requesting party a reasonable fee to cover the expenses of providing copies of documents under this section.

6. The records maintained by a corporation may use any information storage technique, even though the technique makes them illegible visually, if the records can be converted accurately and within a reasonable time into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert any of the records referred to in subsection 1 or 3 upon the request of a person entitled to inspect them with the expense of the conversion being borne by the person who bears the expense of copying under subsection 5. A copy of the conversion is admissible in evidence, and must be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

7. A member or a director who is wrongfully denied access to or copies of documents under this section may bring an action for injunctive relief, damages, and costs and reasonable attorneys' fees.

10-33-81. Equitable remedies. If a corporation or an officer or director of the corporation violates this chapter, a court in this state, in an action brought by at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, or by the attorney general, may grant equitable relief it considers just and reasonable in the circumstances and award expenses, including attorneys' fees and disbursements, to the members.

10-33-82. Loans - Guarantees - Suretyship.

1. Except as provided in subsection 2, a corporation may lend money to, guarantee or pledge its assets as security for an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved by the board and:

   a. Is in the usual and regular course of activities of the corporation;

   b. Is with, or for the benefit of:

      (1) A related organization;

      (2) An organization in which the corporation has a financial interest;

      (3) A person or organization with whom the corporation has a relationship in the usual and regular course of its activities; or

      (4) An organization to which the corporation has the power to make donations; or

   c. Has been approved by:

      (1) Two-thirds of the members with voting rights; or

      (2) If there is no member with voting rights, by two-thirds of the board.

2. A corporation may not lend money to or guarantee the obligation of a director or officer of the corporation or a related organization, or of the spouse, parents, children and spouses of children, brothers and sisters or spouses of brothers and sisters of the director or officer.

   a. If a loan or guarantee is made in violation of this section, the borrower's liability on the loan is not affected.

   b. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, or who vote for or assent to the guarantee of the obligation of a director or officer of the corporation, and any officer participating in the making of such loan or guarantee shall be jointly and severally liable to the corporation for the amount of the loan until its repayment.

   c. This subsection does not prohibit an advance of money for expenses authorized by section 10-33-83.

3. A loan, guaranty, surety contract, or other financial assistance under subsection 1 or 2 may be with or without interest and may be unsecured or secured.

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

10-33-83. Advances. A corporation, without a vote of the directors or its members, may advance money to its directors, officers, employees, or agents to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

10-33-84. Indemnification.

1. For purposes of this section:

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

   b. "Official capacity" means:

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

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

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

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

   d. "Special legal counsel" means counsel who has not represented the corporation or a related organization, or a director, officer, member of a committee of the board, or employee whose indemnification is in issue.

2. Subject to subsection 5, a corporation shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines including excise taxes assessed against the person with respect to an

employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

a. Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines including excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorneys' fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;

b. Acted in good faith;

c. Received no improper personal benefit and section 10-33-45, if applicable, has been satisfied;

d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

e. In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the corporation, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the corporation. If the person's acts or omissions complained of in the proceeding relate to conduct as a director, governor, officer, manager, trustee, employee, or agent of an employee benefit plan, the conduct is not considered to be opposed to the best interests of the corporation if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

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

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

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

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

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

5. The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2, 3, and 4 including monetary limits on indemnification or advances for expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring prior to the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.

6. This section does not require, or limit the ability of, a corporation to reimburse expenses, including attorneys' fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

7. All determinations whether indemnification of a person is required because the criteria provided in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:

a. By the board by a majority of a quorum, if the directors who are at the time parties to the proceeding are not counted for determining either a majority or the presence of a quorum;

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

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

d. If a determination is not made under subdivisions a, b, and c, by the members with voting rights, other than members who are a party to the proceeding; or

e. If an adverse determination is made under subdivisions a through d, or under subsection 8, or if no determination is made under subdivisions a through d, or under subsection 8, within sixty days after:

(1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or

(2) A request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

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

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

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

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

11. Nothing in this section may be construed to limit the power of the corporation to indemnify other persons by contract or otherwise.

10-33-85. Merger, consolidation, or transfer.

1. Two or more corporations may merge or consolidate, resulting in a single corporation subject to this chapter. A merger or consolidation must be made as provided in sections 10-33-86 through 10-33-92.

2. A corporation may sell, lease, transfer, or dispose of all or substantially all of its property and assets under section 10-33-94.

3. If applicable, a corporation shall comply with section 10-33-122 before it may merge or consolidate or transfer all or substantially all of its assets.

10-33-86. Plan of merger or consolidation. A plan of merger or consolidation must contain:

1. The names of the corporations proposing to merge or consolidate;

2. The name of the surviving or new corporation;

3. The terms and conditions of the proposed merger or consolidation;

4. In the case of a merger, the manner and basis of converting the memberships of the constituent corporations into memberships of the surviving corporation or of any other corporation;

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

6. In the case of a consolidation, the provisions required by section 10-33-06 to be set out in the articles of the new corporation; and

7. Other provisions with respect to the proposed merger or consolidation which are considered necessary or desirable.

10-33-87. Plan approval.

1. A plan of merger or consolidation must be approved and adopted by each constituent corporation as provided in this section.

2. When a constituent corporation has members with voting rights with respect to mergers and consolidations, the board of directors of the corporation shall adopt a resolution by a majority vote of all directors approving a proposed plan of merger or consolidation and directing that the plan be submitted to a vote at a meeting of the members with voting rights. Notice of the meeting must be given to the members, accompanied by a copy or summary of the proposed plan. Unless the articles or bylaws require a greater vote, the plan of merger or consolidation is adopted upon receiving the affirmative vote of a majority of the members who vote upon the proposed plan.

3. When a constituent corporation does not have a member with voting rights and unless the articles or bylaws require a greater vote, a plan of merger or consolidation is adopted at a meeting of the board of directors of the corporation upon receiving the affirmative votes of a majority of all directors. Notice of the meeting must be given to all directors accompanied by a copy of the proposed plan of merger or consolidation.

10-33-88. Articles of merger or consolidation - Certificate.

1. Upon receiving the approval required by section 10-33-87 and after compliance with section 10-33-122, if applicable, articles of merger or consolidation must be prepared that contain:

   a. The plan of merger or consolidation;

b. A statement that the plan has been approved by each corporation under this chapter; and

c. A statement that the notice of the attorney general required by section 10-33-122 has been given and the waiting period has expired or has been waived by the attorney general or a statement that section 10-33-122 is not applicable.

2. The articles of merger or consolidation must be signed on behalf of each constituent corporation and filed with the secretary of state.

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

10-33-89. Abandonment.

1. After a plan of merger or consolidation has been approved by each constituent corporation under section 10-33-87 and before the effective date of the plan, it may be abandoned:

a. If each constituent corporation has approved the abandonment at a meeting:

(1) By a majority of the members with voting rights voting on the issue; or

(2) If the corporation does not have voting members, by a majority of all directors; or

b. If the plan itself provides for abandonment and the conditions for abandonment in the plan are met.

2. A plan of merger or consolidation may be abandoned after it has been approved by each constituent corporation and before the effective date of the plan, by a resolution approved by a majority of all directors of the constituent corporation abandoning the plan of merger or consolidation, subject to the contract rights of any other person under the plan.

