CORPORATIONS

CHAPTER 92

HOUSE BILL NO. 1144

(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

SECURITIES LAW REVISIONS

AN ACT to create and enact section 10-04-08.4 of the North Dakota Century Code, relating to filing requirements for federal covered securities; and to amend and reenact sections 10-04-02, subsections 4 and 5 of section 10-04-03, sections 10-04-04, 10-04-05, 10-04-06, 10-04-07.1, 10-04-08, 10-04-08.1, 10-04-08.2, 10-04-08.3, 10-04-09, 10-04-10, 10-04-10.1, 10-04-10.2, 10-04-10.3, 10-04-11, 10-04-12, 10-04-14, 10-04-16.1, 10-04-17, and 10-04-18 of the North Dakota Century Code, relating to definitions, administration, and registration of securities under the Securities Act of 1951, advertising of and statements about securities, federal covered securities, suspensions and revocation of securities registrations, registration of dealers, agents, investment advisers, and investment adviser representatives, suspension and revocation of registrations of dealers, agents, investment advisers and investment adviser representatives, hearing provisions, securities investigations, consent to service of process, remedies available to investors, and penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[59] **SECTION 1. AMENDMENT.** Section 10-04-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Agent" means any individual, other than a dealer, who represents a dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in effecting transactions in a covered security as described in section 18(b)(3) and 18(b)(4) of the Securities Act of 1933 or a dealer in effecting transactions in this state limited to those transactions described in section 15(h)(2) of the Securities Act of 1934.

2. "Commissioner" means the securities commissioner of this state.

~~2.~~ 3. "Dealer" means ~~every~~ a person, other than ~~a salesman~~ an agent, ~~who engages in this state, either for all or part of the person's time:~~ engaged

[59] Section 10-04-02 was also amended by section 3 of House Bill No. 1145, chapter 93.

in the business of effecting transactions in securities issued by another person or by such person for the account of others or for the person's own account.

~~a. Directly or indirectly, as agent, broker, or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person; or~~

~~b. Directly or through an officer, director, employee, or agent, which officer, director, employee, or agent is not registered as a dealer under this chapter, in selling securities issued by such person.~~

4. "Federal covered adviser" means a person who is registered under section 203 of the Investment Advisers Act of 1940.

5. "Federal covered security" means any security that is a covered security pursuant to section 18(b) of the Securities Act of 1933 or rules or regulations adopted under that Act.

~~3.~~ 6. "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. "Investment adviser" does not include:

a. An investment adviser representative.

b. A bank, savings institution, or trust company.

c. A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the person's profession.

d. A broker or dealer or its ~~salesman~~ agent whose performance of these services is solely incidental to the conduct of business as a broker or dealer and who receives no special compensation for them.

e. A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication ~~of general, regular, and paid circulation~~ or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.

f. A federal covered adviser.

g. A person who is exempted from the federal definition of "investment adviser" under section 202(a)(11) of the Investment Advisers Act of 1940.

h. Such other persons not within the intent of this subsection as the commissioner may by rule or order designate.

~~4.~~ 7. "Investment adviser representative" means:

a. With respect to an investment adviser, any partner, officer, director of an investment adviser, or a person occupying a similar status or performing similar functions, or other individual who is either employed by or associated with an investment adviser~~, except clerical or ministerial personnel,~~ who is registered or required to be registered under this chapter who:

~~a.~~ (1) Makes any recommendations or otherwise renders advice regarding securities directly to advisory clients;

~~b.~~ (2) Manages the accounts or portfolios of clients;

~~c.~~ (3) Determines which recommendations or advice regarding securities should be given ~~if that person is a member of the investment adviser's investment committee that determines general investment advice to be given to clients or, if the investment adviser has no investment committee, the person determines general client advice (if there are more than five such persons, only the supervisors of such persons are deemed to be investment adviser representatives)~~;

~~d.~~ (4) Solicits, offers, or negotiates for the sale of or sells investment advisory services ~~unless that person is a dealer licensed in this state or a licensed salesman of a dealer and the person would not be an investment adviser representative except for the performance of the activities described in this subdivision~~; ~~or~~

~~e.~~ (5) Immediately supervises employees in the performance of any of the foregoing.

b. With respect to a federal covered adviser, any person who is an "investment adviser representative" who has a "place of business" in this state, as those terms are defined by the securities and exchange commission pursuant to section 203A of the Investment Advisers Act of 1940.

c. "Investment adviser representative" does not include clerical or ministerial personnel.

~~5.~~ 8. "Issuer" means every person who issues or proposes to issue any security, except that:

a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, certificates of interest, or shares in an unincorporated investment trust, whether or not of the fixed, restricted management, or unit type, issuer means the person or persons performing the acts and assuming the duties of depositor or

manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.

b. With respect to equipment trust certificates or like securities, issuer means the person by whom the equipment or property is or is to be used.

c. With respect to fractional interests in oil, gas, or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, which are created for the purpose of sale.

~~6.~~ 9. "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, must be deemed an offer to sell the security to be acquired by subscription or conversion. The offer or grant of an option to purchase securities may not be deemed an offer to sell the securities to be purchased if:

a. The offer or grant is an offer or grant limited to directors, officers, or employees of the issuer or a parent or subsidiary of the issuer;

b. No money or other tangible property is given for the option; and

c. The option, by its terms or by the terms of a supplemental agreement, is nontransferable except by will or the laws of descent and distribution.

~~7.~~ 10. "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint-stock company, a trust, or any other unincorporated organization.

11. "Registered agent" means an agent registered under this chapter.

~~8.~~ 12. "Registered dealer" means a dealer registered under this chapter.

~~9.~~ "~~Registered salesman" means a salesman registered under this chapter.~~

~~10.~~ 13. "Sale" or "sell" means every sale or other disposition of a security or interest in a security for value, and every contract to make any such sale or disposition. Any security given or delivered with, or as a bonus on account of any purchase of securities or any other thing, must be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

~~11.~~ "~~Salesman" means any individual, other than a dealer, who represents a dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. A partner, officer, or director of a dealer or an issuer or a person occupying a similar status or performing similar functions is a "salesman" only if the person otherwise comes within the definition.~~

~~12.~~ 14. "Securities Act of 1933" means the Act of Congress known as the Securities Act of 1933, as now or hereafter amended.

~~13.~~ 15. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor where the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

SECTION 2. AMENDMENT. Subsections 4 and 5 of section 10-04-03 of the 1997 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. All fees collected under this chapter must be deposited in 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~~ an investor restitution fund, and all other civil penalties and moneys collected~~, including those collected for the reasonable expenses for the administration of a particular case,~~ pursuant to an administrative action, court order or judgment, including investigation costs and attorney's fees in a securities action brought by the commissioner, must be deposited in the general fund.

5. The commissioner may honor requests from interested persons for the issuance of a statement or opinion concerning the applicability of this chapter or the rules adopted under this chapter to any transaction or proposed transaction which may be subject to this chapter. Any such request must be accompanied by a nonrefundable fee ~~to be set by the commissioner by rule, which may not exceed two~~ of one hundred fifty dollars.

SECTION 3. AMENDMENT. Section 10-04-04 of the North Dakota Century Code is amended and reenacted as follows:

10-04-04. Registration of securities. It is unlawful for any person to sell, or offer for sale, any ~~securities~~ security in this state~~, except those~~ unless it is registered under this chapter or the security or transaction is exempt under section 10-04-05~~, those sold in transactions exempt under section 10-04-06, or those registered by description under section 10-04-07 or by announcement under section 10-04-07.1, unless such securities have been registered by qualification as provided in section 10-04-08~~ or it is a federal covered security.

SECTION 4. AMENDMENT. Section 10-04-05 of the North Dakota Century Code is amended and reenacted as follows:

10-04-05. Exempt securities. Sections 10-04-04, 10-04-07, 10-04-07.1, ~~and~~ 10-04-08, and 10-04-08.4 do not apply to any of the following securities:

1. Securities issued or guaranteed by the United States of America, or by any state, territory, or insular possession thereof, or by any political subdivision of any such state, territory, or insular possession, or by the District of Columbia, or by any public agency or instrumentality of one or more of any of the foregoing, or payable from assessments for improvements or revenues of publicly owned utilities therein; or a certificate of deposit for any of the foregoing, but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless the security is insured or unconditionally guaranteed by, or the revenues are derived from, a person whose securities are exempt from registration under this section.

2. Securities issued by and representing an interest in or a debt of, or guaranteed by, a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an act of Congress and supervised by the United States, or any agency thereof, or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member, or issued by and representing an interest in or a debt of, or guaranteed by, a state bank, trust company, savings bank, savings institution, or credit union organized and supervised under the laws of any state, and securities of any person subject to examination by the commissioner of banking and financial institutions of North Dakota.

3. Securities issued by a building and loan association subject to supervision by an agency of the state of North Dakota, or policy contracts, including variable or fixed annuity contracts, of an insurance company subject to supervision by an agency of the state of North Dakota.

4. Securities issued or guaranteed as to principal, interest, or dividends by a corporation or limited liability company owning or operating a railroad or other public service utility, if the corporation or limited liability company is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities by a public service commission, or by a board, body, or official having like powers, of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof~~, provided, however, that a corporation or limited liability company issuing securities exempted under this subsection and which has not filed an application for approval of such securities with the public service commission of the state of North Dakota, shall file with the commissioner a copy of the registration statement with all amendments thereto filed with the securities and exchange commission of the United States, if such a registration statement is made or filed, or a copy of the informative statement made to or filed with any commission, board, or body of the United States or of any state, territory, or insular possession thereof, or~~

~~of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof, by which said corporation or limited liability company is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities, and shall pay a filing fee of twenty-five dollars~~.

5. ~~Securities~~ Any security issued by ~~a~~ any person organized and operated not for private profit but exclusively for religious, educational, benevolent, fraternal, charitable, social, or reformatory purposes ~~and not for pecuniary profit~~; provided that prior to any offer of such security each person must meet the following conditions:

   a. Apply for and obtain the written approval of the commissioner.

   b. File an application, offering disclosure document, and pay a nonrefundable filing fee of one hundred fifty dollars, which document and fee must accompany the application.

   c. File a notice identifying the basis of its qualification under this exemption with such additional information as the commissioner may require.

   d. Must not pay a commission or other remuneration, directly or indirectly, except to a dealer and agent registered in this state in connection with the offer or sale of the security to a resident of this state.

   e. Provide a copy of the offering disclosure document to each person to whom an offer to sell or sale is made.

   The approval is effective for a period of one year from the date of approval.

6. ~~Securities issued by an issuer which meets all of the following conditions:~~

   ~~a. If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of such agent in its prospectus.~~

   ~~b. A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934 [Pub. L. 73-290; 48 Stat. 881; 15 U.S.C. 78a et seq.] and has been so registered for the three years immediately preceding the offering date.~~

   ~~c. Neither the issuer nor a significant subsidiary has had a material default during the lesser of the last seven years or the issuer's existence in the payment of (1) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (2) rentals under leases with terms of three years or more. A "material default" is a failure to pay, the effect of which is to cause indebtedness to become due prior to its stated maturity or to cause termination or reentry under a lease prior to its stated expiration, if the indebtedness or the rental obligation for the unexpired term exceeds five percent of the issuer's and its~~

~~consolidated subsidiaries' total assets, or if the arrearage in required dividend payments on preferred stock is not cured within thirty days.~~

~~d. The issuer has had annual consolidated net income before extraordinary items and the cumulative effect of accounting changes as follows: (1) at least one million dollars in four of its last five fiscal years including its last fiscal year, and (2) if the offering is of interest-bearing or of fixed or floating rate dividend securities, at least one and a half times its annual interest and dividend expense, calculating net income before deduction for income taxes and depreciation and giving effect to the proposed offering and the intended use of the proceeds for its last fiscal year. Floating rate dividend shall be calculated with reference to interest rates in the marketplace at the time of the offering. "Last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than fifteen months from the commencement of the offering.~~

~~e. If the offering is of stock or shares other than preferred stock or shares, and except as otherwise required by law, the securities have voting rights at least equal to the securities of each of the issuer's outstanding classes of stock or shares other than preferred stock or shares, with respect to (1) the number of votes per share, and (2) the right to vote on the same general corporate decisions.~~

~~f. If the offering is of stock or shares other than preferred stock or shares, the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least one thousand two hundred persons, and on that date there are at least seven hundred fifty thousand of the shares outstanding with an aggregate market value, based on the average bid price, of at least three million seven hundred fifty thousand dollars. In determining the number of persons who are beneficial owners of the stock or shares, the issuer or a broker-dealer may rely in good faith upon written information furnished by record owners.~~

~~g. Provided that, if the securities to be issued are listed, or approved for listing upon notice of issuance, on the New York stock exchange, inc., or the American stock exchange, inc., and the current original listing standards of that exchange are satisfied as of the end of the issuer's most recent fiscal year, the conditions of subdivision e need be met for only five years and the annual net earnings requirement of paragraph 1 of subdivision d shall be two hundred fifty thousand dollars.~~

~~h. And provided further that, if the issuer of the securities is a finance company with liquid assets of at least one hundred five percent of its liabilities other than deferred income taxes, deferred investment tax credits, capital stock, and surplus at the end of each of its last five fiscal years, the net income requirement of paragraph 2 of subdivision d, but before deduction for interest expense, shall be one and a quarter times its annual interest expense. "Finance company" means a company engaged directly or through~~

~~consolidated subsidiaries primarily in the business of wholesale, retail, installment, mortgage, commercial, industrial, or consumer financing, banking, or factoring. "Liquid assets" means cash, receivables payable on demand or not more than twelve years following the close of the company's last fiscal year, and readily marketable securities, in each case less applicable reserves and unearned income.~~

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

~~7.~~ Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, is not the subject of a public offering, is prime quality negotiable commercial paper which ~~is eligible for discounting by federal reserve banks,~~ has at the time of issuance a definite maturity ~~(after all days of grace, if any)~~ of not exceeding nine months, is payable in cash only, and is not convertible into and does not carry an option or right to receive payment or any bonus in any other security.

~~8.~~ 7. Securities, other than common stock, providing for a fixed return, which have been outstanding and in the hands of the public for not less than five years and upon which no default has occurred during the five years next preceding the date of sale. ~~The exemptions herein specified must be proved by any person who may legally offer such securities for sale in the state of North Dakota by filing with the commissioner evidence in such form as the commissioner may require for each issue of securities for which exemption is provided herein and paying a filing fee of ten dollars.~~

~~9.~~ 8. Securities, including patronage dividends or refunds, issued by any cooperative ~~formed~~ organized under the statutes of ~~the state of North Dakota~~ this state.

~~10.~~ 9. Any equipment security based on a chattel mortgage, lease, or agreement for the conditional sale of cars, motive power, or other rolling stock mortgaged, leased, sold to, or furnished for the use of a railroad or other public service utility corporation or limited liability company, and any equipment security where the ownership of or title to such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state thereof, or of the Dominion of Canada, to secure the payments of such equipment security whether it be an equipment trust certificate, bond, or note.

~~11.~~ 10. Any bond, note, or other evidence of debt issued by a holding corporation or limited liability company and secured by collateral consisting of any of the securities described in subsections 4 and 10, if the collateral securities equal in fair value at least one hundred

twenty-five percent of the par value of the bonds, notes, or other evidences of debts secured thereby. ~~Before any security described in this subsection is offered for sale, the person intending to offer it shall file with the commissioner descriptive circulars of the collateral securities and pay a filing fee to the commissioner of twenty-five dollars. Unless the commissioner makes an order within three days after the receipt of such circulars requiring the securities to be qualified by application under this chapter, the securities shall be exempt.~~

~~12.~~ 11. The execution of orders for purchase of securities by a registered dealer provided such dealer acts as agent for the purchaser, has made no solicitation of the order to purchase such securities, has no direct material interest in the sale or distribution of the securities ordered, receives no commission, profit, or other compensation other than the commissions involved in the purchase and sale of the securities and delivery to the purchaser of written confirmation of the order which clearly itemizes the commissions paid to the registered dealer. Clear and complete records of all transactions exempted under this subsection shall be maintained by the registered dealer or broker.

~~13.~~ 12. Securities issued by a venture capital corporation or limited liability company organized under chapter 10-30.1.

~~14.~~ 13. Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, or any agency or corporate or other instrumentality of one or more of the foregoing, or any other foreign government with which the United States currently maintains diplomatic relations, if the security is recognized as a valid obligation by the issuer or guarantor. This exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise.

~~15.~~ 14. a. Any security, other than a security that is a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933 and therefore not subject to any filing or registration requirements under this chapter, listed or designated, or approved for listing or designation upon notice of issuance on:

(1) The New York stock exchange;

(2) The American stock exchange;

(3) The national association of securities dealers automated quotation national market system; ~~or~~

(4) Tier I of the Philadelphia stock exchange;

(5) Tier I of the Pacific stock exchange;

(6) Chicago board options exchange; or

(7) Any other stock exchange or automated quotation system which the commissioner approves by rule;

b. Any other security of the same issuer which is of senior or substantially equal rank;

c. Any security called for by subscription rights or warrants so listed or approved; or

d. Any warrant or right to purchase or subscribe to any of the foregoing.

The commissioner may withdraw this exemption by order as to any exchange or system, or any particular security, if the commissioner determines that ~~the exchange, system, or particular security does not comply with paragraphs 1 through 4 of the memorandum of understanding regarding a model uniform marketplace exemption from state securities registration requirements [53 Federal Register 52550, December 28, 1988], as they may be amended by agreement of the parties to that memorandum. The commissioner shall make this determination in accordance with the provisions of section 10-04-06.1, except that no summary suspension may be entered pending a final determination for an exchange or system~~ it would be in the public interest.

~~16.~~ 15. Securities issued by the North Dakota education association dues credit trust to members of the North Dakota education association.

[60] **SECTION 5. AMENDMENT.** Section 10-04-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-04-06. Exempt transactions. Except as hereinafter in this section expressly provided, sections 10-04-04, 10-04-07, 10-04-07.1, 10-04-08, 10-04-08.4, and 10-04-10 do not apply to any of the following transactions:

1. Any judicial, executor's, administrator's, guardian's, or conservator's sale or any sale by a receiver or trustee in insolvency or bankruptcy.

2. The sale in good faith and not for the purpose of avoiding the provisions of this chapter by a pledgee of securities pledged for a bona fide debt~~, provided that the amount of such securities does not exceed two percent of the entire issue of each issue of such securities outstanding, and provided further that before proceeding to sell such pledged securities the pledgee shall notify the commissioner and obtain the commissioner's permission to such sale, unless such securities are exempted under section 10-04-05~~.

3. Any isolated sale of any security made by or on behalf of a bona fide owner for the owner's account, such owner not being an issuer, underwriter, dealer, or ~~salesman~~ agent and such sale not being made in the course of repeated and successive transactions of a like character. This subsection shall not exempt any dealer or ~~salesman~~ agent participating in an isolated sale from registering in accordance with section 10-04-10, nor shall this exemption be available in connection with any sale not made in good faith but rather for the purpose of evading the registration requirements imposed under chapter 10-04.

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[60] Section 10-04-06 was also amended by section 5 of House Bill No. 1045, chapter 50, and section 1 of House Bill No. 1154, chapter 94.

4. ~~Stock~~ Securities dividends or other distributions by a corporation or a limited liability company out of its earnings or surplus, or the sale or distribution of additional capital stock of a corporation or membership interest of a limited liability company to or among its own stockholders or members, including persons who at the time of the transaction are holders of nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, where no commission or other remuneration is paid or given directly or indirectly for soliciting or effecting such sale or distribution to stockholders or members in this state.

5. Any offer or sale of securities to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or similar benefit plan, or other financial institution ~~or institutional buyer~~, or to a dealer, whether the purchaser is acting for itself or in a fiduciary capacity.

6. Any transaction incident to a vote by stockholders pursuant to the articles of incorporation or the applicable corporation or limited liability company statute on a merger, consolidation, reclassification of securities, or sale of corporate or limited liability company assets in consideration of the issuance of securities of another corporation or limited liability company, or any transaction incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash.

7. The issuance and delivery of any securities in exchange for any other securities of the same issuer pursuant to a right of conversion entitling the holder of the securities surrendered to make such conversion; provided, that the securities surrendered were not offered for sale or sold in violation of section 10-04-04.

8. The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that:

   a. Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics.

   b. Such securities do not constitute an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer, its officers, or directors or by or through an underwriter.

   c. ~~A nationally recognized~~ Such securities are listed in the standards and poor's standard corporation descriptions, Moody's industrial manual ~~approved by the commissioner contains, and has contained for a period of not less than ninety days prior to the sale, the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen months prior to the date of such sale, and a profit and loss statement of the issuer for either the fiscal~~

~~year preceding that date or the most recent year of operations~~, Moody's bank and finance manual, Moody's transportation manual, Moody's public utility manual, or Fitch's individual stock bulletin.

d. Such securities are limited to issuers organized under the laws of any state, territory, or insular possession of the United States.

e. Provided, however, that even though the foregoing conditions might all be met, the exemption would not apply to the securities of open-end management companies, mutual funds, unit investment trusts, contractual plans, and face amount certificate companies.

9. a. Any transaction pursuant to an offer directed by the offeror to not more than t~~wenty-five~~ thirty-five persons, other than those designated in subsection 5, in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:

(1) The seller reasonably believes that all the buyers in this state, other than those designated in subsection 5, are purchasing for investment.

(2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state, other than those designated in subsection 5, except to a dealer and agent registered in this state in connection with the offer or sale of the security to a resident of this state.

(3) The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a nonrefundable filing fee of one hundred fifty dollars, which fee must accompany the application for approval.

~~Provided, however, that the~~ The commissioner may ~~by rule or order~~, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the ~~conditions~~ condition in ~~paragraphs~~ paragraph 1~~, 2, and 3 with or without the substitution of a limitation on remuneration~~.

b. Any offer or sale in this state of common stock, preferred stock, limited liability company membership interests, or limited partnership interests of an issuer during any period of twelve consecutive months if all of the following conditions are met:

(1) The issuer reasonably believes that all the buyers in this state, other than those designated in subsection 5, are purchasing for investment.

(2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state, other than those designated in subsection 5, except reasonable and customary commissions paid by the issuer to a dealer ~~or salesman~~ and agent registered ~~under this chapter~~

~~or others who the commissioner may designate by rule~~ in this state in connection with the offer or sale of the security to a resident of this state.

(3) The issuer is both organized under the laws of this state and has its principal place of business in this state.

(4) No public advertising matter or general solicitation, ~~other than~~ except tombstone advertisements ~~that~~ approved by the commissioner ~~shall prescribe by rule~~, is used in connection with any offers or sales.

(5) ~~At least eighty percent of the net proceeds from the sale of the securities must be used in connection with the operations of the issuer in this state. "Net proceeds" means gross proceeds less commissions and sales expenses.~~

~~(6)~~ An offering disclosure document in the form approved by the commissioner must be delivered to each offeree no less than seventy-two hours prior to the sale of the security.

~~(7)~~ (6) The gross proceeds of the offering may not exceed ~~five hundred thousand~~ one million dollars.

~~(8)~~ (7) The issuer must apply for and obtain the written approval of the commissioner prior to making any offer or sale in this state by filing an application prescribed by the commissioner, a copy of the offering disclosure document, and any other information or documents the commissioner may require, together with a nonrefundable filing fee of one hundred fifty dollars.

~~(9)~~ (8) All funds raised in the offering are placed in an escrow account until the total offering amount has been sold.

~~Provided, however, that the~~ The commissioner may ~~by rule or order, as to any security or transaction or any type of security or transaction,~~ withdraw or further condition this exemption or waive the conditions in paragraphs 5 and 6 ~~and 7~~.

c. ~~The offer or sale of a security offered or sold in compliance with a limited offering transactional exemption that the commissioner, by rule, may adopt to further the objectives of compatibility with the exemptions from securities registration authorized by the Securities Act of 1933 and uniformity among the states.~~ The issuer must file a report of all offers and sales made in this state pursuant to subdivision a or b on a form prescribed by the commissioner within thirty days after the completion of the offering or expiration of the twelve-month approval period, whichever occurs first.

d. The exemptions provided under subdivisions a~~,~~ and b~~, and c~~ may not be combined.

e. An exemption under this subsection is not available for the securities of any issuer if the issuer or any promoter, officer, director, manager, partner, or underwriter of the issuer:

(1) Has filed a registration statement that is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the application required under this exemption.

(2) Has been convicted within five years prior to the filing of the application required under this exemption of any felony or misdemeanor in connection with the offer, purchase, or sale of any security or any felony involving fraud or deceit, including forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(3) Is currently subject to any state administrative enforcement order or judgment entered by any state securities administrator or the securities and exchange commission within five years prior to the filing of the application required under this exemption or is subject to any federal or state administrative enforcement order or judgment in which fraud or deceit, including making untrue statements of material facts, was found and the order of judgment was entered within five years prior to the filing of the application required under this exemption.

(4) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase, or sale of securities.

(5) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment, or decree of any court of competent jurisdiction, permanently restraining or enjoining, such part from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security or involving the making of any false filing with any state or with the securities and exchange commission entered within five years prior to the filing of the application required under this exemption.

(6) Has been or is the subject of any order issued by the United States postal service that was entered within five years prior to reliance on this exemption and alleged any fraudulent or unlawful conduct.

f. Subdivision e does not apply if the commissioner determines, upon a showing of good cause, that it is not necessary under the circumstances that the exemption should not be denied.

10. The sale of capital stock of a corporation or membership interests of a limited liability company ~~may be exempted by the securities commissioner~~ if the corporation or limited liability company is organized under ~~chapter 10-30 or approved by the small business administration as qualifying for loans under section 502 of the Small Business Investment Act of 1958, as amended;~~ the statutes of this state or the sale of memberships, including dues, in a nonprofit corporation incorporated under chapter 10-24 ~~may be exempted by the securities commissioner~~ if

the corporation or limited liability company is organized and operated for the primary purpose of promoting community development.

11. Any security issued in connection with an employees' stock purchase, savings, pension, profit-sharing, a self-employed person's retirement plan, or similar benefit plan~~; provided, that the securities which fund the plan or are the subject of the plan are otherwise exempt pursuant to section 10-04-05~~.

12. The sale of a security issued by the United States, or the state of North Dakota, or any political subdivision or instrumentality of the state of North Dakota; provided, that the offer for sale and sale are made by an official or employee of the issuer or of the Bank of North Dakota acting in an official capacity and not for personal pecuniary profit, or by a bank or similar financial association or institution or an official or employee thereof solely as an accommodation to customers of such association or institution and without asking or receiving a commission or remuneration other than an accommodation fee not to exceed fifty dollars in connection with the transaction.

13. The sale of capital stock or membership interests of a venture capital corporation or limited liability company organized under chapter 10-30.1.

14. Any offer or sale of shares of capital stock issued by a professional corporation or professional limited liability company which is organized and operated pursuant to chapter 10-31.

15. The offer or sale of a security issued by the North Dakota education association dues credit trust to members of the North Dakota education association.

16. 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 known 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 of 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.

17. An offer or sale of common stock, limited liability company membership interests, or limited partnership interests by a person to a person or other subscribers, not exceeding ten in number, for the sole purpose of organization in this state, if the securities are not acquired for the purpose of resale to others for a period of twelve months, advertising has not been published or circulated in connection with the offer or sale, and all sales are consummated within ten days after the date of organization.

18. Any offer or sale of a security by an issuer in a transaction provided all of the following conditions are met:

a. Sales of securities may be made only to persons who are, or the issuer reasonably believes are, accredited investors as defined in 17 CFR 230.501(a) promulgated by the securities and exchange commission.

b. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.

c. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to, or for, sale in connection with a distribution of the security. Any resale of a security sold in reliance of this exemption within twelve months of sale must be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under section 10-04-04 or to an accredited investor pursuant to an exemption available under subsection 5.

d. (1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:

(a) Within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the securities and exchange commission;

(b) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

(c) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(d) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(2) Paragraph 1 does not apply if:

(a) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

(b) Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or

(c) The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subdivision.

e. (1) A general announcement of the proposed offering may be made by any means.

(2) The general announcement must include only the following information, unless additional information is specifically permitted by the commissioner:

(a) The name, address, and telephone number of the issuer of the securities;

(b) The name, a brief description, and price, if known, of any security to be issued;

(c) A brief description of the business of the issuer in twenty-five words or less;

(d) The type, number, and aggregate amount of securities being offered;

(e) The name, address, and telephone number of the person to contact for additional information; and

(f) A statement that:

[1] Sales will only be made to accredited investors;

[2] No money or other consideration is being solicited or will be accepted by way of this general announcement; and

[3] The securities have not been registered with or approved by any state securities agency or the securities and exchange commission and are being offered and sold pursuant to an exemption from registration.

f. The issuer, in connection with an offer, may provide information in addition to the general announcement under subdivision e, if such information:

(1) Is delivered through an electronic data base that is restricted to persons who have been prequalified as accredited investors; or

(2) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.

g. Telephone solicitation is not permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.

h. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption.

i. The issuer shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the general announcement, and a nonrefundable filing fee of one hundred dollars within fifteen days after the first sale in this state.

19. The offer or sale of a security issued by an organization organized under and operated in compliance with chapter 10-06.1.

SECTION 6. AMENDMENT. Section 10-04-07.1 of the North Dakota Century Code is amended and reenacted as follows:

10-04-07.1. Registration by announcement - Secondary.

1. Securities that have been outstanding and in the hands of the public for not less than one year as the result of prior original registration in North Dakota or through securities and exchange commission registration, by the issuer, or by the underwriter on behalf of an issuer, are entitled to registration by announcement in the manner and subject to the conditions provided by this section.

   In addition to the foregoing, stock, having equal voting rights with other classes, of life insurance companies may also qualify for registration under this section provided the company has been in continuous operation for twenty years immediately preceding the date of filing for registration and provided further that in addition to supplying the information required by subdivisions a through c of subsection 2 the applicant can supply all of the following:

   a. A balance sheet and an earnings statement showing statutory net earnings after all dividends (returned premiums) to policyholders and after all expenses including state and federal income taxes for the fiscal period ended not more than twelve months prior to the filing date upon which either an unqualified or a qualified opinion has been expressed by a certified public accountant; provided, however, that any qualification of opinion relates only to generally accepted principles of accounting which may have been modified to meet the reporting requirements of the various state insurance departments.

   b. Such balance sheet separates the surplus account into its component parts and shows a positive balance in the accumulated unrestricted retained earnings account, on statutory basis.

   c. Earnings statements for the four fiscal years immediately preceding the beginning date of the earnings statement required in subdivision a prepared by the same certified public accountant showing statutory net earnings after the deductions enumerated in subdivision a for each fiscal year; provided, however, that these statements need not be accompanied by an unqualified or a qualified opinion of the certified public accountant unless such certified public accountant did actually perform an audit of the company for any year or years covered by the earnings statements in which case the requirements of subdivision a apply for the year or years so audited.

   d. A statement prepared by a certified public accountant or actuary showing a net gain in insurance in force for each of the last five fiscal years.

2. Securities entitled to registration by announcement may be registered only by a dealer registered in the office of the commissioner as provided for in section 10-04-10 by filing in the office of the commissioner a written announcement of intention to trade in the securities~~, which~~

~~announcement may be given by telegram sent to the commissioner by the dealer,~~ containing the following:

a. Name of issuer and location of the headquarters or principal office.

b. A brief description of the security, including price and current earnings.

c. A statement that the securities have been outstanding and in the hands of the public not less than one year as aforesaid.

d. A ~~statement that a~~ balance sheet not more than twelve months old ~~has been or will be mailed to the commissioner~~.

e. A statement that the security has been registered in North Dakota or by the securities and exchange commission.

3. The filing of such announcement in the office of the commissioner constitutes the registration of the security, unless advised to the contrary within forty-eight hours or advised to furnish additional information, and such dealer shall pay to the commissioner a filing fee of twenty-five dollars ~~within thirty-six hours after the time of such filing~~. Upon registration, such securities may be sold in this state for a period of one year from date of registration by registered dealers at a price or prices reasonably related to the current market price of such security at the time of sale, subject, however, to any and all rights and authority granted the commissioner and to any person or purchaser under chapter 10-04, in respect of securities registered in the office of the commissioner by description or qualification. No security registered under this section shall be sold directly or indirectly for the benefit of the issuer, or an underwriter of such securities, or for the promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter; provided, that no security, the registration of which has been revoked by the commissioner, or application for registration of which has been denied by the commissioner, or withdrawn by the applicant, shall be registered under this section.

4. ~~Nothing in this section shall be held or construed to require registration of securities under this section after said securities have been registered by description or qualification as provided in section 10-04-07 or 10-04-08 for one year after registration.~~ Securities registered pursuant to section 10-04-07 or 10-04-08 become eligible for trading in the secondary market at current market prices upon completion of the original offering when said securities are outstanding and in the hands of the public and remain so until the end of the registration year when renewal for secondary is permissible. Notification of completion of initial offering should be sent to the commissioner when the offering is completed requesting change to secondary.

