58272.0200

FIRST ENGROSSMENT

Fifty-ninth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1391

Introduced by

Representative DeKrey

Senator Traynor

A BILL for an Act to create and enact sections 10-19.1-01.2, 10-19.1-102.1, 10-19.1-104.1, 10-19.1-104.2, 10-19.1-104.3, 10-19.1-104.4, 10-19.1-104.5, 10-19.1-104.6, 10-19.1-148.1, 10-19.1-148.2, 10-32-02.2, 10-32-106.1, 10-32-108.1, 10-32-108.2, 10-32-108.3, 10-32-108.4, 10-32-108.5, 10-32-108.6, 10-32-152.1, 10-32-152.2, 10-33-01.2, 10-33-141.1, 10-33-141.2, 45-13-01.1, 45-21-02.1, 45-21-04.1, 45-21-04.2, 45-21-07.1, 45-22-23.1, and 45-22-23.2 of the North Dakota Century Code, relating to corporations, limited liability companies, limited liability partnerships, and partnerships; to amend and reenact sections 10-19.1-01 and 10-19.1-08, subsections 3 and 4 of section 10-19.1-10, sections 10-19.1-13, 10-19.1-20, 10-19.1-21, 10-19.1-27, and 10-19.1-39, subsections 3 and 5 of section 10-19.1-43, sections 10-19.1-52 and 10-19.1-55, subsection 2 of section 10-19.1-61.1, section 10-19.1-63, subsection 2 of section 10-19.1-70, section 10-19.1-74, subsection 1 of section 19-19.1-75, section 10-19.1-75.1, subsection 7 of section 10-19.1-76.2, subsections 2 and 3 of section 10-19.1-76.3, subsections 4 and 10 of section 10-19.1-84, section 10-19.1-87, subsections 3 and 4 of section 10-19.1-88, subsection 1 of section 10-19.1-91, subsection 1 of section 10-19.1-103, subsection 2 of section 10-19.1-104, subsection 1 of section 10-19.1-110, section 10-19.1-129, subsection 1 of section 10-19.1-141, section 10-19.1-145, subsections 1, 2, 4, and 6 of section 10-19.1-146, sections 10-19.1-147, 10-19.1-148, 10-19.1-149, 10-19.1-149.1, 10-19.1-150, 10-31-07.3 and 10-32-02, subsections 2 and 4 of section 10-32-07, section 10-32-10, subsection 2 of section 10-32-12, subsection 4 of section 10-32-13, sections 10-32-17, 10-32-20, 10-32-24, and 10-32-42, subsection 1 of section 10-32-43, section 10-32-43.1, subsection 2 of section 10-32-51, sections 10-32-53 and 10-32-54, subsections 3 and 4 of section 10-32-55, sections 10-32-56 and 10-32-76, subsections 3 and 5 of section 10-32-80, section 10-32-91, subsection 1 of section 10-32-99, subsections 1 and 2 of section 10-32-100, subsections 1 and 5 of section 10-32-102, subsection 2 of section 10-32-106, subsections 1 and 4 of section 10-32-107, subsection 2 of section 10-32-108, subsection 1 of

section 10-32-114, section 10-32-132, subsection 1 of section 10-32-144, section 10-32-148, subsections 1, 2, 3, 4, and 7 of section 10-32-149, sections 10-32-150, 10-32-152, 10-32-153, 10-32-153.1, 10-32-154, and 10-33-01, subsection 3 of section 10-33-06, section 10-33-10, subsection 2 of section 10-33-12, subsection 4 of section 10-33-13, sections 10-33-18, 10-33-22, and 10-33-34, subsections 3 and 5 of section 10-33-39, sections 10-33-47, 10-33-51, 10-33-72, 10-33-73, and 10-33-74, subsections 2, 5, and 7 of section 10-33-80, section 10-33-120, subsections 1 and 2 of section 10-33-123, subsection 1 of section 10-33-134, sections 10-33-138, 10-33-139, 10-33-140, 10-33-141, 10-33-142, 10-33-142.1, and 10-33-143, subsection 2 of section 10-33-145, sections 45-13-01, 45-13-02, and 45-13-04.1, subsections 3 and 4 of section 45-13-04.2, subsection 8 of section 45-13-05, sections 45-21-01, 45-21-02, 45-21-03, 45-21-04, 45-21-05, 45-21-06, 45-21-07, 45-22-01, 45-22-04, 45-22-05, 45-22-17, 45-22-21.1, 45-22-22, 45-22-23, 45-23-01, 45-23-02, 45-23-03, and 45-23-04, subsections 1 and 2 of section 45-23-05, and sections 45-23-06, 45-23-07, 45-23-08, and 45-23-09 of the North Dakota Century Code, relating to corporations, limited liability companies, limited liability partnerships, and partnerships; and to repeal section 45-22-01.1 of the North Dakota Century Code, relating to limited liability partnerships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-01. Definitions. For ~~the~~ purposes of this chapter, unless the context ~~clearly indicates a different meaning is intended~~ <u>otherwise requires</u>:

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~~ the zip code, of the actual office location, which may not be only a post-office box; and

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

4. "Articles" means:

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

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

5. "Authenticated electronic communication" means:

a. That the electronic communication is delivered:

(1) To the principal place of business of the corporation; or

(2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and

b. That the electronic communication sets forth information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.

6. "Ballot" means a written ballot or a ballot transmitted by electronic communications.

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

~~7.~~ 8. "Board member" means:

a. An individual serving on the board of directors in the case of a corporation; and

b. An individual serving on the board in the case of a limited liability company.

~~8.~~ 9. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how that code is designated.

~~9.~~ 10. "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.

~~10.~~ 11. "Closely held corporation" means a corporation that does not have more than thirty-five shareholders.

~~11.~~ 12. "Constituent corporation" means a corporation or a foreign corporation that:

a. In a merger, is either the surviving corporation or a corporation that is merged into the surviving organization; or

b. In an exchange, is either the acquiring corporation or a corporation whose shares are acquired by the acquiring organization.

~~12.~~ 13. "Constituent organization" means a corporation, foreign corporation, limited liability company, or foreign limited liability company that:

a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or

b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.

14. "Converted organization" means the organization into which a converting organization converts pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.

15. "Converting organization" means an organization that converts into another organization pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.

~~13.~~ 16. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.

~~14.~~ 17. "Director" means a member of the board.

~~15.~~ 18. "Distribution" means a direct or indirect transfer of money or other property, other than a corporation's own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of the corporation's shareholders in respect of 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 the corporation's shares, or otherwise.

~~16.~~ 19. "Division" or "combination" means dividing or combining shares of a class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.

~~17.~~ 20. "Domestic organization" means an organization created under the laws of this state.

~~18.~~ 21. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

~~19.~~ 22. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper that:

a. Creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and

b. May be directly reproduced in paper form by the recipient through an automated process.

~~20.~~ 23. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

~~21.~~ 24. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.

~~22.~~ 25. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:

a. That a ~~document~~ record meeting the applicable requirements of this chapter, together with the fees provided in section 10-19.1-147, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.

b. That the secretary of state ~~shall~~ did then:

(1) Record the actual date on which the ~~document is~~ record was filed, and if different the effective date of filing; and

(2) Record the ~~document~~ record in the office of the secretary of state.