3. If articles of merger or consolidation have been filed with the secretary of state, but have not yet become effective, articles of abandonment that comply with subsection 4 must be filed with the secretary of state by:

a. The constituent corporations, in the case of abandonment under subdivision a of subsection 1;

b. The constituent corporations or any one of them, in the case of abandonment under subdivision b of subsection 1; or

c. The abandoning corporation in the case of abandonment under subsection 2.

4. The articles of abandonment must contain:

a. The names of the constituent corporations;

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

c. If the plan is abandoned under subsection 2, the text of the resolution approved by the directors abandoning the plan.

10-33-90. Effective date of merger or consolidation - Effect.

1. A merger or consolidation is effective when the articles of merger or consolidation are filed with the secretary of state or on a later date named in the articles.

2. When a merger or consolidation becomes effective:

a. The constituent corporations become a single corporation, which, in case of merger, is a surviving corporation or, in case of consolidation, is a new corporation.

b. Subject to subdivision c and section 10-33-91, and except for the surviving corporation, the separate existence of the constituent corporations ends.

c. When the agreement of merger or consolidation expressly provides for the continuance of the corporate existence of a constituent corporation and expressly declares the purpose for the continuance, the corporate existence of the constituent corporation continues in the single corporation for the purpose declared in the agreement.

d. The single corporation has the rights, privileges, immunities, and powers, and is subject to the duties and liabilities, of a corporation formed under this chapter.

e. The single corporation has the rights, privileges, immunities, powers, and franchises, public and private, of each constituent corporation.

f. All real or personal property, debts, including debts arising from a subscription for membership, and interests belonging to each constituent corporation are transferred to the single corporation without further act or deed.

g. Interest in real estate possessed by a constituent corporation does not revert to the grantor, or otherwise, nor is it in any way impaired by reason of the merger or consolidation; and the personal property of a constituent corporation does not revert by reason of the merger or consolidation.

h. Except where the will or other instrument provides otherwise, and subject to section 10-33-95, a devise, bequest, gift, or grant contained in a will or other instrument, in trust or otherwise, made before or after the merger or consolidation has become effective, to or for any of the constituent corporations, inures to the single corporation.

i. Debts, liabilities, and obligations of each constituent corporation become the debts, liabilities, and obligations of the single

corporation, just as if the debts, liabilities, and obligations had been incurred or contracted by the single corporation.

j. Existing claims or a pending action or proceeding by or against a constituent corporation may be prosecuted to judgment as though the merger or consolidation had not been effected, or the single corporation may be substituted for the constituent corporation.

k. The liabilities of the members, officers, directors, or similar groups or persons, however denominated, of a constituent corporation are not affected by the merger or consolidation of a constituent corporation.

l. The rights of creditors or liens upon the property of a constituent corporation are not impaired by the merger or consolidation, but the liens are limited to the property upon which they were liens immediately before the merger or consolidation.

m. The articles of the surviving corporation are considered to be amended to the extent that changes in its articles are contained in a plan of merger.

n. In the case of a consolidation, the plan of consolidation constitutes the articles of incorporation of the new corporation.

3. a. For purposes of this subsection, "fiduciary capacity" means the capacity of a trustee, executor, administrator, personal representative, guardian, conservator, receiver, escrow agent, agent for the investment of money, attorney-in-fact, or a similar capacity.

b. Except where the will, declaration of trust, or other instrument provides otherwise, the single corporation is, without further act or deed, the successor of the constituent corporation in the fiduciary capacity in which a constituent corporation was acting at the time of the merger or consolidation and is liable to any beneficiary as fully as if the constituent corporation had continued its separate corporate existence.

c. If a constituent corporation is nominated and appointed, or has been nominated and appointed, in a fiduciary capacity in a will, declaration of trust, or other instrument, order, or judgment before or after the merger or consolidation, then even if the will or other instrument, order, or judgment does not become operative or effective until after the merger or consolidation becomes effective, every fiduciary capacity and the rights, powers, privileges, duties, discretions, and responsibilities provided for in the nomination or appointment fully vest in and are to be exercised by the single corporation, whether there are one or more successive mergers or consolidations.

10-33-91. Continuance of corporate authority. When an act or instrument 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 of each constituent corporation shall do the act or execute and deliver the instrument and for this purpose, the existence of the constituent corporations and the authority of those persons is continued.

10-33-92. Merger or consolidation with foreign corporation.

1. A corporation may merge or consolidate with a foreign corporation by following the procedures set forth in this section, if the merger or consolidation is permitted by the laws of the state under which the foreign corporation is incorporated.

2. Each corporation shall comply with sections 10-33-85 through 10-33-91 with respect to the merger or consolidation of corporations and each foreign corporation shall comply with the laws under which it was incorporated or by which it is governed.

3. If the single corporation will be incorporated under this chapter, it shall comply with this chapter.

4. If the single corporation will be a foreign corporation and will conduct activities in this state, 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.

10-33-93. Merger of corporation doing business as a hospital with a corporation organized for profit - Retention of property tax status. Notwithstanding any provision of chapter 10-19.1 and this chapter, a corporation doing business as a hospital may merge with a corporation incorporated for profit and form a corporation incorporated under this chapter.

1. Notwithstanding chapter 57-02 or any other provision of law, any interest in property of corporations merging under this section retains the same property tax status after the merger as it had in the taxable year before the merger.

2. Notwithstanding chapter 57-39.2 or 57-40.2 or any other provision of law, the sale, purchase, or use of any property by a corporation merging under this section retains the same status under the sales and use tax laws after the merger as it would have had before the merger.

10-33-94. Transfer of assets - When permitted.

1. Unless otherwise provided in its articles or bylaws, a corporation, by affirmative vote of the board, may sell, lease, transfer, or dispose of all or substantially all of its property and assets in the usual and regular course of its activities and, subject to subsection 1 of section 10-33-82, 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 activities, 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 considers expedient, in which case no member approval is required.

2. A corporation, by affirmative vote of the board, may sell, lease, transfer, or dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its activities, 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 considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the majority of the members with voting rights.

   a. If there are not members with voting rights, member approval is not required.

   b. Notice of the meeting must be given to the members with voting rights.

   c. The notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.

3. If applicable, a corporation shall comply with section 10-33-122 before transferring all or substantially all of its assets under this section.

4. 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.

5. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state.

10-33-95. Certain assets not to be diverted. When a corporation dissolves, merges or consolidates, transfers its assets, or grants a mortgage or other security interest in its assets, assets of the corporation or a constituent corporation, and assets subsequently received by a single corporation after a merger or consolidation, may not be diverted from the uses and purposes for which the assets have been received and held, or from the uses and purposes expressed or intended by the original donor.

10-33-96. Methods of dissolution.

1. Subject to section 10-33-122, a corporation may be dissolved:

   a. By the incorporators under section 10-33-97;

   b. By the board and members with voting rights under sections 10-33-98 through 10-33-103; or

   c. By order of a court under sections 10-33-106 through 10-33-113.

2. A corporation also may be dissolved by the secretary of state under section 10-33-139.

10-33-97. Voluntary dissolution by incorporators.

1. If the first board has not been named in the articles, designated or appointed pursuant to the articles, or elected under section 10-33-25, a corporation may be dissolved by the incorporators as provided in this section.