SECTION 7. AMENDMENT. Section 10-04-08 of the North Dakota Century Code is amended and reenacted as follows:

10-04-08. Registration by qualification. Securities required to be registered by qualification under this chapter before they may be sold in this state must be registered as provided in this section. Application for registration of securities by

qualification must be made by the issuer of the securities or by a registered dealer by filing in the office of the commissioner:

1. An application for registration which must be made in writing or on forms prescribed by the commissioner and which must contain the following information and be accompanied by the following documents:

   a. With respect to the applicant or issuer and any significant subsidiary: its name, address, and form of organization; the state of foreign jurisdiction and date of its organization; the general character and location of its business; a general description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged.

   b. With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: the person's name, address, and principal occupation for the past five years; the amount of securities of the issuer held by the person as of a specified date within thirty days of the filing of the application for registration; the amount of the securities covered by the application for registration to which the person has indicated an intention to subscribe; and a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected.

   c. With respect to persons covered by subdivision b: the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer to all those persons in the aggregate.

   d. With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in subdivision b other than the person's occupation.

   e. With respect to every promoter if the issuer was organized within the past three years: the information specified in subdivision b, any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for any such payment.

   f. With respect to any person on whose behalf any part of the offering is to be made in a nonissuer distribution: the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the application for registration; a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected; and a statement of the person's reasons for making the offering.

   g. The title, kind, classes, and amount of securities to be offered in this state; the proposed offering price to the public or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if

otherwise than for cash; the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges and a statement as to what person, corporation, or limited liability company shall be responsible for payment of the same; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter.

h. The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition.

i. A description of each and every stock option or other security option outstanding, or to be created in connection with the offering, including the price at which such options may be exercised together with the amount of any such options held or to be held by every person.

j. The capitalization and long-term debt of the issuer and any subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities.

k. The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the application for registration or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which affects its business or assets.

l. A detailed statement showing the items of cash, property, services, patents, goodwill, and any other consideration for which any

securities of the issuer have been within two years or are to be issued in payment.

m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering.

n. A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered.

o. A balance sheet of the issuer as of a date within four months prior to the filing of the application for registration; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if the business were the registrant.

p. Other states in which it is proposed to offer the securities for sale to the public; other states in which the securities are eligible for sale to the public; states which have refused, by order or otherwise, to render the securities eligible for sale to the public or have revoked or suspended the right to sell the securities, or in which an application for registration has been withdrawn; and, if application has been made to register the securities under the Federal Securities Act of 1933, the date upon which the application to register the securities was first filed, and a statement as to whether registration under that Act is effective, and if so, the effective date.

q. Such additional information as the commissioner requires by rule or order or may subsequently request.

2. ~~a.~~ Payment of a r~~egistration~~ filing fee for each security or class of security to be registered as follows:

~~(1)~~ a. One-tenth of one percent of the first seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.

~~(2)~~ b. One-twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security to be registered.

~~(3)~~ c. In no event may such r~~egistration~~ filing fee be less than one hundred dollars for each security or class of security to be registered. If the application for r~~egistration~~ filing is denied, such r~~egistration~~ filing fee less the actual cost to the state of processing and investigating as determined by the commissioner must be returned to the applicant.

~~(4)~~ d. Provided, further, that any applicant may r~~egister~~ ~~additional~~ increase the aggregate amount of securities under this subdivision before the expiration of one year from the date of the r~~egistration~~ certificate of effectiveness at the same reduced fee, which must be computed as provided in ~~paragraphs 1~~ subdivisions a and ~~2~~ b as a separate fee for each additional amount registered, as if the additional securities had been included in the other registration of that year, registration year and not calendar year.

~~(5)~~ e. For the renewal of the registration of securities for additional periods of one year there must be paid a renewal fee of one hundred dollars.

~~b. (1) Each open-end management company, unit investment trust, and face amount certificate company, as defined in the Investment Company Act of 1940 [Pub. L. 76-768; 54 Stat. 789; 15 U.S.C. 80a-1 et seq.] may register an indefinite number or amount of securities by including on the facing sheet of its registration statement a declaration that an indefinite number or amount of securities is being registered by such registration statement.~~

~~(2) At the time a declaration is filed there must be paid a registration fee of five hundred dollars.~~

~~(3) Provided, further, that those issuers of several classes of such securities may not combine the registration of several classes.~~

~~(4) Each open-end management company, unit investment trust, and face amount certificate company, as defined in the Investment Company Act of 1940 [Pub. L. 76-768; 54 Stat. 789; 15 U.S.C. 80a-1 et seq.] having an effective registration statement relating to an indefinite number or amount of securities shall, within sixty days after the end of any fiscal year and after the registration is terminated, file a report of the aggregate public offering price of securities sold in this state during the fiscal year and shall pay a filing fee of one-twentieth of one percent of such amount, but in no case may such filing fee be less than one hundred dollars nor more than two hundred fifty dollars. Failure to file the report and fee is cause for the issuance of a stop order.~~

3. If the applicant is not domiciled in this state and is not a corporation or limited liability company organized or authorized to transact business under the laws of this state, a consent to service of process conforming to the requirements of section 10-04-14.

4. The commissioner may by rule or order require as a part of the application for registration under this section that a prospectus containing any designated part of the information specified in subsection 1 be submitted to the commissioner and the same prospectus must be sent or given to each person to whom a sale or an offer to sell is made. The commissioner may by rule or otherwise permit the omission of any item of information or document from any application for registration. In all cases in which an application is filed to register

securities and a registration statement covering the same securities has been filed with the federal securities and exchange commission, a copy of the registration statement so filed must be accepted by the commissioner in lieu of the information specified in subdivisions a through q of subsection 1, except that it must be accompanied by a statement of the amount of such securities to be offered in this state. All of the statements, exhibits, or documents of every kind required under this section must be certified by the applicant or the issuer or any person having knowledge of the facts. An applicant may, with the consent of the commissioner, amend or withdraw an application and any or all statements, exhibits, or documents filed therewith under this section at any time prior to the registration or prior to any offering and sale of the securities sought to be registered or the entry of an order denying the registration of such securities, but in no event may the r~~egistration~~ fee be returned.

Registration under this section is effective for a period of one year~~, except that the effectiveness of a registration for an indefinite number or amount of securities under paragraph 1 of subdivision b of subsection 2 shall continue until terminated by either the commissioner or the issuer by filing within one hundred twenty days of the end of its fiscal year, an updated prospectus, a balance sheet, and a statement of income of the issuer~~.

SECTION 8. AMENDMENT. Section 10-04-08.1 of the North Dakota Century Code is amended and reenacted as follows:

10-04-08.1. Authority of commissioner ~~as to registration of securities~~. The right to sell securities in this state shall not be granted in any case where it appears to the commissioner that the sale of such securities would work a fraud or deception on purchasers or the public, or that the proposed disposal of the securities is on unfair terms, or if the proposed plan of business of the applicant appears to be unfair, unjust, or inequitable. When the commissioner deems it necessary the commissioner has power, in connection with pending applications and at the expense of the applicant, to require the applicant to furnish additional information, to order appraisals, audits, or other examinations and reports, and, where the applicant is the issuer of the securities, or the proposed sale is to be on behalf of the issuer, to make an investigation of the books, records, property, business, and affairs of such issuer.

Upon compliance with all the provisions of this chapter relating to applications for approval or registration by qualification and the requirements of the commissioner, the commissioner shall either approve or register such securities or if the commissioner is of the opinion that sale of the securities would be contrary to the provisions of this section, the commissioner shall deny the application. The commissioner has power to place such conditions, limitations, and restrictions on any approval or registration as may be necessary to carry out the purposes of this chapter. Registration or approval must be by entry in the register of securities, which entry must show the securities approved or registered and for whom approved or registered, and the conditions, limitations, and restrictions, if any, or shall make proper reference to a formal order of the commissioner on file showing such conditions, limitations, and restrictions. Included among any other reasonable conditions, limitations, and restrictions which the commissioner may deem necessary are the following:

1. The commissioner may by rule, order, or directive require that any security issued or to be issued to a promoter for a consideration different from the public offering price, or to any person for a consideration other

than cash, be deposited in escrow with the commissioner or some other depository satisfactory to the commissioner under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than six percent of the initial offering price shown to the satisfaction of the commissioner to have been held actually earned on the investment in any common stock as held. In case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities have been paid in full.

2. The commissioner may by rule, order, or directive require that all the proceeds from the sale of the approved or registered security be impounded until the issuer receives a specified amount of funds, which amount shall be determined by the commissioner.

3. The commissioner may refuse to allow the granting of any stock options to any person, but if such an option is allowed, the commissioner may prescribe that the price at which the option can be exercised shall be increased each year in which it is not exercised in an amount to be determined by the commissioner and that the option shall lapse altogether after a specified period to be set by the commissioner.

4. If any stock is given for past services or consideration, the commissioner may require that the issuer submit to the commissioner a strict and comprehensive evaluation of such past services or consideration and may limit the amount of stock so given in order that it is commensurate with the value of the past services and in no case shall the commissioner allow stock to be given for future services.

5. The commissioner may limit the price at which the securities, either of par or no par value, may be sold, and if such securities are quoted by a recognized quotation list such price shall be limited to an amount not unreasonably in excess of the amount quoted.

6. The commissioner may by rule, order, or directive limit compensation, and all other expenses paid or incurred, directly or indirectly, in connection with the organization, approval, registration, or sale of securities, to an amount not in excess of compensation paid or expenses incurred in connection with the organization, approval, registration, or sale of similar securities.

7. If more than one class of stock is issued and one class of stock is issued for the purpose of giving preference as to dividends, the commissioner may require that a greater consideration, commensurate with the value of the dividend preference, be paid per share for such stock.

8. The commissioner may by rule, order, or directive require that any security approved or registered be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the commissioner or preserved by the corporation, partnership, or limited liability company for any period up to three years specified in the rule ~~or~~, order, or directive.

9. So long as the approval or registration is effective, the commissioner may by rule or order require the person who filed for approval or registration to file reports, not more often than quarterly, to provide reasonably current information upon the matters contained in the application or registration statement, and to disclose the progress of the offering.

10. The commissioner has the authority to disapprove an application for approval or registration of any security when it is established that one or more of the promoters are not of good business reputation or character.

The provisions of this section do not apply to a federal covered security.

SECTION 9. AMENDMENT. Section 10-04-08.2 of the North Dakota Century Code is amended and reenacted as follows:

10-04-08.2. Advertising matter - Regulations.

1. No circular, prospectus, advertisement, form or market letter, report, document, pamphlet, leaflet, script, or other written or printed matter, or any communication by radio, television, or similar communications media, hereinafter referred to as advertising matter, used in connection with the offer, sale, ~~or purchase of~~ or rendering investment advice with respect to any security in this state shall be published, circulated, distributed, broadcast, or caused to be published, circulated, distributed, or broadcast in any manner unless and until such advertising matter shall have been filed with the commissioner at least five business days prior to its first publication, circulation, distribution, or broadcast, unless such advertising matter pertains to a security or transaction exempted in 10-04-05 or 10-04-06, relates to a federal covered security, or is used by a federal covered adviser.

2. The commissioner may by rule or order and subject to such terms and conditions as may be prescribed therein exempt any advertising matter from the filing requirement imposed under subsection 1 if the commissioner finds that the imposition of the filing requirement is not necessary or appropriate in the public interest or for the protection of investors.

3. The commissioner has the power to disapprove any advertising matter filed pursuant to subsection 1, which the commissioner deems in conflict with the purposes of this chapter.

4. Nothing in this section or section 10-04-04 shall be construed to prohibit the publication or distribution to the public of a preliminary ~~prospectuses or preliminary summary prospectuses under the Securities Act of 1933, as amended~~ prospectus, provided that no solicitation is made or order or conditional order accepted prior to registration in this state, and provided also that, unless the preliminary prospectus relates to a federal covered security, the following legend appears on each such prospectus or preliminary prospectus:

   A registration statement relating to these securities has been filed ~~with the securities and exchange commission~~ but has not yet become effective. Information contained herein is subject to completion or amendment. These securities may not be sold nor

may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation, or sale would be unlawful prior to registration or ~~qualification~~ approval under the securities laws of any such state.

SECTION 10. AMENDMENT. Section 10-04-08.3 of the North Dakota Century Code is amended and reenacted as follows:

10-04-08.3. Unlawful representations concerning registration or exemption.

1. Neither the fact that an application for approval under sections 10-04-05 or 10-04-06 or registration under sections 10-04-07, 10-04-07.1, 10-04-08, or 10-04-10 or a notice filing under section 10-04-08.4 has been filed nor the fact that a security or person is effectively approved or registered constitutes a finding by the commissioner that any document filed under this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any security, transaction, or person.

2. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection 1.

SECTION 11. Section 10-04-08.4 of the North Dakota Century Code is created and enacted as follows:

10-04-08.4. Federal covered security. A federal covered security may be offered and sold in this state without registration, subject to the following:

1. Any federal covered security that is subject to section 18(b)(2) of the Securities Act of 1933, as amended, may be offered and sold upon the filing of:

   a. A copy of the issuer's registration statement or a notice of intent in writing or electronically for an indefinite or definite dollar amount for each security or class of security on a form prescribed by the commissioner with a consent to service of process.

   b. If the notice filing is for a definite dollar amount, at the time of the initial notice filing the issuer shall pay a nonrefundable filing fee of one-tenth of one percent of the first seven hundred fifty thousand dollars and one-twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security. In no event, however, may such filing fee be less than one hundred dollars for each security or class of security.

   c. If the notice filing is for an indefinite dollar amount, at the time of the initial notice filing the issuer shall pay a nonrefundable filing fee of five hundred dollars for each security or class of security.

d. A notice filing for a definite dollar amount may be increased before the expiration of one year from the date of the certificate of effectiveness at the same reduced fee, which must be calculated as provided in subdivision b as a separate fee for each additional amount.

e. A notice filing for a definite dollar amount may be renewed for additional periods of one year by filing, at least fifteen days prior to its expiration, a renewal and sales report notice with a fee of one hundred dollars to renew the unsold balance.

f. A notice filing for an indefinite dollar amount may be renewed by filing, within sixty days following the issuer's fiscal year, a renewal and sales report notice with a fee of one-twentieth of one percent of the amount of securities sold in this state during the period of the notice filing being renewed. In no case may such fee be less than one hundred dollars nor more than two hundred fifty dollars.

g. A notice filing may be terminated by the issuer upon providing the commissioner a notice of such termination.

h. The provision for each security or class of security in this subsection is effective when the federal registration statement becomes effective with the securities and exchange commission or the date the notice of intent is received by the commissioner, whichever is later. A filing notice for a definite dollar amount is effective for a period of one year from the date of effectiveness.

i. A copy of any document filed with the securities and exchange commission as the commissioner may require.

2. Any federal covered security that is subject to section 18(b)(4)(D) of the Securities Act of 1933, as amended, may be offered and sold upon a filing of:

a. A notice of intent is filed in writing on SEC form D or other prescribed form with a consent to service of process and a nonrefundable filing fee of one hundred dollars within fifteen calendar days after the first sale in this state.

b. A copy of any document filed with the securities and exchange commission as the commissioner may require.

c. The notice filing is effective for a period of one year from the date the filing is received by the commissioner.

For any security offered or sold under this subsection, no commission or other remuneration may be paid, either directly or indirectly, for soliciting any prospective buyer in this state, except to a dealer and agent registered in accordance with section 10-04-10.

3. The commissioner, by rule or otherwise, may require the filing of a notice or any document filed with the securities and exchange commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) or 18(b)(4) of the Securities Act of 1933, together with a filing fee.

4. The commissioner may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, as amended, if it is found to be in the public interest or there is a failure to comply with any of the provisions stated in this section.

SECTION 12. AMENDMENT. Section 10-04-09 of the North Dakota Century Code is amended and reenacted as follows:

10-04-09. Suspension or revocation of registration of securities. The commissioner may revoke the registration of any securities registered under this chapter if, after a hearing or opportunity for hearing as provided in section 10-04-12, the commissioner finds that any provisions of this chapter or any rule, order, or condition lawfully imposed under this chapter has been violated, or if the commissioner finds any of the following:

1. The sale of such securities would work or tend to work a fraud, or deception upon the purchasers thereof or the public, or that the disposal of the securities is on unfair terms, or if the plan of business of the applicant appears to be unfair, unjust, or inequitable.

2. The issuer of such securities is insolvent, or has violated any of the provisions of this chapter or any order of the commissioner of which such issuer has notice, or does not conduct its business in accord with law.

3. The issuer of such securities has made any fraudulent representations in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities.

4. The issuer of such securities has refused to permit an examination into its affairs as provided in this section or has failed to furnish the commissioner any further information required pursuant to this section.

5. Securities registered by description were not entitled to registration by description.

6. No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

If the commissioner has reasonable grounds to believe that the registration of any securities registered under this chapter should be revoked upon any ground specified in this section, the commissioner or the commissioner's agent may conduct an examination into the affairs of the issuer of such securities; provided, that the commissioner or the commissioner's agent may conduct such an examination only if the information sought by such examination could not be obtained from other readily available sources. In making any such examination, the commissioner or the commissioner's agent shall have access to and may compel the production of all the books and papers of an issuer and may administer oaths to and examine the officers and any employees of such issuer as to its business and affairs. They may also require a balance sheet exhibiting the assets and liabilities of any such issuer or the issuer's income statement, or both, to be certified to by a certified public accountant. Whenever the commissioner may deem it necessary in connection with any such examination, the commissioner may also require such balance sheet or income statement, or both, to be made more specific in such particulars as the commissioner shall point out or to be brought down to the latest practicable date. Such

examination shall be made at the office of the commissioner, unless the issuer or a registered dealer requests that the examination be made at some other place, in which case the person making such request may be required by the commissioner to advance sufficient funds to pay the actual expenses of such investigation.

If the commissioner has reasonable grounds to believe that the registration of any securities under this chapter should be revoked on any ground specified in this section, the commissioner may enter an order suspending the registration of such securities pending an examination into the affairs of the issuer of such securities or pending a hearing or opportunity for hearing as provided in section 10-04-12; provided, that no such suspension order shall be effective for more than thirty days and such an order, if not withdrawn by the commissioner within thirty days, shall automatically terminate thirty days after the date of its issuance. Such suspension order shall state specifically the grounds for its issuance. Upon the entry of an order suspending the registration of any securities or of an order withdrawing a suspension order previously issued, the commissioner shall send a copy of such order to the issuer of such securities ~~and to all registered dealers by mail, or by telegraph, or by telephone, confirmed in writing~~.

If the commissioner finds, after a hearing or opportunity for hearing as provided in section 10-04-12, that there are grounds for revoking the registration of certain securities, the commissioner may enter in the register of securities an order revoking the registration of such securities. Such order shall state specifically the grounds for its issuance. Upon the entry of an order revoking the registration of securities, the commissioner shall send a copy of such order to the issuer of such securities ~~and to all registered dealers by mail, or by telegraph, or by telephone, confirmed in writing~~. No order revoking the registration of securities shall invalidate any sale of such securities made prior to the entry of such order.

SECTION 13. AMENDMENT. Section 10-04-10 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10. Registration of dealers, ~~salesmen~~ agents, ~~and~~ investment advisers, and investment adviser representatives; notice filings by federal covered advisers. A dealer or ~~salesman~~ agent may not offer for sale or sell any securities within or from this state, except in transactions exempt under section 10-04-06, unless registered as a dealer or ~~salesman~~ agent pursuant to the provisions of this section.

1. Dealers. Application for registration as a dealer may be made by any person eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed in the office of the commissioner, and must contain the following information:

   a. The name of the applicant.

   b. The address of the principal place of business of the applicant and the addresses of all branch offices, if any, of the applicant in this state.

   c. The form of business organization and the date of organization of the applicant.

   d. The names and business addresses of all members, partners, officers, directors, trustees, or managers of the applicant; a

statement of the limitations, if any, of the liability of any partner, member, manager, or trustee; and a statement setting forth in chronological order the occupational activities of each such partner, member, officer, director, trustee, or manager during the preceding ten years.

e. A brief description of the general character of the business conducted or proposed to be conducted by the applicant.

f. A list of any other states in which the applicant is registered as a dealer, and, if registration of the applicant as a dealer has ever been refused, canceled, suspended, or withdrawn in any state, full details with respect thereto.

g. Whether the applicant is registered as a dealer under the Securities Exchange Act of 1934 or any act in amendment thereof and whether any such registration of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension by the securities and exchange commission.

h. The names of all organizations of dealers or brokers of which the applicant is a member or before which any application for membership on the part of the applicant is then pending, and whether any such membership of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.

i. The names of any securities exchange of which the applicant or any of its partners, officers, directors, trustees, members, managers, or employees is a member, and whether any such membership has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.

j. A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant, or by a responsible officer or member of said applicant as the commissioner may require. A dealer that is registered under the Securities Exchange Act of 1934 may satisfy this requirement by filing with the commissioner the dealer's most recent financial statements prepared under such Act.

k. Whether the applicant or any officer, director, partner, member, trustee, or manager of the applicant, has ever been convicted of a felony or any misdemeanor other than minor highway traffic offenses and, if so, all pertinent information with respect to any such conviction.

l. Any other information which the commissioner may by rule or order require.

The commissioner may also require such additional information as to the previous history, record, or association of the applicant, its

officers, directors, employees, members, partners, managers, or trustees as the commissioner deems necessary to establish whether or not the applicant should be registered as a dealer under the provisions of this law.

There must be filed with such application a written consent to the service of process upon the commissioner in actions against such dealer, conforming to the requirements of section 10-04-14, and payment of the prescribed registration fee, which must be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as a dealer unless the commissioner finds that the applicant is not of good business reputation, or is not solvent, or does not appear qualified by training or experience to act as a dealer in securities.

~~The~~ Except as prohibited by the Securities Exchange Act of 1934, the commissioner may require an indemnity bond ~~or a deposit of cash or other properties approved by the commissioner~~ running to the state of North Dakota conditioned for the faithful compliance by the dealer and the dealer's agents ~~and salesmen~~ with all the provisions of this law and for the faithful performance and payment of all obligations of the dealer and the dealer's agents ~~and salesmen~~.

The bond ~~or deposit~~ must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect purchasers ~~when there is taken into consideration the volume of business engaged in by the applicant and the number of salesmen employed by the applicant~~. Any such bond must have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a dealer, the commissioner shall notify the applicant of such registration.

2. ~~Salesmen~~ Agent. Application for registration as ~~a salesman~~ an agent may be made by any individual eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant and by the registered dealer or issuer employing or proposing to employ such applicant, duly verified by oath, must be filed in the office of the commissioner and must contain the following information:

   a. Name and residence and business address of the applicant.

   b. Name of the dealer or issuer employing or proposing to employ the applicant, unless the applicant is to be self-employed.

   c. ~~Names and addresses of three persons of whom the commissioner may inquire as to the character and business reputation of the applicant.~~

   ~~d.~~ Applicant's ~~age and education~~ date of birth.

   ~~e.~~ d. ~~The~~ All full and part-time work, self-employment, military service, unemployment and full-time education for the period of ten years immediately preceding the date of application. For all employment,

include the nature of the employment and the names and addresses of employers of the applicant ~~for the period of ten years immediately preceding the date of application~~.

~~f.~~ e. ~~Other state or federal laws under~~ A list of the states or other jurisdictions with which the applicant ~~has ever been~~ is registered as a dealer or ~~salesman~~ agent of securities, and, if any such registration has ever been refused, canceled, limited, suspended, or revoked, full details with respect thereto.

~~g.~~ f. Whether the applicant has ever been convicted of or pled guilty or nolo contendere in a domestic, foreign, or military court to a felony or misdemeanor ~~other than minor highway traffic offenses,~~ and ~~if so,~~ all pertinent information with respect to any such conviction or plea.

The commissioner shall require as a condition of registration that the applicant, and, in the case of a corporation, limited liability company, or partnership, all officers, directors, managers, governors, or partners doing securities business in this state, pass a written examination as evidence of knowledge of the securities business; provided, that not more than two officers or managers of an issuer may be registered as ~~a salesman~~ an agent for a particular original offering of the issuer's securities without being required to pass such written examination; and provided, further, that no such officer or manager may again register within ~~five~~ three years as such ~~salesman~~ agent for this or any other issuer without passing the written examination.

The commissioner may also require such additional information as to the applicant's previous business experience as the commissioner deems necessary to determine whether or not the applicant should be registered as ~~a salesman~~ an agent under the provisions of this law. If ~~a salesman~~ an agent proposes to be self-employed, the ~~salesman~~ agent shall specifically state the particular security or securities the ~~salesman~~ agent proposes to sell in this state in the application, and if said security or securities are exempt under section 10-04-05, or have been registered by description under section 10-04-07, or have been registered by announcement under section 10-04-07.1, or have been registered by qualification under section 10-04-08, then the commissioner shall require that said self-employed ~~salesman~~ agent file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed ~~salesman~~ agent with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond must be in a form approved and in the amount required by the commissioner. There must be filed with such application payment of the prescribed registration fee, which must be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as ~~a salesman~~ an agent unless the commissioner finds that such applicant is not of good business reputation, or that the dealer named on the application is not a registered dealer. When the commissioner has registered an applicant as ~~a salesman~~ an agent, the commissioner shall immediately notify the ~~applicant~~ dealer of such registration.

Every registered dealer or issuer shall promptly notify the commissioner of the termination of the employment by the dealer or issuer of a registered ~~salesman~~ agent. ~~The registration of such salesman shall automatically be suspended from the time of termination of such employment until the salesman notifies the commissioner of the salesman's employment by another registered dealer or issuer.~~

3. Investment advisers.

a. It is unlawful for any person to transact business in this state as an investment adviser unless:

(1) The person is registered under this chapter.

(2) The person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered advisers, dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner; or

(3) Such person is registered either under the laws of the state where its principal place of business is located or with the securities and exchange commission, if the investment adviser has no place of business in this state and, during the preceding twelve-month period has had not more than six clients, other than those specified in paragraph 2, who are residents of this state.

b. Application for registration as an investment adviser may be made by any person eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed in the office of the commissioner, and must contain the following information:

(1) Name, residence, and business address of the applicant.

(2) If the applicant is a corporation, limited liability company, or association, give full information as to ~~agents~~ officers, partners, managers, and managing officers.

(3) ~~Statement showing each individual named is of good repute and possesses essential experience and education~~ Information concerning the educational and business background and disciplinary history of all officers, directors, partners, control persons, and owners of five percent or more of the investment adviser.

(4) The plan and character of business, and the proposed method of operation.

(5) Such other information as may be required.

c. If the applicant is a foreign corporation, limited liability company, or association, it shall file with its application:

(1) A copy of its articles.

(2) Certificate showing authorization to transact business.

d. The commissioner may also require such additional information as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees, as the commissioner deems necessary to establish whether or not the applicant should be registered as an investment adviser under the provisions of this chapter.

e. There must be filed with such application:

(1) A written consent to the service of process upon the commissioner in actions against the investment adviser conforming to the requirements of section 10-04-14.

(2) Payment of the prescribed registration fee, which must be returned if registration is refused.

(3) A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant or by a responsible officer or member of the applicant, as the commissioner may require. An investment adviser that maintains its principal place of business in a state other than this state and that is registered with and in compliance with such state's financial reporting requirements may satisfy this requirement by filing with the commissioner a copy of those financial statements, if any, that are filed by the investment adviser with the state in which it maintains its principal place of business.

f. ~~The~~ Except as prohibited by the Investment Advisers Act of 1940, the commissioner may require an indemnity bond ~~or a deposit of cash or other properties approved by the commissioner~~ running to the state of North Dakota conditioned for the faithful compliance by the investment adviser and the investment adviser's representatives with all the provisions of this law and for the faithful performance and payment of all obligations of the investment adviser and the investment adviser's representatives. The bond ~~or deposit~~ must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect persons in this state ~~when there is taken into consideration the volume of business engaged in by the applicant and the number of persons who represent the applicant~~. Any such bond must have as surety thereon a surety company authorized to do business in this state.

g. The commissioner may by rule provide for an examination~~, which may be written or oral or both,~~ to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make the person an investment adviser.

h. When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an investment adviser unless the commissioner finds that the applicant is not of good business reputation or is not solvent.

i. A registrant as investment adviser shall notify the commissioner of any change of address.

4. Federal covered adviser. Except with respect to a federal covered adviser whose clients are those described in paragraph 2 of subdivision a of subsection 3 or who meets the criteria of paragraph 3 of subdivision a of subsection 3, it shall be unlawful for a person to transact business in this state as a federal covered adviser unless such person has made a notice filing with the commissioner consisting of a copy of those documents that have been filed with the securities and exchange commission as the commissioner may require by rule or otherwise and the prescribed notice filing fee.

A notice filing is effective from receipt until the following May first. It may be renewed by filing with the commissioner, prior to expiration, those documents filed with the securities and exchange commission as the commissioner may require by rule or otherwise, with the notice filing renewal fee.

If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the federal covered adviser shall file an amendment with the commissioner whenever such amendment is filed with the securities and exchange commission.

A notice filing may be terminated by a federal covered adviser by filing a notice of termination with the commissioner.

5. Investment adviser representatives. Application for registration as an investment adviser representative may be made by any person eighteen years of age or older. The application for registration must be ~~made~~ submitted in writing or electronically in a form prescribed by the commissioner, be signed by the applicant and if applicable, by the investment adviser employing or proposing to employ the applicant, be duly verified by oath, be filed in the office of the commissioner, and contain the following information:

a. Name, residence, and business address of the applicant.

b. Name of the investment adviser employing or proposing to employ the applicant, unless the applicant is to be self-employed.

c. Applicant's ~~age and education~~ date of birth.

d. ~~The~~ All full and part-time work, self-employment, military service, unemployment and full-time education for the period of ten years immediately preceding the date of application. For all employment, include the nature of the employment and the names and addresses of employers of the applicant ~~for the period of ten years immediately preceding the date of the application~~.

e. ~~Other state or federal laws under~~ A list of the states or other jurisdictions with which the applicant ~~has ever been~~ is registered as an investment adviser representative, and, if any registration has ever been refused, canceled, limited, suspended, or revoked, full details with respect thereto.

f. Whether the applicant has ever been convicted of or pled guilty or nolo contendere in a domestic, foreign, or military court to a felony or misdemeanor ~~other than minor highway traffic offenses,~~ and ~~if so,~~ all pertinent information with respect to any such conviction or plea.

There must be filed with the application payment of the prescribed registration fee, which must be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register the applicant as an investment adviser representative unless the commissioner finds that: the applicant is not of good business reputation ~~or~~; that the investment adviser named in the application is not a registered investment adviser; or the federal covered adviser named in the application has not made a notice filing with the commissioner. When the commissioner has registered an applicant as an investment adviser representative, the commissioner shall immediately notify the ~~applicant~~ investment adviser or the federal covered adviser, as applicable, of such registration.

Every registered investment adviser shall promptly notify the commissioner of the termination of the employment by the adviser of a registered investment adviser representative. Every registered investment adviser representative employed by a federal covered adviser or the federal covered adviser shall promptly notify the commissioner of the termination of such employment. The registration of the investment adviser representative is automatically suspended from the time of termination of employment until such time as the representative ~~notifies~~ is registered by the commissioner ~~of employment by~~ as a representative of another investment adviser or federal covered adviser.

The commissioner may by rule provide for an examination to be taken by the applicant.

~~5.~~ 6. Refusal of registration. If the commissioner has reason to believe there are grounds to refuse the approval of any application under this section, the commissioner may, by order, summarily postpone the approval of any application made under this section. If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-04-12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, the commissioner shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order must

be mailed to the applicant at the applicant's business address, and if the application is for registration as ~~a salesman~~ an agent, to the registered dealer or issuer or if the application is for registration as an investment adviser representative to the investment adviser or federal covered adviser who proposed to employ such applicant. If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a dealer's, ~~salesman's~~ agent's, investment adviser's, or investment adviser representative's registration under section 10-04-11, such act or omission may constitute a sufficient ground for a finding by the commissioner that such applicant is not of good business reputation.

~~6.~~ 7. Record and renewal of registrations. The names and addresses of all persons who have been registered as dealers, ~~salesmen~~ agents, investment advisers, or investment adviser representatives, and all orders with respect thereto, and the names and addresses of all federal covered advisers who have made a notice filing must be recorded in a register of dealers, ~~salesmen~~ agents, investment advisers, federal covered advisers, and investment adviser representatives in the office of the commissioner. Every registration and notice filing under this section expires ~~one year from its effective date~~ on May first of each year unless renewed. The commissioner may by rule provide for expirations and renewals, including dates, forms, and procedures, adjust registration and notice filing fees to correspond with expiration dates, and do any other thing which may be necessary or convenient in order to participate in a central registration depository or any similar arrangement designed to promote uniformity, to ease regulatory burdens, or to encourage cooperation with other states, the securities and exchange commission, or any registered national securities association or exchange. ~~Upon any change in the proprietors, partners, officers, or directors of a registered dealer or investment adviser, such registered dealer or investment adviser shall promptly notify the commissioner in writing of such changes. The commissioner shall record such changes, without fee, in the register of dealers, salesmen, investment advisers, and investment adviser representatives.~~

~~7.~~ 8. Fees. The fee, which must accompany the application, for registration, transfer, or notice filing, and for each annual renewal thereof is:

a. For each dealer		$200.00
b. For each ~~salesman~~ agent	~~$50.00~~	60.00
c. For each investment adviser or federal covered adviser		$100.00
d. For each investment adviser representative	~~$35.00~~	50.00

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

SECTION 14. AMENDMENT. Section 10-04-10.1 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10.1. Advisory activities.