~~23.~~ 26. "Foreign corporation" means a corporation organized for profit which is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.

~~24.~~ 27. "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 chapter 10-32.

~~25.~~ 28. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.

~~26.~~ 29. "Good faith" means honesty in fact in the conduct of an act or transaction.

30. "Governing statute" of an organization means:

a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:

(1) If a corporation, then this chapter;

(2) If a limited liability company, then chapter 10-32;

(3) If a general partnership, then chapters 45-13 through 45-21;

(4) If a limited partnership, then chapter 45-10.2;

(5) If a limited liability partnership, then chapter 45-22; and

(6) If a limited liability limited partnership, then chapter 45-23; and

b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.

~~27.~~ 31. "Intentionally" means that the person referred to has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute:

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

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

~~28. "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.~~

~~29.~~ 32. "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.

~~30.~~ 33. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.

~~31.~~ 34. "Nonprofit corporation" means a corporation, whether domestic or foreign, incorporated under or governed by chapter 10-33.

~~32.~~ 35. "Notice":

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

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

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice.

(d) Any other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.

b. Is given by a publicly held corporation to a shareholder if the notice is addressed to the shareholder or group of shareholders in a manner permitted by the rules and regulations under the Securities Exchange Act of 1934, as amended, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.

c. Is given, in all other cases:

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

(2) When handed to the person;

(3) When left at the office of the person with a clerk or other person in charge of the office 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; or

(4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

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

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

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

[1] The posting; or

[2] The giving of the separate notice.

(d) Any other form of electronic communication by which the person has consented to receive notice, when directed to the person.

(5) When the method is fair and reasonable when all of the circumstances are considered.

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

e. Is deemed received when it is given.

~~33.~~ 36. "Officer" means an individual who is eighteen years of age or more who is:

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

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

~~34.~~ 37. "Organization" means:

a. Whether domestic or foreign, a corporation, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, ~~joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity~~ or any other person subject to a governing statute; but

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

~~35.~~ 38. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.

~~36.~~ 39. "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.

~~37.~~ 40. "Ownership interests" means for an organization that is:

a. ~~Shares in the case of a~~ A corporation, its shares;

b. ~~Membership interests in the case of a nonprofit corporation or~~ A limited liability company, its membership interests; ~~and~~

c. ~~Similar interests in other organizations~~ A limited partnership, its partnership interests;

d. A general partnership, its partnership interests;

e. A limited liability partnership, its partnership interests; or

f. A limited liability limited partnership, its partnership interests.

~~38.~~ 41. "Parent" of a specified corporation means a corporation ~~or~~, a foreign corporation, a limited liability company, or a foreign limited liability company that directly, or indirectly through related organizations, owns more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.

~~39.~~ 42. "Principal executive office" means:

a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of a corporation has an office; or

b. If the corporation has no elected or appointed president, then the registered office of the corporation.

~~40.~~ 43. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~41.~~ 44. "Registered office" means the place in this state designated in ~~the~~ a corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office ~~of the corporation~~.

~~42.~~ 45. "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.

~~43.~~ 46. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

~~44.~~ 47. "Security" has the meaning given in section 10-04-02.

~~45.~~ 48. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to a corporation's articles, that have some of the

same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

~~46.~~ 49. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.

~~47.~~ 50. "Shareholder" means a person registered on the books or records of a corporation or the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation.

~~48.~~ 51. "Signed" means:

a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09; and

b. With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state, that:

(1) The ~~document~~ record is signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the directors as required under section 10-19.1-46 or the shareholders as required under section 10-19.1-74; and

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

~~49.~~ 52. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

~~50.~~ 53. "Subsidiary" of a specified corporation means:

a. A corporation or a foreign corporation having more than fifty percent of the voting power of ~~the corporation's~~ its shares entitled to vote for directors owned directly, or indirectly through related organizations, by the specified corporation; or

b. A limited liability company or a foreign limited liability company having more than fifty percent of the voting power of ~~the limited liability company's~~ 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.

~~51.~~ 54. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.

~~52.~~ 55. "Surviving organization" means the corporation or foreign corporation or domestic or foreign limited liability company resulting from a merger which:

a. May preexist the merger; or

b. May be created by the merger.

~~53.~~ 56. "Vote" includes authorization by written action.

~~54.~~ 57. "Written action" means:

a. A written ~~document~~ record signed by all of the persons required to take the action; or

b. The counterparts of a written ~~document~~ record signed by any of the persons taking the action described.

(1) Each counterpart constitutes the action of the person signing; and

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

SECTION 2. Section 10-19.1-01.2 of the North Dakota Century Code is created and enacted as follows:

10-19.1-01.2. Knowledge and notice.

1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.

2. A person has notice of a fact if the person:

a. Knows of the fact;

b. Has received notice of the fact as provided in subsection 35 of section 10-19.1-01;

c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or

d. Has notice of it under subsection 3.

3. Subject to subsection 8, a person has notice of:

a. The intention of a corporation to dissolve, ninety days after the effective date of the filed notice of intent to dissolve;

b. The dissolution of a corporation, ninety days after the effective date of the filed articles of dissolution;

c. The conversion of a corporation, ninety days after the effective date of the filed articles of conversion; or

d. The merger of a corporation, ninety days after the effective date of the filed articles of merger.

4. A person notifies or gives a notification to another person by taking the steps provided in subsection 35 of section 19-19.1-01, whether or not the other person learns of it.

5. A person receives a notification as provided in subsection 35 of section 10-19.1-01.

6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection 35 of section 10-19.1-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.

a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.

b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular

duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

7. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by an officer or director is effective immediately as knowledge of, notice to, or receipt of a notification by the corporation, except in the case of a fraud on the corporation committed by or with the consent of the officer or director. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by a shareholder who is not an officer or director, is not effective as knowledge by, notice to, or receipt of a notification by the corporation.

8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a corporation unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.

9. With respect to notice given by a form of electronic communication:

a. Consent by an officer or director to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the officer or director. However, no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.

b. An affidavit of an officer or director or an authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

SECTION 3. AMENDMENT. Section 10-19.1-08 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 4. AMENDMENT. Subsections 3 and 4 of section 10-19.1-10 of the North Dakota Century Code are amended and reenacted as follows:

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

majority of the voting power of the shares of the same class or series as the shares to be issued as provided in subsection 1 of section 10-19.1-63.

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

m. The affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote at a duly held meeting is required for an action of the shareholders, except when this chapter requires the affirmative vote of ~~a~~:

(1) A plurality of the votes cast as provided in subsection 1 of section 19-19.1-39; or

(2) A majority of the voting power of all shares entitled to vote as provided in subsection 1 of section 10-19.1-74.

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

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

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

q. Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 5 of section 10-19.1-73.2.

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

s. A written action of shareholders must be signed by all shareholders as provided in section 10-19.1-75.

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

   a. A director serves for an indefinite term that expires upon the election and qualification of a successor as provided in section 10-19.1-35.

   b. The compensation of directors is fixed by the board as provided in section 10-19.1-37.

   c. The method provided in section 10-19.1-41 or 10-19.1-41.1 must be used for removal of directors.

   d. The method provided in section 10-19.1-42 must be used for filling board vacancies.

   e. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-19.1-43.