2. A majority of the incorporators shall sign articles of dissolution containing:

   a. The name of the corporation;

   b. The date of incorporation;

   c. A statement that the first board has not been:

      (1) Named in the articles;

      (2) Designated or appointed pursuant to the articles; or

      (3) Elected at an organizational meeting;

   d. A statement that no debts remain unpaid; and

   e. A statement:

      (1) That notice to the attorney general required by section 10-33-122 has been given and the waiting period:

         (a) Has expired; or

         (b) Has been waived by the attorney general; or

      (2) That section 10-33-122 is not applicable.

3. The articles of dissolution must be filed with the secretary of state together with the fees provided in section 10-33-140.

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

5. The secretary of state shall issue to the dissolved corporation a certificate of dissolution that contains:

   a. The name of the corporation;

   b. The date the articles of dissolution were filed with the secretary of state; and

   c. A statement that the corporation is dissolved.

10-33-98. Voluntary dissolution by board and members with voting rights.

1. A corporation may be dissolved by the board and members with voting rights as provided in this section.

2. The board shall adopt a resolution proposing dissolution of the corporation by the affirmative vote of a majority of all directors.

a. The resolution must include a plan of dissolution that states to whom the assets owned or held by the corporation will be distributed after creditors are paid.

b. The plan must comply with the requirements of section 10-33-105.

c. If the board will have discretion in distributing assets, the plan must state that the assets will be distributed to persons the board subsequently identifies.

d. If there is a member with voting rights, the resolution and plan of dissolution must be submitted to the members under subsection 3.

3. With respect to approval by members with voting rights:

a. Written notice:

(1) Must be given to each member with voting rights, within the time and in the manner provided in section 10-33-68 for notice of meetings of members; and

(2) Whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the corporation.

b. The proposed dissolution must be submitted for approval at a meeting of members. If the proposed dissolution is approved by the members, the dissolution must be started.

10-33-99. Filing notice of intent to dissolve - Effect.

1. If dissolution of the corporation is approved under section 10-33-98, the corporation shall:

a. File with the secretary of state, together with the fees provided in section 10-33-140, a notice of intent to dissolve which must contain:

(1) The name of the corporation;

(2) The date and place of the meeting at which the resolution was approved by the board under subsection 2 of section 10-33-98, and by the members under subsection 3 of section 10-33-98, if applicable; and

(3) A statement that the requisite approval of the directors and members was received.

b. If applicable, notify the attorney general under section 10-33-122.

2. When the notice of intent to dissolve has been filed with the secretary of state and subject to section 10-33-104, the corporation may not carry on its activities, except to the extent necessary for the winding up of the corporation.

a. The board and members with voting rights have the right to revoke the dissolution proceedings under section 10-33-104.

b. The members with voting rights have the right to remove directors or fill vacancies on the board.

c. The corporate existence continues to the extent necessary to wind up the affairs of the corporation until the dissolution proceedings are revoked or articles of dissolution are filed with the secretary of state.

3. The filing with the secretary of state of a notice of intent to dissolve does not affect a remedy in favor of the corporation or a remedy against it or its directors, officers, or members in those capacities, except as provided in section 10-33-115.

10-33-100. Procedure in dissolution.

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible to collect or make provision for the collection of debts owing to the corporation and to pay or make provision for the payment of debts, obligations, and liabilities of the corporation according to their priorities.

2. Notwithstanding section 10-33-94, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the members, subject to sections 10-33-95 and 10-33-122.

3. Property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation must be distributed under section 10-33-105.

10-33-101. Dissolution procedure for corporations that give notice to creditors and claimants. When a notice of intent to dissolve has been filed with the secretary of state and the attorney general, if applicable, the corporation may give notice of the filing to each creditor of and claimant against the corporation known or unknown, present or future, and contingent or noncontingent.

1. If notice to creditors and claimants is given, it must be given:

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

b. By giving written notice to known creditors and claimants pursuant to subsection 18 of section 10-33-01.

2. a. The notice to creditors and claimants must contain:

(1) A statement that the corporation is in the process of dissolving;

(2) A statement that the corporation has filed with the secretary of state a notice of intent to dissolve;

(3) The date of filing the notice of intent to dissolve;

(4) The address of the office to which written claims against the corporation must be presented; and

(5) The date by which all the claims must be received, which must be the later of:

(a) Ninety days after published notice; or

(b) With respect to a particular known creditor or claimant, ninety days after the date on which written notice was given to that creditor or claimant.

b. Published notice is deemed given on the date of first publication for the purpose of determining this date.

3. With respect to claims against a corporation that gives notice to creditors and claimants:

a. The corporation has thirty days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is deemed accepted.

b. A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has:

(1) Sixty days from the date of rejection;

(2) One hundred eighty days from the date the corporation filed with the secretary of state the notice of intent to dissolve; or

(3) Ninety days after the date on which notice was given to the creditor or claimant, whichever is longer, to pursue any other remedies with respect to the claim.

c. A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is barred from suing on that claim or otherwise realizing upon it or enforcing it, except as provided in section 10-33-115.

d. A creditor or claimant whose claim is rejected by the corporation under subdivision b is barred from suing on that claim or otherwise realizing upon or enforcing it, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in subdivision b.

4. Articles of dissolution for a corporation dissolving under this section that has given notice to creditors and claimants must be filed with the secretary of state after compliance with section 10-33-122, if applicable, and:

a. The ninety-day period in subdivision a of subsection 2 has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or

b. The longest of the periods described in subdivision b of subsection 3 has expired and there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3.

5. The articles of dissolution for a corporation that has given notice to creditors and claimants under this section must state:

a. The last date on which the notice was given and:

(1) That the payment of all creditors and claimants filing a claim within the ninety-day period in subdivision a of subsection 2 has been made or provided for; or

(2) The date on which the longest of the periods described in subdivision b of subsection 3 expired;

b. That the remaining property, assets, and claims of the corporation have been distributed in accordance with section 10-33-105, or that adequate provision has been made for that distribution; and

c. That there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

10-33-102. Dissolution procedure for corporations that do not give notice to creditors and claimants. When a notice of intent to dissolve has been filed with the secretary of state and the attorney general, if applicable, and the corporation has elected not to give notice to creditors and claimants in the manner provided in section 10-33-101:

1. Articles of dissolution for a corporation that has not given notice to creditors and claimants in the manner provided in section 10-33-101:

a. Must be filed with the secretary of state after compliance with section 10-33-122, if applicable, and:

(1) The payment of claims of all known creditors and claimants has been made or provided for; or

(2) At least two years have elapsed from the date of filing the notice of intent to dissolve.

b. Must state:

(1) If the articles of dissolution are being filed pursuant to paragraph 1 of subdivision a of subsection 1, that all known debts, obligations, and liabilities of the corporation have been

paid and discharged or that adequate provision has been made for payment or discharge;

(2) That the remaining property, assets, and claims of the corporation have been distributed in accordance with section 10-33-105, or that adequate provision has been made for that distribution; and

(3) There are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

2. With respect to claims against corporations that do not give notice to creditors and claimants under 10-33-101:

a. If a corporation has paid or provided for all known creditors or claimants at the time articles of dissolution are filed, a creditor or claimant who does not file a claim or pursue a remedy, in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.

b. If the corporation has not paid or provided for all known creditors and claimants at the time articles of dissolution are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 10-33-115.