1. It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to

the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

a. To employ any device, scheme, or artifice to defraud the other person; or

b. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person~~;~~.

~~c. Acting as principal for the person's own account,~~

2. It is unlawful for any person, in the solicitation of a client for investment advisory services, to make any false or misleading statement of material fact, or to fail to disclose a material fact.

3. It is unlawful for any person who provides investment advisory services subject to the provisions of this chapter to knowingly ~~to~~ sell any security to or purchase any security from a client~~, or acting as broker for a person other than the client, knowingly to effect any sale or purchase of any security for the account of the client, without disclosing to the client in writing before the completion of the transaction the capacity in which the person is acting and obtaining the consent of the client to the transaction. The prohibitions of this subsection do not apply to any transaction with a customer of a dealer if the dealer is not acting as an investment adviser in relation to the transaction; or~~ while acting for the person's own account or as a broker for another client unless the person first makes a written disclosure to the client of the capacity in which the person is acting and obtains the client's written consent to the transaction.

~~d.~~ 4. ~~To~~ It is unlawful for any person who provides investment advisory services subject to the provisions of this chapter to engage in dishonest or unethical practices as the commissioner may define by rule.

~~2. In the solicitation of advisory clients, it is unlawful for any person to make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading.~~

~~3.~~ 5. It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:

a. ~~That the~~ The investment adviser shall not be compensated on the basis of a share of capital gains ~~upon~~, earnings, or capital appreciation of the funds or any portion of the funds of the client. This does not prohibit an investment advisory contract that provides for compensation based on the total value of a fund determined as of a definite date or averaged as of definite dates or over a definite period.

b. ~~That no~~ An assignment of the investment advisory contract may not be made by the investment adviser ~~without~~ unless the investment adviser notifies the client of the intended assignment and obtains the prior written consent of the ~~other party to the contract~~ client.

c. ~~That the~~ The investment adviser~~, if a limited liability company or partnership, shall notify~~ shall provide written notice to the ~~other party to the contract~~ client within fifteen days of any change ~~in the membership of the limited liability company or partnership within a reasonable time after the change~~ of ownership in excess of five percent.

~~Subdivision a does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in subdivision b, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a securityholder of the assignor; but, if the investment adviser is a limited liability company or partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.~~

d. The investment adviser shall provide written notice to the client within fifteen days of a change of controlling interest of the investment adviser. The client may terminate the investment advisory contract without penalty by providing a written notice to the investment adviser within thirty days after the client's receipt of the notice of change of controlling interest.

~~4.~~ 6. It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:

a. The commissioner by rule prohibits custody; or

b. ~~In the absence of rule, the~~ The investment adviser fails to notify the commissioner that the investment ~~advisor~~ adviser has or may have custody.

~~5.~~ 7. No action may be brought under this section by the commissioner after six years from the date of the alleged violation.

SECTION 15. AMENDMENT. Section 10-04-10.2 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10.2. Conviction not bar to registration - Exceptions. Conviction of an offense does not disqualify a person from registration under this chapter unless the commissioner determines that the offense has a direct bearing upon a person's ability to serve the public as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

SECTION 16. AMENDMENT. Section 10-04-10.3 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10.3. Postregistration provisions.

1. Every registered dealer, ~~salesman~~ agent, investment adviser, and investment adviser representative shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the commissioner prescribes by rule. All records so required must be preserved for three years unless the commissioner prescribes otherwise by rule for particular types of records.

2. Every registered dealer, ~~salesman~~ agent, investment adviser, and investment adviser representative shall file such financial reports as the commissioner prescribes by rule.

3. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

4. All the records referred to in subsection 1 are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or outside this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, if deemed practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or any other jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business, and in so cooperating may share any information obtained as a result of any investigation or examination.

5. The commissioner and the commissioner's representatives may copy records or require a registrant to copy records and provide the copies to the commissioner and the commissioner's representatives to the extent and in a manner reasonable under the circumstances.

SECTION 17. AMENDMENT. Section 10-04-11 of the North Dakota Century Code is amended and reenacted as follows:

10-04-11. Suspension or revocation of dealer's, ~~salesman's~~ agent's, investment adviser's, and investment adviser representative's registration.

1. The commissioner may censure, place limitations on the activities of, suspend for a period not exceeding twelve months, or revoke the registration of any dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative or any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the dealer or investment adviser if, after a hearing or opportunity for hearing as provided in section 10-04-12, the commissioner finds that such registered dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative:

   a. Has violated or failed to comply with any provisions of this chapter or any order or rule of the commissioner under this chapter;

b. Is, in the case of a dealer or investment adviser, insolvent;

c. Has engaged in dishonest, fraudulent, or unethical practices in the securities business;

d. Conducts business in purchasing or selling securities at such variations from current market prices as, in the light of all the circumstances, are unconscionable or unfair to the purchasing public, or if such variance, including commissions on sales, unreasonably exceeds the price quoted by a recognized national quotation list as prescribed by the commissioner;

e. Has failed to file with the commissioner any financial record required pursuant to section 10-04-10.3, or has refused to permit an examination into the person's affairs as provided by section 10-04-10.3 and subsection 3;

f. Has filed an application for registration which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

g. Has been convicted of an offense determined by the commissioner to have a direct bearing upon a person's ability to serve the public as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative, or the commissioner finds that a person, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1;

h. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

i. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative;

j. Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order suspending or expelling membership in or association with a member of a self-regulatory organization registered under the Securities Exchange Act of 1934, the Commodity Exchange Act, or the Investment ~~Advisors~~ Advisers Act of 1940; or is the subject of a United States post-office fraud order;

k. Has, in connection with the offer, sale, or purchase of any security, directly or indirectly, effected a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase or sale of the security;

l. Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business;

m. Has failed reasonably to supervise the person's ~~salesmen~~ agents if the person is a dealer or the person's employees or investment adviser representatives if the person is an investment adviser; or

n. Is the subject of an order entered by the insurance administrator of any state denying or revoking registration as an agent, broker, consultant, or the substantial equivalent of those terms as defined in section 26.1-26-02.

2. It is sufficient cause for revocation of registration of a dealer or investment adviser as provided in this section, in case of a partnership, corporation, limited liability company, or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association or any manager or governor of a limited liability company has been guilty of any act or omission which would be sufficient grounds for revoking the registration of an individual dealer or investment adviser.

3. If the commissioner has reasonable grounds to believe that the registration of any registered dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative should be censured, suspended, or revoked upon any grounds specified in this section, the commissioner or the commissioner's agent may conduct an examination into the affairs of any such registered dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative. In making any such examination, the commissioner or the commissioner's agent shall have access to and may compel the production of all the books and papers of a registered dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative, and may administer oaths to and examine the officers and employees of such dealer or investment adviser as to the dealer's or investment ~~advisor's~~ adviser's business and affairs.

4. If the commissioner ~~has reasonable grounds to believe that a registered dealer, salesman, investment adviser, or investment adviser representative has been guilty of any act or omission which would be sufficient grounds for revoking the registration of such dealer, salesman, investment adviser, or investment adviser representative~~ makes written findings of fact to support the conclusion that grounds exist pursuant to subsection 1 for the commissioner to suspend or revoke any registration, the commissioner may ~~enter an~~ by order ~~suspending the registration of such dealer, salesman, investment adviser, or investment adviser representative~~ summarily suspend registration pending ~~an examination into the affairs of such dealer, salesman, investment adviser, or investment adviser representative or pending a hearing or opportunity for hearing as provided in section 10-04-12; provided, that no such order shall be effective for more than thirty days, and such order, if not withdrawn by the commissioner within thirty days, shall automatically terminate thirty days after the date of its issuance. Such suspension order shall state specifically the grounds for its issuance. Upon the entry of such suspension order, or of an order withdrawing a suspension order previously entered, the commissioner shall send a copy of such order by registered or certified mail to the dealer, salesman, investment adviser, or investment adviser representative whose registration is affected thereby at~~

~~the person's business address, and, to the registered dealer or registered investment adviser who employs any salesman or investment adviser representative affected by such order~~ final determination of any proceeding under this section. Upon the entry of the summary order, the commissioner shall promptly notify the applicant, as well as the employer or prospective employer if the applicant is an agent or investment adviser representative, that it has been entered and the reasons. The person subject to the order, if desiring a hearing, must make a written request for a hearing to the commissioner within fifteen days after receipt of the notice. Within fifteen days after receipt by the commissioner of a written request the matter will be set for hearing to determine if the order should be modified, vacated, or extended pending a final determination. If a hearing is not requested and none is ordered by the commissioner, the order will remain in effect until modified or vacated by the commissioner.

5. If the commissioner finds, after affording a registered dealer, a registered ~~salesman~~ agent, a registered investment adviser, or a registered investment adviser representative a hearing or opportunity for hearing as provided in section 10-04-12, that there are grounds to censure, suspend, or revoke the registration of such dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative, the commissioner may enter an order in the register of dealers, ~~salesmen~~ agents, investment advisers, and investment adviser representatives~~,~~ censuring, suspending, or revoking the registration of such dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative. Such order shall state specifically the grounds for its issuance. A copy of such order shall be sent by registered mail to the dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative whose registration is censured, suspended, or revoked thereby at the person's business address and, if the censure, suspension, or revocation is of the registration of ~~a salesman~~ an agent, or investment adviser representative, to the registered dealer or registered investment adviser who employs such person. Suspension or revocation of the registration of a dealer shall also suspend or revoke the registration of all of the dealer's ~~salesmen~~ agents. Suspension or revocation of the registration of an investment adviser also suspends or revokes the registration of all of the investment adviser's investment adviser representatives. Suspension or revocation of the registration of ~~a salesman~~ an agent or investment adviser representative solely because of employment by a dealer or investment adviser whose registration was suspended or revoked shall not prejudice subsequent applications for registration by such person.

6. No action may be brought under this section by the commissioner after ten years from the date of the alleged violation.

SECTION 18. AMENDMENT. Section 10-04-12 of the North Dakota Century Code is amended and reenacted as follows:

10-04-12. Hearings. Before entering an order revoking the registration of any securities as provided in section 10-04-09, the commissioner shall send to the issuer of the securities, and if the application for registration of the securities was filed by a registered dealer, to the registered dealer, a notice of opportunity for hearing. Before entering an order refusing to register any person as a dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative, as provided in section 10-04-10, or censuring, placing limitations, suspending, or revoking the

registration of any person as a registered dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative as provided in section 10-04-11, the commissioner shall send to that person, and if that person is ~~a~~ ~~salesman~~ an agent or investment adviser representative or an applicant for registration as ~~a~~ ~~salesman~~ an agent or investment adviser representative, to the registered dealer or investment adviser who employs or proposes to employ that ~~salesman~~ agent or investment adviser representative, a notice of opportunity for hearing.

1. Notices of opportunity for hearing must be sent by registered mail, returned receipt requested, to the addressee's business address, and the notice must state:

   a. The order the commissioner proposes to issue.

   b. The grounds for issuing the proposed order.

   c. That the person to whom the notice is sent may be afforded a hearing upon request to the commissioner if the request is made within ~~ten~~ fifteen days after receipt of the notice.

2. Whenever a person requests a hearing in accordance with this section, the commissioner shall immediately set a date, time, and place for the hearing and shall ~~forthwith~~ notify the person requesting the hearing. The date set for the hearing must be within ~~fifteen~~ thirty days, but not earlier than ~~five~~ fifteen days, after the request for hearing has been made, unless otherwise agreed to by both the commissioner and the person requesting the hearing.

3. Any hearing conducted under this section must be conducted in accordance with chapter 28-32.

4. If the commissioner does not receive a request for a hearing within the prescribed time, the commissioner may enter a final order which must set forth the findings with respect to the matters involved.

SECTION 19. AMENDMENT. Section 10-04-14 of the North Dakota Century Code is amended and reenacted as follows:

10-04-14. Service of process.

1. Every applicant for registration under this chapter ~~and~~, every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense, and every person making a notice filing under this chapter shall file with the commissioner, in such form as the commissioner prescribes, an irrevocable consent appointing the commissioner or the commissioner's successor in office to be the applicant's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by commissioner,

forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last address on file with the commissioner, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

2. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by this chapter or any rule or order hereunder, and the person has not filed a consent to service of process under subsection 1 and personal jurisdiction over the person cannot otherwise be obtained in this state, that conduct shall be considered equivalent to the person's appointment of the commissioner or the commissioner's successor in office to be the person's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the person or the person's successor, executor, or administrator which grows out of that conduct and which is brought under this chapter or any rule or order hereunder, with the same force and validity as if served on the person personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last known address or takes other steps which are reasonably calculated to give actual notice, and the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

3. When process is served under this section, the court, or the commissioner in a proceeding before the commissioner, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

SECTION 20. AMENDMENT. Section 10-04-16.1 of the North Dakota Century Code is amended and reenacted as follows:

10-04-16.1. Investigations and subpoenas.

1. The commissioner may:

   a. Make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. Any investigation under this section may include an investigatory hearing held in accordance with section 28-32-08. In the discretion of the commissioner, the expense reasonably attributed to an investigation under this section must be paid by the dealer, ~~salesman~~ agent, investment adviser, or investment adviser representative whose affairs are investigated~~, but the expense so payable may not exceed an amount that the commissioner prescribes by rule~~.

b. Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated.

c. Publish information concerning any violation of this chapter or any rule or order hereunder, and may keep confidential the information or documents obtained or prepared in the course of any investigation conducted under this section but only during an active and ongoing investigation. If an investigation under this section extends beyond six months, the commissioner shall, upon a request by any party, state in writing that the need for confidentiality still exists, the general reason why the need exists, and the date, as can best be determined at the time, when the need for confidentiality will cease.

2. For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.

3. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

4. No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No testimony or evidence, documentary or otherwise, compelled from an individual after a valid claim of the privilege against self-incrimination has been made may be used against the individual in any criminal proceeding, or in any proceeding to subject the individual to a penalty or forfeiture, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

SECTION 21. AMENDMENT. Section 10-04-17 of the North Dakota Century Code is amended and reenacted as follows:

10-04-17. Remedies. Every sale or contract for sale made in violation of any of the provisions of this chapter, or of any rule or order issued by the commissioner under any provisions of this chapter, shall be voidable at the election of the purchaser. The person making such sale or contract for sale, and every director, officer, ~~salesman,~~ or agent of or for such seller who shall have participated or aided in any way in making such sale shall be jointly and severally liable to such purchaser who may sue either at law or in equity to recover the full amount paid by such

purchaser, together with all taxable court costs, interest as provided in subsection 2, and reasonable attorney's fees, less the amount of any income received on the securities, upon tender to the seller, in person or in open court, of the securities sold or of the contracts made, or for damages if the purchaser no longer owns the securities. Damages are the amount that would be recoverable upon a tender less the value of the securities when the purchaser disposed of them and interest as provided in subsection 2 from the date of disposition. Provided:

1. That no action may be brought under this section for the recovery of the purchase price after five years from the date that the aggrieved party knew or reasonably should have known about the facts that are the basis for the alleged violation; and

2. That no purchaser shall claim or have the benefit of this section if the purchaser shall have refused or failed to accept, within thirty days from the date of such offer, an offer in writing of the seller to take back the securities in question and to refund the full amount paid by such purchaser, together with interest on such amount for the period from the date of payment by such purchaser down to the date of repayment, such interest to be computed:

   a. In case such securities consist of interest-bearing obligations, at the same rate as provided in such securities, less the amount of any income received on the securities.

   b. In case such securities consist of other than interest-bearing obligations, at the legal rate specified in section 47-14-05, less the amount of any income received on the securities.

3. The provisions of this section do not apply to a violation of section 10-04-08.4.

4. Nothing in this chapter shall limit any statutory or common-law right of any person in any court for any act involved in the sale of securities.

SECTION 22. AMENDMENT. Section 10-04-18 of the North Dakota Century Code is amended and reenacted as follows:

10-04-18. Penalties.

1. Any person who willfully violates any provision of this chapter, except section 10-04-08.4 or subsection 4 of section 10-04-10, or any rule or order of the commissioner made pursuant to the provisions of this chapter, or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful shall be guilty of a class B felony.

2. As used in this section, the term "willfully", except as it applies to subdivisions a and b of subsection 1 of section 10-04-10.1 and subsections 2 and 4 of section 10-04-15, means that the person acted intentionally in the sense that the person was aware of what the person was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required.

3. Each violative act or omission constitutes a separate offense, and a prosecution or conviction for any one offense shall not bar a prosecution or conviction for any other offense.

4. An information must be filed or an indictment must be found under this chapter within five years after the alleged violation.

5. No action may be brought under this chapter by the commissioner after five years from the date that the commissioner knew or reasonably should have known about the facts that are the basis for the alleged violation. This subsection does not apply to any action under sections 10-04-09, 10-04-10.1, 10-04-11, and 10-04-15.

Approved March 26, 1999
Filed March 26, 1999

CHAPTER 93

HOUSE BILL NO. 1145

(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

VIATICAL SETTLEMENT CONTRACTS

AN ACT to create and enact a new subsection to section 10-04-02 of the North Dakota Century Code, relating to viatical settlement contracts; and to amend and reenact subsections 5 and 13 of section 10-04-02 of the North Dakota Century Code, or in the alternative to amend and reenact subsections 8 and 15 of section 10-04-02 of the North Dakota Century Code, relating to viatical settlement contracts and foreign currency contracts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. If House Bill No. 1144 does not become effective, subsections 5 and 13 of section 10-04-02 of the North Dakota Century Code are amended and reenacted as follows:

5. "Issuer" means every person who issues or proposes to issue any security, except that:

   a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, certificates of interest, or shares in an unincorporated investment trust, whether or not of the fixed, restricted management, or unit type, issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.

   b. With respect to equipment trust certificates or like securities, issuer means the person by whom the equipment or property is or is to be used.

   c. With respect to fractional interests in oil, gas, or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, which are created for the purpose of sale.

   d. With respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical settlement contract that is not fractionalized or pooled means the person effecting the transactions with the investors in such contracts.

13. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement

contract or a fractionalized or pooled interest therein; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor where the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; foreign currency commodity contract, as used in chapter 51-23; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

SECTION 2. AMENDMENT. Subsections 8 and 15 of section 10-04-02 of the North Dakota Century Code as amended by House Bill No. 1144, as approved by the fifty-sixth legislative assembly, are amended and reenacted as follows:

8. "Issuer" means every person who issues or proposes to issue any security, except that:

   a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, certificates of interest, or shares in an unincorporated investment trust, whether or not of the fixed, restricted management, or unit type, issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.

   b. With respect to equipment trust certificates or like securities, issuer means the person by whom the equipment or property is or is to be used.

   c. With respect to fractional interests in oil, gas, or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, which are created for the purpose of sale.

   d. With respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. The issuer of a viatical settlement contract that is not fractionalized or pooled means the person effecting the transactions with the investors in such contracts.

15. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement contract or a fractionalized or pooled interest therein; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's

worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor where the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; foreign currency commodity contract, as used in chapter 51-23; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

[61] **SECTION 3.** A new subsection to section 10-04-02 of the North Dakota Century Code is created and enacted as follows:

"Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement contract" does not include:

a. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by the viator to the viatical settlement provider pursuant to chapter 26.1-33.1;

b. The assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or

c. The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the insurance laws of this state.

Approved March 8, 1999
Filed March 8, 1999

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[61] Section 10-04-02 was also amended by section 1 of House Bill No. 1144, chapter 92.

CHAPTER 94

HOUSE BILL NO. 1154

(Industry, Business and Labor Committee)
(At the request of the Securities Commissioner)

SECURITIES REGISTRATION

AN ACT to amend and reenact subsection 16 of section 10-04-06 of the North Dakota Century Code, relating to the test the waters security offering exempt transaction.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

[62] **SECTION 1. AMENDMENT.** Subsection 16 of section 10-04-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

16. a. ~~The distribution of a prospectus or similar disclosure document by~~ An offer, but not a sale, of a security made by or on behalf of 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~~ an indication of interest ~~from prospective purchasers if the issuer~~ in receiving a prospectus or similar disclosure document for the security if all of the following conditions are satisfied:

~~a.~~ (1) ~~Is~~ The issuer is or will be a business entity 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~~ one of the states or possessions of the United States or one of the provinces or territories of Canada; is engaged in or proposes to engage in a business other than petroleum exploration~~,~~ ~~oil~~ or production, ~~extractive~~ mining, or ~~any blind pool~~ other extractive industries; and is not a blind pool offering ~~without a~~ or other offering for which the specific business ~~purpose~~ or properties cannot now be described.

~~c.~~ ~~Discusses potential business strategies and economic development or solicits~~

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[62] Section 10-04-06 was also amended by section 5 of House Bill No. 1045, chapter 50, and section 5 of House Bill No. 1144, chapter 92.

(2) The issuer may solicit 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~~

(3) The issuer intends 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~~ conduct its offering pursuant to either regulation A or rule 504 ~~of regulation D of~~, as promulgated by 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.~~ (4) ~~Files~~ The issuer 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.~~ (5) ~~Obtains~~ The issuer 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.

(6) The issuer does not use any solicitation of interest form, script, advertisement, or other material which the issuer has been notified by the commissioner not to distribute, to solicit indications of interest.

(7) Except for scripted broadcasts and published notices, the issuer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current solicitation of interest form at or before the time of the communication or within five days from the communication.

~~g.~~ (8) ~~Stops~~ The issuer 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.~~ (9) ~~Does~~ The issuer 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 or approval to offer and sell securities 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 known that the issuer or any officer, director, ten percent shareholder, promoter, partner, manager or agent of the issuer has:~~

~~(1)~~ (10) ~~Been~~ The issuer does not make a sale until three days after delivery to the purchaser of a prospectus or similar disclosure document.

(11) The issuer does not know, and in the exercise of reasonable care could not know, that the issuer or any officer, director, manager, ten percent shareholder, promoter, partner, or agent of the issuer:

(a) Has 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~~,~~ or use of any exemption from registration in connection with the offer, sale, or purchase of 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 within

five years prior to the filing of the solicitation of interest form; or

~~(2)~~ (b) ~~Been~~ Has 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.

The prohibitions listed above shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the dealer employing such party is licensed or registered in this state and the form B-D filed with this state discloses the order, conviction, judgment, or decree relating to such person. A person disqualified under this subsection may not act in a capacity other than that for which the person is licensed or registered. Any disqualification caused by this section is automatically waived if the agency, which created the basis for disqualification, determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

b. The issuer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of section 10-04-04, but is a violation of this chapter, is actionable by the commissioner under section 10-04-16, and constitutes grounds for denying or revoking the exemption as to a specific security or transaction.

(1) Any published notice must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(a) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

(b) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF A PROSPECTUS OR SIMILAR DISCLOSURE DOCUMENT THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

(c) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and

(d) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION

UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SECURITIES AND EXCHANGE COMMISSION AND IS REGISTERED OR APPROVED IN THIS STATE.

(2) Any script for broadcast must contain at least the identity of the chief executive of the issuer, a brief description of its business and products, its address and telephone number and the following legends:

(a) THIS IS FOR AN INDICATION OF INTEREST ONLY AND INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND UPON A PROSPECTIVE INVESTOR;

(b) NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED; and

(c) THIS OFFER IS MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER FEDERAL AND STATE SECURITIES LAWS.

c. Offers made on reliance of this exemption will not result in a violation of section 10-04-04 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

Approved March 25, 1999
Filed March 25, 1999

CHAPTER 95

SENATE BILL NO. 2271

(Senators W. Stenehjem, Krebsbach)

CORPORATION AND LLC REVISIONS

AN ACT to create and enact a new subsection to section 10-19.1-10, a new subsection to section 10-19.1-65, a new subsection to section 10-19.1-87, a new subsection to section 10-32-13, a new subsection to section 10-33-06, a new subsection to section 10-33-17, a new subsection to section 45-10.1-04, sections 45-10.1-04.1, 45-10.1-51.1, 45-10.1-54.1, 45-10.1-58.1, 45-10.1-58.2, 45-13-04.1, 45-13-04.2, 45-15-03.1, 45-15-03.2, 45-22-08.1, 45-22-20.1, 45-22-21.1, and chapter 45-23 of the North Dakota Century Code, relating to business corporations, nonprofit corporations, limited partnerships, general partnerships, limited liability partnerships, and limited liability limited partnerships; to amend and reenact sections 10-06.1-12, 10-06.1-13, 10-06.1-17, 10-06.1-27, 10-19.1-01, subsection 2 of section 10-19.1-05, section 10-19.1-11, subsection 1 of section 10-19.1-13, section 10-19.1-23, subsection 2 of section 10-19.1-30, section 10-19.1-61, subsection 5 of section 10-19.1-61.1, subsection 1 of section 10-19.1-63, subsection 4 of section 10-19.1-64, section 10-19.1-66, subsection 2 of section 10-19.1-68, subsection 2 of section 10-19.1-70, subsection 1 of section 10-19.1-73.2, subsection 1 of section 10-19.1-76.2, subsection 3 of section 10-19.1-83, subsection 1 of section 10-19.1-84, subsection 3 of section 10-19.1-88, sections 10-19.1-91, 10-19.1-96, 10-19.1-97, 10-19.1-98, 10-19.1-99, 10-19.1-100, 10-19.1-101, 10-19.1-102, 10-19.1-103, subsection 2 of section 10-19.1-106, subsection 1 of section 10-19.1-108, subsection 3 of section 10-19.1-112, subsection 1 of section 10-19.1-113.1, sections 10-19.1-129, 10-19.1-137, 10-19.1-139, subsection 1 of section 10-19.1-146, sections 10-19.1-147, 10-30-05, 10-30.1-04, subsection 1 of section 10-31-02.1, subsection 2 of section 10-31-11, sections 10-31-13, 10-32-02, 10-32-06, 10-32-07, subsection 1 of section 10-32-10, subsection 5 of section 10-32-11, sections 10-32-17, 10-32-22, 10-32-23, 10-32-28, 10-32-30, 10-32-31, 10-32-32, subsection 2 of section 10-32-35, sections 10-32-36, 10-32-37, 10-32-38, 10-32-39, subsection 3 of section 10-32-40, sections 10-32-40.1, 10-32-42, subsection 1 of section 10-32-43, section 10-32-43.1, subsection 1 of section 10-32-44, section 10-32-48, subsection 2 of section 10-32-48.1, sections 10-32-49, 10-32-50, subdivision d of subsection 1 of section 10-32-51, sections 10-32-54, 10-32-55, 10-32-56, 10-32-57, subsection 7 of section 10-32-58, sections 10-32-59, 10-32-60, 10-32-61, 10-32-62, subdivision c of subsection 1 of section 10-32-64, subsection 1 of section 10-32-66, subsection 2 of section 10-32-67, sections 10-32-68, 10-32-70, 10-32-71, 10-32-72, 10-32-74, 10-32-75, 10-32-76, subsection 1 of section 10-32-78, subdivision a of subsection 1 of section 10-32-78.1, subsection 1 of section 10-32-79, sections 10-32-80, 10-32-81, 10-32-82, 10-32-83, subsection 1 of section 10-32-84, subsection 2 of section 10-32-85, section 10-32-86, subdivision b of subsection 2 of section 10-32-87, sections 10-32-88, 10-32-89, 10-32-94, 10-32-95, 10-32-99, 10-32-100, subdivision b of subsection 1 of section 10-32-101, section 10-32-102, subsection 1 of section 10-32-103, sections 10-32-104, 10-32-105, subdivision a of subsection 2 of section 10-32-106, sections 10-32-107, 10-32-109, paragraph 1 of subdivision b of subsection 1 of section 10-32-112, subdivision b of subsection 3 of section 10-32-113, sections 10-32-114,

10-32-119, subsection 2 of section 10-32-122, sections 10-32-131, 10-32-140, 10-32-142, subsection 2 of section 10-32-149, subsection 1 of section 10-32-150, section 10-33-01, subsection 1 of section 10-33-10, subsection 4 of section 10-33-13, section 10-33-49, subsection 3 of section 10-33-50, subsection 3 of section 10-33-54, section 10-33-84, subsection 2 of section 10-33-87, sections 10-33-95, 10-33-130, 34-09-06, 45-10.1-01, subsection 1 of section 45-10.1-02, sections 45-10.1-08, 45-10.1-09, 45-10.1-10, 45-10.1-11, 45-10.1-14, 45-10.1-15, 45-10.1-36, 45-10.1-51, 45-10.1-52, 45-10.1-53, 45-10.1-55, 45-10.1-58, 45-11-08.2, 45-13-01, subsection 2 of section 45-13-03, sections 45-13-05, 45-13-06, 45-14-01, subsection 1 of section 45-15-03, subsection 1 of section 45-15-06, sections 45-22-01, 45-22-03, 45-22-04, 45-22-05, 45-22-06, 45-22-07, 45-22-10, 45-22-11, 45-22-12, 45-22-13, 45-22-14, 45-22-15, 45-22-16, 45-22-17, 45-22-18, 45-22-20, subsection 1 of section 45-22-21, sections 45-22-22, 45-22-23, subsection 2 of section 45-22-24, sections 45-22-25, 45-22-26, subdivision b of subsection 1 of section 45-22-27, subsection 6 of section 47-22-02, sections 47-25-03, and 61-13-03.1 of the North Dakota Century Code, relating to farm corporations, business corporations, development corporations, venture capital corporations, professional associations, limited liability companies, nonprofit corporations, labor unions, limited partnerships, fictitious partnership names, general partnerships, limited liability partnerships, trademarks, trade names, and the organization of corporations for irrigation purposes; and to repeal sections 45-10.1-54 and 45-22-08 of the North Dakota Century Code, relating to the names of foreign limited partnership and piercing the limited liability shield of limited liability partnerships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

1. If a corporation, the corporation must not have more than fifteen shareholders. If a limited liability company, the limited liability company must not have more than fifteen members.

2. Each shareholder or member must be related to each of the other shareholders or members within one of the following degrees of kinship or affinity: parent, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or the spouse of a person so related.

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[63] Section 10-06.1-12 was also amended by section 6 of House Bill No. 1045, chapter 50.

3. Each shareholder or member must be an individual or one of the following:

   a. A trust for the benefit of an individual or a class of individuals who are related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.

   b. An estate of a decedent who was related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.

4. A trust or an estate may not be a shareholder or member if the beneficiaries of the trust or the estate together with the other shareholders or members are more than fifteen in number.

5. Each individual who is a shareholder or member must be a citizen of the United States or a permanent resident alien of the United States.

6. If a corporation, the officers and directors of the corporation must be shareholders who are actively engaged in operating the farm or ranch and at least one of ~~its~~ the corporation's shareholders must be an individual residing on or operating the farm or ranch. If a limited liability company, the governors and managers of the limited liability company must be members who are actively engaged in operating the farm or ranch and at least one of its members must be an individual residing on or operating the farm or ranch.

7. An annual average of at least sixty-five percent of the gross income of the corporation or limited liability company over the previous five years, or for each year of its existence, if less than five years, must have been derived from farming or ranching operations.

8. The income of the corporation or limited liability company from nonfarm rent, nonfarm royalties, dividends, interest, and annuities cannot exceed twenty percent of the gross income of the corporation or limited liability company.

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

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

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

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[64] Section 10-06.1-13 was also amended by section 7 of House Bill No. 1045, chapter 50.

10-06.1-17. Annual report - Contents - Filing requirements. Before April ~~fifteenth~~ sixteenth 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~~ an annual report executed by ~~its~~ the corporation's or limited liability company's president, ~~a~~ vice president, secretary, or treasurer ~~containing all of~~. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this section or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this section meets the filing date requirement. An annual report must include 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~~ the corporation's or limited liability company's 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.

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.

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].

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.

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.