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

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

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

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

   j. Unless the board determines otherwise, the officers have specified duties as provided in section 10-19.1-53.

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

   l. The board may establish uncertificated shares as provided in subsection 6 of section 10-19.1-66.

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

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

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

~~n.~~ p. The board may fix a date up to fifty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of and entitled to vote at the meeting as provided in subsection 1 of section 10-19.1-73.2.

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

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

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

10-19.1-13. Corporate name.

1. The corporate name:

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

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

   c. ~~May not contain a word or phrase indicating or 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.~~ d. May not contain a word or phrase ~~indicating or implying~~ that indicates or implies the corporation ~~is~~:

      (1) Is incorporated for a purpose other than ~~a legal~~:

(a) A lawful business purpose for which a corporation may be incorporated under this chapter; or

(b) For a purpose stated in its articles of incorporation; or

(2) May not be incorporated under this chapter.

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

(1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a ~~document~~ record that complies with subsection ~~7~~ 3, of:

(a) Another corporation;

(b) A corporation incorporated or authorized to do business in this state under another chapter of this code;

(c) A limited liability company;

(d) A limited partnership;

(e) A limited liability partnership; or

(f) A limited liability limited partnership;

(2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, ~~45-10.1-03~~ 45-10.2-11, 45-13-04.2, or 45-22-05;

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

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

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

3. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:

a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or

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

4. This subsection does not affect the right of a domestic corporation existing on July 1, 1986, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.

5. This section and section 10-19.1-14 do not:

a. Abrogate or limit:

(1) The law of unfair competition or unfair practices;

(2) Chapter 47-25;

(3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or

(4) Any other rights to the exclusive use of names or symbols; or

b. Derogate the common law or the principles of equity.

~~4.~~ 6. A corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:

a. Was incorporated, organized, formed, or registered under the laws of this state;

b. Is authorized to transact business or conduct activities in this state;

c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, ~~45-10.1-03~~ 45-10.2-11, 45-13-04.2, or 45-22-05;

d. Holds a fictitious name registered in the manner provided in chapter 45-11; or

e. Holds a trade name registered in the manner provided in chapter 47-25.

~~5.~~ 7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.

~~6.~~ 8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-19.1-146 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-19.1-11, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 2. A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name that complies with the provisions of this section:

a. By refiling articles of incorporation pursuant to section 10-19.1-11;

b. By amending pursuant to section ~~10-19.1-127~~ 10-19.1-17; or

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

~~unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name which complies with the provisions of this section.~~

~~7. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:~~

~~a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or~~

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

~~This subsection does not affect the right of a domestic corporation existing on July 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name~~.

9. Subject to section 10-19.1-133, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

SECTION 6. AMENDMENT. Section 10-19.1-20 of the North Dakota Century Code is amended and reenacted as follows:

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

1. ~~Increase or decrease the aggregate number of authorized shares of the class or series;~~

~~2.~~ Increase or decrease the par value of the shares of the class or series;

~~3.~~ 2. Effect an exchange, reclassification, or cancellation of all or part of the shares of the class or series or effect a combination of outstanding shares of a class or series into a lesser number of shares of the class or series where each other class and series is not subject to a similar combination;

~~4.~~ 3. Effect an exchange, or create a right of exchange, of all or any part of the shares of another class or series for the shares of the class or series;

~~5.~~ 4. Change the rights or preferences of the shares of the class or series;

~~6. Change the shares of the class or series, whether with or without par value, into the same or a different number of shares, either with or without par value, of another class or series;~~

~~7.~~ 5. Create a new class or series of shares having rights and preferences prior and superior to the shares of that class or series, or increase the rights and preferences or the number of authorized shares, of a class or series having rights and preferences prior or superior to the shares of that class or series;

~~8.~~ 6. Divide the shares of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the shares of each series, or authorize the board to do so;

~~9.~~ 7. Limit or deny any existing preemptive rights of the shares of the class or series; or

~~10.~~ 8. Cancel or otherwise affect distributions on the shares of the class or series that have accrued but have not been declared.

SECTION 7. AMENDMENT. Section 10-19.1-21 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The name of the corporation.
2. The amendment adopted.
3. The date of the adoption of the amendment by the shareholders or by the incorporators or the board when no shares have been issued.
4. ~~If the amendment provides for but does not establish the manner for effecting an exchange, reclassification, or cancellation of issued shares, a statement of the manner in which it will be effected.~~
~~5.~~ If the amendment restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to ~~them~~ the original articles.
~~6.~~ 5. A statement that the amendment has been adopted pursuant to this chapter.

SECTION 8. AMENDMENT. Section 10-19.1-27 of the North Dakota Century Code is amended and reenacted as follows:

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

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

10-19.1-39. ~~Cumulative voting~~ Voting for directors - Cumulative voting. ~~Each~~ With respect to the election of directors:

1. Unless otherwise provided in the articles and subject to subsection 2, directors are elected by a plurality of the voting power of the shares present and entitled to vote on the election of directors at a meeting at which a quorum is present.
2. As provided in article XII of the Constitution of North Dakota, each shareholder entitled to vote for directors has the right to cumulate those votes in all elections of directors by giving written notice of intent to cumulate those votes to any officer of the corporation before the meeting, or to the presiding officer at the meeting at which the election is to occur at any time before the election of directors at the meeting, in which case:

~~1.~~ a. The presiding officer at the meeting shall announce, before the election of directors, that shareholders may cumulate their votes; and

~~2.~~ b. Each shareholder shall cumulate those votes either by casting for one candidate the number of votes equal to the number of directors to be elected multiplied by the number of votes represented by the shares entitled to vote, or by distributing all of those votes on the same principle among any number of candidates.

SECTION 10. AMENDMENT. Subsections 3 and 5 of section 10-19.1-43 of the North Dakota Century Code are amended and reenacted as follows:

3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to subsection 2 of section 10-19.1-30, at least three days' notice, to all directors of the date, time, and place of the meeting.

   a. The notice need not state the purpose of the meeting unless the articles or bylaws require it.

   b. Any notice to a director given under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the director to whom the notice is given is effective when given.

   c. Consent by a director to notice given by electronic communication may be given in writing or by authenticated electronic communication.

      (1) Any consent so given may be relied upon until revoked by the director.

      (2) However, no revocation affects the validity of any notice given before a receipt of revocation of the consent.

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

SECTION 11. AMENDMENT. Section 10-19.1-52 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 12. AMENDMENT. Section 10-19.1-55 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 13. AMENDMENT. Subsection 2 of section 10-19.1-61.1 of the North Dakota Century Code is amended and reenacted as follows:

2. Articles of amendment must be adopted by the board and the shareholders under ~~sections~~ section 10-19.1-19 and, if required, section 10-19.1-20 to effect a division or combination if, as a result of the proposed division or combination:
   a. The rights or preferences of the holders of outstanding shares of any class or series will be adversely affected; or
   b. The percentage of authorized shares of any class or series remaining unissued after the division or combination will exceed the percentage of authorized shares of that class or series that were unissued before the division or combination.