10-33-103. Filing of articles of dissolution - Effective date of dissolution - Certificate of dissolution.

1. An original of the articles of dissolution must be filed with the secretary of state, together with the fees provided in section 10-33-140. If the secretary of state finds that the articles of dissolution conform the secretary of state shall issue a certificate of dissolution.

2. When the certificate of dissolution has been issued by the secretary of state, the corporation is dissolved.

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

a. The name of the corporation;

b. The date the articles of dissolution were filed with the secretary of state; and

c. A statement that the corporation was dissolved.

10-33-104. Revocation of dissolution proceedings.

1. As provided in this section, dissolution proceedings begun under section 10-33-98 may be revoked before the articles of dissolution are filed.

2. The board may adopt a resolution revoking the proposed dissolution by the affirmative vote of a majority of all directors. If there are members with voting rights, the resolution must be submitted to the members under subsection 3.

3. Written notice must be given to the members with voting rights within the time and in the manner provided in section 10-33-68 for notice of meetings of members and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution proceedings.

   a. The proposed revocation must be submitted to the members at the meeting.

   b. If the proposed revocation is approved by the members with voting rights, the dissolution proceedings are revoked.

4. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state.

   a. After the notice is filed, the corporation may resume business.

   b. If notice to the attorney general has been given under section 10-33-122, the notice of revocation also must be given to the attorney general on or before the time that it is filed with the secretary of state.

10-33-105. Distribution of assets.

1. In performing the duties under section 10-33-100, the board, or the officers acting under the direction of the board, shall distribute the assets of the corporation in the following order of priority:

   a. Distribution of assets received and held for a special use or purpose under subsection 2;

   b. Payment of costs and expenses of the dissolution proceedings, including attorney fees and disbursements;

   c. Payment of debts, obligations, and liabilities of the corporation;

   d. Distribution of assets pursuant to articles or bylaws of the dissolving corporation or the rules or canons of another organization under subsection 3; and

   e. Distribution of remaining assets under subsection 4.

2. Assets of the corporation may not be diverted from the uses and purposes for which the assets have been received and held, or from the uses and purposes expressed or intended by the original donor.

3. Where the articles or bylaws of the dissolving corporation, or the rules or canons of another organization by which the dissolving corporation is

bound, provide for a particular distribution of the assets of the dissolving corporation, the assets must be distributed accordingly.

4. The distribution of assets held for or devoted to a charitable or public use or purpose is subject to section 59-02-22.

10-33-106. Supervised voluntary dissolution. After the notice of intent to dissolve has been filed with the secretary of state and before a certificate of dissolution has been issued, the corporation, the attorney general, or, for good cause, a creditor or at least fifty members with voting rights or ten percent of the members with voting rights, whichever is less, may apply to a court within the county in which the principal executive office of the corporation is located to have the dissolution conducted or continued under the supervision of the court under sections 10-33-107 through 10-33-113.

10-33-107. Involuntary dissolution.

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 business:

   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 misapplied or wasted; or

      (5) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-33-118.

   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; or

(b) After changing its registered office to file with the secretary of state a statement of the change;

(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.

2. In determining whether to order equitable relief or dissolution under this section, the court shall consider the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation is solvent.

3. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision b, c, or d of subsection 1. Lesser relief may be ordered if it would be appropriate under the facts and circumstances of the case.

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

5. Proceedings under this section must be brought in a court within the county in which the principal executive office of the corporation is located. It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

10-33-108. Procedure in involuntary or supervised voluntary dissolution.

1. In dissolution proceedings the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be held.

2. When a proceeding involving a corporation described in subsection 1 of section 10-33-122 is begun, the court shall order that a copy of the petition be served on the attorney general. In all proceedings under this section, the attorney general has a right to participate as a party.

3. After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the corporate assets. A receiver has authority, subject to the order of the court, to continue the business of the corporation and to sell, lease, transfer, or otherwise dispose of all or any of the property and assets of the corporation either at public or private sale.

4. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:

a. The costs and expenses of the proceedings, including attorneys' fees and disbursements;

b. Debts, taxes, and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;

c. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workers' compensation insurance, as provided by law, at the time the injury was sustained;

d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and

e. Other claims duly proved and allowed.

5. After payment of the expenses of receivership and claims of creditors duly proved, the remaining assets, if any, must be distributed in accordance with section 10-33-105.

10-33-109. Qualifications of receivers - Powers.

1. A receiver must be an individual or organization authorized to transact business or conduct activities in this state. A receiver shall give bond as directed by the court with the sureties required by the court.

2. A receiver may sue and defend in all courts as receiver of the corporation. The court appointing the receiver has exclusive jurisdiction of the corporation and its property.

10-33-110. Filing claims in proceedings to dissolve.

1. In proceedings referred to in section 10-33-107 to dissolve a corporation, the court may require all creditors and claimants of the corporation to file their claims under oath with the clerk of court or with the receiver in a form prescribed by the court.

2. If the court requires the filing of claims, it shall fix a date, which may not be less than one hundred twenty days from the date of the order, as the last day for the filing of claims, and shall prescribe the notice of the fixed date that must be given to creditors and claimants. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the corporation.

10-33-111. Discontinuance of dissolution proceedings. The involuntary or supervised voluntary dissolution of a corporation must be discontinued at any time during the dissolution proceedings when it is established that cause for dissolution no longer exists. When this is established, the court shall dismiss the proceedings and direct the receiver, if any, to redeliver to the corporation all its remaining property and assets.

10-33-112. Decree of dissolution.

1. In an involuntary or supervised voluntary dissolution, the court shall provide for the discharge of obligations and the distribution of the assets as set forth in subsection 4 of section 10-33-108, and shall enter a decree dissolving the corporation.

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

10-33-113. Filing decree. After the court enters a decree dissolving a corporation, the clerk of court shall cause a certified copy of the decree to be filed with the secretary of state. The secretary of state may not charge a fee for filing the decree.

10-33-114. Deposit with administrator of abandoned property of amount due certain persons - Appropriation. Upon dissolution of a corporation, the portion of the assets distributable to a person who is unknown or cannot be found must be reduced to money and deposited with the administrator of abandoned property for disposition pursuant to chapter 47-30.1. The amount deposited is appropriated to the administrator of abandoned property and must be paid over to the person or a legal representative, upon proof satisfactory to the administrator of abandoned property of a right to payment.

10-33-115. Claims barred - Exceptions.

1. A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within the time provided in section 10-33-101, 10-33-102, 10-33-106, 10-33-107, or 10-33-110, or has not begun a legal, administrative, or arbitration proceeding before the beginning of the dissolution proceedings, and a person claiming through or under the creditor or claimant, is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.

2. At any time within one year after articles of dissolution have been filed with the secretary of state under subsection 4 of section 10-33-101 or subsection 1 of section 10-33-102 or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim against the corporation to the extent of undistributed assets.

3. All known contractual debts, obligations, and liabilities incurred during dissolution proceedings must be paid by the corporation before the distribution of assets under section 10-33-105. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy against the officers or directors of the corporation before the expiration of the applicable statute of limitations. This subsection does not apply to dissolution under the supervision or order of a court.

10-33-116. Right to sue or defend after dissolution. After a corporation has been dissolved, any of its former officers, directors, or members with voting rights may assert or defend, in the name of the corporation, any claim by or against the corporation.