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

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 4. AMENDMENT. Section 10-06.1-27 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-27. Protection of minority members. If a member owns less than fifty percent of the membership interest of a farming or ranching limited liability company doing business under this chapter~~,~~ and if the terms and conditions for the repurchase of that membership interest by the limited liability company or by the other members are not set forth in the ~~operating agreement~~ bylaws, the instrument ~~which~~ that transferred the membership interest to the member, or are not the subject of a ~~business continuation~~ member-control agreement or ~~an~~ other agreement between that member and the limited liability company, ~~then~~ the disposition of ~~such~~ the membership interest must be determined by this section upon the withdrawal of the member. Any member who desires to withdraw from the limited liability company shall first offer the membership interest for sale to the remaining members in proportion to the membership interests owned by ~~them~~ the remaining members. If not all of the members wish to purchase the membership interest, any one member can purchase all of the membership interest of the withdrawing member. If no member desires to purchase the membership interest of the withdrawing member, ~~then~~ the limited liability company ~~itself~~ may purchase the membership interest. If the limited liability company chooses not to purchase the membership interest of the withdrawing member, ~~then~~ the withdrawing member may sell the membership interest to any other person eligible to be a member. If the withdrawing member is unable to sell the membership interest to any other person eligible to become a member, ~~then~~ the withdrawing member may bring an action in district court to terminate the limited liability company. Upon a finding that the withdrawing member cannot sell the membership interest at a fair price, the court shall enter an order directing that the limited liability company ~~itself~~ or any of the remaining members pro rata or otherwise, ~~shall~~ have twelve months from the date of the court's order to purchase the membership interest of the withdrawing member at a fair price as determined by the court and that if the membership interest of the withdrawing member is not completely purchased at ~~said~~ the fair price, the limited

liability company ~~shall~~ must be dissolved and the assets of the limited liability company ~~shall~~ must be first used to pay all liabilities of the limited liability company with the remaining net assets to be distributed pro rata to the members in proportion to ~~their~~ the member's membership interest ownership. For the purpose of this section, a fair price for the membership interest of the withdrawing member must be determined as though the membership interest was being valued for federal gift tax purposes under the Internal Revenue Code.

SECTION 5. AMENDMENT. Section 10-19.1-01 of the 1997 Supplement to 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. "Acquiring organization" means the corporation, foreign corporation, or domestic or foreign limited liability company acquiring in an exchange the shares of a corporation or foreign corporation or the membership interests of a domestic or foreign limited liability company.

3. "Address" means:

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

   b. In any other case, the mailing address, including a zip code.

~~3.~~ 4. "Articles" means:

   a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, 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.~~ 5. "Board" or "board of directors" means the board of directors of a corporation.

~~5.~~ 6. "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.~~ 7. "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.~~ 8. "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.

~~8.~~ 9. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.

~~9.~~ 10. "Constituent corporation" means a domestic or foreign corporation that is a party to a merger or an exchange.

11. "Constituent organization" means a corporation, foreign corporation, or a domestic or foreign limited liability company that is a party to a merger or an exchange.

~~10.~~ 12. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.

~~11.~~ 13. "Director" means a member of the board.

~~12.~~ 14. "Distribution" means a direct or indirect transfer of money or other property, other than ~~its~~ a corporation's own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of ~~its~~ the corporation's shareholders in respect of ~~its~~ the corporation's shares, 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~~ the corporation's shares, or otherwise.

~~13.~~ 15. "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.

~~14.~~ 16. "Filed with the secretary of state" means ~~that either~~, except as otherwise permitted by law or rule, a signed original or a legible facsimile ~~copy~~ telecommunication 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, together with the fees provided in section 10-19.1-147, ~~has been~~ was delivered to the secretary of state and ~~has been~~ was 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.

~~15.~~ 17. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.

~~16.~~ 18. "Foreign limited liability company" means a limited liability company organized for profit ~~that~~ which 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.

~~17.~~ 19. "Good faith" means honesty in fact in the conduct of an act or transaction.

~~18.~~ 20. "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.

~~19.~~ 21. "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.

~~20.~~ 22. "Legal representative" means a person empowered to act for another person, including an agent, a manager, an officer, a partner, or an associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.

~~21.~~ 23. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.

~~22.~~ 24. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.

~~23.~~ 25. "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~~ 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 there.

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

c. Notice is deemed received when it is given.

~~24.~~ 26. "Officer" means an individual who is eighteen years of age or more who is elected, appointed, or otherwise designated as an officer by the board, or deemed elected as an officer pursuant to section 10-19.1-56.

~~25.~~ 27. "Organization" means, 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.

~~26.~~ 28. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.

~~27.~~ 29. "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.

~~28.~~ 30. "Ownership interests" means:

a. Shares in the case of a corporation;

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

c. Similar interests in other organizations.

~~29.~~ 31. "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.

~~30.~~ 32. "Principal executive office" means an office where the elected or appointed president of a corporation has an office, or if the corporation has no elected or appointed president, then the registered office of the corporation.

~~31.~~ 33. "Registered office" means the place in this state designated in the articles as the registered office of the corporation.

~~32.~~ 34. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:

a. Owns, directly or indirectly, at least fifty percent of the shares, membership interests, or other ownership interests of another organization;

b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or

c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.

~~33.~~ 35. "Security" has the meaning given in section 10-04-02.

~~34.~~ 36. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to ~~its~~ a corporation's articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

~~35.~~ 37. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.

~~36.~~ 38. "Shareholder" means a person registered on the books or records of a corporation or ~~its~~ the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation.

~~37.~~ 39. "Signed" means that the signature of a person ~~has been~~ 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~~ is 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 as required under section 10-19.1-46 or the ~~holders of the required proportion or number of the voting power of the shares present and entitled to vote~~ shareholders as required under section 10-19.1-74; 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, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document.

~~38.~~ 40. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~39.~~ 41. "Subsidiary" of a specified corporation means:

a. A corporation having more than fifty percent of the voting power of ~~its~~ the corporation's 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~~ the limited liability company's membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company.

~~40.~~ 42. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.

43. "Surviving organization" means the corporation or foreign corporation or domestic or foreign limited liability company resulting from a merger.

~~41.~~ 44. "Vote" includes authorization by written action.

~~42.~~ 45. "Written action" means a written document signed by all of the persons required to take the action, 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~~ the counterparts.

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

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

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

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

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

10-19.1-11. 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

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[65] Section 10-19.1-05 was also amended by section 8 of House Bill No. 1045, chapter 50.

[66] Section 10-19.1-10 was also amended by section 9 of House Bill No. 1045, chapter 50.

[67] Section 10-19.1-11 was also amended by section 10 of House Bill No. 1045, chapter 50.

that the articles of incorporation conform to law and ~~that~~ all fees ~~have been~~ are paid under ~~chapter 10-23~~ section 10-19.1-147, the secretary of state shall issue a certificate of incorporation to the incorporators or ~~their~~ the incorporators' representative.

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

1. The corporate name:

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

   b. Must contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.

   c. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~ implying the corporation may not be incorporated under this chapter.

   d. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.

   e. May not contain a word or phrase ~~that indicates~~ indicating or ~~implies that it~~ implying the corporation is incorporated for a purpose other than a legal business purpose for which a corporation may be incorporated under this chapter.

   ~~e.~~ 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~~ that complies with subsection ~~2~~ 7 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

         (f) A limited liability limited partnership;

      (2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, 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.

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

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

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

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~~ under subsection 5 of section 10-19.1-43.

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

10-19.1-61. Authorized shares.

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[68] Section 10-19.1-23 was also amended by section 11 of House Bill No. 1045, chapter 50.

[69] Section 10-19.1-61 was also amended by section 12 of Hosue Bill No. 1045, chapter 50.

1. Subject to any restrictions in the articles, a corporation may issue securities and rights to purchase securities only when authorized by the board.

2. All ~~the~~ shares of a corporation:

   a. Must be of one class and one series, unless the articles establish~~,~~ or authorize the board to establish~~,~~ more than one class or series;

   b. Must be common shares entitled to vote and ~~shall~~ have equal rights and preferences in all matters not otherwise provided for by the board, unless and to the extent ~~that~~ the articles have created nonvoting shares or have fixed the relative rights and preferences of different classes and series; and

   c. Must have, unless a different par value is specified in the articles, a par value of one cent per share.

3. Subject to any restrictions in the articles, the power granted in subsection 2 may be exercised by a resolution approved by ~~the affirmative vote of a majority of~~ the directors ~~present~~ as required under section 10-19.1-46 establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series established in the articles or by resolution of the directors:

   a. May be made dependent upon facts ascertainable outside the articles~~,~~ or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and

   b. May incorporate by reference ~~some or all~~ any of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or series if the corporation retains at ~~its~~ the principal executive office, a copy of the agreements, contracts, or other arrangements or portions incorporated by reference.

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

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

   a. ~~Subject~~ Are subject to the right of the corporation to redeem any of those shares at the price fixed for ~~their~~ the shares' redemption by the articles or by the board;

b. ~~Entitling~~ Entitle the shareholders to cumulative, partially cumulative, or noncumulative distributions;

c. ~~Having~~ Have preference over any class or series of shares for the payment of distributions of any or all kinds;

d. ~~Convertible~~ Convert into shares of any other class or any series of the same or another class; or

e. ~~Having~~ Have full, partial, or no voting rights, except as provided ~~in~~ under section 10-19.1-20.

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

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

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

1. Subject to any restrictions in the articles:

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

b. ~~Upon authorization in accordance with section 10-19.1-61.1, the corporation may, without~~ Without any new or additional consideration, a corporation may issue ~~its~~ the corporation's own shares in exchange for or in conversion of ~~its~~ the corporation's outstanding shares, or may, subject to authorization of share dividends, divisions, and combinations according to section 10-19.1-61.1, issue ~~its~~ the corporation's own shares pro rata to ~~its~~ the corporation's shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. ~~No shares~~ Shares of a class or series, shares of which are then outstanding, may not be issued to the holders of shares of another class or series, except in exchange for or in conversion of outstanding shares of the other class or series, unless the issuance ~~either~~ is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a

majority of the voting power of all shares of the same class or series as the shares to be issued.

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

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

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

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

SECTION 17. AMENDMENT. Section 10-19.1-66 of the 1997 Supplement to 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 certificated shares or uncertificated shares. Each holder of certificated shares issued in compliance with section 10-19.1-63 is entitled to a certificate of shares.

2. 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.~~ 3. 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~~ ceases having that capacity before the certificate is issued, with the same effect as if the person had that capacity at the date of ~~its~~ the certificate's issue.

~~3.~~ 4. Every certificate representing shares issued by a corporation ~~which~~ that 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~~ of the series ~~so far as~~ to the extent the ~~same~~ relative rights and preferences 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~~ the certificate represents.

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

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

~~5.~~ 6. Unless uncertificated shares are prohibited by the articles or bylaws, a resolution approved by the affirmative vote of a majority of the directors present may provide that some or all of any or all classes and series of ~~its~~ the corporation's 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. The information required under this section is not required to be sent to the new shareholder by a publicly held corporation that adopted a system of issuance, recordation, and transfer of the corporation's shares by electronic or other means not involving the issuance of certificates if the system complies with federal law.

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

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

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

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

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

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

1. The board may fix or authorize an officer to 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~~ If a date is fixed, only shareholders on that date are entitled to notice of and permitted to vote at that meeting of shareholders.

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

1. At or before the meeting for which 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 which is signed by the shareholder, with an officer authorized to tabulate votes.

   a. ~~A written~~ Before the meeting, a shareholder may cast or authorize the casting of a vote by a proxy by transmitting to the corporation or the corporation's duly authorized agent an 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~~ by means of telegram, cablegram, or any other form of electronic transmission, including telephonic transmission, whether or not accompanied by written instructions of the shareholders. An electronic transmission must set forth or be submitted with information indicating the appointment is authorized by the shareholder. If it is determined a telegram, cablegram, or other electronic transmission is valid, the inspectors of election or, if there are no inspectors, the other persons making that determination of validity shall specify the information upon which they relied to make that determination.

b. ~~Any~~ A copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original writing or 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~~ the shareholders, 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.

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

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

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

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

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

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

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

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

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

10-19.1-91. 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, officer, manager, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a director, 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 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~~ contendere or ~~its~~ an equivalent plea 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~~ the ultimate determination 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~~ under 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 prohibitions or 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~~ act or ~~omissions~~ omission of the person occurring ~~prior to~~ before 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, 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~~ the indemnification or advance was paid not later than the next meeting of shareholders.

11. ~~Nothing in this~~ This section ~~may be construed to~~ does not limit the power of the corporation to indemnify ~~other~~ persons other than a director, officer, employee, or member of a committee of the board by contract or otherwise.

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

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

1. ~~Any two or more corporations~~ With or without a business purpose, a corporation may merge~~, resulting in a single corporation, with or~~

~~without a business purpose, pursuant to a plan of merger approved in the manner provided in sections 10-19.1-97 through 10-19.1-103.~~ with:

a. Another domestic corporation under a plan of merger approved in the manner provided in sections 10-19.1-97 through 10-19.1-103.

b. A limited liability company under a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-106.

c. A foreign corporation or foreign limited liability company under a plan of merger in the manner provided in section 10-19.1-103.

2. ~~A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation pursuant~~ With respect to ~~a plan of~~ an exchange ~~approved in the manner provided in sections 10-19.1-97 through 10-19.1-99 and sections 10-19.1-101 through 10-19.1-103.~~:

a. A corporation may acquire all the ownership interests of one or more classes or series of another domestic corporation under a plan of exchange approved in the manner provided in sections 10-19.1-97 through 10-19.1-103.

b. A corporation may acquire all the ownership interests of one or more classes or series of a limited liability company under a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106.

c. A limited liability company may acquire all the ownership interests of one or more classes or series of a corporation under a plan of exchange approved in the manner provided in sections 10-19.1-97 through 10-19.1-103 and chapter 10-32.

d. A foreign corporation or foreign limited liability company may acquire all the ownership interests of one or more classes or series of a corporation under a plan of exchange approved in the manner provided in section 10-19.1-103.

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

4. A corporation may participate in a merger or exchange with a ~~domestic~~ limited liability company ~~pursuant to chapter 10-32~~. The dissenter's rights for shareholders of a corporation are governed by this chapter.

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

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

1. A plan of merger or exchange must contain:

a. The ~~names~~ name of the ~~corporations~~ corporation and of each other constituent organization proposing to merge or participate in an exchange and:

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

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

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

c. ~~With~~ r~~espect~~ ~~to~~ ~~the~~ The manner and basis ~~of~~ c~~onversion~~ for converting or ~~exchange~~ exchanging ownership interests:

(1) In the case of a merger, the manner and basis of converting the ~~shares~~ ownership interests of the constituent ~~corporations~~ organizations into securities of the surviving ~~corporation~~ organization or of any other ~~corporation~~ 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 ~~shares~~ ownership interests to be acquired for securities of the acquiring ~~corporation~~ organization or any other ~~corporation~~ organization or, in whole or in part, into money or other property;

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

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

2. ~~The~~ ~~procedure~~ ~~authorized~~ ~~by~~ ~~this~~ This section does not limit the power of a corporation to acquire all or part of the ~~shares~~ ownership interests of one or more classes or series of another ~~corporation~~ organization through a negotiated agreement with the ~~shareholders~~ owners or otherwise.

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

10-19.1-98. Plan approval.

1. A resolution containing the plan of merger or exchange must be approved by the ~~affirmative~~ ~~vote~~ ~~of~~ ~~a~~ ~~majority~~ ~~of~~ ~~the~~ ~~directors~~ ~~present~~ ~~at~~ ~~a~~ ~~meeting~~ ~~of~~ ~~the~~ governing board as required by section 10-19.1-46 or 10-32-83 of each constituent ~~corporation~~ organization and must then be submitted at a regular or special meeting to the ~~shareholders~~ owners of~~:~~

~~a.~~ ~~Each~~ each constituent ~~corporation~~ organization, in the case of a plan of merger~~;~~ ~~and~~

~~b.~~ ~~The~~ ~~corporation~~ or the constituent organization whose ~~shares~~ ownership interests will be acquired by the acquiring ~~corporation~~ constituent organization in the exchange, in the case of a plan of exchange. If ~~shareholders~~ ~~holding~~ owners owning any class or series of ~~stock~~ ~~of~~ ~~the~~ ~~corporation~~ ownership interests in a constituent organization are entitled to vote on the plan of merger

or exchange ~~pursuant to~~ under this subsection, written notice must be given to every ~~shareholder~~ owner of that constituent organization, whether or not entitled to vote at the meeting, ~~no fewer~~ not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders in the case of a domestic corporation and in the manner provided in section 10-32-40 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 ~~shareholders~~ owners must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all ~~shares~~ ownership interests entitled to vote. Except as provided in subsection 3, a class or series of shares of the corporation is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles of incorporation, entitle the class or series of ~~shares~~ 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 ~~shares~~ ownership interests of the ~~corporation~~ constituent organization is not entitled to vote as a class or series solely because the plan of merger affects a cancellation of ~~shares~~ ownership interests of the class or series if the plan of merger or exchange affects a cancellation of all ~~shares~~ ownership interests of the ~~corporation~~ constituent organization of all classes and series that are outstanding immediately ~~prior to~~ before the merger or exchange and ~~shareholders~~ owners of ~~shares~~ ownership interests of that class or series are entitled to obtain payment for the fair value of their ~~shares~~ ownership interests under section 10-19.1-87 or 10-32-54 in the event of the merger.

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

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

   b. Each ~~holder~~ owner of ~~shares of~~ ownership interests in the ~~corporation that~~ constituent organization which were outstanding immediately before the effective date of the transaction will hold the same number of ~~shares~~ ownership interests with identical rights immediately ~~thereafter~~ after the effective date;

   c. The voting power of the outstanding ~~shares~~ ownership interests of the ~~corporation~~ constituent organization entitled to vote immediately after the merger or exchange, plus the voting power of the ~~shares~~ ownership interests of the ~~corporation~~ constituent organization entitled to vote issuable on conversion of, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than twenty percent the voting power of the outstanding ~~shares~~ ownership interests of the ~~corporation~~

constituent organization entitled to vote immediately before the transaction; and

d. The number of participating ~~shares~~ ownership interests of the ~~corporation~~ constituent organization immediately after the merger, plus the number of participating ~~shares~~ ownership interests of the ~~corporation~~ constituent organization issuable on conversion of, or on the exercise of rights to purchase, securities issued in the merger, will not exceed by more than twenty percent the number of participating ~~shares~~ ownership interests of the ~~corporation~~ constituent organization immediately before the merger. "Participating ~~shares~~ ownership interests" are outstanding ~~shares~~ ownership interests of the ~~corporation~~ ~~that~~ constituent organization which entitle their ~~holders~~ owners to participate without limitation in distributions by the ~~corporation~~ constituent organization.

5. If the merger or exchange is with a domestic limited liability company, the plan of merger or exchange must also be approved in the manner provided in chapter 10-32.

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

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

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

   a. The plan of merger; and

   b. A statement that the plan ~~has been~~ is approved by each ~~corporation pursuant to~~ constituent organization under chapter 10-19.1 or chapter 10-32.

2. The articles of merger must be signed on behalf of each constituent ~~corporation~~ organization and filed with the secretary of state, together with the fees provided in ~~chapter 10-23~~ section 10-19.1-147.

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

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

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

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[70] Section 10-19.1-99 was also amended by section 14 of House Bill No. 1045, chapter 50.

[71] Section 10-19.1-100 was also amended by section 15 of House Bill No. 1045, chapter 50.

1. A parent owning at least ninety percent of the outstanding ~~shares~~ ownership interests of each class and series of a subsidiary directly, or indirectly through related corporations~~,~~ or limited liability companies may merge the subsidiary into i~~tself~~ the parent or into any other subsidiary at least ninety percent of the outstanding ~~shares~~ ownership interests 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 ~~shareholders~~ owners of i~~tself~~ the parent or any subsidiary; or may merge i~~tself~~ the parent, or i~~tself~~ the parent 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 present directors of the parent as required by section 10-19.1-46 or of the present governors of the parent required by section 10-32-83 must set forth a plan of merger that contains:

   a. The name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving ~~corporation~~ constituent organization;

   b. The manner and basis of converting the ~~shares~~ ownership interests of the subsidiary or subsidiaries or the parent into securities of the parent, subsidiary, or of another ~~corporation~~ organization; or, in whole or in part, into money or other property;

   c. If the parent is a constituent ~~corporation~~ organization but is not the surviving ~~corporation~~ constituent organization in the merger, a provision for the pro rata issuance of ~~shares~~ ownership interests of the surviving ~~corporation~~ constituent organization to the ~~holders~~ owners of ~~shares~~ ownership interests of the parent on surrender of any ~~certificates for shares~~ ownership interests of the parent; and

   d. If the surviving ~~corporation~~ constituent organization is a subsidiary, a statement of any amendments to the articles of the surviving ~~corporation~~ constituent organization that will be part of the merger.

3. If the parent is a constituent ~~corporation~~ organization but is not the surviving ~~corporation~~ constituent organization in a merger, the resolution is not effective unless ~~it~~ the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all ~~shares~~ ownership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98 if the parent is a domestic corporation, section 10-32-102 if the parent is a limited liability company, or in accordance with the laws of the jurisdiction under which ~~it~~ the parent 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 ~~shareholder~~ owner, other than the parent and any subsidiary, of each subsidiary that is a constituent ~~corporation~~ organization in the merger.

~~3.~~ 5. Articles of merger must be prepared which contain:

   a. The plan of merger;

b. The number of outstanding ~~shares~~ ownership interests of each class and series of the subsidiary that is a constituent ~~corporation~~ organization in the merger and the number of ~~shares~~ ownership interests of each class and series owned by the parent directly, or indirectly through related ~~corporations~~ constituent organizations;

c. The date a copy of the plan of merger was mailed to ~~shareholders~~ owners, other than the parent or a subsidiary, of each subsidiary that is a constituent ~~corporation~~ organization in the merger; and

d. A statement that the plan of merger ~~has been~~ is approved by the parent under this section.

~~4.~~ 6. Within thirty days after a copy of the plan of merger is mailed to ~~shareholders~~ owners of each subsidiary that is a constituent ~~corporation~~ organization to the merger~~,~~ or upon waiver of the mailing by the ~~holders~~ owners of all outstanding ~~shares~~ ownership interests of each subsidiary that is a constituent ~~corporation~~ organization to the merger, the articles of merger must be signed on behalf of the parent and filed with the secretary of state, ~~along~~ with the fees provided in ~~chapter 10-23~~ section 10-19.1-147.

~~5.~~ 7. The secretary of state shall issue a certificate of merger to the ~~parent~~ surviving constituent organization or ~~its~~ the surviving constituent organization's legal representative ~~or, if the parent is a constituent corporation but is not the surviving corporation in a merger, to the surviving corporation or its legal representative~~. The certificate must contain the effective date of the merger.

~~6.~~ 8. If all of the ~~shares~~ ownership interests of one or more domestic subsidiaries that is a constituent ~~party~~ organization to a merger under this section are not owned by the parent directly, or indirectly through related ~~corporations~~ constituent organizations, immediately ~~prior to~~ before the merger, the ~~shareholders~~ owners of each domestic subsidiary have dissenter's rights under section 10-19.1-87 or 10-32-54, without regard to subsection 3 of section 10-19.1-87 ~~and section 10-19.1-88~~ or subsection 2 of section 10-32-54. If the parent is a constituent ~~corporation~~ organization but is not the surviving ~~corporation~~ organization in the merger, ~~and~~ the articles of incorporation or articles of organization of the surviving ~~corporation~~ organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately ~~prior to~~ before the merger in a manner that would entitle ~~a shareholder~~ an owner of the parent to dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54, ~~if~~ and the articles of incorporation or articles of organization of the surviving ~~corporation~~ constituent organization constitute an amendment to the articles of ~~the corporation~~ incorporation or articles of organization of the parent, that ~~shareholder~~ owner of the parent has dissenter's rights as provided under sections 10-19.1-87 ~~and 10-19.1-88~~ or 10-32-54. Except as provided in this subsection, sections 10-19.1-87 and ~~10-19.1-88~~ 10-32-54 do not apply to any merger affected under this section.

~~7.~~ 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

10-19.1-97 through 10-19.1-99 instead of this section, in which case this section does not apply.

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

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

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

   a. With respect to the approval of the abandonment:

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

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

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

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

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[72] Section 10-19.1-101 was also amended by section 16 of House Bill No. 1045, chapter 50.

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

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

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

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

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

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

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

1. A merger is effective when the articles of merger are filed with the secretary of state or on a later date specified in the articles of merger. An exchange is effective on the date specified in the plan of exchange.

2. When a merger becomes effective:

   a. The constituent ~~corporations~~ organizations become a single ~~corporation~~ entity, the surviving corporation or the surviving limited liability company, as the case may be.

   b. The separate existence of all constituent ~~corporations~~ organizations except the surviving ~~corporation~~ organization ceases.

   c. As to any corporation that was a constituent organization and is not the surviving constituent organization, the articles of merger serve as articles of termination, and unless previously filed, the notice of dissolution.

   d. As to rights, privileges, powers, duties, and liabilities:

      (1) If the surviving organization is a limited liability company, the surviving limited liability company has all the rights, privileges, immunities, and powers and is subject to all of the duties and liabilities of a domestic limited liability company.

      (2) ~~The~~ If the surviving ~~corporation~~ organization is a corporation, the surviving corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this chapter.

~~d.~~ e. The surviving ~~corporation~~ organization possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent ~~corporations~~ organizations.

(1) All property~~, real, personal, and mixed,~~ and all debts due on any account, including subscriptions to shares~~,~~ and all other choses in action, and every other interest of or belonging to or due to each of the constituent ~~corporations~~ organizations vests in the surviving ~~corporation~~ 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 ~~corporation~~ organization by ~~its~~ the organization's current officers or managers, as the case may be, or, if the ~~corporation~~ organization no longer exists, by ~~its~~ the organization's last officers or managers.

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

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

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

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

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

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

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

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

1. A domestic corporation may merge with or participate in an exchange with a foreign corporation or 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~~ jurisdiction under which the foreign corporation or foreign limited liability company is incorporated~~;~~ ~~and~~ or organized.

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

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

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

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

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

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

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[73] Section 10-19.1-103 was also amended by section 17 of House Bill No. 1045, chapter 50.

c. An agreement that ~~it~~ the organization will promptly pay to the dissenting ~~shareholders~~ owners of ownership interests of each domestic constituent corporation and domestic constituent limited liability company the amount, if any, to which they are entitled under section ~~10-19.1-87~~ 10-19.1-88 or 10-32-55.

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

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

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

1. If dissolution of the corporation is approved pursuant to subsections 1 and 2 of section 10-19.1-107, the corporation shall file with the secretary of state, together with the fees provided in ~~chapter~~ ~~10-23~~ section 10-19.1-147, a notice of intent to dissolve. The notice must contain:

   a. The name of the corporation;

   b. The date and place of the meeting at which the resolution was approved pursuant to subsections 1 and 2 of section 10-19.1-107; and

   c. A statement that the requisite vote of the shareholders was received or that all shareholders entitled to vote signed a written action.

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

3. Revocation of dissolution proceedings is effective when a notice of revocation is filed with the secretary of state, together with the fees provided in ~~chapter~~ ~~10-23~~ section 10-19.1-147. The corporation may ~~thereafter~~ resume business after this revocation.

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

1. An original of the articles of dissolution must be filed with the secretary of state. If the secretary of state ~~finds~~ ~~that~~ determines the articles of dissolution conform to law and ~~that~~ all fees have been paid under

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[74] Section 10-19.1-106 was also amended by section 18 of House Bill No. 1045, chapter 50.

[75] Section 10-19.1-108 was also amended by section 19 of House Bill No. 1045, chapter 50.

[76] Section 10-19.1-112 was also amended by section 21 of House Bill No. 1045, chapter 50.

[77] Section 10-19.1-113.1 was also amended by section 22 of House Bill No. 1045, chapter 50.

~~chapter 10-23~~ section 10-19.1-147, the secretary of state shall issue a certificate of dissolution.

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

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

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

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

3. If neither the corporation's registered agent nor an officer of the corporation can be found at the registered office, or if a corporation fails to maintain a registered agent in this state and an officer of the corporation cannot be found at the registered office, then the secretary of state is the agent of the corporation upon whom the process, notice, or demand may be served. The return of the sheriff, or the affidavit of a person who is not a party, that no registered agent or officer can be found at the registered office must be provided to the secretary of state. Service on the secretary of state of any process, notice, or demand is deemed personal service upon the corporation and must be made by filing with the secretary of state an original and two copies of the process, notice, or demand, along with the fees provided in ~~chapter 10-23~~ section 10-19.1-147. The secretary of state shall immediately forward, by registered mail, addressed to the corporation at ~~its~~ the 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 so long as claims are not finally barred under section 10-19.1-124. If a corporation has been involuntarily dissolved pursuant to section ~~10-23-02.2~~ 10-19.1-146, 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

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[78] Section 10-19.1-129 was also amended by section 23 of House Bill No. 1045, chapter 50.

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.

SECTION 40. AMENDMENT. Section 10-19.1-137 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted 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~~ is false when made or ~~any arrangements or other facts described have changed, making the application inaccurate in any respect~~ the foreign corporation changes the foreign corporation's name or purposes sought in this state, the foreign corporation ~~shall~~ promptly shall 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~~ the foreign corporation's name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated.

1. 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.

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

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

10-19.1-139. Foreign corporation - Merger of foreign corporation authorized to transact business in this state. ~~Whenever~~ If 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~~ the foreign corporation is incorporated, and the foreign 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~~ that is the surviving organization in a merger and which will continue to transact business in this state~~,~~ shall procure a ~~new~~ certificate of authority if not previously authorized to transact business in the state.

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

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~~ the corporation or foreign corporation is incorporated.

   b. The address of the registered office of the corporation or foreign corporation in this state, the name of ~~its~~ the corporation's or foreign corporation's registered agent in this state at that address, and the address of ~~its~~ the corporation's or foreign corporation's principal executive office.

   c. A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this state.

   d. The names and respective addresses of the officers and directors of the corporation or foreign corporation.

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

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

   g. ~~A statement, expressed in dollars, of the 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 under this section 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 under this section for the filing of the report, the corporation had not been in existence for a period of twelve months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve months, ~~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~~ the corporation's authorization to transact business in this state and December thirty-first.

~~j.~~ h. 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.

SECTION 43. AMENDMENT. Section 10-19.1-147 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted 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 of 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 t~~hereof~~ 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 t~~hereof~~, 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~~ that foreign corporation's business transacted within this state, and the denominator of which must be the sum of the value of all of ~~its~~ that foreign corporation's property wherever located and the gross receipts of the foreign corporation derived from ~~its~~ that foreign corporation's business wherever transacted. The amounts used in determining the numerator and denominator must be determined from the foreign corporation's filed annual report.

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

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

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

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

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

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

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

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

1. To carry out the purposes of this chapter, a venture capital ~~corporations~~ organization may be formed under ~~chapters~~ chapter 10-19.1 ~~through 10-23~~ if a corporation, or under chapter 10-32 if a limited liability company. The articles of incorporation or articles of organization of a

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[79] Section 10-30-05 was also amended by section 24 of House Bill No. 1045, chapter 50.

[80] Section 10-30.1-04 was also amended by section 25 of House Bill No. 1045, chapter 50.

venture capital ~~corporation~~ organization must comply with subsections 2 through 9.

2. The purpose of a venture capital corporation or limited liability company must be solely to raise funds to be used to make investments in, and provide financing to, qualified entities in a manner that will encourage capital investment in the state, encourage the establishment or expansion of business and industry, provide additional jobs within the state, and encourage research and development activities in the state.

3. Each director ~~or governor~~ of a venture capital corporation or each governor of a venture capital limited liability company must be a North Dakota resident, and must have a minimum investment in the venture capital corporation or limited liability company of one thousand dollars.

4. A venture capital corporation ~~will~~ or limited liability company shall provide financing to qualified entities to be used solely for the purpose of enhancing the production capacity of the qualified entity or the ability of the qualified entity to do business in this state. The venture capital corporation or limited liability company may establish and regulate terms and conditions, consistent with this chapter, with respect to the financing. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing, but no more than twenty percent of the stated capital of a venture capital corporation or limited liability company may be invested in any one qualified entity. For purposes of this chapter, "one qualified entity" means a single entity or a group of affiliated entities that are engaged in a unitary business.

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

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

7. If at any time within one year of the issuance of the certificate of incorporation ~~or certificate of organization~~ of the venture capital corporation ~~its~~ or certificate of organization of the limited liability company, the venture capital corporation's or limited liability company's stated capital equals at least five hundred thousand dollars, or such greater amount established by the articles of incorporation ~~or bylaws or~~, the articles of organization ~~and operating agreement of the venture capital corporation~~, or bylaws, the funds held in escrow pursuant to

subsection 6 must be released to the venture capital corporation or limited liability company for use and disposition according to ~~its~~ the venture capital corporation's or limited liability company's articles of incorporation ~~and bylaws or the~~, articles of organization ~~and operating agreement~~, or the bylaws.

8. If within one year of the issuance of the certificate of incorporation ~~or certificate of organization~~ of the venture capital corporation ~~its~~ or the certificate of organization of the venture capital limited liability company, the venture capital corporation's or limited liability company's stated capital has not at any time equaled at least five hundred thousand dollars, or such greater amount established by the articles of incorporation ~~or bylaws or by~~, the articles of organization ~~and operating agreement of the venture capital corporation~~, or the bylaws, ~~its~~ the venture capital corporation's or limited liability company's certificate of incorporation or certificate of organization ~~will be terminated, the venture capital corporation~~ must be dissolved or terminated, and all funds held in escrow pursuant to subsection 6, and all other remaining funds, must be returned to the investors in proportion to ~~their~~ the investor's investments.