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

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

1. Subject to ~~any restrictions in~~ article XII of the ~~articles:~~

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

~~b.~~ ~~Without~~

2. Subject to any restrictions in the articles, without any new or additional consideration, a corporation may issue the corporation's own shares in exchange for or in conversion of 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 the corporation's own shares pro rata to the corporation's shareholders or the shareholders of one or more classes or series, to effectuate share dividends, divisions, or combinations. Shares 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 is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

~~2.~~ 3. The determinations of the board or the shareholders as to the amount or fair value or the fairness to the corporation of the consideration received or to be received by the corporation for its shares or the terms of payment, as well as the agreement to issue shares for that consideration, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Directors or shareholders who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving an issue of shares for a consideration that is unfair to the corporation, or overvalue property or services received or to be received by the corporation as consideration for shares issued, are jointly and

severally liable to the corporation for the benefit of the then shareholders who did not consent to and are damaged by the action, to the extent of the damages of those shareholders. A director or shareholder against whom a claim is asserted pursuant to this section, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors or shareholders who are liable under this section.

~~3.~~ 4. A corporation may issue only shares for which the agreed consideration has been fully paid, delivered, or rendered to the corporation~~:~~.

a. The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by the corporation out of the consideration received by it in payment for its shares without rendering the shares not fully paid and nonassessable.

b. If shares are issued in violation of this subsection, the following persons are jointly and severally liable to the corporation for the difference between the agreed consideration for the shares and the consideration actually received by the corporation:

(1) A director or shareholder who was present and entitled to vote but who failed to vote against the issuance of the shares knowing of the violation;

(2) The person to whom the shares were issued; and

(3) A successor or transferee of the interest in the corporation of a person described in paragraph 1 or 2, including a purchaser of shares, a subsequent assignee, successor, or transferee, a pledgee, a holder of any other security interest in the assets of the corporation or shares granted by the person described in paragraph 1 or 2, or a legal representative of or for the person or estate of the person, which successor, transferee, purchaser, assignee, pledgee, holder, or representative acquired the interest knowing of the violation.

~~4.~~ 5. A pledgee or holder of any other security interest in all or any shares that have been issued in violation of subsection ~~3~~ 4 is not liable under subdivision b of

subsection ~~3~~ 4 if all those shares are surrendered to the corporation. The surrender does not impair any rights of the pledgee or holder of any other security interest against the pledgor or person granting the security interest.

~~5.~~ 6. A pledgee, holder of any other security interest, or legal representative is liable under subdivision b of subsection ~~3~~ 4 only in that capacity. The liability of the person under subdivision a of subsection ~~3~~ 4 is limited to the assets held in that capacity for the person or estate of the person described in paragraph 1 or 2 of subdivision b of subsection ~~3~~ 4.

~~6.~~ 7. Each person liable under subdivision b of subsection ~~3~~ 4 has a full right of contribution on an equitable basis from all other persons liable under that subdivision for the same transaction.

~~7.~~ 8. An action may not be maintained against a person under subdivision b of subsection ~~3~~ 4 unless commenced within two years from the date on which shares are issued in violation of subsection ~~3~~ 4.

SECTION 15. 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 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~~ record creating or describing the restriction.

SECTION 16. AMENDMENT. Section 10-19.1-74 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-74. Act of the shareholders.

1. Unless this chapter or the articles require a greater vote or voting by class and except for the election of directors which is governed by section 10-19.1-39, the shareholders shall take action by the affirmative vote of the holders of the greater of:
   a. A majority of the voting power of the shares present and entitled to vote on that item of business; or
   b. A majority of the voting power of the minimum number of shares entitled to vote that would constitute a quorum for the transaction of business at the meeting.

   If the articles require a larger proportion or number than is required by this chapter for a particular action, then the articles control.
2. In any case when a class or series of shares is entitled by this chapter, the articles of incorporation, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the shares as is required as provided in subsection 1, unless the articles of incorporation require a larger proportion. Unless otherwise stated in the articles or the bylaws in the case of voting as a class or series, the minimum percentage of the total voting power of shares of the class or series that must be present is equal to the minimum percentage of all shares entitled to vote required to be present under section 10-19.1-76.
3. Unless otherwise provided in the articles or bylaws, shareholders may take action at a meeting by:
   a. Voice or ballot;
   b. Action without a meeting pursuant to section 10-19.1-75;
   c. ~~Written ballot~~ Ballot pursuant to section 10-19.1-75.1; or
   d. ~~Electronic~~ Remote communication pursuant to section 10-19.1-75.2.

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

1. If the articles so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the shareholders who

own voting power equal to the voting power that would be required to take the same action at a meeting of the shareholders at which all shareholders were present.

a. After the adoption of the initial articles, an amendment to the articles to permit written action to be taken by less than all shareholders requires the approval of all of the shareholders entitled to vote on the amendment.

b. When written action is permitted to be taken by less than all shareholders, all shareholders must be notified ~~immediately~~ of its text and effective date no later than five days after the effective time of the action.

~~b.~~ c. Failure to provide the notice does not invalidate the written action.

~~c.~~ d. A shareholder who does not sign or consent to the written action has no liability for the action or actions taken by the written actions.

SECTION 18. AMENDMENT. Section 10-19.1-75.1 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-75.1. ~~Action~~ Shareholder action by ~~written~~ ballot.

1. Except as provided in subsection 5 and unless prohibited or limited by the articles or bylaws, an action that may be taken at a regular or special meeting of shareholders may be taken without a meeting if the corporation mails or delivers a ~~written~~ ballot to every shareholder entitled to vote on the matter.
2. A ~~written~~ ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.
3. Approval by ~~written~~ ballot under this section is valid only if:
   a. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and
   b. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
4. Solicitations for votes by ~~written~~ ballot must:
   a. Indicate the number of responses needed to meet the quorum requirements;
   b. State the percentage of approvals necessary to approve each matter other than election of directors; and

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

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

6. With respect to a ballot by electronic communication:

a. A corporation may deliver a ballot by electronic communication only if the corporation complies with subsection 4 of section 10-19.1-75.2 as if the ballot were a notice.

b. Consent by a shareholder to receive notice by electronic communication in a certain manner constitutes consent to receive a ballot by electronic communication in the same manner.

SECTION 19. AMENDMENT. Subsection 7 of section 10-19.1-76.2 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 20. AMENDMENT. Subsections 2 and 3 of section 10-19.1-76.3 of the North Dakota Century Code are amended and reenacted as follows:

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

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

b. The name signed purports to be that of an administrator, guardian, or conservator representing the shareholder and, if the corporation requests,

evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

c. The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder, and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;

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

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

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

SECTION 21. AMENDMENT. Subsections 4 and 10 of section 10-19.1-84 of the North Dakota Century Code are amended and reenacted as follows:

4. A shareholder or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the corporation shall make available within ten days after receipt by an officer of the corporation of the written demand:

a. The share register; and

b. All ~~documents~~ records referred to in subsection 2.

10. Copies of the share register and all ~~documents~~ records referred to in subsection 2, if required to be furnished under this section, must be furnished at the expense of the corporation. In all other cases, the corporation may charge the requesting party a reasonable fee to cover the expenses of providing the copy.

SECTION 22. AMENDMENT. Section 10-19.1-87 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-87. Rights of dissenting shareholders.