10-33-117. Omitted assets. Title to assets remaining after payment of all debts, obligations, or liabilities and after all distributions pursuant to section 10-33-105 may be transferred by a court in this state.

10-33-118. Extension after duration expired.

1. A corporation whose period of duration as provided in the articles has expired and which has continued to operate despite that expiration may reinstate its articles and extend the period of corporate duration, including making the duration perpetual, within one year after the date of expiration by filing an amendment to the articles as set forth in this section.

2. An amendment to the articles must be approved by the board and must include:

   a. The date on which the period of duration expired under the articles;

   b. A statement that the period of duration will be perpetual or, if some shorter period is to be provided, the date to which the period of duration is extended;

   c. A statement that the corporation has been in continuous operation since before the date of expiration of its original period of duration; and

   d. A name change if the name of the corporation has been adopted for use or reserved by another person.

3. If the corporation has a member with voting rights, the amendment to the articles must be presented, after notice, to a meeting of the members with voting rights. The amendment is adopted when approved by the members with voting rights pursuant to section 10-33-15.

4. Articles of amendment, together with any fees and delinquent filings and reports, conforming to section 10-33-16 must be filed with the secretary of state.

10-33-119. Effect of extension. Filing with the secretary of state of articles of amendment extending the period of duration of a corporation:

1. Relates back to the date of expiration of the original period of duration of the corporation as provided in the articles;

2. Validates contracts or other acts within the authority of the articles, and the corporation is liable for those contracts or acts; and

3. Restores to the corporation all the assets and rights of the corporation to the extent they were held by the corporation before expiration of its original period of duration, except those sold or otherwise distributed after that time.

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

1. The registered agent must be an agent of the corporation and any nonresident director upon whom any process, notice, or demand

required or permitted by law to be served on the corporation or director may be served. Acceptance of a directorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.

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

3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person who is not a party, that no registered agent or officer can be found at the registered office must be provided to the secretary of state. Service on the secretary of state of any process, notice, or demand is deemed personal service upon the corporation and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand, along with the fees provided in section 10-33-140. The secretary of state shall immediately forward, by registered mail, addressed to the corporation at its registered office, a copy of the process, notice, or demand. Service on the secretary of state is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

4. 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. 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.

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

10-33-121. State interested - Proceedings. If it appears at any stage of a proceeding in a court in this state that the state is, or is likely to be, interested therein, or that it is a matter of general public interest, the court shall order that a copy of the complaint or petition be served upon the attorney general in the same manner prescribed for serving a summons in a civil action. The attorney general shall intervene in a proceeding when the attorney general determines that the public interest requires it, whether or not the attorney general has been served.

10-33-122. Attorney general - Notice to - Waiting period.

1. Except as provided in subsection 7, the following corporations shall notify the attorney general of their intent to dissolve, merge, or consolidate, or to transfer all or substantially all of their assets:

   a. A corporation that holds assets for a charitable purpose.

   b. A corporation that is exempt under section 501(c)(3) of the Internal Revenue Code.

2. The notice must be signed on behalf of the corporation by an authorized person and must include:

   a. The purpose of the corporation that is giving the notice;

   b. A list of assets owned or held by the corporation for charitable purposes;

   c. A description of restricted assets and purposes for which the assets were received;

   d. A description of debts, obligations, and liabilities of the corporation;

   e. A description of tangible assets being converted to cash and the manner in which they will be sold;

   f. Anticipated expenses of the transaction, including attorneys' fees;

   g. A list of persons to whom assets will be transferred, if known;

   h. The purposes of persons receiving the assets; and

   i. The terms, conditions, or restrictions, if any, to be imposed on the transferred assets.

3. Subject to subsection 4, a corporation described in subsection 1 may not transfer or convey assets as part of a dissolution, merger, or consolidation, or transfer of assets under section 10-33-94 until forty-five days after it has given written notice to the attorney general, unless the attorney general waives all or part of the waiting period.

4. The attorney general may extend the waiting period under subsection 3 for one additional thirty-day period by notifying the corporation in writing of the extension. The attorney general shall notify the secretary of state if the waiting period is extended.

5. When all or substantially all of the assets of a corporation described in subsection 1 have been transferred or conveyed following expiration or waiver of the waiting period, the board shall deliver to the attorney general a list of persons to whom the assets were transferred or conveyed. The list must include the addresses of each person who received assets and show what assets the person received.

6. Failure of the attorney general to take an action with respect to a transaction under this section does not constitute approval of the transaction and does not prevent the attorney general from taking other action.

7. Subsections 1 through 5 do not apply to a merger with, consolidation into, or transfer of assets to an organization exempt under section 501(c)(3) of the Internal Revenue Code, or any successor section. A corporation that is exempt under this subsection shall send a copy of the certificate of merger or certificate of consolidation and incorporation to the attorney general.

10-33-123. Powers of attorney general.

1. When it appears to the attorney general it is in the public interest that an investigation should be made to ascertain whether a proceeding by the attorney general, as provided in this chapter, should be commenced, the attorney general may:

   a. Examine under oath any person in connection with the affairs of the corporation.

   b. Examine any record, book, document, account, or paper as the attorney general determines necessary.

   c. Pursuant to an order of the district court, impound any record, book, document, account, or paper, and retain it in the attorney general's possession until the completion of all proceedings undertaken under this chapter.

2. To accomplish the objectives and to carry out the duties prescribed by this chapter, the attorney general may issue subpoenas to any person.

3. If any person fails or refuses to file any statement or report, or obey any subpoena, the attorney general may apply to the district court for an order enforcing the subpoena or other investigation demand. Failure to comply with the order of the district court is contempt of court.

10-33-124. Certified nonprofit development corporation - Application - Income tax credit.

1. For the purposes of this section:

   a. "Certified nonprofit development corporation" means a corporation organized under this chapter which meets the following requirements:

      (1) Is certified by the secretary of state under this section;

      (2) Invests a majority of its funds in primary sector businesses; and

      (3) No part of the income is distributable to its members, directors, or officers.

   b. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that, through a process employing knowledge and labor, adds value to a product produced for resale.

2. A corporation may apply to the secretary of state to become a certified nonprofit development corporation by submitting an application executed by an officer of the corporation containing:

   a. The name of the corporation and the address of its principal executive office;

   b. The names and addresses of the officers and directors of the corporation; and

   c. A statement that the corporation has adopted a resolution to invest a majority of membership payments, dues, or contributions received in primary sector businesses. A copy of the resolution must be submitted with the application to the secretary of state together with the fees provided in section 10-33-140.

3. Upon receipt by the secretary of state of the completed application and fee, the secretary of state shall certify the applicant as a certified nonprofit development corporation.

4. a. An individual or a corporation that buys membership in, or pays dues or contributes to a nonprofit development corporation is entitled to an income tax credit equal to twenty-five percent of the amount paid.

   b. This credit may not be claimed by an individual who elects to file an income tax return under section 57-38-30.3 or by a corporation that is recognized as a subchapter S corporation under section 57-38-01.4.

   c. No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section.

   d. The amount of the credit under this section in excess of the taxpayer's income tax liability may be carried forward for up to seven taxable years.