9. ~~Prior to~~ Before any investment in a venture capital corporation or limited liability company, the venture capital corporation ~~must~~ or limited liability company shall make written disclosure of the provisions contained in subsections 5 through 8 to the potential investor.

10. If a venture capital corporation or limited liability company does not invest or provide financing with eighty percent of the funds received from investors within two years of receiving the funds, the venture capital corporation or limited liability company must be dissolved or terminated and all funds held by the corporation or limited liability company must be returned to the investors in proportion to ~~their~~ the investor's investments.

SECTION 46. AMENDMENT. Subsection 1 of section 10-31-02.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. ~~Two~~ One 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~~ name and residence ~~addresses~~ address of ~~all of the~~ each original ~~members~~ member of the professional limited liability company who will practice the profession in this state.

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

2. With respect to a professional organization in the form of a limited liability company:

a. The articles of organization may provide for the purchase or redemption of the membership interest of any member upon the death or disqualification of the member, or the same may be provided for in the ~~operating~~ ~~agreement~~ bylaws, in the member-control agreement, or by private agreement. In the absence of a provision for the same in the articles of organization, in the ~~operating~~ ~~agreement~~ bylaws, in the member-control agreement, or by private agreement, the limited liability company has an option to purchase the membership interest of a deceased member or a member no longer qualified to own a membership interest in the limited liability company within six months after the death or disqualification of the member.

b. The option price for such membership interest must be the book value as of the end of the month immediately preceding the death or disqualification of the member unless otherwise specified in the articles of organization, in the ~~operating~~ ~~agreement~~ bylaws, in the member-control agreement, or by private agreement. Book value must be determined from the books and records of the limited liability company in accordance with the regular method of accounting used by the limited liability company.

c. If the limited liability company fails to exercise the option, the membership interest of the deceased or disqualified member may be sold to any individual licensed or otherwise legally authorized to render the same professional service as that for which the limited liability company was organized.

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

SECTION 48. AMENDMENT. Section 10-31-13 of the 1997 Supplement to 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 chapter 10-19.1 giving the name and residence ~~addresses~~ address of ~~all~~ ~~officers~~ each officer, ~~directors~~ director, and ~~shareholders~~ shareholder of the corporation ~~as~~ ~~of~~ at the ~~thirtieth day of June next preceding the~~ time of filing of the report. With respect to shares, the report ~~shall~~ must 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. The report must include a 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. 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 of the corporation; and

(3) Accompanied by the filing fee prescribed in chapter 10-19.1.

c. A copy of the report must be filed at the same time with the regulatory board that licenses the shareholders described in the 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. The report must include a 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 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 of the limited liability company; and

(3) Accompanied by the filing fee prescribed in section 10-32-180.

c. A copy of the report must be filed at the same time with the regulatory board that licenses the members described in the 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~~ annual report filed with the secretary of state ~~pursuant~~ ~~to~~ at the time specified for the filing of the report by chapter 45-22 must include the name and residence address of ~~all~~ ~~partners~~ each partner of the organization ~~as~~ ~~of~~ ~~the~~ ~~thirtieth~~ ~~day~~ ~~of~~ ~~June~~ ~~next~~ ~~preceding~~ ~~the~~ at the time of filing of the ~~renewal~~ ~~registration~~ annual report.

b. The ~~renewal~~ ~~registration~~ annual report must include a statement that ~~all~~ ~~partners~~ each partner holding voting partnership interests who ~~practice~~ practices in this state ~~are~~ is licensed to render the same specific professional services as those for which the limited liability partnership was registered. The ~~renewal~~ ~~registration~~ ~~shall~~ annual report must be:

(1) Made on a form prescribed and furnished by the secretary of state;

(2) Signed by a managing partner of the limited liability partnership; and

(3) Accompanied by the filing fee prescribed in section 45-22-22.

c. A copy of the ~~renewal~~ ~~registration~~ annual report must be filed at the same time with the regulatory board that licenses the partners described in the ~~renewal~~ ~~registration~~ annual report. ~~No~~ A filing fee may not 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~~ exceeding twenty dollars per individual certified to be licensed by the regulating board.

SECTION 49. AMENDMENT. Section 10-32-02 of the 1997 Supplement to 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~~ otherwise requires:

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:

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

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

3. "~~Agreement to give 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 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.~~

~~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.~~ 4. "Board" or "board of governors" means the board of governors of a limited liability company.

~~6.~~ 5. "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.~~

6. "Bylaws" means any rule, resolution, or other provision, regardless how designated, that:

a. Relates to the management of the business or the regulation of the affairs of the limited liability company; and

b. Was expressly part of the bylaws by the action, taken from time to time under section 10-32-68, by the board of governors or the members.

~~8.~~ 7. "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.~~ 8. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.

~~10.~~ 9. "Constituent organization" means a limited liability company or a domestic or foreign corporation that is a party to a merger or an exchange.

~~11.~~ 10. "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.~~ 11. "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.~~ 12. "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~~ the limited liability company's affairs and to terminate ~~its~~ the limited liability company's existence as a legal entity.

~~14.~~ 13. "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.~~ 14. "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~~ the limited liability company's 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.~~ 15. "Domestic corporation" means a corporation other than a foreign corporation organized for profit and incorporated under or governed by chapter 10-19.1.

~~17.~~ 16. "Filed with the secretary of state" means except as otherwise permitted by law or rule:

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~~ telecommunication 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~~ 10-32-150.

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.~~ 17. "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.~~ 18. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under chapter 10-19.1.

~~20.~~ 19. "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 for which a limited liability company may be organized under this chapter.

~~21.~~ 20. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

~~22.~~ 21. "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.~~ 22. "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.~~ 23. "Governor" means an individual serving on the board of governors.

~~25.~~ 24. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute:

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

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

~~26.~~ 25. "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.~~ 26. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.

~~28.~~ 27. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under this chapter.

~~29.~~ 28. "Manager" means:

a. An individual who is eighteen years of age or more and who is elected, appointed, or otherwise designated as a manager by the board of governors; and

b. An individual considered elected as a manager pursuant to section 10-32-92.

~~30.~~ 29. "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~~ in the limited liability company.

~~31.~~ 30. "Membership interest" means a member's interest in a limited liability company consisting of:

a. A member's i~~nterest in a limited liability company consisting of a member's~~ financial rights;

b. A member's right to assign financial rights as provided in section 10-32-31;

c. A member's governance rights, if any; and

d. A member's right to assign any governance rights owned as provided in section 10-32-32.

~~32.~~ 31. "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 the person or at the ~~last known~~ 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.~~ 32. "Organization" means, 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.~~ 33. "Owners" means:

a. Members in the case of a limited liability company; and

b. Shareholders in the case of a corporation.

~~36.~~ 34. "Ownership interests" means:

a. Membership interests in the case of a limited liability company; and

b. Shares in the case of a corporation.

~~37.~~ 35. "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.~~ 36. "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.~~ 37. "Principal executive office" means:

a. If the limited liability company has an elected or appointed president, an office where the elected or appointed president of the limited liability company has an office; or

b. If the limited liability company has no elected or appointed president, the registered office of the limited liability company.

~~40.~~ 38. "Registered office" means the place in this state designated in the articles as the registered office of the limited liability company.

~~41.~~ 39. "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.

~~42.~~ 40. "Required records" are those records required to be maintained under section 10-32-51.

~~43.~~ 41. "Security" has the meaning given it in subsection 13 of section 10-04-02.

~~44.~~ 42. "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.~~ 43. "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:

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, a member-control agreement, or ~~operating agreement~~ the bylaws or a resolution approved by the ~~affirmative vote of the required proportion or number of~~ governors as required by section 10-32-83 or the members as required ~~proportion of the voting power of membership interests present and entitled to vote~~ by section 10-32-42; 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, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document.

~~46.~~ 44. "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.~~ 45. "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.~~ 46. "Surviving organization" means the foreign or domestic limited liability company or domestic or foreign corporation resulting from a merger.

~~49.~~ 47. "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.~~ 48. "Vote" includes authorization by written action.

~~51.~~ 49. "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 d~~isposes~~ disposing of ~~its~~ assets under section 10-32-131.

~~52.~~ 50. "Written action" means a written document signed by ~~all of the persons~~ every person required to take the action described~~.~~ ~~The term also means~~ and the counterparts of a written document signed by any ~~of the persons~~ person 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 50. AMENDMENT. Section 10-32-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-06. ~~Two-member requirement~~ Number of members required. ~~Unless otherwise provided in the articles of organization, a~~ A limited liability company must have ~~two~~ one or more members ~~at the time of its formation. 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~~.

[81] **SECTION 51. AMENDMENT.** Section 10-32-07 of the 1997 Supplement to 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~~ the limited liability company's registered agent at that address;

   ~~d.~~ c. The name and address of each organizer;

   ~~e.~~ d. The effective date of organization:

      (1) If a later date than that on which the certificate of organization is issued by the secretary of state; and

      (2) Which may not be later than ninety days after the date on which the certificate of organization is issued; and

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[81] Section 10-32-07 was also amended by section 27 of House Bill No. 1045, chapter 50.

~~f.~~ e. ~~A~~ If the articles of organization are filed with the secretary of state:

(1) Before July 1, 1999, 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~~;~~, which may be perpetual.

(2) After June 30, 1999, a statement stating in years the period of existence of the limited liability company, if other than perpetual.

~~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;~~

~~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~~ member-control 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~~ bylaws 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 the greater of a majority of governors present or a majority of the minimum number of governors constituting a quorum is required for an action of the board 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 r~~estatement~~ ~~of~~ value of previous contributions ~~is~~ ~~to~~ must be ~~determined~~ ~~according~~ ~~to~~ ~~a~~ ~~specified~~ ~~process~~ restated when a new contribution is accepted as provided in subsections 3 and 4 of section 10-32-57;

k. A member has certain preemptive rights, unless otherwise provided by the board of governors as provided in section 10-32-37;

l. The affirmative vote of the greater of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting or a majority of the voting power of the membership interests with voting rights constituting the minimum voting power needed for a quorum for the transaction of business is required for an action of the members, except ~~where~~ if 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~~ 10-32-42;

m. The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members as provided in section ~~10-32-45~~ 10-32-40.1;

n. Members share in distributions in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-60;

o. Members share profits and losses in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-36;

p. A written action by the members taken without a meeting must be signed by all members as provided in section 10-32-43;

q. Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind as provided in section 10-32-62;

r. A member is not subject to expulsion as provided in subsection 2 of section 10-32-30;

s. Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32;

t. 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.~~ The termination of a person's membership interest has specified consequences as provided in section 10-32-30; and

v. Restrictions apply to the assignment of governance rights as provided in section 10-32-32.

3. The following provisions govern a limited liability company unless modified ~~either~~ in the articles of organization, a ~~member central~~ member-control agreement under section 10-32-50, or in the ~~operating agreement~~ bylaws:

a. Governors serve for an indefinite term that expires at the next regular meeting of members as provided in section 10-32-72;

b. The compensation of governors is fixed by the board 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. The notice of 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~~ 10-32-40.1;

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~~ bylaws or an act of the board of governors as provided in section 10-32-61.

4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of organization or a member-control agreement under section 10-32-50. The ~~following~~ provisions ~~relating to the management of the business or the regulation of the affairs of a limited liability company~~ in subdivisions b to f, h, i, j, k, l, m, n, and q may be included ~~either~~ in the articles of organization, in a ~~member central~~ member-control 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~~ bylaws:

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 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 10-32-88;

j. Additional powers, rights, duties, and responsibilities may be given to managers as provided in section 10-32-89;

k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-32-94;

l. The date, time, and place of regular member meetings may be fixed as provided in subsection 3 of section 10-32-38;

m. Certain persons may be authorized to call special meetings of members as provided in subsection 1 of section 10-32-39;

n. Notices of member meetings may be required to contain certain information as provided in subsection 3 of section 10-32-40;

o. A larger than majority vote may be required for member action as provided in section 10-32-42;

p. Voting rights may be granted in or pursuant to the articles of organization to persons who are not members as provided in subsection 3 of section ~~10-32-45~~ 10-32-40.1;

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~~ the limited liability company's members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles as provided in subsection 4 of section 10-32-86.

5. Subsection 4 does not limit the right of the board, by resolution, to take an action the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.

6. 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.~~ 7. It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by this chapter.

SECTION 52. AMENDMENT. Subsection 1 of section 10-32-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~, "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of ~~either or both of~~ these words;

   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

   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~~ 3 of this section, of:

         (a) Another limited liability company;

         (b) A corporation;

         (c) A limited partnership; ~~or~~

         (d) A limited liability partnership; or

         (e) A limited liability limited partnership;

      (2) A name, the right of which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, 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.

SECTION 53. AMENDMENT. Subsection 5 of section 10-32-11 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

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

SECTION 55. AMENDMENT. Section 10-32-17 of the 1997 Supplement to 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 to the articles of organization, 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 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 56. AMENDMENT. Section 10-32-22 of the 1997 Supplement to 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 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 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~~ bylaws 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~~ signed 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 57. AMENDMENT. Section 10-32-23 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-23. 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 with articles of organization filed with the secretary of state:

   a. Before July 1, 1999, 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, which may be perpetual.

   b. After June 30, 1999, has perpetual 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, 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 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. 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 and establish employee or incentive benefit plans, trusts, and provisions for the benefit 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 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.

14. A limited liability company may provide for its benefit life insurance and other insurance with respect to the services 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~~ the bylaws 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.

SECTION 58. AMENDMENT. Section 10-32-28 of the 1997 Supplement to 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.

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, if any, 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~~ 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 section 41-08-02, an uncertificated security as defined in section 41-08-02, chattel paper as defined in section 41-09-05, an instrument as defined in section 41-09-05, or an account as defined in section 41-09-06~~ to be characterized as provided in subsection 3 of section 41-08-03.

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

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

1. The continued membership of a member in a limited liability company is terminated by:

   a. The member's death;

   b. The member's retirement;

   c. The member's resignation;

   d. The redemption of the member's complete membership interest;

   e. An assignment of the member's governance rights under section 10-32-32 which leaves the assignor with no governance rights;

   f. A buyout of a member's membership interest under section 10-32-119 which leaves that member with no governance rights;

   g. The member's expulsion;

   h. The member's bankruptcy;

   i. The dissolution of a member that is an organization; or

   j. The occurrence of any other event terminating the continued membership of a member in the limited liability company.

2. A member always has the power, though not necessarily the right, to terminate ~~its~~ the member's membership by resigning or retiring at any time. ~~A member's resignation or retirement, whether rightful or wrongful, causes dissolution under subdivision e of subsection 1 of section 10-32-109 unless dissolution is avoided under that subdivision. A member has no power to transfer all or part of the member's membership interest, except as provided in sections 10-32-31 and 10-32-32.~~

~~2.~~ 3. Unless otherwise provided in the articles of organization or in a member-control agreement, a member may not be expelled.

~~3.~~ 4. If for any reason the continued membership of a member is terminated and:

a. If ~~dissolution under subdivision e of subsection 1 of section 10-32-109 is avoided under that subdivision~~ the termination does not result in the dissolution of the limited liability company, ~~then~~ subject to the articles of organization and any member-control agreement, the member whose membership has terminated loses all governance rights and will be considered merely an assignee of the financial rights owned before the termination of membership; or

b. If ~~dissolution under subdivision e of subsection 1 of section 10-32-109 is not avoided under that subdivision~~ the termination does result in the dissolution of the limited liability company, subject to the articles of organization and any member-control agreement, the member whose continued membership has terminated retains all governance rights and financial rights owned before the termination of the membership and may exercise those rights through the winding up and termination of the limited liability company.

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

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

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

SECTION 60. AMENDMENT. Section 10-32-31 of the 1997 Supplement to 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 a member-control agreement, in the ~~operating agreement~~ bylaws, 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~~ bylaws, 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 61. AMENDMENT. Section 10-32-32 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-32. Assignment of governance 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.

   ~~a.~~ Except as otherwise provided in the articles of organization or a member-control agreement, 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.

   ~~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. 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. However, a secured party may not take or assign ownership of governance rights without first obtaining the

consent required by this subsection. If a secured party has a security interest in 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.

8. Notwithstanding any provision of law, articles of organization, member-control agreement, ~~operating agreement~~ bylaws, 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 62. AMENDMENT. Subsection 2 of section 10-32-35 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

SECTION 64. AMENDMENT. Section 10-32-37 of the 1997 Supplement to 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, in a member-control agreement, 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. Unless otherwise provided in the articles of organization or a member-control agreement, 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. 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~~ or a member-control agreement which has the effect of denying, limiting, or modifying the preemptive rights provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board of governors under cumulative voting are cast against the amendment.

10. A denial or limitation of preemptive rights otherwise provided in this section does not limit the power of a limited liability company to grant first refusal rights, contribution allowance rights, or other rights to make contributions to the limited liability company, to members, to persons who have entered into contribution agreements, or to other persons before accepting contributions or before making allowance agreements with any other person.

SECTION 65. AMENDMENT. Section 10-32-38 of the 1997 Supplement to 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~~, a member-control agreement, the bylaws, or by subsection 2.

2. If a regular meeting of members has not been held within the earlier of six months after the fiscal yearend of the corporation or fifteen months 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 date and at the time and place fixed by, or in a manner authorized by~~,~~ the articles, a member-control agreement, or ~~operating agreement~~ the bylaws, 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:

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 66. AMENDMENT. Section 10-32-39 of the 1997 Supplement to 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, a member-control agreement, or ~~operating agreement~~ the bylaws 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, a member-control agreement, or ~~operating agreement~~ the bylaws 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 67. AMENDMENT. Subsection 3 of section 10-32-40 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The notice:

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

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

c. Must contain the information with respect to d~~issenter's~~ dissenters' 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~~ any member-control agreement, the bylaws, 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.

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

10-32-40.1. Voting rights.

1. The board of governors may fix or authorize a manager to fix a date not more than fifty days, or a shorter time period provided in the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws, 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, in a member-control agreement, 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 or a member-control agreement 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 69. AMENDMENT. Section 10-32-42 of the 1997 Supplement to 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 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, except if this chapter, the articles of organization, or a member-control agreement require a larger proportion. If the articles or a member-control agreement require a larger proportion than is required by this chapter for a particular action, the articles or member-control agreement control.

2. In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, ~~the operating~~ a member-control 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, unless the articles of organization or a member-control agreement requires a larger proportion.

3. Unless otherwise provided in the ~~article~~ articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws, 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 70. AMENDMENT. Subsection 1 of section 10-32-43 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 or a member-control agreement so ~~provide~~ provides, 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.

SECTION 71. AMENDMENT. Section 10-32-43.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted 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~~ the bylaws, 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~~ the bylaws, a written ballot may not be revoked.

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

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 the meeting, unless a different proportion is provided in the articles of organization, a member-control agreement, or the bylaws.

SECTION 73. AMENDMENT. Section 10-32-48 of the 1997 Supplement to 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, 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 copy, facsimile telecommunication, or other reproduction of the original 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~~ unless the appointment is coupled with an interest in the membership interests of the limited liability company. ~~A member 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 the appointment may not be terminated 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 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 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. 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 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 74. AMENDMENT. Subsection 2 of section 10-32-48.1 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Unless the articles, a member-control agreement, or ~~operating agreement~~ the 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 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.

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

10-32-49. Member voting agreements.

~~1. Except as provided in subsection 2, a~~ A written agreement among persons who are then members or who have signed contribution agreements, relating to the voting of their membership interests, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of ~~subsections 1 through 7 of~~ section 10-32-48 regarding proxies.

~~2. Any assignee of any member's financial rights may not be a party to an agreement under subsection 1, unless that assignee is also a member. A voting agreement may not relate to the consents referred to in subsection 2 of section 10-32-32, subsection 5 of section 10-32-58, subsection 3 of section 10-32-59, or subdivision e of subsection 1 of section 10-32-109.~~

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

10-32-50. Member-control agreements.

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~~ member-control agreement relating to any phase or aspect of the business and affairs of a limited liability company is valid as provided in subsection 2 and enforceable as provided in subsection 3.

   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~~ A member-control agreement valid under ~~this section or through a procedure established by a member-control agreement valid under this section.~~ subsection 2 may relate to, without limitation, the:

      (1) Management of the limited liability company's business;

      (2) Declaration and payment of distributions;

(3) Sharing of profits and losses;

(4) Election of governors or managers;

(5) Employment of members and others by the limited liability company;

(6) Relations among members and persons who have signed contribution agreements, including the termination of continued membership;

(7) Dissolution, termination, and liquidation of the limited liability company, including the continuation of the limited liability company's business through a successor organization or individual; and

(8) Arbitration of disputes.

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.~~ If 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; in the bylaws; or by an act of the board, the same result may 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.

c. A member-control agreement may ~~not include an agreement to give transfer consent~~:

(1) Allocate to the members authority ordinarily exercised by the board of governors;

(2) Allocate to the board of governors authority ordinarily exercised by the members; or

(3) Structure the governance of the limited liability company in any agreed fashion and may waive, in whole or in part, a member's dissenting rights under sections 10-32-54 and 10-32-55.

~~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.~~

2. ~~A written agreement among persons described in subsection 1 that relates to the control of or the liquidation, dissolution, and termination of the limited liability company, the relations among them, or any phase of the business and affairs of the limited liability company, including, without limitation, the management of its business, the declaration and payment of distributions, the sharing of profits and losses, the election of governors or managers, the employment of members by the limited liability company, or the arbitration of disputes, is valid, if the agreement~~

~~is signed by all persons who are then the members of the limited liability company, whether or not the members all have voting power, and all those who have signed contribution agreements, regardless of whether those signatories will, when members, have voting power. An agreement authorized under this section may allocate to the members authority ordinarily exercised by the board of governors, allocate to the board of governors authority ordinarily exercised by the members, or structure the governance of the limited liability company in any agreed fashion.~~ With respect to the validity of a member-control agreement:

a. A member-control agreement described in subsection 1 is valid if the agreement is in writing and is signed by the persons who, on the date the agreement first becomes effective, comprise:

(1) All members of the limited liability company, regardless of voting power; and

(2) All persons who are parties to contribution agreements that on that date have not yet been fully performed, regardless of whether those parties will, when members, have voting power.

b. A member-control agreement may also include as parties persons who are neither members nor parties to a contribution agreement.

c. A member-control agreement may provide for amendment of the member-control agreement through nonunanimous means.

3. ~~An~~ A member-control agreement valid under subsections 1 and 2 is enforceable by and against persons who are parties to ~~it~~ the member-control agreement and is also binding upon and enforceable against ~~only those persons and other~~ persons who acquire an interest in a membership interest or in a contribution agreement having knowledge of the existence of the member-control agreement. A signed original of the member-control agreement must be filed with the limited liability company.

a. The limited liability company shall note in ~~its~~ the limited liability company's required records that the members' interests are governed by a member-control agreement entered into under this section.

b. A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member-control agreement from the limited liability company at the company's expense.

4. A member-control agreement valid under subsections 1 and 2 is specifically enforceable.

5. ~~A member-control agreement may waive dissenters' rights, subject to subsection 3 of section 10-32-131.~~

~~6.~~ A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member-control agreement from the limited liability company at the company's expense.

~~7.~~ 6. If ~~an~~ a member-control agreement authorized under this section takes away from any person any of the authority and responsibility ~~which~~ that the person would otherwise possess under this chapter, the effect of the member-control agreement is also to relieve that person of liability imposed by law for acts and omissions in the possession or exercise of that authority and responsibility and to impose that liability on the person or persons possessing the authority and responsibility under the agreement.

~~8.~~ 7. This section does not apply to, limit, or restrict agreements otherwise valid, ~~nor~~ ~~is~~ and the procedure set forth in this section is not the exclusive method of agreement among members or between the members and the limited liability company with respect to any of the matters described.

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

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

SECTION 78. AMENDMENT. Section 10-32-54 of the 1997 Supplement to 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~~, but not an amendment to a member-control agreement, which 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; or

(6) Establishes or changes the conditions for or consequences of expulsion;

~~(7) Changes the statement required under subdivision f of subsection 1 of section 10-32-07; or~~

~~(8) Changes the statement required under subdivision 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, 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, 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; or

e. Any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, a member-control agreement, the ~~operating agreement~~ bylaws, or a resolution approved by the board of governors directs that dissenting members may obtain payment for ~~their~~ the dissenting members' 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.

3. If a date is fixed according to subsection 1 of section 10-32-40.1 for the determination of members entitled to receive notice of and to vote on an action described in subsection 1, only members as of the date fixed may exercise dissenters' rights.

SECTION 79. AMENDMENT. Section 10-32-55 of the 1997 Supplement to 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.~~ b. "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.

   c. "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.

   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 is entitled to dissent under section 10-32-54 and who wishes to exercise dissenters' rights ~~must~~ shall 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~~ may not vote the membership interests in favor of the proposed action.

4. After the proposed action ~~has been~~ is 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~~,~~ and 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~~,~~ and 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.

[82] **SECTION 80. AMENDMENT.** Section 10-32-56 of the 1997 Supplement to 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 or a member-control agreement and only when authorized by the board of governors or pursuant to a member-control agreement, 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:

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[82] Section 10-32-56 was also amended by section 28 of House Bill No. 1045, chapter 50.

a. Be of one class, without series, unless a member-control agreement or 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~~ 10-32-40.1, 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~~ or a member-control agreement fixes 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 or a member-control agreement, 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, in a member-control agreement, or by resolution of the board of governors.

7. A statement ~~executed~~ signed 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 or a member-control agreement. 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 81. AMENDMENT. Section 10-32-57 of the North Dakota Century Code is amended and reenacted as follows:

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

1. As used in this section, an "old" contribution is a contribution reflected in the required records of a limited liability company before the time the limited liability company accepts a new contribution.

2. Whenever a limited liability company accepts a new contribution, the board of governors shall restate, as required by this section, the value of all old contributions.

3. Unless otherwise provided in the articles of organization or a member-control agreement, this subsection states the method of restating the value of old contributions that pertain to the same series or class to which the new contribution pertains:

   a. State the value the limited liability company has accorded to the new contribution under subdivision a of subsection 3 of section 10-32-56;

   b. Determine what percentage the value stated under subdivision a will constitute, after the restatement required by this subsection, of the total value of all contributions that pertain to the particular series or class to which the new contribution pertains;

   c. Divide the value stated under subdivision a by the percentage determined under subdivision b, yielding the total value, after the restatement required by this subsection, of all contributions pertaining to the particular series or class;

   d. Subtract the value stated under subdivision a from the value determined under subdivision c, yielding the total value, after the restatement required by this subsection, of all the old contributions pertaining to the particular series or class;

   e. Subtract the value, as reflected in the required records before the restatement required by this subsection, of the old contributions from the value determined under subdivision d, yielding the value to be allocated among and added to the old contributions pertaining to the particular series or class; and

   f. Allocate the value determined under subdivision e proportionally among the old contributions pertaining to the particular series or class, add the allocated values to those old contributions, and change the required records accordingly.

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

4. Unless otherwise provided in the articles of organization or a member-control agreement, this subsection states the method of restating the value of old contributions that do not pertain to the same series or class to which the new contribution pertains:

   a. Determine the percentage by which the restatement under subsection 3 has changed the total contribution value reflected in

the required records for the series or class to which the new contribution pertains; and

b. As to each old contribution that does not pertain to the same series or class to which the new contribution pertains, change the value reflected in the required records by the percentage determined under subdivision a. The percentage determined under subdivision a may be positive, negative, or zero.

5. If a limited liability company accepts more than one contribution pertaining to the same series or class at the same time, then for the purpose of the restatement required by this section the limited liability company may consider all those new contributions as if they were a single contribution.

SECTION 82. AMENDMENT. Subsection 7 of section 10-32-58 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. ~~A~~ Unless otherwise provided in the articles of organization or a member-control agreement, 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 83. AMENDMENT. Section 10-32-59 of the North Dakota Century Code is amended and reenacted as follows:

10-32-59. Contribution allowance agreements.

1. Subject to any restrictions in the articles of organization or a member-control agreement, a limited liability company may enter into contribution allowance agreements under the terms, provisions, and conditions fixed by the board of governors.

2. Any contribution allowance agreement must be in writing, and the writing must state in full, summarize, or incorporate by reference all of the agreement's terms, provisions, and conditions.

3. ~~A~~ Unless otherwise provided in the articles of organization or a member-control agreement, a would-be contributor's rights under a contribution allowance 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 of the members approve the assignment by unanimous written consent.

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

10-32-60. Sharing of distributions. Unless otherwise provided in the articles of organization, in a member-control agreement, or by the board of governors under subsections 5 through 7 of section 10-32-56, distributions of cash or other assets of a limited liability company, including distributions on termination of the limited liability company, must be allocated in proportion to the value of the contributions of the members reflected in the required records.

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

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

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

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

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

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~~, a member-control agreement, the bylaws, or an agreement.

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

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 s~~ubsections~~ subsection 1 or 4 of section 10-32-64 or a restriction contained in the articles of organization ~~or operating agreement~~, a member-control agreement, the bylaws, or an agreement, and fails to comply with the standard of conduct provided in section 10-32-86, is liable to the limited liability company, ~~its~~ the limited liability company's receiver, or any other person winding up ~~its~~ the limited liability company's 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.

SECTION 89. AMENDMENT. Subsection 2 of section 10-32-67 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~ the bylaws, 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~~ 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 90. AMENDMENT. Section 10-32-68 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. A limited liability company may~~, but need not,~~ have bylaws, which may be known as an operating agreement. The ~~operating agreement~~ bylaws 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~~ bylaws only if the act expressly states that it is intended to constitute or revise the ~~operating agreement~~ bylaws.

2. ~~An initial operating agreement~~ Initial bylaws 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 or a member-control agreement to the members, the power to adopt, amend, or repeal the ~~operating agreement~~ bylaws 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~~ bylaws adopted, amended, or repealed by the board of governors. After the adoption of the initial ~~operating agreement~~ bylaws, the board of governors may not adopt, amend, or repeal ~~an operating agreement~~ a bylaw 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~~ the governors' classifications, qualifications, or terms of office, but may adopt or amend ~~an operating agreement~~ a bylaw provision to increase the number of governors.

3. Unless the articles or ~~operating agreement provides~~ bylaws provide 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~~ the bylaws adopted, amended, or repealed by the board of governors and

the resolution 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~~ bylaws may impose different or additional requirements for the members to adopt, amend, or repeal the ~~operating agreement~~ bylaws.

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

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

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

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

SECTION 93. AMENDMENT. Section 10-32-72 of the 1997 Supplement to 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, a member-control agreement, or ~~operating agreement~~ the bylaws, 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.

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

   b. Unless the articles, the bylaws, or ~~operating agreement~~ a member-control 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~~ governor's term.

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

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

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

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

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

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

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

10-32-76. Cumulative voting for governors.

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

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

   b. Each member shall cumulate that voting power either by casting for one candidate the amount of voting power equal to the number of governors to be elected multiplied by the voting power represented by the membership interests owned by that member, or by distributing all of that voting power on the same principle among any number of candidates.

2. ~~No~~ An amendment to the articles, a member-control agreement, or ~~operating agreement that~~ the bylaws which has the effect of denying, limiting, or modifying the right to cumulative voting for members provided in this section may not 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 97. AMENDMENT. Subsection 1 of section 10-32-78 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

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~~ 10-32-86; and

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

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

   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.

SECTION 100. AMENDMENT. Section 10-32-80 of the 1997 Supplement to 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, a member-control agreement, or ~~operating agreement~~ the bylaws 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~~ bylaws, 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, a member-control agreement, or ~~operating agreement~~ the bylaws 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 is a quorum. Participation in a

meeting by this means constitutes personal presence 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 this means constitutes personal presence at the meeting.

3. Unless the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws 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, a member-control agreement, or ~~operating agreement~~ the bylaws otherwise require ~~it~~.

4. If the date, time, and place of a board of governors meeting ~~have been~~ are provided in the articles or ~~operating agreement~~ bylaws, or announced at a previous meeting of the board of governors, ~~no~~ notice is not 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 101. AMENDMENT. Section 10-32-81 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-32-81. Absent governors. If the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws 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 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 102. AMENDMENT. Section 10-32-82 of the North Dakota Century Code is amended and reenacted as follows:

10-32-82. Quorum. A majority, or a larger or smaller proportion or number provided in the articles of organization, a member-control agreement, or ~~operating agreement~~ the bylaws, of the governors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the governors 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 governors

present may continue to transact business until adjournment, even though the withdrawal of a number of governors originally present leaves less than the proportion or number otherwise required for a quorum.