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

   a. ~~An~~ Unless otherwise provided in the articles, an amendment of the articles that materially and adversely affects the rights or preferences of the shares of a dissenting shareholder in that it:

      (1) Alters or abolishes a preferential right of the shares;

      (2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of shares;

      (3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares; ~~or~~

      (4) Excludes or limits the right of a shareholder to vote on a matter, or to accumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights; or

      (5) Eliminates the right to obtain payment under this subdivision;

   b. A sale, lease, transfer, or other disposition of ~~all or substantially all of the~~ property and assets of the corporation~~, but not including a transaction permitted without shareholder approval in~~ that requires shareholder approval under subsection ~~1~~ 2 of section 10-19.1-104, ~~or a~~ but not including:

      (1) A disposition in dissolution described in subsection 2 of section 10-19.1-109 ~~or a~~;

      (2) A disposition pursuant to an order of a court~~,~~; or ~~a~~

      (3) A disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in

accordance with their respective interests within one year after the date of disposition;

c. A plan of merger to which the corporation is a constituent organization, except as provided in subsection 3 and except for a plan of merger adopted under section 10-19.1-100.1;

d. A plan of exchange, whether under this chapter or under chapter 10-32, to which the corporation is a constituent organization as the corporation whose shares will be acquired by the acquiring corporation, except as provided in subsection 3; ~~or~~

e. A plan of conversion adopted by a corporation; or

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

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

3. Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the shareholders of:

a. The surviving corporation in a merger with respect to shares of the shareholders that are not entitled to be voted on the merger and are not canceled or exchanged in the merger; or

b. The corporation whose shares will be acquired by the acquiring corporation in a plan of exchange with respect to shares of the shareholders that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.

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

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

<u>6. Notwithstanding subsection 1, the right to obtain payment under this section, other than in connection with a plan of merger adopted under section 10-19.1-100, is limited in accordance with the following provisions:</u>

<u>a. The right to obtain payment under this section is not available for the holders of shares of any class or series of shares that is listed on the New York stock exchange or the American stock exchange or designated as a national market system security on an interdealer quotation system by the national association of securities dealers, incorporated.</u>

<u>b. The applicability of subdivision a is determined as of:</u>

<u>(1) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action described in subsection 1; or</u>

<u>(2) The day before the effective date of corporate action described in subsection 1 if there is no meeting of shareholders.</u>

c. Subdivision a is not applicable, and the right to obtain payment under this section is available pursuant to subsection 1, for the holders of any class or series of shares who are required by the terms of the corporate action described in subsection 1 to accept for such shares anything other than shares, or cash in lieu of fractional shares, of any class or any series of shares of the corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in subdivision a at the time the corporate action becomes effective.

SECTION 23. AMENDMENT. Subsections 3 and 4 of section 10-19.1-88 of the North Dakota Century Code are amended and reenacted as follows:

3. If the proposed action must be approved by the shareholders, and the corporation calls a meeting of shareholders, then a shareholder who is entitled to dissent under section 10-19.1-87 and who wishes to exercise dissenter's rights 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 may not vote the shares in favor of the proposed action.

4. After the proposed action has been approved by the board and, if necessary, the shareholders, the corporation shall send to all shareholders who have complied with subsection 3, to all shareholders who did not sign or consent to a written action that gave effect to the action creating the right to obtain payment under section 10-19.1-87, and to all shareholders entitled to dissent if no shareholder vote was required, a notice that contains:

   a. The address to which a demand for payment and share certificates must be sent in order to obtain payment and the date by which they must be received;

   b. A form to be used to certify the date on which the shareholder, or the beneficial owner on whose behalf the shareholder dissents, acquired the shares or an interest in them and to demand payment; and

   c. A copy of section 10-19.1-87 and this section.

SECTION 24. AMENDMENT. Subsection 1 of section 10-19.1-91 of the North Dakota Century Code is amended and reenacted as follows:

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 governor, director, officer, manager, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, 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.

SECTION 25. Section 10-19.1-102.1 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 26. AMENDMENT. Subsection 1 of section 10-19.1-103 of the North Dakota Century Code is amended and reenacted as follows:

1. A domestic corporation may merge with, including a merger pursuant to section 10-19.1-100, or participate in an exchange with a foreign corporation or foreign limited liability company by following the procedures set forth in this section, if:
   a. With respect to a merger, the merger is permitted by the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized.
   b. With respect to an exchange, the constituent organization whose ownership interests will be acquired is a domestic corporation or limited liability company, regardless of whether the exchange is permitted by the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized.

SECTION 27. AMENDMENT. Subsection 2 of section 10-19.1-104 of the North Dakota Century Code is amended and reenacted as follows:

2. With respect to shareholders approval:
   a. A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, when approved at a regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote.
      (1) Written notice of the meeting must be given to all shareholders whether or not they are entitled to vote at the meeting.
      (2) The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.

b. Shareholder approval is not required under subdivision a if, following the sale, lease, transfer, or other disposition of its property and assets, the corporation retains a significant continuing business activity. The corporation will conclusively be deemed to have retained a significant continuing business activity if the corporation retains a business activity that represented at least:

(1) Twenty-five percent of the corporation's total assets at the end of the most recently completed fiscal year; and

(2) Twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, measured on a consolidated basis with its subsidiaries for each of paragraphs 1 and 2.

SECTION 28. Section 10-19.1-104.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-104.1. Conversion.

1. An organization other than a corporation may convert to a corporation, and a corporation may convert to another organization other than a general partnership as provided in this section and sections 10-19.1-104.2 through 10-19.1-104.6 and a plan of conversion, if:

a. The governing statute of the other organization authorizes the conversion;

b. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and

c. The other organization complies with its governing statute in effecting the conversion.

2. For the purposes of sections 10-19.1-104.1 through 10-19.1-104.6, unless the context otherwise requires:

a. "Act of the board" means action by the board as provided in section 10-19.1-46 whether:

(1) At a meeting of the board as provided in section 10-19.1-43; or

(2) By a written action of the board as provided in section 10-19.1-47.

b. "Act of the shareholders" means action by the shareholders as provided in section 10-19.1-74 whether:

(1) At a meeting of the shareholders as provided in sections 10-19.1-71 and 10-19.1-72; or

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

c. "Certificate of creation" means:

(1) A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under this chapter;

(2) A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter 10-32;

(3) A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under chapter 45-10.2;

(4) The filed registration of a limited liability partnership, if the converted organization is a limited liability partnership deemed to be established under chapter 45-22; or

(5) A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.

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

(1) A corporation which is:

(a) The converting organization was incorporated; or

(b) The converted organization is deemed to be incorporated;

(2) A limited liability company which is:

(a) The converting organization was organized; or

(b) The converted organization is deemed to be organized;

(3) A general partnership that is the converting organization was formed;

(4) A limited partnership which is:

(a) The converting organization was formed; or

(b) The converted organization is deemed to be formed;

(5) A limited liability partnership which is:

(a) The converting organization was formed; or

(b) The converted organization is deemed to be formed; and

(6) A limited liability limited partnership which is:

(a) The converting organization was formed; or

(b) The converted organization is deemed to be formed.

e. "Filed registration" means the registration of a limited liability partnership which has been filed with the secretary of state.

f. "General partnership" means an organization formed under chapters 45-13 through 45-21.

g. "Organizational records" means for an organization which is:

(1) A corporation, its articles of incorporation and bylaws;

(2) A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;

(3) A limited partnership, its partnership agreement;

(4) A limited liability partnership, its partnership agreement; or

(5) A limited liability limited partnership, its partnership agreement.