5. a. Within thirty days of the date on which a taxpayer buys membership in, or pays dues or contributes to a certified nonprofit development corporation, the certified nonprofit development corporation must complete and file with the tax commissioner a form prescribed by the tax commissioner setting forth:

      (1) The name, address, and social security number or federal employer identification number of the taxpayer making the payment;

      (2) The dollar amount paid by the taxpayer;

      (3) The date the certified nonprofit development corporation received the payment from the taxpayer;

      (4) The name, address, and federal employer identification number of the certified nonprofit development corporation; and

(5) The signature and title of an officer authorized to act on behalf of the corporation.

b. Two copies of this form must be provided to the taxpayer. To receive the credit, the taxpayer must attach one copy of the form to the taxpayer's income tax return.

10-33-125. Foreign corporation - Governing law.

1. Subject to the constitution of this state, the laws of the jurisdiction under which a foreign corporation is incorporated govern its incorporation and internal affairs. Nothing in this chapter authorizes this state to regulate the incorporation or internal affairs of a foreign corporation.

2. A foreign corporation may not be denied a certificate of authority to conduct activities in this state by reason of any difference between those laws and the laws of this state.

3. A foreign corporation holding a valid certificate of authority in this state has no greater rights and privileges than a corporation. The certificate of authority does not authorize the foreign corporation to exercise any of its powers or purposes that a corporation is forbidden by law to exercise in this state.

10-33-126. Foreign corporation - Name. A foreign corporation may apply for a certificate of authority under any name that would be available to a corporation, whether or not the name is the name under which it is authorized in its jurisdiction of incorporation. A trade name must be registered as provided in chapter 47-25 when applying for the certificate of authority under a name other than the name as authorized in the jurisdiction of incorporation.

10-33-127. Foreign corporation - Admission of foreign corporation conducting activities - Obtaining licenses and permits. A foreign corporation may not:

1. Conduct activities in this state or obtain any license or permit required by this state until it has procured a certificate of authority from the secretary of state.

2. Conduct in this state any activity that is prohibited to a corporation incorporated under this chapter.

3. Be denied a certificate of authority because the laws of the state or country where the corporation is incorporated differ from the laws of this state.

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 of the proposed registered office of the foreign corporation in this state;

f. The name of the proposed 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 business 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. The purpose or purposes of the foreign corporation which it proposes to pursue in conducting its activities in this state;

h. The names and addresses of the directors and officers of the foreign corporation; and

i. 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.

10-33-129. Foreign corporation - Issuance of certificate of authority. If the secretary of state finds that an application for a certificate of authority conforms to law and that all fees have been paid, the secretary shall:

1. Endorse on the application the word "filed" and the date of the filing;

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

3. Issue to the corporation or its representative a certificate of authority to conduct activities in this state.

10-33-130. Foreign corporation - Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign corporation was false when made or any arrangements or other facts described have changed, making the application inaccurate in any respect, the foreign corporation shall promptly file with the secretary of state an application for an amended

certificate of authority executed by an authorized person correcting the statement and, in the case of a change in its name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. In the case of a dissolution or merger, a foreign corporation that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated.

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 continuously maintain a registered office in the same manner 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.

10-33-132. Foreign corporation - Merger of foreign corporation authorized to conduct activities in this state. Whenever a foreign corporation authorized to conduct activities in this state is a party to a statutory merger permitted by the laws of the jurisdiction under which it is incorporated, and the corporation is not the surviving organization, the surviving organization shall, within thirty days after the merger becomes effective, file with the secretary of state a certified statement of merger duly authenticated by the proper officer of the state or country where the statutory merger was effected. It is not necessary for any foreign organization, which is the surviving organization in a merger, to procure either a new or amended certificate of authority to conduct activities in this state unless the name of the organization is changed thereby or unless the organization desires to pursue in this state purposes other than those which it is authorized to transact in this state.

10-33-133. Foreign corporation - Certificate of withdrawal.

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; and

e. A post-office address to which a person may mail a copy of any process against the corporation.

2. The filing with the secretary of state of a certificate of dissolution, or a certificate of merger if the corporation is not the surviving organization, from the proper officer of the state or country under the laws of which the corporation is incorporated constitutes a valid application of withdrawal and the authority of the corporation to conduct activities in this state shall cease upon filing of the certificate.

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 a registered office as required by this chapter;

(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 document submitted by the foreign corporation pursuant to this chapter.

2. 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 office in this state or, if the foreign corporation 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 corporation has failed to file the report of change regarding the registered office or the registered agent, to file any amendment, or to 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 of revocation and shall mail the certificate to the principal executive office of the foreign corporation.

10-33-135. Foreign corporation - Conduct of activity without certificate of authority - Civil penalty.

1. A foreign corporation conducting activities in this state may not maintain any action, suit, or proceeding in any court of this state until it possesses a certificate of authority.

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

3. A foreign corporation, by conducting activities in this state without a certificate of authority, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.

4. A foreign corporation that conducts activities in this state without a valid certificate of authority is liable to the state for the years or parts of years during which it conducted activities in this state without the certificate in an amount equal to all fees that would have been imposed by this chapter upon that corporation had it duly obtained the certificate, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under this section.

5. A foreign corporation that conducts activities in this state without a valid certificate of authority is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each director and each officer or agent who authorizes, directs, or participates in the conduct of activity in this state on behalf of a foreign corporation that does not have a certificate is subject to a civil penalty, payable to the state, not to exceed one thousand dollars.

6. The civil penalties set forth in subsection 5 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign corporation or any of its members, directors, officers, or agents have conducted activities in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further conduct of the activity of the foreign corporation and the further exercise of any rights and privileges by the corporation in this state. The foreign corporation must be enjoined from conducting activities in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign corporation has otherwise complied with this chapter.

7. A member of a foreign corporation is not liable for the debts and obligations of the corporation solely by reason of the corporation having conducted activity in this state without a valid certificate of authority.

10-33-136. Foreign corporation - Conduct not constituting conducting activities.

1. The following activities of a foreign corporation, among others, do not constitute conducting activity within the meaning of this chapter:

   a. Maintaining, defending, or settling any proceeding;

   b. Holding meetings of its members or carrying on any other activities concerning its internal affairs;

   c. Maintaining bank accounts;

   d. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;

   e. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts; or

   f. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.

2. The term "conducting activity" as used in this section has no effect on personal jurisdiction under the North Dakota Rules of Civil Procedure.

3. For purposes of this section, any foreign corporation that owns income-producing real or tangible personal property in this state, other than property exempted under subsection 1, is considered conducting activity in this state.

4. The list of activities in subsection 1 is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign corporation to service of process or taxation in this state or to regulation under any other law of this state.

10-33-137. Foreign corporation - Action by attorney general. The attorney general may bring an action to restrain a foreign corporation from conducting activity in this state in violation of this chapter.

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

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 prescribed by 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 prescribed in subsection 24 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 prescribed 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 prescribed by 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. 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 of 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 of 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 prescribed 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 the section when an annual report form could not be delivered to the corporation.

10-33-140. Secretary of state - Fees and charges.