SECTION 103. AMENDMENT. Section 10-32-83 of the 1997 Supplement to 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~~ if this chapter, a member-control agreement, or the articles require the affirmative vote of a larger proportion or number. If a member-control agreement or the articles require a larger proportion or number than is required by this chapter for a particular action, the member-control agreement or the articles control.

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

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 or a member-control agreement so provide, any action, other than an action requiring member approval, may be taken by written action signed by the number of governors ~~that~~ which would be required to take the same action at a meeting of the board of governors at which all governors were present.

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

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

SECTION 106. AMENDMENT. Section 10-32-86 of the 1997 Supplement to 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 from voting on the action by the articles; by the ~~operating~~ ~~agreement~~ bylaws; 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 or a member-control agreement. ~~The~~ Neither the articles nor a member-control agreement 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 107. AMENDMENT. Subdivision b of subsection 2 of section 10-32-87 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

b. The material facts as to the contract or transaction and as to the ~~manager's~~ governor's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by:

(1) The owners of two-thirds of the voting power of membership interests entitled to vote ~~that~~ which are owned by persons other than the interested governor; or

(2) The unanimous affirmative vote of all members, whether or not entitled to vote;

SECTION 108. AMENDMENT. Section 10-32-88 of the 1997 Supplement to 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~~ bylaws. 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~~ bylaws.

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

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

1. 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~~ if 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~~, the bylaws, 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. 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.

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 th~~emselves~~ the managers and agents 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, a member-control agreement, or the ~~operating agreement~~ bylaws, or as may be determined by resolution of the board not inconsistent with the articles, a member control agreement, or the ~~operating agreement~~ bylaws.

SECTION 110. AMENDMENT. Section 10-32-94 of the 1997 Supplement to 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. Except as otherwise provided in the articles or ~~operating agreement~~ bylaws, 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, 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, a member-control agreement, or ~~operating agreement, or~~ the bylaws; in the manner determined by the board of governors~~,~~; or pursuant to section 10-32-92.

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

10-32-95. Delegation. Unless prohibited by the articles ~~or operating agreement~~, a member-control agreement, the bylaws, or by a resolution 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 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 112. AMENDMENT. Section 10-32-99 of the 1997 Supplement to 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, a member-control agreement, or ~~operating agreement either~~ the bylaws 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 a member-control agreement, or the date of adoption of a provision in the ~~operating agreement~~ bylaws 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, 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 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~~ This section ~~may be construed to~~ does not limit the power of the limited liability company to indemnify ~~other~~ persons other than a governor, a manager, a member, an employee, or a member of a committee of the board, by contract or otherwise.

SECTION 113. AMENDMENT. Section 10-32-100 of the 1997 Supplement to 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 a domestic corporation under a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.

   c. With any foreign corporation or foreign limited liability company pursuant to a plan of merger approved in the manner provided in section 10-32-107.

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.

b. A limited liability company may acquire all of the ownership interests of one or more classes or series of a domestic corporation pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.

c. A 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 and in chapter 10-19.1.

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

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

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

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

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

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

10-32-102. Plan approval.

1. A resolution containing the plan of merger or exchange must be approved by the ~~affirmative vote of a majority of the~~ governing board ~~members present at a meeting of the governing board~~ as required by section 10-19.1-46 or 10-32-83 of each constituent organization and must then be submitted at a regular or special meeting to the owners of each constituent organization in the case of a plan of merger; 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~~ If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange pursuant to this subsection, 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~~ 10-19.1-73 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~~ as required by section 10-19.1-74 or 10-32-42. 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~~ a member-control agreement, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series solely because the plan of merger effects a cancellation of the ownership interests of the class or series if the plan of merger effects a cancellation of all ownership interests of the constituent organization of all classes and series that are existing immediately before the merger 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.

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

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

   b. Each ~~holder~~ owner of ~~shares of the corporation that~~ ownership interests in the constituent organization which were outstanding immediately before the effective time of the transaction will hold the same number of ~~shares~~ ownership interests with identical rights immediately after that time;

   c. The voting power of the outstanding ~~shares~~ ownership interests of the ~~corporation~~ constituent organization entitled to vote immediately after the merger, plus the voting power of the outstanding ~~shares~~ ownership interests of the ~~corporation~~ constituent organization entitled to vote issuable on conversion of or on the exercise of rights to purchase securities issued in the transaction, will not exceed by more than twenty percent, the voting power of the outstanding ~~shares~~ ownership interests of the ~~corporation~~ constituent organization entitled to vote immediately before the transaction; and

   d. The number of participating ~~shares~~ ownership interests of the ~~corporation~~ constituent organization immediately after the merger, plus the number of participating ~~shares~~ ownership interests of the ~~corporation~~ constituent organization issuable on conversion, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than twenty percent, the number of participating ~~shares~~ ownership interests of the

~~corporation~~ constituent organization immediately before the transaction. "Participating ~~shares~~ ownership interests" are outstanding ~~shares~~ ownership interests of the ~~corporation~~ ~~that~~ constituent organization which entitle ~~their~~ ~~holders~~ the ownership interests owners to participate without limitation in distributions by the ~~corporation~~ constituent organization.

5. If the merger or exchange is with a domestic corporation, the plan of merger or exchange must also be approved in the manner provided in chapter 10-19.1.

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

1. Upon receiving the approval required by section 10-32-102, articles of merger must be prepared ~~that~~ which 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~~ each constituent organization pursuant to ~~subsection 2 or 3 of section 10-32-102;~~ chapter 10-19.1 or this chapter.

      ~~(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.~~

SECTION 117. AMENDMENT. Section 10-32-104 of the 1997 Supplement to 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 directly, or indirectly through related corporations or limited liability companies:

   a. May merge the subsidiary into ~~itself~~ the parent; or may merge the subsidiary into any other subsidiary at least ninety percent of the outstanding ownership interest of each class and series of which is owned by the parent directly, or indirectly through related corporations or limited liability companies, without a vote of the owners of ~~itself~~ the parent or any subsidiary; or

   b. May merge ~~itself~~ the parent, or ~~itself~~ the parent 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 of the parent as required by section 10-19.1-46 or by the governors of the parent present as required by section 10-32-83 must set forth a plan of merger ~~that~~ which contains:

a. The name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving constituent organization;

b. The manner and basis of converting the ownership interests of the subsidiary into ownership interests of the parent 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~~ on surrender of any ownership interests of the parent; and

d. If the surviving constituent organization is a subsidiary, a statement of any amendments to the articles of the surviving constituent organization that will be part of the merger.

3. If the parent is a constituent organization but is not the surviving constituent organization in a merger, the resolution is not effective unless ~~it~~ the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98 if the parent is a corporation, section 10-32-102 if the parent is a limited liability company, or in accordance with the laws of the jurisdiction under which ~~it~~ the parent is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.

4. A copy of the plan of merger must be mailed to each owner, other than the parent, of each subsidiary that is a constituent organization to the merger.

5. Articles of merger must be prepared ~~that~~ which contain:

a. The plan of merger;

b. The number of outstanding ownership interests of each class and series of ~~each~~ the subsidiary that is a constituent organization and the number of ownership interests of each class and series owned by the parent directly or indirectly, through related constituent organizations;

c. The date a copy of the plan of merger was mailed to the owners, other than the parent, of 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.

6. Within thirty days after a copy of the plan of merger is mailed to the owners of each subsidiary that is a constituent organization to the merger, or upon waiver of the mailing by the owners of all outstanding ownership interests of each subsidiary that is a constituent organization to the merger, 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.

7. The secretary of state shall issue a certificate of merger to the ~~parent~~ surviving constituent organization in the merger or ~~its~~ the surviving constituent organization's 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~~ section 10-19.1-87 ~~and~~ ~~10-19.1-88~~ or under ~~sections~~ section 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 118. AMENDMENT. Section 10-32-105 of the 1997 Supplement to 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~~ is approved by the owners entitled to vote on the approval of the plan as provided in section 10-32-102, and before the effective date of the plan, ~~it~~ the plan of merger may be abandoned:

   a. With respect to approval of the abandonment:

      (1) If the owners of ownership interests of each of the constituent organizations entitled to vote on the approval of the plan as provided in section 10-32-102 have approved the abandonment at a meeting by the ~~affirmative~~ ~~vote~~ ~~of~~ ~~the~~ ~~owners~~ ~~of~~ ~~a~~ ~~majority~~ ~~of~~ ~~the~~ ~~voting~~ ~~power~~ ~~of~~ ~~the~~ ~~ownership~~ ~~interests~~ ~~entitled~~ ~~to~~ ~~vote~~ ~~and,~~ owners as required by section 10-19.1-74 or 10-32-42;

      (2) ~~if~~ 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~~ as required by section 10-19.1-46 or 10-32-83; and

(3) If the merger or exchange is with a foreign corporation or foreign limited liability company, if abandonment is approved in the manner required by the laws of the jurisdiction under which the corporation is incorporated or the limited liability company is organized;

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

c. Pursuant to subsection 2.

2. If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned before the effective date of the plan, a resolution by the governing board of any constituent organization abandoning the plan of merger or exchange may be approved by the ~~affirmative vote of a majority of the~~ board ~~members present,~~ as required by section 10-19.1-46 or 10-32-83 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~~ constituent organization, in the case of abandonment under subdivision b of subsection 1, or the abandoning constituent organization in the case of abandonment under subsection 2, shall file with the secretary of state together with the fees provided in section 10-32-150, articles of abandonment that contain:

a. The names of the constituent organizations;

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

c. ~~If the plan is abandoned under subsection 2, the~~ 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 119. AMENDMENT. Subdivision a of subsection 2 of section 10-32-106 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

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

1. A limited liability company may merge with 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~~ jurisdiction 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~~ of which the ownership interests will be acquired is ~~either~~ a limited liability company or a domestic corporation, regardless of whether ~~or not~~ the exchange is permitted by the laws of the ~~state~~ jurisdiction 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 of the jurisdiction under which ~~it was~~ the foreign corporation or foreign limited liability company is incorporated or organized or ~~by~~ under which ~~it~~ the foreign corporation or foreign liability company is governed.

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

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

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

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[83] Section 10-32-107 was also amended by section 29 of House Bill No. 1045, chapter 50.

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

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

SECTION 121. AMENDMENT. Section 10-32-109 of the 1997 Supplement to 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;

e. For a limited liability company with articles of organization filed with the secretary of state:

(1) ~~Except~~ Before July 1, 1999, except as provided in subsection 2 and except as otherwise provided in the articles of organization or a member-control agreement, upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, including:

~~(1)~~ (a) Death of any member;

~~(2)~~ (b) Retirement of any member;

~~(3)~~ (c) Resignation of any member;

~~(4)~~ (d) Redemption of a member's complete membership interest;

~~(5)~~ (e) Assignment of a member's governance rights under section 10-32-32 which leaves the assignor with no governance rights;

~~(6)~~ (f) A buyout of a member's membership interest under section 10-32-119 ~~that~~ which leaves that member with no governance rights;

~~(7)~~ (g) Expulsion of any member;

~~(8)~~ (h) Bankruptcy of any member;

~~(9)~~ (i) Dissolution of any member; or

~~(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)~~ (j) 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

(2) After June 30, 1999, upon the occurrence of an event terminating the continued membership of a member in the limited liability company:

(a) If the articles of organization or a member-control agreement specifically provide that the termination causes dissolution; or

(b) If the membership of the last or sole member terminates and the legal representative of that last or sole member does not cause the limited liability company to admit at least one member within one hundred eighty days after the termination;

f. A merger in which the limited liability company is not the surviving organization; or

g. When terminated by the secretary of state pursuant to section 10-32-149.

2. For a limited liability company with articles of organization filed with the secretary of state before July 1, 1999, the limited liability company is not dissolved and is not required to be wound up by reason of any event terminating the continued membership of a member:

a. If there is at least one remaining member and the existence and business of the limited liability company is continued by the consent of every remaining member 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 a member-control agreement; or

b. If the membership of the last or sole member terminates and the legal representative of that last or sole member causes the limited liability company to admit at least one member within one hundred eighty days after the termination.

3. 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~~ the limited liability company's 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.~~ 4. Notwithstanding any provision of law, articles of organization, member-control agreement, ~~operating agreement~~ bylaws, 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 122. AMENDMENT. Paragraph 1 of subdivision b of subsection 1 of section 10-32-112 of the North Dakota Century Code is amended and reenacted as follows:

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

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

b. ~~Subject to any business continuation agreement, to~~ 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

SECTION 124. AMENDMENT. Section 10-32-114 of the 1997 Supplement to 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. ~~When~~ If a notice of dissolution ~~has been~~ is 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~~ the notice must be given by publishing the notice once each week for four successive weeks in an official newspaper as defined in chapter 46-06 in the county or counties where the registered office and the principal executive office of the limited liability company are located and by giving written notice to known creditors and claimants pursuant to subsection ~~32~~ 31 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. The limited liability company 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~~ the notice to accept or reject. 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~~ that claim 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~~ that claim 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.~~ 4. Articles of termination for a limited liability company dissolving under this section ~~that has given~~ which gave 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~~ expires and the payment of claims of all creditors and claimants filing a claim within that period ~~has been~~ are made or provided for; or

b. The longest of the periods described in subdivision b of subsection ~~4~~ ~~has expired~~ 3 expires 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~~ 3.

~~6.~~ 5. The articles of termination for a limited liability company that ~~has given~~ gave 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~~ was made or provided for, or the date on which the longest of the periods described in subdivision b of subsection ~~4 expired~~ 3 expires;

b. That the remaining property, assets, and claims of the limited liability company ~~have been~~ were distributed in accordance with section 10-32-131, or that adequate provision ~~has been~~ was 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~~ 3 or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against ~~it~~ the limited liability company in a pending proceeding.

SECTION 125. AMENDMENT. Section 10-32-119 of the 1997 Supplement to 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 an action under subdivision b of subsection 1 in which one or more of the circumstances described in that subdivision is established, a court, upon motion of a limited liability company or a member, may order the sale by a plaintiff or a defendant of all membership interests of the limited liability company held by the plaintiff or defendant to the limited liability company or the moving members, whichever is specified in the motion, if the court determines in the court's discretion that an order is

fair and equitable to all parties under all of the circumstances of the case.

a. The purchase price of any membership interest sold under this subsection is the fair value of the membership interest as of the date of the commencement of the action or as of another date found equitable by the court. If the articles of organization, a member-control agreement, or another agreement state a price for the redemption or buyout of membership interests, the court shall order the sale for the price and on the terms 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 entry of the order, the limited liability company shall provide each selling member with the information the limited liability company is required to provide under subsection 6 of section 10-32-55.

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 membership interests under the provisions of subsection 9 of section 10-32-55, may allow interest or costs as provided in subsections 1 and 10 of section 10-32-55, and may allocate payment among the member whose membership interest is being sold and any assignees of the financial rights of that member.

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

4. 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.~~ 5. 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.~~ 6. 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~~ may 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.

~~6.~~ 7. 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 b~~usiness~~ ~~continuation~~ member-control 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.

~~7.~~ 8. 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.

~~8.~~ 9. 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 126. AMENDMENT. Subsection 2 of section 10-32-122 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. An action ~~must~~ may 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, a member-control agreement, or the ~~operating~~ ~~agreement~~ bylaws 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 127. AMENDMENT. Section 10-32-131 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Subject to subsection ~~4~~ 2, ~~except~~ ~~when~~ ~~the~~ b~~usiness~~ ~~of~~ ~~a~~ d~~issolved~~ ~~limited~~ ~~liability~~ ~~company~~ ~~is~~ ~~being~~ ~~continued~~ ~~under~~ ~~subsection~~ ~~2~~ ~~or~~ ~~when~~ ~~the~~ d~~issolved~~ ~~limited~~ ~~liability~~ ~~company~~ ~~is~~ ~~being~~ ~~wound~~ ~~up~~ ~~and~~ t~~erminated~~ ~~under~~ s~~ubsection~~ ~~3~~ ~~of~~ ~~section~~ ~~10-32-112,~~ the assets of the dissolved limited liability company must be disposed of to satisfy liabilities according to the following priorities:

   a. To creditors, including members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for interim distributions to members under section 10-32-61 or termination distributions under section 10-32-60;

b. Unless otherwise provided in the articles of organization or a member-control agreement, to members and former members of the limited liability company in satisfaction of liabilities for distributions under section 10-32-60 or 10-32-61; and

c. Unless otherwise provided in the articles of organization or a member-control agreement, to members first for a return of their contributions, as restated from time to time under section 10-32-57, and secondly respecting ~~their~~ the member's membership interests in the proportions in which the members share in distributions.

2. ~~If a business continuation agreement exists, then after dissolution the board of governors shall resolve to implement the business continuation agreement and the assets of the dissolved limited liability company must be disposed of according to that agreement, except:~~

~~a. Members and former members have dissenters' rights as provided in sections 10-32-54 and 10-32-55, but:~~

~~(1) No dissenters' rights exist if the business of the dissolved limited liability company is being continued pursuant to a business continuation agreement made after the dissolution; and~~

~~(2) Any dissenters' rights that do exist are limited by subsections 3 and 4.~~

~~b. If the business of the dissolved limited liability company is being continued, but not through a merger under subsection 3 of section 10-32-112, the dissolved limited liability company shall comply with either section 10-32-114 or 10-32-115.~~

~~3. If a person has agreed in a business continuation agreement to waive dissenters' rights and nonetheless asserts dissenters' rights under subsection 2:~~

~~a. Those rights must be honored; but~~

~~b. Unless the business continuation agreement provides otherwise, including providing for installment payments:~~

~~(1) In determining the fair value of the membership interest, the value of the goodwill of the business of the dissolved limited liability company must not be considered; and~~

~~(2) The payment due the dissenter is subject to an offset equal to:~~

~~(a) Any amount owed to the limited liability company by the member;~~

~~(b) The amount of damages, if any, suffered by the limited liability company as a result of the dissenter's breach of the business continuation agreement; and~~

~~(c) The amount of other damages, if any, provided for in subsection 4.~~

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

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

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

1. If any statement in the application for a certificate of authority by a foreign limited liability company ~~was~~ is false when made or ~~any arrangements or other facts described have changed, making the application inaccurate in any respect~~ the foreign limited liability company changes the foreign limited liability company's name or purposes sought in this state, the foreign limited liability company ~~shall~~ promptly shall 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~~ the foreign limited liability company's 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.

2. 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.

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

SECTION 129. AMENDMENT. Section 10-32-142 of the 1997 Supplement to 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~~ If 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~~ the foreign limited liability company 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. Any foreign organization, which is the surviving organization in a merger and which will continue to transact business in this state, shall procure ~~either~~ a ~~new~~ ~~or~~ ~~amended~~ certificate of authority if not previously authorized to transact business in this state.

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

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

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

1. The secretary of state shall charge and collect for:

   a. Filing articles of 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. 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-five dollars.

x. Submitting any document for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.

y. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.

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

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

1. "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 except as otherwise permitted by law or rule:

   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~~ telecommunication 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~~ 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~~ sign by this chapter, the articles, the bylaws, a resolution approved by the ~~affirmative vote of the required proportion or number of the~~ directors as required by section 10-33-42, or the ~~required proportion or number of~~ members with voting rights, if any, as required by section 10-33-72; 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, transmitted by facsimile telecommunication or electronically, 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.

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

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

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

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 the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.

   e. 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.~~ f. 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; or

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[84] Section 10-33-06 was also amended by section 30 of House Bill No. 1045, chapter 50.

(f) A limited liability limited partnership.

(2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, 45-10.1-03, 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.

SECTION 135. AMENDMENT. Subsection 4 of section 10-33-13 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. With respect to fees:

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

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

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

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

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

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~~,~~ and secretary~~, and treasurer~~. The officers of the corporation may also include a treasurer, 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.

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

3. The treasurer, if any, 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~~ when 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.

SECTION 139. AMENDMENT. Subsection 3 of section 10-33-54 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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, if any, or president, 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.

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

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 prohibition 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~~ before 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~~ This section ~~may be construed to~~ does not limit the power of the corporation to indemnify ~~other~~ persons other than a director, an officer, an employee, or a member of a committee of the board by contract or otherwise.

SECTION 141. AMENDMENT. Subsection 2 of section 10-33-87 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. ~~When~~ If a constituent corporation has members with voting rights with respect to mergers and consolidations as required by section 10-33-42, 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.

SECTION 142. AMENDMENT. Section 10-33-95 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-33-95. Certain assets not to be diverted. ~~When~~ If a corporation dissolves, merges ~~or~~, substantially changes the use or purposes for which the corporation will use corporate assets, consolidates, transfers ~~its~~ corporate assets, or grants a mortgage or other security interest in ~~its~~ corporate 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~~ were received and held~~,~~ or from the uses and purposes expressed or intended by the original donor.

SECTION 143. AMENDMENT. Section 10-33-130 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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~~ is false when made or any arrangements or other facts described ~~have changed~~ change, 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~~ the foreign corporation's 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. A foreign nonprofit corporation that changes the foreign nonprofit corporation's name and applies for an amended certificate of authority and that is the owner of a trademark or trade name, a general partner named in a fictitious name certificate, a general partner in a limited partnership or a limited liability limited partnership, or a managing partner in a limited liability partnership that is on

file with the secretary of state shall change the foreign nonprofit corporation's name in each of the foregoing registrations that apply if the foreign nonprofit corporation files an application for an amended certificate of authority.

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

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

SECTION 145. AMENDMENT. Section 45-10.1-01 of the 1997 Supplement to 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. "Business" includes every trade, occupation, and profession.

3. "Certificate of limited partnership" means the certificate referred to in section 45-10.1-08, and the certificate as amended or restated.

~~3.~~ 4. "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~~ that partner's capacity as a partner.

5. "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

~~4.~~ 6. "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.~~ 7. "Filed with the secretary of state" means except as otherwise permitted by law or rule:

a. That ~~either:~~

~~(1)~~ ~~A~~ a signed original or a legible facsimile ~~copy~~ telecommunication of a signed original of a request for reserved name~~;~~ or

~~(2)~~ ~~A~~ 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~~ was delivered to the secretary of state and ~~has been~~ was 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.

~~6.~~ 8. "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.

~~7.~~ 9. "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.

10. "Jurisdiction of origin" means the jurisdiction in which the limited partnership status of the foreign limited partnership is created.

~~8.~~ 11. "Limited partner" means a person who has been admitted to a limited partnership as a limited partner in accordance with the partnership agreement.

~~9.~~ 12. "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.~~ 13. "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 l~~ast known~~ 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.

~~11.~~ 14. "Partner" means a general or limited partner.

~~12.~~ 15. "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.

~~13.~~ 16. "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.

~~14.~~ 17. "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.~~ 18. "Signed" means that the signature of a person ~~has been~~ 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~~ is signed by a person authorized to ~~do so~~ sign the document 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, transmitted by facsimile or electronically, or in any other manner reproduced on the document.

~~16.~~ 19. "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

[85] **SECTION 146. AMENDMENT.** Subsection 1 of section 45-10.1-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The name of each limited partnership as set forth in ~~its~~ the limited partnership's certificate of limited partnership:

   a. Must be in the English language or in another language expressed in English letters or characters.

   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.

   c. May not contain the name of a limited partner unless:

      (1) ~~It~~ Except as limited in subdivision g, the name is also the name of a general partner; or

      (2) The business of the limited partnership ~~had been~~ has 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~~ the limited partnership may not be organized under this chapter.

   e. May not contain a word or phrase indicating or implying ~~it~~ the limited partnership is organized for a purpose other than a legal business purpose for which a limited partnership may be organized under this chapter.

   f. May not contain a word or phrase indicating or implying ~~it~~ the limited partnership is organized other than for a purpose stated in ~~its~~ the limited partnership's certificate of limited partnership.

   g. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited liability partnership", "limited liability limited partnership", or any abbreviation of ~~those~~ these words.

   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~~ 3, of:

         (a) Another limited partnership;

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[85] Section 45-10.1-02 was also amended by section 66 of House Bill No. 1045, chapter 50.

(b) A corporation;

(c) A limited liability company; ~~or~~

(d) A limited liability partnership; or

(e) A limited liability limited partnership;

(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.

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

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

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

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

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

   a. The name of the limited partnership;

   b. The new address of the limited partnership's registered office, if the address of the limited partnership's registered office is to be changed;

   c. The name of the limited partnership's new registered agent, if the limited partnership's registered agent is to be designated or changed;

   d. The name of the limited partnership's registered agent as changed, if the name of the limited partnership's registered agent is to be changed;

   e. A statement that the address of the limited partnership's registered office and the address of the business office of the limited partnership's registered agent, as changed, will be identical; and

   f. A statement that the change of registered office or registered agent was authorized by resolution approved by the general partners.

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

3. If the business address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each limited partnership represented by that agent by filing with the secretary of state a statement for each limited partnership as required in subsection 1, except that the statement need be signed only by the registered agent, need not be responsive to subdivision f of subsection 1, and must state that a copy of the statement was mailed to each of those limited partnerships or to the legal representative of each of those limited partnerships.

4. The fee prescribed in section 45-10.1-15 for change of registered office must be refunded if in the secretary of state's opinion a change of address of registered office results from rezoning or postal reassignment.

SECTION 149. AMENDMENT. Section 45-10.1-08 of the 1997 Supplement to 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~~ signed 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 registered office ~~and the name and address of the agent for service of process required to be maintained by section 45-10.1-04~~ of the limited partnership and the name of the limited partnership's registered agent at that address.

   d. The name and address of the principal place of business of each general partner.

   e. 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~~ on the date specified in the certificate of limited partnership ~~if, in either case, there has been substantial compliance with the requirements of this section~~ which is within ninety days after the filing of the certificate of limited partnership with the secretary of state.

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

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

1. A certificate of limited partnership is amended by filing a certificate of amendment t~~hereto~~ in the office of the secretary of state. The certificate must set forth all of the following:

   a. The name of the limited partnership.

   b. ~~The date of filing the certificate.~~

   ~~c.~~ The amendment to the certificate.

2. An amendment to a certificate of limited partnership reflecting the occurrence of the event or events must be filed within thirty days after the happening of any of the following events:

   a. The admission of a new general partner.

   b. The withdrawal of a general partner.

   c. The continuation of the business under section 45-10.1-47 after an event of withdrawal of a general partner.

   d. A change of ~~office or an~~ registered agent or change of address of registered agent.

3. A general partner who becomes aware that any statement in a certificate of limited partnership was false when made or that any arrangements or other facts described have changed, making the certificate inaccurate in any respect, shall promptly amend the certificate.

4. A certificate of limited partnership may be amended at any time for any other proper purpose the general partners determine.

5. No person has any liability because an amendment to a certificate of limited partnership has not been filed to reflect the occurrence of any event referred to in subsection 2 if the amendment is filed within the thirty-day period specified in subsection 2.

6. A restated certificate of limited partnership may be executed and filed in the same manner as a certificate of amendment.

7. A 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.

8. A limited partnership that ~~amends~~ changes its name and that 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 amendments.

9. Whenever a general partner that is a corporation files an amendment, or application for an amended certificate of authority, to change its corporate name it must simultaneously file an amendment to a certificate of limited partnership.

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

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

1. The name of the limited partnership.

2. ~~The date of filing of its certificate of limited partnership.~~

~~3. The reason for filing the certificate of cancellation.~~

~~4.~~ The later effective date~~, which must be a date certain, of cancellation~~ if ~~it~~ the effective date is not to be effective upon the filing of the certificate. A later effective date may not be later than ninety days after the date on which the certificate is filed with the secretary of state.

~~5.~~ 3. Any other information the general partners filing the certificate determine.

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

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

1. Each certificate required by sections 45-10.1-08 through 45-10.1-19 to be filed in the office of the secretary of state must be ~~executed in the following manner:~~ signed by at least one general partner.

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

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

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

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

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

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

45-10.1-14. ~~Renewal of certificate - Filing with secretary~~ Secretary of state - ~~Cancellation~~ Annual report of limited partnership and foreign limited partnership. ~~Any certificate of limited partnership or registration of foreign limited partnership filed under this chapter must be renewed every five years from the date of the initial filing. Limited partnerships existing prior to July 1, 1985, must file the statement of renewal by July 1, 1987, and every five years thereafter. The statement of renewal must be executed by the limited partnership or foreign limited partnership on forms prescribed and furnished by the secretary of state and sent to the address of the registered office at least sixty days prior to the deadline for filing. The statement must include the name of the limited partnership or foreign limited partnership, the state or country of organization, the address of the registered office and the name of the registered agent, and a statement that the limited partnership or foreign limited partnership 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 it does not conform, the secretary of state shall promptly return the statement to the limited partnership or the foreign limited partnership for any necessary corrections, and the certificate of limited partnership or registration of foreign limited partnership must be canceled if the statement is not returned corrected within thirty days after the statement was returned for corrections. If any limited partnership or foreign limited partnership fails to file the statement of renewal when due, the secretary of state shall cancel the certificate of limited partnership or registration of foreign limited partnership and shall mail notice of cancellation to the address of the registered office.~~

1. Each limited partnership, and each foreign limited partnership 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 partnership or foreign limited partnership and the jurisdiction of origin.

   b. The address of the registered office of the limited partnership or foreign limited partnership in this state and the name of the limited partnership's or foreign limited partnership's registered agent in this state at that address.

   c. The address of the limited partnership's or foreign limited partnership's principal executive office.

   d. A brief statement of the character of the business in which the limited partnership or foreign limited partnership is actually engaged in this state.

   e. The name and respective address of every general partner of the limited partnership or foreign limited partnership.

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided in the annual report must be accurate as of the time of filing the report. The annual report must be signed as prescribed in subsection 15 of section 45-10.1-01 or a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited partnership or foreign limited partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited partnership or foreign limited partnership by the receiver or trustee. The secretary of state may

destroy any annual reports provided for in this section after the annual report is on file for six years.

3. The annual report of a limited partnership or foreign limited partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited partnership or foreign limited partnership must be delivered before April first of the year following the calendar year in which the registration was filed by the secretary of state. A limited partnership existing before July 1, 1999, or a foreign limited partnership registered before July 1, 1999, shall file the limited partnership's or foreign limited partnership's first annual report before April first in the year of the expiration of the limited partnership's or foreign limited partnership's registration or renewal registration in effect on December 31, 1999.

   a. An annual report in a sealed envelope postmarked by the United States postal service on or before April first or an annual report in a sealed packet with a verified shipment date by any other carrier service on or before April first, complies with the delivery requirement under this subsection.

   b. The secretary of state shall file the report if the report conforms to the requirements of subsection 2.

      (1) If the report does not conform, the report must be returned to the limited partnership or foreign limited partnership for any necessary corrections.

      (2) If the report is filed before the deadlines 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.

4. After the date established under subsection 3, the secretary of state shall notify any limited partnership or foreign limited partnership failing to file an annual report that the limited partnership's or foreign limited partnership's certificate or registration is not in good standing and that the limited partnership's certificate or foreign limited partnership's registration may be terminated or revoked pursuant to subsection 5.

   a. The secretary of state must mail notice of termination or revocation to the last registered agent at the last registered office of record.

   b. If the limited partnership or foreign limited partnership files an annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as prescribed by section 45-10.1-15, the secretary of state will restore the limited partnership's or foreign limited partnership's certificate or registration to good standing.

5. A limited partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established in subsection 3, ceases to exist and is considered involuntarily terminated by operation of law.

a. The secretary of state shall note the termination of the limited partnership's certificate on the records of the secretary of state and shall give notice of the action to the terminated limited partnership.

b. Notice by the secretary of state must be mailed to the limited partnership's last registered agent at the last registered office of record.

6. A foreign limited partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established by subsection 3, forfeits the right to transact business in this state.

a. The secretary of state shall note the revocation of the foreign limited partnership's registration on the records of the secretary of state and shall give notice of the action to the foreign limited partnership.

b. Notice by the secretary of state must be mailed to the foreign limited partnership's last registered agent at the last registered office of record.

7. A limited partnership that is terminated for failure to file an annual report, or a foreign limited partnership registration that is forfeited for failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as prescribed in section 45-10.1-15. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the termination or revocation to the reinstatement.

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

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

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

1. Filing a limited partnership, one hundred dollars.

2. Filing a limited partnership amendment, forty dollars.

3. Filing a limited partnership dissolution, twenty-five dollars.

4. Filing a limited partnership cancellation, twenty-five dollars.

5. Filing a reservation of name, ten dollars.

6. Filing a ~~statement~~ notice of ~~renewal~~ transfer of a reserved limited partnership ~~or renewal of registration of foreign limited partnership~~ name, ~~forty~~ ten dollars.

7. Filing a cancellation of a reserved limited partnership name, ten dollars.

8. Filing a consent to use a deceptively similar name, ten dollars.

9. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.

10. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited partnership affected by the change.

11. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.

12. Filing a resignation as registered agent, ten dollars.

13. Filing a registration of foreign limited partnership, one hundred dollars.

~~8.~~ 14. Filing a certified statement of amendment of foreign limited partnership, twenty-five dollars.

~~9.~~ 15. Filing a certified statement of dissolution of foreign limited partnership, twenty-five dollars.