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

(1) A corporation, its articles of incorporation;

(2) A limited liability company, its articles of organization;

(3) A limited partnership, its certificate of limited partnership;

(4) A limited liability partnership, its registration; or

(5) A limited liability limited partnership, its certificate of limited liability limited partnership.

SECTION 29. Section 10-19.1-104.2 of the North Dakota Century Code is created and enacted as follows:

10-19.1-104.2. Plan of conversion. A plan of conversion must be in a record and must contain:

1. The name and form of the converting organization before conversion;
2. The name and form of the converted organization after conversion;
3. The terms and conditions of the proposed conversion;
4. The manner and basis of converting each ownership interest in the converting organization into ownership interests in the converted organization or, in whole or in part, into money or other property;

5. The organizational records of the converted organization; and

6. Any other provisions with respect to the proposed conversion that are deemed necessary or desirable.

SECTION 30. Section 10-19.1-104.3 of the North Dakota Century Code is created and enacted as follows:

10-19.1-104.3. Plan approval and amendment.

1. If the converting organization is a corporation, then:
   a. A resolution containing or amending the plan of conversion must be approved by an act of the board of the converting corporation and must then be approved by an act of its shareholders.
      (1) In the action by the shareholders, a class or series of shares is entitled to vote as a class or series on the approval or amendment of the plan.
      (2) Any amendment of the plan is subject to any contractual rights.
   b. If the resolution containing or amending the plan of conversion is approved by the shareholders:
      (1) At a shareholder meeting, then:
         (a) Written notice must be given to every shareholder of the converting corporation, whether or not entitled to vote at the meeting, not less than fourteen days nor more than fifty days before the meeting, in the manner provided in section 10-19.1-73.
         (b) The written notice must state that a purpose of the meeting is to consider the proposed plan of conversion or an amendment to it.
         (c) A copy or short description of the plan of conversion or the amendment to it must be included in or enclosed with the notice.
      (2) By a written action of the shareholders, then a copy or short description of the plan of conversion or the amendment to it must be included in or attached to the written action.
2. If the converting organization is not a corporation, then the approval and amendment of the plan of conversion must comply with its governing statute in effecting the conversion.

SECTION 31. Section 10-19.1-104.4 of the North Dakota Century Code is created and enacted as follows:

10-19.1-104.4. Articles of conversion.

1. Upon receiving the approval required by section 10-19.1-104.3, articles of conversion must be prepared in a record that must contain:
   a. A statement that the converting organization is being converted into another organization including:
      (1) The name of the converting organization immediately before the filing of the articles of conversion;
      (2) The name to which the name of the converting organization is to be changed, which must be a name that satisfies the laws applicable to the converted organization;
      (3) The form of organization that the converted organization will be; and
      (4) The jurisdiction of the governing statute of the converted organization;
   b. A statement that the plan of conversion has been approved by the converting organization as provided in section 10-19.1-104.3;
   c. A statement that the plan of conversion has been approved as required by the governing statute of the converted organization;
   d. The plan of conversion without organization records;
   e. A copy of the originating record of the converted organization; and
   f. If the converted organization is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office which the secretary of state may use for the purposes of subsection 4 of section 10-19.1-104.6.
2. The articles of conversion must be signed on behalf of the converting organization and filed with the secretary of state.
   a. If the converted organization is a domestic organization:
      (1) Then the filing of the articles of conversion must also include the filing with the secretary of state of the originating record of the converted organization.

(2) Upon both the articles of conversion and the originating record of the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of creation to the converted organization or its legal representative.

b. If the converted organization is a foreign organization:

(1) That is transacting business or conducting activities in this state, then:

(a) The filing of the articles of conversion must include the filing with the secretary of state of an application for a certificate of authority by the converted organization.

(b) Upon both the articles of conversion and the application for a certificate of authority by the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of authority to the converted organization or the legal representative.

(2) That is not transacting business or conducting activities in this state, then, upon the articles of conversion being filed with the secretary of state, the secretary of state shall issue a certificate of conversion to the converted organization or its legal representative.

3. A converting organization that 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 a limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

SECTION 32. Section 10-19.1-104.5 of the North Dakota Century Code is created and enacted as follows:

10-19.1-104.5. Abandonment of conversion.

1. If the articles of conversion have not been filed with the secretary of state, and:

a. If the converting organization is a corporation, then:

(1) Before a plan of conversion has been approved by the converting corporation as provided in section 10-19.1-104.3, it may be abandoned by an act of its board.

(2) After a plan of conversion has been approved by the converting corporation as provided in section 10-19.1-104.3, and before the effective date of the plan, it may be abandoned:

(a) If the shareholders of the converting corporation entitled to vote on the approval of the plan as provided in section 10-19.1-104.3 have approved the abandonment by an act of the shareholders; or

(b) If the plan provides for abandonment and if all conditions for abandonment set forth in the plan are met.

b. If the converting organization is not a corporation, then the abandonment of the plan of conversion must comply with its governing statute.

2. If articles of conversion have been filed with the secretary of state, but have not yet become effective, then the converting organization shall file with the secretary of state articles of abandonment that contain:

a. The name of the converting organization;

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

c. If the plan is abandoned:

(1) By an act of the board under paragraph 1 of subdivision a of subsection 1, or by an act of the shareholders under subparagraph b of paragraph 2 of subdivision a of subsection 1, then the text of the resolution abandoning the plan; or

(2) As provided in the plan under subparagraph b of paragraph 2 of subdivision a of subsection 1, then a statement that the plan provides for abandonment and that all conditions for abandonment set forth in the plan are met.

SECTION 33. Section 10-19.1-104.6 of the North Dakota Century Code is created and enacted as follows:

10-19.1-104.6. Effective date of conversion - Effect.

1. A conversion is effective when the filing requirements of subsection 2 of section 10-19.1-104.4 have been fulfilled or on a later date specified in the articles of conversion.

2. With respect to the effect of conversion on the converting organization and on the converted organization:

   a. An organization that has been converted as provided in sections 10-19.1-104.1 through 10-19.1-104.6 is for all purposes the same entity that existed before the conversion.

   b. Upon a conversion becoming effective:

      (1) If the converted organization:

         (a) Is a corporation, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a corporation incorporated under this chapter; or

         (b) Is not a corporation, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to the duties and liabilities as provided in its governing statute;

      (2) All property owned by the converting organization remains vested in the converted organization;

      (3) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

      (4) An action or proceeding pending by or against the converting organization may be continued as if the conversion has not occurred;

      (5) Except as otherwise provided by other law, all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization; and

      (6) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

3. When a conversion becomes effective, each ownership interest in the converting organization is deemed to be converted into ownership interests in the converted

organization or, in whole or in part, into money or other property to be received under the plan, subject to any dissenters' rights under section 10-19.1-87.

4. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this state on the obligation.

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

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

1. If notice to creditors and claimants is given, it must be given by:
   a. Publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located; and
   b. Giving written notice to known creditors and claimants pursuant to subsection ~~32~~ 35 of section 10-19.1-01.

SECTION 35. AMENDMENT. Section 10-19.1-129 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The registered agent must be an agent of the corporation or foreign corporation and any nonresident director upon whom any process, notice, or demand required or permitted by law to be served on the corporation, the foreign corporation, or any director may be served.
   a. When a foreign corporation transacts business without a certificate of authority, or when the certificate of authority of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notice, or demand.

b. Acceptance of a directorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.

2. A process, notice, or demand required or permitted by law to be served upon a corporation or foreign corporation may be served ~~either upon~~:

a. On the registered agent of the corporation~~, or upon~~;

b. On an officer of the corporation~~,~~ or foreign corporation;

c. On any responsible person found at the registered office or at the principal executive office if located in this state; or ~~upon~~

d. On the secretary of state as provided in this section.

3. If neither the ~~corporation's~~ registered agent nor ~~an officer of the corporation~~ a responsible person 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~~ responsible person cannot be found at the ~~registered office~~ principal executive office if located in this state, then the secretary of state is ~~the~~ an agent of the corporation or foreign corporation upon whom the process, notice, or demand may be served.

a. Service on the secretary of state:

~~a.~~ (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication~~;~~.

~~b.~~ (2) Shall include the return of the sheriff, or the affidavit of a person who is not a party, verifying that neither the registered agent nor ~~an officer~~ a responsible person can be found at the registered office~~; and~~ or at the principal executive office.

~~c.~~ (3) Is deemed personal service upon the corporation and must be made by filing with the secretary of state:

~~(1)~~ (a) Three copies of the process, notice, or demand; and

~~(2)~~ (b) The fees provided in section 10-19.1-147; and

(4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

b. The secretary of state shall immediately forward, by registered mail, addressed to the corporation or foreign corporation at the registered office or

principal executive 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, then service may be made according to subsection 2 so long as claims are not finally barred under section 10-19.1-124. If a corporation has been involuntarily dissolved pursuant to section 10-19.1-146, then service may be made according to subsection 2.

5. ~~A~~ The secretary of state shall maintain a record of ~~all processes, notices~~ every process, notice, and ~~demands~~ demand served ~~upon~~ on the secretary of state under this section, including the date of service and the action taken with reference to ~~it, must be maintained in the office of the secretary of state~~ the process, notice, or demand.

6. ~~Nothing in this~~ This section ~~limits~~ does not limit the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

SECTION 36. AMENDMENT. Subsection 1 of section 10-19.1-141 of the North Dakota Century Code is amended and reenacted as follows:

1. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the occurrence of either of these events:
   a. The foreign corporation has failed to:
      (1) Maintain a registered office as required by this chapter;
      (2) Appoint and maintain a registered agent as required by this chapter;
      (3) File a report upon any change in the address of its registered office;
      (4) File a report upon any change in the name or business address of the registered agent; or

(5) File in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-19.1-137; or

b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other ~~document~~ record submitted by the foreign corporation pursuant to this chapter.

SECTION 37. AMENDMENT. Section 10-19.1-145 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-145. Foreign corporation - Service of process. Service of process on a foreign corporation must be as provided in section 10-19.1-129. ~~When a foreign corporation transacts business without a certificate of authority or when the certificate of authority of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notices, or demand.~~

SECTION 38. AMENDMENT. Subsections 1, 2, 4, and 6 of section 10-19.1-146 of the North Dakota Century Code are 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~~ provided in subsection 3, an annual report setting forth:

   a. The name of the corporation or foreign corporation and the state or country under the laws of which the corporation or foreign corporation is incorporated.

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

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

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

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

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

g. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the total gross income of the corporation for the twelve months ending on December thirty-first preceding the date provided under this section for the filing of the annual report and the gross amount accumulated by the corporation at or from places of business in this state. If, on December thirty-first preceding the time provided under this section for the filing of the report, the corporation had not been in existence for a period of twelve months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve months, the statement with respect to total gross income must be furnished for the period between the date of incorporation or the date of the corporation's authorization to transact business in this state and December thirty-first.

h. Any additional information necessary or appropriate to enable the secretary of state to determine and assess the proper amount of fees payable by the corporation.

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report except as to the information required by subdivision g of subsection 1 which must be given as of the close of business on December thirty-first next preceding the date herein provided for the filing of the report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. The annual report must be signed as ~~prescribed~~ provided in subsection ~~48~~ 51 of section 10-19.1-01, or the articles or the bylaws or a resolution approved by the affirmative vote of the required proportion or number of the directors or holders of shares entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver

or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years. The secretary of state, or any employee or legal representative of the secretary of state, may not disclose the information reported under subdivision g of subsection 1 to any person, except a person who is verified to be a shareholder of the corporation or foreign corporation, a legal representative of the shareholder for which information is requested, or to the tax commissioner or any employee or legal representative of the tax commissioner, who may not disclose the information and may use the information only for the administration of the tax laws.

4. The secretary of state must file the annual report if the annual report conforms to the requirements of this section and all fees have been paid as provided in section 10-19.1-147.

   a. If the annual report does not conform, it must be returned to the corporation or foreign corporation for any necessary correction or payment.

   b. If the annual report is corrected and filed before the date provided in subsection 3, or within thirty days after the annual report was returned by the secretary of state for correction, then the penalties ~~prescribed~~ provided in section 10-19.1-147 for the failure to file an annual report within the time provided do not apply.

6. ~~Within three~~ Three months after the date provided in subsection 3, ~~the secretary of state shall notify~~ any corporation or foreign corporation failing to file its annual report is not in good standing. After the corporation or foreign corporation becomes not in good standing, the secretary of state shall notify the corporation or foreign corporation that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked as provided in subsection 7 or 8.

   a. The secretary of state must mail the notice of impending dissolution or revocation to the last registered agent at the last registered office of record.

   b. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the filing fee and the late filing penalty fee provided in

section 10-19.1-147, then the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.

SECTION 39. AMENDMENT. Section 10-19.1-147 of the North Dakota Century Code is amended and reenacted as follows:

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

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

~~4.~~ 7. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.

~~5.~~ 8. Filing articles of abandonment of merger, fifty dollars.

~~6.~~ 9. Filing an application to reserve a corporate name, ten dollars.

~~7.~~ 10. Filing a notice of transfer of a reserved corporate name, ten dollars.

~~8.~~ 11. Filing a cancellation of reserved corporate name, ten dollars.

~~9.~~ 12. Filing a consent to use of name, ten dollars.

~~10.~~ 13. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.

~~11.~~ 14. Filing a statement of change of address of registered office by registered agent, ten dollars for each corporation affected by such change.

~~12.~~ 15. Filing a registered agent's consent to serve in such capacity, ten dollars.

~~13.~~ 16. Filing a resignation as registered agent, ten dollars.

~~14.~~ 17. Filing a statement of the establishment of a series of shares, twenty dollars.

~~15.~~ 18. Filing a statement of cancellation of shares, twenty dollars.

~~16.~~ 19. Filing a statement of reduction of stated capital, twenty dollars.