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

   a. Filing articles of incorporation and issuing a certificate of incorporation, thirty dollars.

b. Filing articles of amendment, twenty dollars.

c. Filing restated articles of incorporation, thirty dollars.

d. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.

e. Filing an intent to dissolve, ten dollars.

f. Filing articles of dissolution, twenty dollars.

g. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.

h. Filing a registered agent's consent to serve in that capacity, ten dollars.

i. Filing a resignation as registered agent, ten dollars.

j. Filing an application to reserve a corporate name, ten dollars.

k. Filing a notice of transfer of a reserved corporate name, ten dollars.

l. Filing a cancellation of reserved corporate name, ten dollars.

m. Filing a consent to use of a deceptively similar name, ten dollars.

n. 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 dollars.

o. Filing an application of a foreign corporation for an amended certificate of authority, forty dollars.

p. Filing a certified statement of merger of a foreign corporation holding a certificate of authority to conduct activities in this state, fifty dollars.

q. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.

r. Filing an annual report of a domestic or foreign corporation, ten dollars. The secretary of state shall charge and collect additional fees for late filing of the annual report:

(1) After the date prescribed in subsection 3 of section 10-33-140, five dollars; and

(2) After the dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of forty dollars.

s. Filing any other statement of a domestic or foreign corporation, ten dollars.

2. The secretary of state shall charge and collect:

a. For furnishing a certified copy of any document, instrument, or paper relating to a corporation, one dollar for every four pages or fraction thereof and fifteen dollars for the certificate and affixing the seal to the certificate.

b. At the time of any service of process on the secretary of state as resident agent of a corporation, twenty-five dollars, which may be recovered as taxable costs by the party to the claim for relief causing the service to be made if that party prevails in the suit or action.

10-33-141. Secretary of state - Enforcement - Penalty - Appeal.

1. The secretary of state may administer this chapter.

2. The secretary of state may propound to any corporation or foreign corporation that is subject to this chapter and to any officer, director, or employee thereof, any interrogatory as may be reasonably necessary and proper to ascertain whether the corporation has complied with this chapter applicable to the corporation.

a. The interrogatory must be answered within thirty days after mailing, or within any additional time as must be fixed by the secretary of state. The answers 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 corporation, it must be answered by the president, vice president, secretary, or assistant secretary of the corporation.

c. The secretary of state need not file any document to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose that the document 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, an interrogatory and answers thereto, which discloses a violation of this chapter.

e. Each officer, director, or employee of a corporation or foreign corporation who fails or refuses within the time provided by subdivision a of subsection 2 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 may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.

3. If the secretary of state rejects any document required by this chapter to be approved by the secretary of state before the document may be filed, then the secretary of state shall give written notice of the rejection to the person who delivered the document, specifying the reasons for rejection.

   a. From such rejection the person may appeal to the district court of the county in which the registered office of such corporation is, or is proposed to be, situated by filing with the clerk of the court a petition setting forth a copy of the document sought to be filed and a copy of the written rejection of the document 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 revokes the certificate of authority to conduct activities in this state of any foreign corporation, pursuant to section 10-33-134, then, the foreign corporation may appeal to the district court of the county where the registered office of the foreign corporation in this state is situated by filing with the clerk of the court a petition setting forth a copy of the corporation's certificate of authority to conduct activities in this state and a copy of the notice of revocation given by the secretary of state. The matter must be tried de novo by the court. The court shall sustain the action of the secretary of state or shall direct the secretary of state to take the action the court determines proper.

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

10-33-142. Secretary of state - Evidence.

1. All certificates issued by the secretary of state and all copies of documents filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated.

2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated.

10-33-143. Secretary of state - Forms. All annual reports required by this chapter to be filed in the office of the secretary of state must be made on forms prescribed by the secretary of state. Forms for all other documents to be filed in the office of the secretary of state may be furnished by the secretary of state upon request. However, the use of the forms, unless otherwise specifically required by law, is not mandatory.

SECTION 2. AMENDMENT. Subsection 2 of section 11-10-24 of the North Dakota Century Code is amended and reenacted as follows:

2. The organization or organizations authorized hereunder ~~shall~~ must be organized pursuant to ~~chapters 10-24 through 10-28~~ chapter 10-33.

[3] **SECTION 3. AMENDMENT.** Section 14-03-09 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

14-03-09. Who may solemnize marriages. Marriages may be solemnized by all judges of courts of record within their respective jurisdictions, by clerks of district court, by ordained ministers of the gospel and priests of every church, by ministers of the gospel licensed by regular church bodies or denominations and serving as pastors of churches, and by any person authorized by the forms and usages of any church or religious denomination or organization organized or possessing a certificate of authority pursuant to ~~chapters 10-24 through 10-28~~ chapter 10-33.

SECTION 4. AMENDMENT. Section 15-17-01 of the North Dakota Century Code is amended and reenacted as follows:

15-17-01. Institutional holding associations authorized. Nonprofit corporations to be known as institutional holding associations may be formed in the manner, for the purposes, and with the powers, obligations, and limitations prescribed by the applicable provisions of ~~chapters 10-24 through 10-28~~ chapter 10-33, except as otherwise provided in this chapter.

SECTION 5. AMENDMENT. Section 18-05-01 of the North Dakota Century Code is amended and reenacted as follows:

18-05-01. Firemen's relief association - Where it may be organized. A firemen's relief association may be organized in any city which has a paid fire department. In organizing such association, the procedure provided in ~~chapters 10-24 and 10-28~~ chapter 10-33 must be followed.

SECTION 6. AMENDMENT. Section 26.1-14-03 of the North Dakota Century Code is amended and reenacted as follows:

26.1-14-03. Authority. An incorporated mutual insurance company is authorized to be known as the North Dakota medical malpractice mutual insurance company. The company is subject to and governed by this chapter and is not subject to the laws of this state relating to insurance and insurance companies except as specifically provided in this chapter. The company has all the powers, privileges, and immunities granted by and is subject to all the obligations imposed upon a mutual insurance company under ~~chapter~~ chapters 26.1-12 and ~~chapters 10-24 through 10-28~~ 10-33. If a provision of chapter 26.1-12 or ~~a provision of chapters 10-24 through 10-28~~ 10-33 and provision of this chapter are both by their terms applicable, the provision of this chapter controls.

SECTION 7. AMENDMENT. Section 26.1-17-11 of the North Dakota Century Code is amended and reenacted as follows:

26.1-17-11. Applicability of portion of Nonprofit Corporation Act. Unless in conflict with this chapter, ~~chapters 10-24, 10-25, 10-26, and 10-28 apply~~ chapter

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[3] Section 14-03-09 was also amended by section 1 of Senate Bill No. 2359, chapter 146.

10-33 applies to the incorporation, operation, and control of any nonprofit health service corporation.

SECTION 8. AMENDMENT. Subsection 2 of section 40-01-23 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The organization or organizations authorized hereunder must be organized pursuant to ~~chapters 10-24 through 10-28~~ chapter 10-33.

SECTION 9. AMENDMENT. Subsection 12 of section 49-23-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. "Nonprofit corporation" means a corporation established under ~~chapters 10-24 through 10-28~~ chapter 10-33.

SECTION 10. AMENDMENT. Subsection 8 of section 54-01.1-02 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. "Nonprofit organization" means a corporation organized under ~~the North Dakota Nonprofit Corporation Act,~~ ~~chapters 10-24 through 10-28~~ chapter 10-33, or an organization defined in subsection 7, 8, 9, 10, or 11 of section 57-02-08.