~~10.~~ 16. Filing a certified statement of cancellation of foreign limited partnership, twenty-five dollars.

~~11.~~ 17. Filing a statement of withdrawal of foreign limited partnership, twenty-five dollars.

~~12.~~ 18. Filing ~~a consent to use of a deceptively similar name, ten dollars.~~ an annual report of a limited partnership or foreign limited partnership, twenty-five dollars. The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:

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

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

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

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

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

1. If the limited partnership is formed before July 1, 1999, and the agreement does not specify in writing the time when or the events upon the happening of which a limited partner may withdraw or a definite time for the dissolution and winding up of the limited partnership, a limited partner may withdraw upon not less than six months' ~~prior~~ advance written notice to each general partner at the general partner's

address on the books of the limited partnership at ~~its~~ the limited partnership's office in this state.

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

SECTION 156. AMENDMENT. Section 45-10.1-51 of the 1997 Supplement to 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~~ jurisdiction under which a foreign limited partnership is organized govern ~~its~~ the organization and internal affairs and the liability of ~~its~~ the limited partners~~, and a~~. A foreign limited partnership may not be denied registration by reason of any difference between ~~those~~ the laws of the jurisdiction and the laws of this state.

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

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

SECTION 158. AMENDMENT. Section 45-10.1-52 of the 1997 Supplement to 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.

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

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

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

~~4.~~ d. 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~~ and which 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.~~ e. 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~~ is revoked or if the agent cannot be found or served with the exercise of reasonable diligence.

~~6.~~ f. The address of the principal office of the foreign limited partnership.

~~7.~~ g. The name and address of the principal place of business of each general partner.

~~8.~~ h. The address of the office at which is kept a list of the names and addresses of the limited partners and ~~their~~ the limited partners' 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.

2. 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~~ foreign limited partnership's jurisdiction of origin, the consent of registered agent, and the fees required under this chapter.

3. If the secretary of state finds the application for registration conforms to law and the fees required by this chapter have been paid, the secretary of state shall file the application for registration and the consent of the registered agent.

SECTION 159. AMENDMENT. Section 45-10.1-53 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-10.1-53. (903) Foreign limited partnership - ~~Filing~~ ~~of~~ ~~registration~~ Registered agent and certain reports. ~~If~~ ~~the~~ ~~secretary~~ ~~of~~ ~~state~~ ~~finds~~ ~~that~~ ~~an~~ ~~application~~ ~~for~~ ~~registration~~ ~~conforms~~ ~~to~~ ~~law~~ ~~and~~ ~~all~~ ~~requisite~~ ~~fees~~ ~~have~~ ~~been~~ ~~paid,~~ ~~the~~ ~~secretary~~ ~~of~~ A foreign limited partnership registered in this state shall:

1. ~~Endorse~~ ~~on~~ ~~the~~ ~~application~~ ~~the~~ ~~word~~ ~~"Filed"~~ ~~and~~ ~~the~~ ~~month,~~ ~~day,~~ ~~and~~ ~~year~~ ~~of~~ ~~the~~ ~~filing.~~ Appoint and continuously maintain a registered agent and a registered office in the same manner as provided in section 45-10.1-04; and

2. ~~File~~ ~~the~~ ~~application~~ ~~in~~ ~~the~~ ~~office~~ ~~of~~ ~~the~~ ~~secretary~~ ~~of~~ ~~state.~~ File a report upon any change in the address of the registered office or upon any change in the name of the foreign limited partnership's registered agent as provided in section 45-10.1-04.1.

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

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

1. Transact business in this state or obtain any license or permit required by this state until the foreign limited partnership registers with the secretary of state.

2. Transact in this state any business that is prohibited to a domestic limited partnership organized under this chapter.

3. Be denied registration because the laws of the foreign limited partnership's jurisdiction of origin differ from the laws of this state.

SECTION 161. AMENDMENT. Section 45-10.1-55 of the 1997 Supplement to 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~~ is false when made or any arrangements or other facts described ~~have~~ ~~changed~~ change, 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~~ changes the foreign limited partnership's name and files a statement as provided in subsection 1 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 or a limited liability limited partnership on file with the secretary of state~~,~~ ~~must~~ shall effect a change of name in each of ~~such~~ the foregoing registrations ~~simultaneously~~ ~~with~~ ~~the~~ ~~filing~~ ~~of~~ which is applicable when the foreign limited partnership files the certificate amending the registration of foreign limited partnership.

3. A foreign limited partnership ~~must~~ shall file a certificate of amendment, signed ~~and~~ ~~sworn~~ ~~to~~ by a general partner, ~~whenever~~ when a general partner that is a corporation files an amendment changing ~~its~~ the general partner's corporate name, or when ~~it~~ the general partner 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~~ shall notify the secretary of state in writing ~~whenever~~ when a general partner changes the address of ~~its~~ the general partner's 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~~ a notice under this subsection. This notice is not subject to the amendment fee prescribed in 45-10.1-15.

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

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

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

   a. 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~~;

   b. Failing 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 the foreign limited partnership's 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 the foreign limited partnership's registration as specified in section 45-10.1-55; or

   c. Misrepresenting any material matter in any registration, certificate, report, or other document submitted by the foreign limited partnership pursuant to this chapter.

2. Except for the annual report for which the registration may be revoked as provided in section 45-10.1-14, registration of a foreign limited partnership may not be revoked by the secretary of state unless ~~the~~:

   a. The secretary of state ~~has given~~ gave the foreign limited partnership ~~not less than~~ at least sixty days' notice by mail addressed to ~~its~~ the foreign limited partnership's registered office in this state ~~and the~~ or, if the foreign limited partnership fails to appoint and maintain a registered agent in this state, addressed to the foreign limited partnership's principal executive office ~~of record, and the foreign limited partnership has failed to remedy the deficiency prior to revocation.~~; and

   b. During the sixty-day period, the foreign limited partnership 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 limited partnership to transact business in this state ceases and the secretary of state shall issue a notice of revocation and shall mail the notice to the principal executive office of the foreign limited partnership.

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

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

SECTION 164. Section 45-10.1-58.2 of the North Dakota Century Code is created and enacted as follows:

45-10.1-58.2. Foreign limited partnership - Transaction of business without registering.

1. A foreign limited partnership transacting business in this state may not maintain any claim, action, suit, or proceeding in any court of this state until the foreign limited partnership registers with the secretary of state.

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

3. A foreign limited partnership, by transacting business in this state without registering, appoints the secretary of state as the foreign limited partnership's agent upon whom any notice, process, or demand may be served.

4. A foreign limited partnership that transacts business in this state without registering is liable to the state for the years or parts of years during which the foreign limited partnership transacted business in this state without registering in an amount equal to all fees that would have been imposed by this chapter upon that foreign limited partnership had the foreign limited partnership duly registered, 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 limited partnership that transacts business in this state without registering is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each general partner and each agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited partnership that has not registered 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 partnership or any of the foreign limited partnership's general partners 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 partnership and further exercise of any rights and privileges by the foreign limited partnership in this state. The foreign limited partnership 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 partnership has otherwise complied with the provisions of this chapter.

SECTION 165. AMENDMENT. Section 45-11-08.2 of the North Dakota Century Code is amended and reenacted as follows:

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

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

2. Any other fictitious name upon written request for cancellation, from one or more partners, with the filing fee of ten dollars.

SECTION 166. AMENDMENT. Section 45-13-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. "Business" includes every trade, occupation, and profession.

2. "Chief executive office" means an office from which the partnership conducts business.

3. "Debtor in bankruptcy" means a person who is the subject of:

   a. An order for relief under title 11 of the United States Code or a comparable order under a successor statute of general application; or

   b. A comparable order under federal, state, or foreign law governing insolvency.

~~3.~~ 4. "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

5. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:

   a. A signed original or a legible facsimile telecommunication of a signed original of a request for reserved name or the signed original of all other documents meeting the applicable requirements of this chapter together with the fees provided in section 45-13-05 was delivered to the secretary of state and was determined by the secretary of state to conform to law.

   b. 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.

6. "Foreign limited liability partnership" means a partnership that is formed under laws other than the laws of this state and has the status of a limited liability partnership under those laws.

7. "Limited liability partnership" means a partnership that filed a registration under chapter 45-22 and does not have a similar statement in effect in any other jurisdiction.

8. "Notice":

a. Is given to a partnership or to a partner of a partnership when in writing and mailed or delivered to the partnership or to the partner at the chief executive office of the 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, if there is no one in charge, when left in a conspicuous place in the office or, if the office is closed or the person to be notified has no office, when left at the dwelling, house, or other 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.

~~4.~~ 9. "Partnership" means an association of two or more persons to carry on as coowners a business for profit formed under section 45-14-02, predecessor law, or comparable law of another jurisdiction.

~~5.~~ 10. "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

~~6.~~ 11. "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

~~7.~~ 12. "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

~~8. "Person" includes any legal or commercial entity. The term includes governmental subdivision, agency, or instrumentality.~~

~~9.~~ 13. "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

14. "Signed" means 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 the document is signed by a person authorized to do so by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

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

~~10.~~ 15. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

~~11.~~ 16. "Statement" means a statement of partnership authority under section 45-15-03, a statement of denial under section 45-15-04, a statement of dissociation under section 45-19-04, a statement of dissolution under section 45-20-05, a statement of merger under section 45-21-07, or an amendment or cancellation of any of the foregoing.

~~12.~~ 17. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

SECTION 167. AMENDMENT. Subsection 2 of section 45-13-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The partnership agreement may not:

a. Vary the rights and duties under section 45-13-05 except to eliminate the duty to provide copies of statements to all of the partners;

b. Unreasonably restrict the right of access to books and records under subsection 2 of section 45-16-03;

c. Eliminate the duty of loyalty under subsection 2 of section 45-16-04 or subdivision c of subsection 2 of section 45-18-03, but:

(1) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(2) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty~~.~~;

d. Unreasonably reduce the duty of care under subsection 3 of section 45-16-04 or subdivision c of subsection 2 of section 45-18-03;

e. Eliminate the obligation of good faith and fair dealing under subsection 4 of section 45-16-04, but the partnership agreement may

prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

f. Vary the power to dissociate as a partner under subsection 1 of section 45-18-02, except to require the notice under subsection 1 of section 45-18-01 to be in writing;

g. Vary the right of a court to expel a partner in the events specified in subsection 5 of section 45-18-01;

h. Vary the requirement to wind up the partnership business in cases specified in subsection 4, 5, or 6 of section 45-20-01; ~~or~~

i. Vary the law applicable to a limited liability partnership under chapter 45-22; or

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

SECTION 168. Section 45-13-04.1 of the North Dakota Century Code is created and enacted as follows:

45-13-04.1. Partnership name.

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

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

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

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

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

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

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

(a) Another partnership;

(b) A limited liability company;

(c) A corporation;

(d) A limited partnership;

(e) A limited liability partnership; or

(f) A limited liability limited partnership;

(2) A name, the right of which is, at the time of filing, 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 partnership name is deceptively similar to another name for purposes of this chapter.

3. This subsection does not affect the right of a domestic partnership existing on July 1, 1999, or a foreign partnership authorized to do business in this state on July 1, 1999, to continue the use of the foreign partnership's name. If the secretary of state determines a partnership name is deceptively similar to another name for purposes of this chapter, the partnership name may not be used unless there is filed with the statement:

a. The written consent of the holder of the rights to the name to which the proposed name is determined to be deceptively similar; or

b. A certified copy of a judgment of a court in this state establishing the earlier right of the applicant to the use of the name in this state.

4. This section and section 45-13-04.2 do not:

a. Abrogate or limit the law of unfair competition or unfair practices; chapter 47-25; the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or any other rights to the exclusive use of a name or symbol.

b. Derogate the common law or any principle of equity.

5. A partnership that is merged with another partnership or domestic or foreign limited partnership, or that is formed by the reorganization of one or more partnerships or domestic or foreign limited partnerships, or that acquires by sale, lease, or other disposition to or exchange with a partnership all or substantially all of the assets of another partnership or domestic or foreign limited partnership including the partnership's or limited partnership's name, may have the same name as that used in this state by any other partnership or domestic or foreign limited partnership if the other partnership or domestic or foreign limited partnership:

a. Is formed 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 45-10.1-03;

d. Holds a fictitious name registered in the manner provided in chapter 45-11; or

e. Holds a trade name registered in the manner provided in chapter 47-25.

6. The use of a name by a partnership in violation of this section does not affect or vitiate the partnership's partnership existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the partnership from doing business under a name assumed in violation of this section, although a statement may have been filed with the secretary of state.

7. If a partnership's period of existence is expired or a partnership's statement filed under section 45-13-05 is expired, the partnership may reacquire the right to use that name by refiling a statement pursuant to section 45-13-05, unless the name was 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 pursuant to subsection 2. A partnership that cannot reacquire the use of the partnership's partnership name shall adopt a new partnership name that complies with this section.

SECTION 169. Section 45-13-04.2 of the North Dakota Century Code is created and enacted as follows:

45-13-04.2. Reserved name.

1. The exclusive right to the use of a partnership name otherwise permitted by section 45-13-04.1 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 45-13-05.

   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 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 45-13-05.

4. The right to the exclusive use of a 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 the cancellation together with the fees provided in section 45-13-05.

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

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

SECTION 170. AMENDMENT. Section 45-13-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

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

2. A certified copy of a statement that has been filed in the office of the secretary of state and recorded in the office for recording transfers of real property has the effect provided for recorded statements in chapters 45-13 through 45-21. A recorded statement that is not a certified copy of a statement filed in the office of the secretary of state does not have the effect provided for recorded statements in chapters 45-13 through 45-21.

3. A statement filed by a partnership must be executed by at least two partners. Other statements must be executed by a partner or other person authorized by chapters 45-13 through 45-21. An individual who executes a statement as, or on behalf of, a partner or other person named as a partner in a statement shall personally declare under penalty of perjury that the contents of the statement are accurate.

4. A person authorized by chapters 45-13 through 45-21 to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

5. A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and to any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

6. ~~A partnership name filed in a statement under this section may not be the same as or deceptively similar to the name of any other partnership filed under this section or any corporation, limited liability company, or limited partnership, or a trade name or fictitious name certificate on file with the secretary of state, unless there is filed with the partnership statement a written consent of the holder of the similar name to use the name proposed by the partnership.~~

~~7.~~ Any statement filed under this section must be renewed every five years from the date of the initial filing. A statement of renewal must be executed by the partnership on a form furnished by the secretary of state which is sent to the address of the chief executive office at least sixty

days before the deadline for filing. If the secretary of state finds that the statement of renewal conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement of renewal. If the secretary of state finds that the statement of renewal does not so conform, the secretary of state shall return the statement of renewal to the partnership for any necessary corrections. If the statement of renewal is not returned corrected within thirty days after the statement of renewal was returned for correction, the statement of renewal is subject to cancellation. If any partnership fails to file the statement of renewal, the secretary of state shall cancel the initial statement and shall mail notice of the cancellation to the address of the chief executive office.

~~8.~~ 7. A partnership shall notify the secretary of state in writing upon a change in address of the partnership's chief executive office. A statement of renewal filed by the secretary of state which reflects a change of address of the chief executive office of the partnership may serve as ~~such~~ a notice under this subsection.

~~9.~~ 8. a. The secretary of state shall charge and collect a fee for:

(1) Filing a statement under this section, one hundred dollars.

(2) Filing an amendment under this section, forty dollars.

(3) Filing a cancellation under this section, ~~twenty-four~~ twenty-five dollars.

(4) Filing a renewal under this section, forty dollars.

(5) Filing a request to reserve a partnership name, ten dollars.

(6) Filing a notice of transfer of a reserved partnership name, ten dollars.

(7) Filing a cancellation of reserved partnership name, ten dollars.

(8) Filing a statement of conversion, fifty dollars.

(9) Filing a statement of merger, fifty dollars.

(10) Any document submitted for approval before the actual time of submission for filing, half of the fee provided in this section for filing the document.

b. The officer responsible for recording transfers of real property may collect a fee for recording a statement.

SECTION 171. AMENDMENT. Section 45-13-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-13-06. (106) Law governing internal relations.

1. ~~The~~ Except as otherwise provided in subsection 2, the law of the jurisdiction in which a partnership has ~~its~~ the partnership's chief

executive office governs relations among the partners and between the partners and the partnership.

2. The law of this state governs relations among the partners and between the partners and the partnership and the liability of partners for an obligation of a limited liability partnership.

SECTION 172. AMENDMENT. Section 45-14-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-14-01. (201) Partnership as entity.

1. A partnership is an entity distinct from ~~its~~ the partnership's partners.

2. A limited liability partnership continues to be the same entity in existence before the filing of the registration under chapter 45-22.

SECTION 173. AMENDMENT. Subsection 1 of section 45-15-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A partnership may file a statement of partnership authority~~,~~ which:

   a. Must include:

      (1) The name of the partnership;

      (2) The street address of ~~its~~ the partnership's chief executive office and of one office in this state, if there is one;

      (3) The ~~names~~ name and mailing ~~addresses~~ address of ~~all of the partners and of an agent appointed and maintained by the partnership~~ each partner;

      (4) The address of the registered office of the partnership and the name of the registered agent at that address;

      (5) The ~~names~~ name of ~~the partners~~ each partner authorized to execute an instrument transferring real property held in the name of the partnership; and

      ~~(5)~~ (6) The nature of business to be transacted~~; and~~.

   b. May state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

SECTION 174. Section 45-15-03.1 of the North Dakota Century Code is created and enacted as follows:

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

1. A partnership that files and maintains a statement of partnership authority 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 chief executive office of the partnership.

2. A partnership that files a statement of partnership authority shall appoint and continuously maintain a registered agent who may be:

   a. An individual residing in this state;

   b. A domestic corporation;

   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 the registered agent's registered office.

4. Proof of the registered agent's consent to serve in the capacity of registered agent must be filed with the secretary of state, together with the fees provided in section 45-13-05.

SECTION 175. Section 45-15-03.2 of the North Dakota Century Code is created and enacted as follows:

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

1. A partnership that files and maintains a statement of partnership authority may change the partnership's registered office, change the partnership's registered agent, or state a change in the name of the partnership's registered agent, by filing with the secretary of state, along with the fees provided in section 45-13-05, a statement containing:

   a. The name of the partnership;

   b. If the address of the partnership's registered office is changing, the new address of the partnership's registered office;

   c. If the partnership's registered agent is being designated or changing, the name of the partnership's new registered agent;

   d. If the name of the partnership's registered agent is changing, the name of the partnership's registered agent as changed;

   e. A statement that the address of the partnership's registered office and the address of the business office of the partnership's registered agent, as changed, will be identical; and

   f. A statement that the change of registered office or registered agent was authorized by resolution approved by the partners.

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

3. If the business address or name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each partnership represented by that agent by filing with the secretary of state a statement for each partnership as required in subsection 1, except the statement need be signed only by the registered agent, need not be responsive to subdivision f of subsection 1, and must state that a copy of the statement was mailed to each of those partnerships or to the legal representative of each of those partnerships.

SECTION 176. AMENDMENT. Subsection 1 of section 45-15-06 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Except as otherwise provided in subsection 2 and in chapter 45-22, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

SECTION 177. AMENDMENT. Section 45-22-01 of the 1997 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:

   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, except as otherwise permitted by law or rule:

   a. That ~~either:~~

      ~~(1)~~ ~~A~~ a signed original or a legible facsimile ~~copy~~ telecommunication of a signed original of a request for reserved name; or

      ~~(2)~~ ~~A~~ 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~~ was delivered to the secretary of state and ~~has been~~ was 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 partnership organized as 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. In~~ which is in good standing in ~~its~~ the partnership's jurisdiction of origin.

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~~ means the jurisdiction in which the limited liability partnership status of the foreign limited liability partnership was created.

~~7.~~ 6. "Limited liability partnership" means a domestic limited liability partnership or a foreign limited liability partnership.

~~8.~~ 7. "Managing 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.

~~9.~~ 8. "Notice":

a. Is given to a limited liability partnership or to a partner of the limited liability partnership when in writing and mailed or delivered to the limited liability partnership or the partner at the registered office or principal executive office of the limited liability partnership~~; 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~~ 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.

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

d. Is deemed received when ~~it is~~ given.

~~10.~~ 9. "Originally registered" and "original registration" r~~efers to~~ means the document establishing the limited liability partnership status of the foreign limited liability partnership in ~~its~~ the foreign limited liability partnership's jurisdiction of origin.

10. "Partnership" means an association of two or more persons to carry on as coowners of a business for profit formed under chapters 45-13 through 45-21, predecessor law, or comparable law of another jurisdiction.

11. "Principal executive office" means:

a. An office from which the limited liability partnership conducts business; or

b. If the limited liability partnership has no office from which ~~it~~ the limited liability partnership conducts business, ~~then~~ the registered office of the limited liability partnership.

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.

13. "Registered office" means the place in this state designated as the registered office of the limited liability partnership.

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.

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.~~

~~16.~~ "Signed" means ~~that~~ the signature of a person ~~has been~~ is placed on a document, as provided in subsection 39 of section 41-01-11~~:~~.

a. With respect to a document required by this chapter to be filed with the secretary of state, the term means ~~that~~ the document ~~has been~~ is signed by a person authorized to do so by this chapter, or by or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners~~; and~~.

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, transmitted by telecommunication or electronically, or in any other manner reproduced on the document.

SECTION 178. AMENDMENT. Section 45-22-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-03. Registration.

1. A partnership may become a limited liability partnership pursuant to this section.

   a. 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 45-14-02 apply.

   b. The terms and conditions on which a partnership becomes a limited liability partnership must be approved by the necessary vote of partners required to amend the partnership agreement, unless the partnership agreement contains a requirement that the vote of a greater number of partners is necessary to amend provisions relating to the partners' obligations to contribute to the partnership, in which case by the necessary vote of the partners to amend these provisions.

2. After the approval required by subdivision b of subsection 1, a partnership shall become a limited liability partnership by filing a registration with the secretary of state. A domestic limited liability partnership or foreign limited liability partnership that is transacting business in this state must have in effect and filed with the secretary of state a registration that complies with this section.

   ~~a. For one year from its~~ From the effective date of filing, the registration of:

~~(1)~~ a. A domestic limited liability partnership establishes ~~its~~ the status as a domestic limited liability partnership; and

~~(2)~~ b. A foreign limited liability partnership authorizes ~~it to transact~~ the transaction of 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 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 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~~ the 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.~~ A statement that the partnership elects to be a limited liability partnership.

(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.~~ A deferred effective date, if any.

b. With respect to a foreign limited liability partnership:

(1) The name of the foreign limited liability partnership and, if different, the name under which ~~it~~ the foreign limited liability partnership proposes to transact business in this state.

(2) The jurisdiction of ~~its original registration~~ origin.

(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~~ the foreign limited liability partnership's registered agent at that address.

(7) The name and address of each managing partner.

(8) An acknowledgment that the status of the foreign limited liability partnership in this state will automatically expire~~:~~

~~(a) Unless the foreign limited liability partnership files a proper renewal registration; and~~

~~(b) Unless~~ unless the foreign limited liability partnership continuously maintains ~~its~~ limited liability partnership status in ~~its~~ the jurisdiction of origin.

c. The registration must be accompanied by payment of the fees provided in section 45-22-22 together with a certificate of good standing or certificate of existence authenticated by the registering officer of the state or country where the foreign limited liability partnership is originally registered and the consent of the designated registered agent for service of process to serve in that capacity.

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~~ are 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~~ is 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~~, 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~~ the limited liability partnership's next ~~renewal registration; and~~ annual report.

~~(2) With respect to foreign limited liability partnerships:~~

~~(a)~~ c. In the case of a change in ~~its~~ a foreign limited liability partnership's name, a foreign limited liability partnership shall file promptly 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; or~~ jurisdiction of origin.

~~(b)~~ d. In the case of a termination or merger:

~~[1]~~ (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~~ partnership's jurisdiction of origin.

[~~2~~] (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~~ the foreign limited liability partnership 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.~~ e. The secretary of state may destroy any ~~registrations and renewal registrations which have been~~ registration that is 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 domestic limited liability partnership ~~whenever~~ if that managing partner is ~~either~~ a domestic or foreign:

a. Corporation;

b. Limited liability company;

c. Limited partnership;

d. Limited liability partnership; ~~or~~

e. Limited liability limited partnership; or

f. ~~General partnership~~ 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 or as otherwise expressly provided in a written partnership agreement.

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~~ the jurisdiction of origin, a partnership ~~which~~ that is a successor to ~~such~~ the limited liability partnership or foreign limited liability partnership and which intends to be a limited liability partnership or foreign limited liability partnership ~~shall~~ is not ~~be~~ required to file a new registration or renewal and ~~shall be~~ is deemed to have filed any documents required or permitted under this section which were filed by the predecessor partnership.

9. The status of a partnership as a limited liability partnership is effective on the later of the filing of the registration or a date specified in the registration which is within ninety days after the filing of the registration.

a. The status of a partnership as a domestic limited liability partnership and the authority of a foreign limited liability partnership to transact business in this state remains effective, regardless of changes in the partnership, until the partnership's registration is voluntarily withdrawn pursuant to section 45-22-13 or revoked by the secretary of state pursuant to sections 45-22-16 and 45-22-21.1.

b. The status of a partnership as a limited liability partnership and the liability of the partnership's partners for obligation of the partnership is not affected by errors or later changes in the information required to be contained in the registration under subsection 3.

SECTION 179. AMENDMENT. Section 45-22-04 of the 1997 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~~:

(1) The words "limited liability partnership" or ~~either~~ the abbreviation "L.L.P." or the abbreviation "LLP", either of which abbreviations ~~can~~ may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state~~,~~; or

(2) In the case of a foreign limited liability partnership, any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of ~~original~~ r~~egistration~~ origin.

c. May not contain a word or phrase ~~that~~ i~~ndicates~~ indicating or ~~implies that it~~ implying the limited liability partnership may not be formed under this chapter.

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

e. May not contain a word or phrase ~~that~~ i~~ndicates~~ indicating or ~~implies that it~~ implying the limited liability partnership is formed for a purpose other than one or more business purposes for which a partnership may be formed under North Dakota law.

~~e.~~ 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 registration a document ~~which~~ that complies with subsection ~~2~~ 3 of this section, ~~or~~ of:

(a) Another limited liability partnership;

(b) A corporation;

(c) A limited liability company; ~~or~~

(d) A limited partnership; or

(e) A limited liability limited partnership;

(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.~~ g. Need not be filed as provided in chapter 45-11 except ~~when~~ if 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 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~~ earlier 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~~ a 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~~ the organization's name, may have the same name as that used in this state by any of the other organizations, if the other organization:

   a. ~~Was~~ Is 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.

6. The use of a name by a limited liability partnership in violation of this section does not affect or vitiate ~~its~~ the limited liability partnership's status as a 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~~ the limited liability partnership's registration may have been filed with the secretary of state.

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, regardless of whether ~~or not~~ the name is the same under which ~~it~~ the foreign limited liability partnership is authorized in ~~its~~ the jurisdiction of original registration.

b. A fictitious name certificate must be filed as provided in chapter 45-11 only ~~when~~ if registering under a name other than the name as authorized in the jurisdiction of original registration.

SECTION 180. AMENDMENT. Section 45-22-05 of the 1997 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 a 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 a reserved name.

6. The secretary of state may destroy ~~all~~ any reserved name r~~equests~~ request and name request index ~~thereof~~ one year after expiration.

SECTION 181. AMENDMENT. Section 45-22-06 of the 1997 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 182. AMENDMENT. Section 45-22-07 of the 1997 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 knowing that ~~no~~ a registration ~~or~~ r~~enewal~~ r~~egistration~~ is not in effect is jointly and severally liable for all debts and liabilities incurred or arising as a result.

SECTION 183. Section 45-22-08.1 of the North Dakota Century Code is created and enacted as follows:

45-22-08.1. Partner liability.

1. An obligation of a partnership incurred while the partnership is a domestic limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the domestic limited liability partnership.

2. A partner is not personally liable, directly or indirectly, including by way of indemnification, contribution, or otherwise under section 45-19-03, 45-20-06, 45-20-07, 45-21-03, or 45-21-06 or any other basis of law, for an obligation under this section solely by reason of being a partner or acting as a partner.

3. This section applies notwithstanding any inconsistent provision in the partnership agreement.

4. This section does not limit or impair the right of a domestic limited liability partnership or the domestic limited liability partnership's partners to make claims against any particular partner on the grounds that the particular partner has, in the partner's capacity as a partner, breached a duty to a domestic limited liability partnership.

SECTION 184. AMENDMENT. Section 45-22-10 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-10. Liability of partners for illegal distributions. With respect to the liability of partners for illegal distributions:

1. ~~A~~ Except as provided in subsection 3, a partner who receives a distribution from a domestic limited liability partnership ~~that~~ which would have been in violation of section 10-19.1-92 had the limited liability partnership been a corporation with a board of directors is liable to the domestic limited liability partnership, ~~its~~ the domestic limited liability partnership's receiver, or other person winding up ~~its~~ the domestic limited liability partnership's affairs, but only to the extent that the distribution received by the partner exceeded the amount that properly could have been paid under section 10-19.1-92.

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

3. A partner actively engaged in the partnership business is not liable to the domestic limited liability partnership for any distribution that is or was regularly paid to the partner on account of engagement in the partnership business to the extent the distribution is reasonable compensation for the partner's services to or on behalf of the partnership.

SECTION 185. AMENDMENT. Section 45-22-11 of the 1997 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 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 appoint and continuously maintain a registered agent in ~~its~~ the registration who may be:

   a. An individual residing in this state;

   b. A domestic corporation, ~~a~~ domestic limited liability company, or ~~a~~ domestic limited liability partnership; or

   c. A foreign corporation, foreign limited liability company, or foreign limited liability partnership authorized to transact business in this state.

3. Proof of the registered agent's consent to serve in ~~that~~ the capacity of registered agent must be filed with the secretary of state, together with the fees provided in section 45-22-22.

SECTION 186. AMENDMENT. Section 45-22-12 of the 1997 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~~ the limited liability partnership's registered office, change ~~its~~ the limited liability partnership's registered agent, or state a change in the name of ~~its~~ the limited liability partnership's registered agent, by filing with the secretary of state, along with the fees provided in section 45-22-22, a statement containing:

   a. The name of the limited liability partnership ~~or foreign limited liability partnership~~.

   b. If the address of ~~its~~ the limited liability partnership's registered office is ~~to be changed~~ changing, the new address of ~~its~~ the limited liability partnership's registered office.

   c. If ~~its~~ the limited liability partnership's registered agent is to be designated or ~~changed~~ is changing, the name of ~~its~~ the limited liability partnership's new registered agent.

   d. If the name of ~~its~~ the limited liability partnership's registered agent is ~~to be changed~~ changing, the name of ~~its~~ the limited liability partnership's registered agent as changed.

   e. A statement that the address of ~~its~~ the limited liability partnership's registered office and the address of the business office of ~~its~~ the limited liability partnership's registered agent, as changed, will be identical.

   f. A statement that the change of registered office or registered agent was authorized by resolution of the partnership.

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~~ was given to the limited liability partnership ~~or foreign limited liability partnership~~ at ~~its~~ the limited liability partnership's 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 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~~ the statement 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~~ was 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~~ if, in the opinion of the secretary of state, the

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

SECTION 187. AMENDMENT. Section 45-22-13 of the 1997 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~~ the partnership's 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~~ the current registration.

      (3) An acknowledgment by the domestic limited liability partnership that the withdrawal ends ~~its~~ the domestic limited liability partnership's status as a limited liability partnership ~~status~~ with respect to periods after the effective date of the withdrawal.

   b. With respect to a foreign limited liability partnership:

      (1) The name of the foreign limited liability partnership.

      (2) The jurisdiction of origin.

      (3) A statement that the foreign limited liability partnership is not transacting business in this state as a foreign limited liability partnership.

      (4) A statement that the foreign limited liability partnership surrenders ~~its~~ authority to transact business in this state as a foreign limited liability partnership and is withdrawing ~~its~~ the foreign limited liability partnership's current registration.

      (5) An acknowledgment by the foreign limited liability partnership that the withdrawal ends ~~its~~ the foreign limited liability partnership's authorization to transact business in this state as a foreign limited liability partnership ~~status in this state~~ with respect to periods after the effective date of the withdrawal.

      (6) A statement that the foreign limited liability partnership revokes the authority of ~~its~~ the foreign limited liability partnership's 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 188. AMENDMENT. Section 45-22-14 of the 1997 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~~ the limited liability partnership's status as a limited liability partnership ~~or foreign limited liability partnership~~ through termination ~~either~~ by~~:~~

   ~~a.~~ ~~Continuing~~ continuing to file an annual ~~renewal registrations~~ report 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 the partnership is dissolved and is winding up its affairs.~~

   ~~(2) Identifies the cause of the dissolution.~~

   ~~(3) States 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~~ winds up ~~its~~ affairs, ~~it~~ the limited liability partnership 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 the limited liability partnership ~~or foreign limited liability partnership has~~ dissolved and wound up ~~its~~ affairs.

(3) A statement the limited liability partnership ~~or foreign limited liability partnership~~ is terminated.

b. Be signed by one former managing partner who ~~has~~ did not wrongfully ~~dissolved~~ dissolve the partnership or, in the case of a foreign limited liability partnership, by ~~a managing~~ an authorized partner.

SECTION 189. AMENDMENT. Section 45-22-15 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-15. Limited liability after dissolution. With respect to limited liability after dissolution:

1. Subject to section 45-22-14, the limited liability shield described in sections 45-22-08 and 45-22-09 continues in full force for the dissolved domestic limited liability partnership regardless of any dissolution, winding up, and termination.

2. If a domestic limited liability partnership dissolves and ~~its~~ the domestic limited liability partnership's business is continued by a successor ~~general~~ partnership under section 45-20-02, ~~then~~ the limited liability described in ~~sections~~ section 45-22-08 ~~and 45-22-09~~ also applies to that successor domestic limited liability partnership until the ~~expiration~~ withdrawal of the registration that the dissolved domestic limited liability partnership had in effect under section 45-22-03 at the moment of dissolution. The successor ~~general~~ partnership may at any time file ~~its~~ the partnership's own registration under section 45-22-03.

SECTION 190. AMENDMENT. Section 45-22-16 of the 1997 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~~ fails:

(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; or

(3) To file any ~~required~~ amendment to ~~its~~ the limited liability partnership's registration~~; or~~ required to be filed pursuant to subdivision b or c of subsection 4 of section 45-22-03.

~~(4) To file a renewal registration as provided in subsection 2 of section 45-22-03.~~

b. An intentional misrepresentation ~~has been~~ is 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~~ gave 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~~ the limited liability partnership's 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~~ by mail addressed to ~~its~~ the limited liability partnership's principal executive office; and

b. During the sixty-day period, the limited liability partnership ~~or foreign limited liability partnership has failed~~ fails:

(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~~ any amendment to ~~its~~ the limited liability partnership's registration required to be filed pursuant to subdivision b or c of subsection 4 of section 45-22-03; or

(4) ~~To file a renewal registration as provided in subsection 2 of section 45-22-03; or~~

~~(5)~~ To correct the misrepresentation.

3. Upon the expiration of the sixty-day period without the limited liability partnership ~~or foreign limited liability partnership having cured~~ curing the reason for the pending revocation set forth in the notice, the registration is revoked. The secretary of state shall note the revocation in the records of the secretary of state and shall give notice of the revocation to the limited liability partnership ~~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~~ fails to appoint and maintain a registered office in this state, ~~then~~ the notice must be mailed to ~~its~~ the limited liability partnership's principal executive office.

SECTION 191. AMENDMENT. Section 45-22-17 of the 1997 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 or on any responsible person found at the registered office 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~~ a registered agent or responsible person ~~may~~ cannot be found at ~~either~~ the registered office or at the principal place of business 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~~ the limited liability partnership's registered office or at ~~its~~ the limited liability partnership's 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~~ the limited liability partnership's 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~~ the process, notice, or demand.

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 192. AMENDMENT. Section 45-22-18 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

45-22-18. Foreign limited liability partnership governing law.

1. The laws of the foreign limited liability partnership's jurisdiction ~~under which a foreign limited liability partnership is originally registered~~ of origin govern ~~its organization, 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. The relations among the partners of a foreign limited liability partnership, or the relations between any partner or partners of a foreign limited liability partnership and the foreign limited liability partnership; and

   b. The liability of partners for obligations of a foreign limited liability partnership.

2. A foreign limited liability partnership may not be denied registration to transact business in this state by reason of any difference between ~~those~~ the laws of the foreign limited liability partnership's jurisdiction of origin and the laws of this state.

3. 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 engage in any business or exercise any ~~of its powers for purposes~~ power that a domestic limited liability partnership ~~is forbidden by law to exercise in this state~~ may not engage in or exercise as a limited liability partnership.

SECTION 193. AMENDMENT. Section 45-22-20 of the 1997 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~~ registers 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 limitation on the personal liability of a partner is not waived solely by the foreign limited liability partnership transacting business in this state without having filed a registration with the secretary of state.

4. A foreign limited liability partnership, by transacting business in this state without ~~having registered~~ registering with the secretary of state, appoints the secretary of state as ~~its~~ the agent upon whom any notice, process, or demand may be served.

SECTION 194. Section 45-22-20.1 of the North Dakota Century Code is created and enacted as follows:

45-22-20.1. Foreign limited liability partnership - Transaction of business without registering.

1. A foreign limited liability partnership transacting business in this state may not maintain any claim, action, suit, or proceeding in any court of this state until the foreign limited liability partnership registers with the secretary of state.

2. The failure of a foreign limited liability partnership to register 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, action, suit, or proceeding in any court in this state.

3. A foreign limited liability partnership, by transacting business in this state without registering, appoints the secretary of state as the foreign limited liability partnership's agent upon whom any notice, process, or demand may be served.

4. A foreign limited liability partnership that transacts business in this state without registering is liable to the state for the years or parts of years during which the foreign limited liability partnership transacted business in this state without registering in an amount equal to all fees that would have been imposed by this chapter upon that foreign limited liability partnership had the foreign limited liability partnership duly registered, 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 limited liability partnership that transacts business in this state without registering is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each managing partner or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited liability partnership that has not registered 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 partnership or any of the foreign limited liability partnership's managing partners 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 partnership and further exercise of any rights and privileges by the foreign limited liability partnership in this state. The foreign limited liability partnership 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 partnership has otherwise complied with the provisions of this chapter.

SECTION 195. AMENDMENT. Subsection 1 of section 45-22-21 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The following activities of a foreign limited liability partnership, 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~~ partners 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 partnership's own partnership interests or maintaining trustees or depositories with respect to those partnership interests.

   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~~ the orders become contracts.

   g. Creating or acquiring indebtedness, ~~mortgages~~ with or without a mortgage, ~~and~~ or other security interests in real or personal property.

   h. ~~Securing or collecting~~ Collecting debts ~~or enforcing~~, including foreclosing mortgages~~,~~ and ~~security interests in property securing the debts~~ canceling contracts for deed; enforcing other security interests on property; securing debts; accepting deeds or other instruments of title from debtors in lieu of foreclosure; canceling or other enforcement; and holding, protecting, and maintaining property acquired under this subdivision.

   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.

   ~~k.~~ j. 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.

   k. Transacting business in interstate commerce.

SECTION 196. Section 45-22-21.1 of the North Dakota Century Code is created and enacted as follows:

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

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

   a. The name of the limited liability partnership and the jurisdiction of origin.

   b. The address of the registered office of the limited liability partnership in this state, and the name of the limited liability partnership's registered agent in this state at that address.

   c. The address of the limited liability partnership's chief executive office.

   d. A brief statement of the character of the business in which the limited liability partnership is actually engaged in this state.

   e. The name and respective address of each managing partner of the domestic limited liability partnership or foreign limited liability partnership.

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 16 of section 45-22-01, the partnership agreement, or in a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited liability partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited liability partnership by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.

3. The annual report of a limited liability partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited liability partnership must be delivered before April first of the year following the calendar year in which the registration is filed by the secretary of state. A limited liability partnership in existence on July 1, 1999, shall file the first annual report before April first in the year of the expiration of the registration in effect on July 1, 1999.

   a. An annual report in a sealed envelope postmarked by the United States postal service before April first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before April first, complies with this requirement.

   b. The secretary of state must file the annual report if the annual report conforms to the requirements of subsection 2.

      (1) If the annual report does not conform, the annual report must be returned to the limited liability partnership for any necessary corrections.

      (2) If the annual report is filed before the deadlines prescribed in this subsection, penalties for the failure to file a report within

the time provided do not apply if the annual report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

4. After the date established under subsection 3, the secretary of state shall notify any limited liability partnership failing to file an annual report that the limited liability partnership's registration is not in good standing and the limited liability partnership may be revoked pursuant to subsection 5.

   a. The secretary of state shall mail notice of revocation to the last registered agent at the last registered office of record.

   b. If the limited liability partnership files an annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as prescribed by section 45-22-22, the secretary of state shall restore the limited liability partnership's registration to good standing.

5. A domestic limited liability partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established in subsection 3, forfeits the limited liability partnership's registration.

   a. The secretary of state shall note the revocation of the domestic limited liability partnership's registration on the records of the secretary of state and shall give notice of the action to the revoked domestic limited liability partnership.

   b. Notice by the secretary of state must be mailed to the domestic limited liability partnership's last registered agent at the last registered office of record.

6. A foreign limited liability partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established by subsection 3, forfeits the foreign limited liability partnership's registration and authority to transact business in this state.

   a. The secretary of state shall note the revocation of the foreign limited liability partnership's registration and authority on the records of the secretary of state and shall give notice of the action to the foreign limited liability partnership.

   b. Notice by the secretary of state must be mailed to the foreign limited liability partnership's last registered agent at the last registered office of record.

   c. The secretary of state's decision that a registration must be revoked under this subsection is final.

7. A domestic limited liability partnership with a registration that is revoked for failure to file an annual report or a foreign limited liability partnership with registration and authority that are forfeited by failure to file an annual report may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report

and a reinstatement fee as prescribed in section 45-22-22. The fees must be paid and the report filed within one year following the revocation. Reinstatement under this subsection does not affect any right or liability of a domestic limited liability partnership or a foreign limited liability partnership for the time from the revocation to the reinstatement.

SECTION 197. AMENDMENT. Section 45-22-22 of the 1997 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~~ If there are more than two managing partners, an additional three dollars must be paid for each additional managing partner not to exceed two hundred fifty dollars.

   b. Filing a ~~renewal~~ registration as a foreign limited liability partnership, t~~wenty-five~~ fifty 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.~~ Filing an annual report of a domestic limited liability partnership or foreign limited liability partnership, twenty-five dollars. The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:

      (1) After the date prescribed in subsection 3 of section 45-22-21.1, twenty dollars; and

      (2) After the revocation of the domestic limited liability partnership registration or the foreign limited liability partnership registration, the reinstatement fee of fifty dollars.

   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 domestic limited liability partnership or foreign limited liability partnership affected by ~~such~~ the change.

k. Filing a registered agent's consent to serve in ~~such~~ the capacity of registered agent, 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 domestic 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.~~ Any document submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the document.

2. The secretary of state shall charge and collect for:

a. Furnishing a copy of any document, instrument, or paper relating to a domestic limited liability partnership or foreign limited liability partnership, one dollar for every four pages, or fraction ~~thereof~~ of pages.

b. A certificate certifying a copy or reciting facts related to a domestic 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 198. AMENDMENT. Section 45-22-23 of the 1997 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~~ Every answer 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~~ the interrogatory must be answered by that individual; ~~or~~

(2) To a domestic limited liability partnership ~~or foreign limited liability partnership~~, ~~it~~ the interrogatory must be answered by a managing partner~~.~~; or

(3) To a foreign limited liability partnership, the interrogatory must be answered by a resident partner or, if no partner is a resident partner, a partner designated by the foreign limited liability partnership.

c. The secretary of state need not file any document to which an interrogatory relates until the interrogatory ~~has been~~ is answered, ~~and not then~~ except if the answers disclose ~~that such~~ the 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~~ that disclose a violation of this chapter.

e. Each managing partner of a domestic limited liability partnership or a resident partner or designated partner of a 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~~ fact or information obtained from an interrogatory except ~~insofar as may be~~ to the extent permitted by law or ~~insofar as is~~ required for evidence in any criminal ~~proceedings~~ proceeding 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 domestic limited liability partnership or foreign limited liability partnership is, or is proposed to be, situated by filing with the clerk of ~~such~~ that 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 foreign limited liability partnership may appeal to district court of the county where the registered office of the foreign limited liability partnership in this state is situated by filing with the clerk of ~~such~~ that court a petition setting forth a copy of ~~its~~ the foreign limited liability partnership's 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.

5. The attorney general may maintain an action to restrain a foreign limited liability partnership from transacting business in this state in violation of this chapter.

SECTION 199. AMENDMENT. Subsection 2 of section 45-22-24 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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 domestic 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 200. AMENDMENT. Section 45-22-25 of the 1997 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~~ Every annual report must be made on forms prescribed by the secretary of state. Upon request, the secretary of state 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 201. AMENDMENT. Section 45-22-26 of the 1997 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 202. AMENDMENT. Subdivision b of subsection 1 of section 45-22-27 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

b. "Private limited liability partnership" means a domestic 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.

SECTION 203. Chapter 45-23 of the North Dakota Century Code is created and enacted as follows:

45-23-01. Definitions. In this chapter, unless the context otherwise requires:

1. "Address" means:

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

   b. In all other cases, the mailing address.

2. "Domestic limited liability limited partnership" means a limited liability limited partnership that is formed under this chapter.

3. "Filed with the secretary of state", except as otherwise permitted by law or rule, means:

   a. That a signed original or legible facsimile telecommunication of a signed original of a request for reserved name or a signed original of all of the documents meeting the applicable requirements of this chapter, together with the fees provided in section 45-23-08, was delivered to the secretary of state and was determined by the secretary of state to conform to law.

   b. That 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.

4. "Foreign limited liability limited partnership" means a limited liability limited partnership that is:

   a. Organized under the laws other than the laws of this state for a purpose or purposes for which a limited liability limited partnership may be organized under this chapter; and

   b. In good standing in the jurisdiction of origin.

5. "Foreign limited partnership" means a limited partnership that is:

   a. Organized under laws other than the laws of this state for a purpose for which a limited partnership may be organized under chapter 45-10.1; and

   b. Authorized to transact business in this state as provided in chapter 45-10.1.

6. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability limited partnership status of a foreign limited liability limited partnership was created.

7. "Limited liability limited partnership" means a domestic limited liability limited partnership.

8. "Limited partnership" means a limited partnership formed under chapter 45-10.1.

9. "Notice":

   a. Is given to a limited liability limited partnership or to a partner of the limited liability limited partnership when in writing and mailed or delivered to the limited liability limited partnership or to the partner at the registered office or principal executive office of the partnership; 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 if there is no one in charge, when left in a conspicuous place in the office and 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 in that house or abode.

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

   d. Is deemed received when given.

10. "Principal executive office" means:

   a. An office from which the limited liability limited partnership conducts business; or

   b. If the limited liability limited partnership has no office from which the limited liability limited partnership conducts business, then the registered office of the limited liability limited partnership.

11. "Registered office" means the place in this state designated as the registered office of the limited liability limited partnership.

12. "Signed" means the signature of a person is placed on a document, as provided in section 41-01-11.

   a. With respect to a document required by this chapter to be filed with the secretary of state, means the document is signed by a person authorized to sign by this chapter, or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

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, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the document.

45-23-02. Applicability of chapter 45-10.1.

1. In any case not provided for in this chapter, chapter 45-10.1 governs.

2. If applying chapter 45-10.1 to a limited liability limited partnership:

   a. All references in chapter 45-10.1 to "limited partnership" refer to "limited liability limited partnership"; and

   b. All references in chapter 45-10.1 to "foreign limited partnership" refer to "foreign limited liability limited partnership".

3. If any provision of this chapter conflicts with chapter 45-10.1, that provision of this chapter takes precedence.

45-23-03. Limited liability limited partnership name.

1. The name of each limited liability limited partnership as set forth in the limited liability limited partnership's certificate of limited liability limited partnership:

   a. Must be in the English language or in another language expressed in English letters or characters.

   b. Must contain:

      (1) Without abbreviation the words "limited liability limited partnership" or the abbreviation "L.L.L.P." or "LLLP", either of which abbreviation may be used interchangeably for any purpose authorized by this chapter including real estate matters, contracts, and filings with the secretary of state; or

      (2) In the case of a foreign limited liability limited partnership, any other words or abbreviations as may be authorized or required under the laws of the jurisdiction of origin.

   c. May not contain the name of a limited partner unless:

      (1) The name is also the name of a general partner; or

      (2) The business of the limited liability limited partnership was carried on under that name before the admission of that limited partner.

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

e. May not contain a word or phrase indicating or implying the limited liability limited partnership may not be organized under this chapter.

f. May not contain a word or phrase indicating or implying the limited liability limited partnership is organized for a purpose other than a legal business purpose for which a limited liability limited partnership may be organized under this chapter.

g. May not contain a word or phrase indicating or implying the limited liability limited partnership is organized other than for a purpose stated in the certificate of the limited liability 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 certificate a document in compliance with subsection 3, of:

(a) Another limited liability limited partnership;

(b) A limited partnership;

(c) A corporation;

(d) A limited liability company; or

(e) A limited liability partnership;

(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 liability limited partnership name is deceptively similar to another name for purposes of this chapter.

3. If the secretary of state determines a limited liability limited partnership name is deceptively similar to another name for purposes of this chapter, the limited liability limited partnership name may not be used unless there is filed with the certificate:

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 earlier right of the applicant to the use of the name in this state.

4. This section does not abrogate or limit the law of unfair competition or unfair practices; chapter 47-25; the laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or any other rights to the exclusive use of any name or symbol. This section does not derogate the common law or the principles of equity.

5. A limited liability limited partnership that is merged with another domestic or foreign organization, 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 the organization's name, may include in the limited liability limited partnership's name the name of any of the other organizations, if the other organization:

   a. Is 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.

6. The use of a name of a limited liability limited partnership in violation of this section does not affect or vitiate a limited liability limited partnership's existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability limited partnership from doing business under a name assumed in violation of this section, although a certificate of limited liability limited partnership may have been filed with the secretary of state.

45-23-04. Limited liability limited partnership formation.

1. If a limited partnership does not exist, a limited liability limited partnership may be formed by filing with the secretary of state, together with the fees provided in section 45-23-08, a certificate of limited liability limited partnership:

   a. That complies with the name requirements in section 45-23-03;

   b. That contains a statement that limited liability limited partnership status is elected; and

   c. That otherwise conforms to the requirements of section 45-10.1-08.

2. An existing limited partnership:

   a. May elect to become a limited liability limited partnership:

(1) By obtaining approval to be governed by this chapter by the vote necessary to amend the limited partnership agreement except, in the case of a limited partnership agreement that expressly considers contribution obligations, the vote necessary to amend those provisions;

(2) By complying with the name requirements of section 45-23-03; and

(3) By filing with the secretary of state, together with the fees provided in sections 45-10.1-15 and 45-23-08, a document that is designated as both an amended certificate of limited partnership and a certificate of limited liability limited partnership which:

(a) Amends the limited partnership name to comply with the name requirements of section 45-23-03;

(b) Contains a statement that limited liability limited partnership status is elected; and

(c) Otherwise conforms to the requirements of section 45-10.1-09.

b. Continues to be the same entity in existence before the filing with the secretary of state pursuant to this section.

45-23-05. Effective date of formation or election under this chapter. With respect to the date on which a limited liability limited partnership is formed or on which a limited partnership elects to be governed by this chapter:

1. If a limited partnership does not exist, a limited liability limited partnership is formed on the later of the filing of the certificate of limited liability limited partnership or the date specified in the certificate of limited liability limited partnership which is within ninety days after the filing of the certificate of limited liability limited partnership.

2. An existing limited partnership electing to become a limited liability limited partnership is governed by this chapter on the later of the filing of the document designated as both an amendment to the certificate of limited partnership and a certificate of limited liability limited partnership or the date specified in that document which is within ninety days after the filing of the document.

45-23-06. General partner liability. An obligation of a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited liability limited partnership. A general partner is not personally liable, directly or indirectly by way of contribution or otherwise, for an obligation of the limited liability limited partnership solely by reason of being or acting as a general partner. This section applies notwithstanding anything inconsistent in the partnership agreement.

45-23-07. Foreign limited partnership - Adopting limited liability limited partnership status. An existing foreign limited partnership authorized to transact business in this state pursuant to section 45-10.1-52 which subsequently adopts and maintains limited liability limited partnership status in the jurisdiction of origin shall

file with the secretary of state, together with the fees required in sections 45-10.1-15 and 45-23-08:

1. A document designated as both an amended foreign limited partnership registration as required by section 45-10.1-55 and a foreign limited liability limited partnership registration as required by section 45-10.1-52; and

2. A certificate of identification, existence, and status of a foreign limited liability limited partnership, duly certified by the proper officer of the jurisdiction of origin.

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

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

2. Filing a certificate of limited liability limited partnership amendment, forty dollars.

3. Filing a certificate of limited liability limited partnership dissolution, twenty-five dollars.

4. Filing a certificate of limited liability limited partnership cancellation, twenty-five dollars.

5. Filing a reservation of limited liability limited partnership name, ten dollars.

6. Filing a notice of transfer of reserved limited liability limited partnership name, ten dollars.

7. Filing a cancellation of a reserved limited liability limited partnership name, ten dollars.

8. Filing a consent to use of a deceptively similar name, ten dollars.

9. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.

10. Filing a statement of change of address of registered office by registered agent, ten dollars for each limited liability limited partnership affected by the change.

11. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.

12. Filing a resignation as registered agent, ten dollars.

13. Filing a registration of foreign limited liability limited partnership, one hundred dollars.

14. Filing a certified statement of amendment of foreign limited liability limited partnership, twenty-five dollars.

15. Filing a certified statement of dissolution of foreign limited liability limited partnership, twenty-five dollars.

16. Filing a certified statement of cancellation of foreign limited liability limited partnership, twenty-five dollars.

17. Filing a statement of withdrawal of foreign limited liability limited partnership, twenty-five dollars.

18. Filing an annual report of limited liability limited partnership, twenty-five dollars. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:

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

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

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

SECTION 204. AMENDMENT. Subsection 6 of section 47-22-02 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. Consists of or comprises a trademark ~~which so~~ that resembles a trademark registered in this state or a trade name, corporate name, limited liability company name, limited liability partnership name, limited partnership name, limited liability limited partnership name, or fictitious name registered with the office of the secretary of state, as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive.

SECTION 205. AMENDMENT. Section 47-25-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

47-25-03. Trade name - Nature. ~~No~~ A trade name registered may not be the same as or deceptively similar to any other trade name, domestic or foreign corporation name, domestic or foreign limited liability company name, ~~or a name of any~~ domestic or foreign limited partnership ~~authorized to do business in this state~~ name, domestic or foreign limited liability partnership name, domestic or foreign limited liability limited partnership name, or a name the right to which is in any manner reserved or registered in the office of the secretary of state, unless there is filed with the trade name registration a written consent of the holder of the similar name to use the proposed name, or if a franchise, a written consent from the franchiser.

SECTION 206. AMENDMENT. Section 61-13-03.1 of the North Dakota Century Code is amended and reenacted as follows:

61-13-03.1. Articles of organization or ~~operating agreement~~ bylaws may restrict sales to members - When membership interest to become appurtenant to land - Sale of water to others. Any limited liability company organized for irrigation

purposes may provide in ~~its~~ the articles of organization or ~~operating agreement~~ bylaws that water ~~shall~~ must be sold, distributed, supplied, or delivered only to owners of ~~its~~ the limited liability company's membership interests and that ~~such~~ these membership interests ~~shall~~ must be appurtenant to the land described in the document evidencing ~~such~~ these membership interests. ~~When~~ If a copy of ~~such~~ the articles of organization or ~~operating agreement~~ bylaws is recorded in the office of the register of deeds of the county in which ~~such~~ the lands are situated, ~~such~~ the membership interests ~~shall~~ become appurtenant to ~~said~~ the lands and ~~shall~~ may be transferred only with the sale or transfer of ~~such~~ the lands, except in the event of sale or forfeiture of ~~such~~ the membership interests for delinquent assessments ~~thereon~~ on the land as provided in section 61-13-04. Notwithstanding ~~such~~ any provision in ~~its~~ the limited liability company's articles of organization or ~~operating agreement~~ bylaws, any limited liability company organized for irrigation purposes may sell water to an irrigation district, this state, or any department or agency ~~thereof~~ of this state, and to the United States, or any department or agency ~~thereof~~ of the United States, at the same rates as to holders of membership interests of ~~such~~ the limited liability company. ~~In the event~~ If lands to which any ~~such~~ membership interest is appurtenant are acquired by the state, the United States, or any department or agency ~~thereof~~ of the state or the United States, ~~such~~ the membership interest ~~shall~~ must be canceled by the limited liability company, ~~which shall~~ and must be reissued to any persons ~~subsequently~~ acquiring title to ~~such~~ the land at a later date.

SECTION 207. REPEAL. Sections 45-10.1-54 and 45-22-08 of the 1997 Supplement to the North Dakota Century Code are repealed.

Approved March 22, 1999
Filed March 22, 1999

CHAPTER 96

HOUSE BILL NO. 1364

(Representatives Koppang, Disrud, Pollert, Stefonowicz)
(Senators Lee, Lindaas)

COOPERATIVE ASSOCIATION ARTICLES INFORMATION

AN ACT to amend and reenact subsection 11 of section 10-15-05 of the North Dakota Century Code, relating to information required in articles of association of a cooperative association filed with the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 11 of section 10-15-05 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

11. The ~~city~~ complete address in this state ~~in~~ ~~which~~ where the cooperative's principal office is to be located, or the name and complete address in this state of ~~its~~ the cooperative's registered agent.

Approved March 15, 1999
Filed March 15, 1999

CHAPTER 97

HOUSE BILL NO. 1347

(Representatives Klein, Keiser)
(Senator Grindberg)

NONPROFIT HOSPITAL AGREEMENTS

AN ACT to create and enact four new sections to chapter 10-33 of the North Dakota Century Code, relating to proposed agreements and transactions by nonprofit hospitals; and to amend and reenact subsection 3 of section 10-33-85, subsection 1 of section 10-33-88, and subsection 3 of section 10-33-94 of the North Dakota Century Code, relating to proposed agreements and transactions by nonprofit hospitals.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 3 of section 10-33-85 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. If applicable, a corporation shall comply with section 10-33-122 and section 4 of this Act before ~~it~~ the corporation may merge ~~or~~, consolidate ~~or~~, sell, lease, transfer, or dispose of all or substantially all of ~~its~~ the corporation's assets.

SECTION 2. AMENDMENT. Subsection 1 of section 10-33-88 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Upon receiving the approval required by section 10-33-87 and after compliance with section 10-33-122 and section 4 of this Act, 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~~ to the attorney general required by section 10-33-122 or section 4 of this Act 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 or section 4 of this Act is not applicable.

SECTION 3. AMENDMENT. Subsection 3 of section 10-33-94 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. If applicable, a corporation shall comply with section 10-33-122 and section 4 of this Act before selling, leasing, transferring, or disposing of all or substantially all of ~~its~~ the corporation's assets under this section.

SECTION 4. A new section to chapter 10-33 of the North Dakota Century Code is created and enacted as follows:

Transaction by a corporation doing business as a hospital - Notice to attorney general - Waiting period.

1. A corporation doing business as a hospital shall notify the attorney general in writing before closing an agreement or a transaction that will:

   a. Sell, lease, transfer, exchange, option, convey, mortgage, create a security interest in, or otherwise dispose of to a for-profit organization fifty percent or more of the assets or operations of the corporation doing business as a hospital or fifty percent or more of the assets or operations of a related organization;

   b. Sell, lease, transfer, exchange, option, convey, mortgage, create a security interest in, or otherwise dispose of any of the assets or operations of the corporation doing business as a hospital or any of the assets or operations of a related organization if the transaction or agreement will result in any for-profit organization owning or controlling fifty percent or more of the assets or operations of the corporation doing business as a hospital or fifty percent or more of the assets or operations of a related organization; or

   c. Result in any for-profit organization having control of, governance of, or the power to direct management and policies of the corporation doing business as a hospital or a related organization.

2. The notice must include:

   a. The names and addresses of the corporation doing business as a hospital, the for-profit organization, and all other parties to the proposed agreement or transaction;

   b. The terms of the proposed agreement or transaction, including the proposed sale price;

   c. A copy of the proposed agreement or transaction; and

   d. Information regarding whether a financial or economic analysis by an independent consultant has been prepared concerning the degree to which the proposed agreement or transaction will serve the public interest, or concerning the fair market value of the corporation doing business as a hospital.

3. A corporation doing business as a hospital may neither transfer nor convey any assets or control through an agreement or transaction described in this section until ninety days after the corporation gives the attorney general notice required under this section, unless the attorney general waives all or part of the waiting period. Before the end of the waiting period, the attorney general may extend the period up to sixty additional days by providing written notice of the extension to the corporation. The waiting period may be extended for one or more additional sixty-day periods upon agreement between the corporation and the attorney general, or pursuant to a court order.

4. The notice requirements of this section do not apply to a proposed agreement or transaction between related organizations serving the same or similar charitable purposes and are in addition to any notice requirements that may apply under section 10-33-122.

SECTION 5. A new section to chapter 10-33 of the North Dakota Century Code is created and enacted as follows:

Transaction by a corporation doing business as a hospital - Attorney general's powers and duties - Experts.

1. Upon receipt of a notice under section 4 of this Act, the attorney general may review and investigate the proposed agreement or transaction and may require the corporation doing business as a hospital and the for-profit organization to provide to the attorney general any additional information relevant to the review or investigation of the proposed agreement or transaction.

2. Upon receipt of a notice under section 4 of this Act, the attorney general may review the proposed agreement or transaction to determine whether consummation of the proposed agreement or transaction by the corporation doing business as a hospital is consistent with the fiduciary obligations of the corporation doing business as a hospital and the obligations of the officers and directors of the corporation doing business as a hospital and is in accordance with law. The attorney general shall consider the following factors in reviewing and evaluating a proposed agreement or transaction:

   a. Whether appropriate steps were taken by the corporation doing business as a hospital to safeguard restricted assets transferred to the for-profit organization;

   b. Whether appropriate steps were taken by the corporation doing business as a hospital to ensure that any proceeds of the proposed agreement or transaction are used for charitable purposes consistent with restrictions placed on assets of and with the charitable purposes of the corporation doing business as a hospital;

   c. Whether the terms and conditions of the proposed agreement or transaction are fair and reasonable to the corporation doing business as a hospital, including whether the corporation doing business as a hospital will receive fair market value for the assets of the corporation;

   d. Whether any conflict of interest or breach of fiduciary duty, as determined by the attorney general, exists and was disclosed, including any conflict of interest or breach of fiduciary duty related to directors and officers of, executives of, and experts retained by the corporation doing business as a hospital, the for-profit organization, and any other party to the agreement or transaction; and

   e. Whether the agreement or transaction will result in inurement, pecuniary gain, or excess benefit to any person associated with the corporation doing business as a hospital.

3. For the purpose of reviewing and evaluating the factors identified in subsection 2, the attorney general may retain experts if necessary and reasonable and shall obtain public comment regarding the proposed agreement or transaction. If the attorney general intends to seek payment from the corporation doing business as a hospital for the cost of any expert retained under this subsection, at least five days before retaining that expert, the attorney general shall notify the corporation doing business as a hospital of the expert cost projected to be incurred. A corporation doing business as a hospital which receives notice under this subsection shall pay the reasonable cost of any retained expert. If the corporation doing business as a hospital objects to paying the costs of an expert, the corporation may seek a district court order limiting the corporation's liability for the costs. In determining whether to issue an order, the court shall consider whether the expert is necessary and reasonable and the cost of the expert relative to the value of the proposed agreement or transaction.

4. Section 44-04-18.4 applies to any information provided to the attorney general under this Act.

SECTION 6. A new section to chapter 10-33 of the North Dakota Century Code is created and enacted as follows:

Transaction by a corporation doing business as a hospital - Notice of decision - Public meeting - Meeting notice. Before the attorney general approves, denies, or takes any other action on a proposed agreement or transaction under section 4 or 5 of this Act, the attorney general shall notify, in writing, the corporation doing business as a hospital of the attorney general's decision. Before issuing a written decision under this section, the attorney general shall conduct at least one public hearing, one of which must be held in the county where the corporation doing business as a hospital is located. At a public hearing under this section, the attorney general shall request and receive comments from any interested person regarding the proposed agreement or transaction. At least fourteen days before a public hearing under this section, the attorney general shall provide notice of the meeting by publication in the official newspaper of the city in which the corporation doing business as a hospital is located. The attorney general shall also provide notice of the meeting to the governing body of the county in which the corporation doing business as a hospital is located, if applicable, and to the governing body of the city in which the corporation doing business as a hospital is located, if applicable.

SECTION 7. A new section to chapter 10-33 of the North Dakota Century Code is created and enacted as follows:

Transaction by a corporation doing business as a hospital - Attorney general decision. The attorney general may bring proceedings to secure compliance with section 4 of this Act. If the attorney general determines consummation of the proposed transaction or agreement is not consistent with the fiduciary obligations of the corporation doing business as a hospital and the corporation's officers and directors or is not in accordance with law, the attorney general may bring proceedings to enjoin the consummation of the proposed transaction or agreement or to secure any other relief available under the law. Failure of the attorney general to take action on a proposed agreement or transaction described in section 4 of this Act does not constitute approval of the transaction and does not prevent the attorney general from taking other action.

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