SECTION 11. AMENDMENT. Section 55-03-01 of the 1995 Supplement to the North Dakota Century Code is amended and reenacted as follows:

55-03-01. Permit required to investigate, evaluate, or mitigate adverse effect on cultural resources, historic buildings, structures, or objects - Application - Fee. Any individual, organization, institution, or company engaged on one's own behalf or on behalf of another in identifying, evaluating, or mitigating adverse effects on cultural resources, historic buildings, structures, or objects on any lands in North Dakota, under section 106 of the National Historic Preservation Act of 1966 [Pub. L. 89-665; 80 Stat. 915; 16 U.S.C. 470, as amended by Pub. L. 91-243, Pub. L. 93-54, Pub. L. 94-422, and Pub. L. 94-458], 36 CFR 800, or subdivision u of subsection 1 of section 38-14.1-14 must obtain an annual permit from the superintendent of the state historical board of North Dakota. The permit application must be in the form prescribed by the superintendent. Each application must be accompanied by a filing fee of one hundred dollars. The superintendent may waive the fee requirement if the applicant is an instrumentality of the state of North Dakota. Following issuance of the annual permit, the permittee shall submit to the state historical society of North Dakota payment in the amount of fifty dollars with every cultural resources identification, evaluation, and mitigation report submitted to the superintendent in compliance with the federal and state statutory and regulatory requirements identified in this section. A permittee submitting a report on behalf of a nonprofit corporation formed under ~~chapters 10-24 through 10-28~~ chapter 10-33 does not have to pay the fee for filing the report.

SECTION 12. AMENDMENT. Subsection 2 of section 61-16.1-60 of the North Dakota Century Code is amended and reenacted as follows:

2. The association or associations authorized hereunder shall be organized pursuant to ~~chapters 10-24 through 10-28~~ chapter 10-33.

SECTION 13. AMENDMENT. Section 61-35-29 of the North Dakota Century Code is amended and reenacted as follows:

61-35-29. Authorization to organize association of rural water systems. A district, upon resolution of the district board, may organize and participate in an association of rural water systems organized under ~~chapters 10-24 through 10-28~~ chapter 10-33.

SECTION 14. REPEAL. Chapters 10-24, 10-25, 10-26, 10-27, and 10-28 of the North Dakota Century Code are repealed.

SECTION 15. EFFECTIVE DATE. This Act becomes effective on August 1, 1997.

Approved April 2, 1997
Filed April 3, 1997

CHAPTER 106

HOUSE BILL NO. 1392

(Representatives Maragos, DeKrey)
(Senator Krebsbach)

REAL ESTATE INVESTMENT TRUSTS

AN ACT to create and enact a new chapter to title 10 of the North Dakota Century Code, relating to real estate investment trusts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new chapter to title 10 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the content otherwise requires:

1. "Real estate investment trust" means an unincorporated trust or association formed under this chapter under which property is acquired, held, managed, administered, controlled, invested, or disposed of by trustees for the benefit and profit of any person who may become a shareholder.

2. "Share" means a transferable unit of beneficial interest in a real estate investment trust.

Real estate investment trust authorized. A real estate investment trust is a permitted form of an unincorporated trust or association and may conduct business in this state in accordance with this chapter.

Relationship to other laws.

1. This chapter does not limit any law as that law applies to the creation of or doing business in this state by a common-law trust, business trust, or Massachusetts trust.

2. A provision of this chapter is unenforceable if it makes a real estate investment trust unable to qualify as a real estate investment trust under sections 856 through 858 of the federal Internal Revenue Code or the regulations adopted under those sections.

Compliance with title - Registered office and 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 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 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 provided in chapter 45-11, or that is a trade name registered in the manner 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 of its registered office and the name of its registered agent located at that office with the written consent of the registered agent attached to the application.

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.

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 filing 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.

6. A registered agent of a real estate investment trust 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 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.

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 filing with the secretary of state a statement as required in subsection 5, 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 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. 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 agent as required by this chapter. Before revoking the registration, the secretary of state shall give not less than sixty days' notice by mail addressed to the registered office and the principal office of record of a foreign real estate investment trust of the deficiency.

Renewal of registration. Any registration of a real estate investment trust filed under this chapter must be renewed every five years from the date of the initial filing. The statement of renewal must be executed by the real estate investment trust on forms prescribed and furnished by the secretary of state and sent to the address of the registered office at least sixty days before the deadline for filing. The statement must include the name of the real estate investment trust, the state or country of

organization, the name and principal place of business of each trustee and officer, the address of the registered office and the name of the registered agent, and a statement that the real estate investment trust is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement. If the secretary of state finds that the statement does not conform, the secretary of state promptly shall return the statement to the real estate investment trust for any necessary corrections, and the certificate of registration must be canceled if the statement is not returned corrected within thirty days after the statement was returned for corrections. If any real estate investment trust fails to file the statement of renewal when due, the secretary of state shall cancel the registration and shall mail notice of cancellation to the address of the registered office. Upon cancellation, the real estate investment trust shall cease to exist.

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 process, notice, or demand required or permitted by law to be served on the real estate investment trust or trustee may be served. 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.

Powers. A real estate investment trust has the power to:

1. Unless the declaration of trust provides otherwise, have perpetual existence unaffected by any rule against perpetuities.

2. Sue, be sued, complain, and defend in all courts.

3. Transact its business, carry on its operations, and exercise the powers granted by this title in any state, territory, district, or possession of the United States and in any foreign country.

4. Make contracts, incur liabilities, and borrow money.

5. Sell, mortgage, lease, pledge, exchange, convey, transfer, and otherwise dispose of all or any part of its assets.

6. Issue bonds, notes, and other obligations and secure them by mortgage or deed of trust of all or any part of its assets.

7. Acquire by purchase or in any other manner and take, receive, own, hold title in the name of the trust, use, employ, improve, encumber, and otherwise deal with any interest in real and personal property, wherever located.

8. Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, loan, pledge, or otherwise dispose of and deal in and with:

   a. Securities, shares, and other interests in any obligations of domestic and foreign corporations, other real estate investment trusts, associations, partnerships, and individuals; and

   b. Direct and indirect obligations of the United States, any other government, state, territory, government district, and municipality, and any instrumentality of them.

9. Elect or appoint trustees, officers, and agents of the trust for the period of time the declaration of trust or bylaws provide, define their duties, and determine their compensation.

10. Adopt and implement employee and officer benefit plans.

11. Make and alter bylaws not inconsistent with law or with its declaration of trust to regulate the government of the real estate investment trust and the administration of its affairs.

12. Exercise these powers, including the power to take, hold, and dispose of the title to property in the name of the trust or in the name of its trustees, without the filing of any bond.

13. Generally exercise the powers set forth in its declaration of trust which are not inconsistent with law and are appropriate to promote and attain the purposes set forth in its declaration of trust.

Restrictions on investments and use - Ownership of farmland prohibited.

1. A real estate trust shall hold at least seventy-five percent of the value of its assets in real estate assets, government securities, cash, and cash items, including receivables.

2. A real estate investment trust, whether domestic or foreign, may not own, use, or apply land within this state for farming or ranching as defined in section 10-06.1-01. A violation of this subsection is deemed a violation of chapter 10-06.1. A real estate investment trust is subject to chapter 10-06.1.

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 dollars.

2. Filing a registered agent's consent or any amendment changing the registered agent or registered office, ten dollars.

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. Issuing a certificate of good standing, twenty-five dollars.

Approved March 13, 1997
Filed March 13, 1997