~~17.~~ 20. Filing a statement of intent to dissolve, ten dollars.

~~18.~~ 21. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.

~~19.~~ 22. Filing articles of dissolution, twenty dollars.

~~20.~~ 23. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, forty dollars.

~~21.~~ 24. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, forty dollars.

~~22.~~ 25. Filing a certificate of fact stating a merger or consolidation of a foreign corporation holding a certificate of authority to transact business in this state, fifty dollars.

~~23.~~ 26. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.

~~24.~~ 27. Filing an annual report of a corporation or foreign corporation, twenty-five dollars.

a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:

~~a.~~ (1) Within ninety days after the date provided in subsection 3 of section 10-19.1-146, twenty dollars;

~~b.~~ (2) Thereafter, sixty dollars; and

~~c.~~ (3) After the involuntary dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of one hundred thirty-five dollars.

b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be

filed because it lacks information required by section 10-19.1-146, or the annual report lacks sufficient payment as required by this subsection.

~~25.~~ 28. Filing any process, notice, or demand for service, twenty-five dollars.

~~26.~~ 29. Furnishing a certified copy of any ~~document~~ record, instrument, or paper relating to a corporation, one dollar for every four pages or fraction and fifteen dollars for the certificate and affixing the seal thereto.

~~27.~~ 30. License fee of fifty dollars for the first fifty thousand dollars of a corporation's authorized shares, or fraction, and the further sum of ten dollars if paid at the time of authorization, or twelve dollars if paid after authorized shares are issued, for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of fifty thousand dollars.

a. A license fee is payable by a corporation at the time of:

(1) Filing articles of incorporation;

(2) Filing articles of amendment increasing the number or value of authorized shares; or

(3) Filing articles of merger or consolidation increasing the number or value of authorized shares a surviving or new corporation will have authority to issue above the aggregate number or value of shares the constituent corporations had authority to issue.

b. A license fee payable on an increase in authorized shares must be imposed only on the additional shares, but the amount of previously authorized shares must be taken into account in determining the rate applicable to the additional authorized shares.

c. For the purposes of this subsection, shares without par value are considered worth one dollar per share.

d. The minimum sum of fifty dollars must be paid for authorized shares at the time of filing articles of incorporation.

e. A corporation increasing authorized shares by articles of amendment or articles of merger must have previously paid for a minimum of fifty thousand dollars of authorized shares.

(1) Thereafter, a corporation may postpone the payment for any additional amount until the filing of an annual report after the unpaid shares are issued.

(2) Any additional amount must be paid in increments of ten thousand dollars of authorized shares.

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

~~28.~~ 31. License fee of eighty-five dollars from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state. Thereafter, the secretary of state shall fix the license fee for each foreign corporation as follows:

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

b. Said amount must be multiplied by a fraction, the numerator of which must be the sum of the value of the property of the foreign corporation located in this state and the gross receipts of the foreign corporation derived from that foreign corporation's business transacted within this state, and the denominator of which must be the sum of the value of all of that foreign corporation's property wherever located and the gross receipts of the foreign corporation derived from that foreign corporation's business wherever transacted. The amounts used in determining the numerator and denominator must be determined from the foreign corporation's filed annual report.

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

The secretary of state shall enter the amount of any additional license fee in the records of the foreign corporation in the secretary of state's office and shall mail a

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

~~29.~~ 32. Any ~~document~~ record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the ~~document~~ record.

~~30.~~ 33. Filing any other statement of a corporation or foreign corporation, ten dollars.

SECTION 40. AMENDMENT. Section 10-19.1-148 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-148. Secretary of state - Powers - Enforcement - Penalty - Appeal.

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

d. The secretary of state shall certify to the attorney general, for action the attorney general may deem appropriate, an interrogatory and answers thereto, which discloses a violation of this chapter.

e. Each officer, director, or employee of a corporation or foreign corporation who fails or refuses within the time provided by subdivision a to answer truthfully and fully an interrogatory propounded to that person by the secretary of state is guilty of an infraction.

f. An interrogatory propounded by the secretary of state and the answers are not open to public inspection. The secretary of state may not disclose any facts or information obtained from the interrogatory or answers except insofar as permitted by law or insofar as required for evidence in any criminal proceedings or other action by this state.

3. If the secretary of state rejects any ~~document~~ record required by this chapter to be approved by the secretary of state before the ~~document~~ record may be filed, then the secretary of state shall give written notice of the rejection to the person who delivered the ~~document~~ record, specifying the reasons for rejection.

a. ~~From such rejection the person~~ Within thirty days after the service of the notice of denial, the corporation or foreign corporation, as the case may be, may appeal to the district court ~~of the county in which the registered office of such corporation is, or is proposed to be, situated~~ in the judicial district serving Burleigh County by filing with the clerk of the court a petition setting forth a copy of the ~~document~~ record sought to be filed and a copy of the written rejection of the ~~document~~ record by the secretary of state.

b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.

4. If the secretary of state dissolves a corporation or revokes the certificate of authority to transact business in this state of any foreign corporation, pursuant to section 10-19.1-141, then the corporation or foreign corporation may appeal to the district court ~~of the county where the registered office of the foreign corporation in~~

~~this state is situated~~ in the judicial district serving Burleigh County by filing with the clerk of the court a petition ~~setting forth a~~ including:

a. A copy of the corporation's articles of incorporation and a copy of the notice of dissolution given by the secretary of state; or

b. A copy of the certificate of authority of the foreign corporation to transact business in this state and a copy of the notice of revocation given by the secretary of state.

The court shall try the matter ~~must be tried~~ de novo ~~by the court~~. The court shall sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.

5. If the court order sought is one for reinstatement of a corporation that has been dissolved as provided in subsection 7 of section 10-19.1-146, or for reinstatement of the certificate of authority of a foreign corporation that has been revoked as provided in subsection 8 of section 10-19.1-146, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the corporation or foreign corporation to:

a. File all past-due annual reports;

b. Pay the fees to the secretary of state for each annual report as provided in subsection 24 of section 10-19.1-147; and

c. Pay the reinstatement fee to the secretary of state as provided in subsection 24 of section 10-19.1-147.

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

SECTION 41. Section 10-19.1-148.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-148.1. Delivery to and filing of records by secretary of state and effective date.

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of

state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person who delivered it to the secretary of state for filing. That person shall then send a copy of the filed record to the person on whose behalf the record was filed.

2. Upon request and payment of a fee provided in section 10-19.1-147, the secretary of state shall send to the requester a certified copy of the requested record.

3. Except as otherwise specifically provided in this chapter, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:

a. If a record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.

b. If the record specifies a delayed effective date within ninety days, then on the specified date.

SECTION 42. Section 10-19.1-148.2 of the North Dakota Century Code is created and enacted as follows:

10-19.1-148.2. Correcting a filed record. With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.

2. A statement of correction:

a. Must:

(1) Be signed by:

(a) The person who signed the original record; or

(b) By a person authorized to sign on behalf of that person.

(2) Set forth the name of the corporation that filed the record;

(3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;

(4) Identify the inaccuracy, error, or defect to be corrected; and

(5) Set forth a statement in corrected form of the portion of the record to be corrected.

b. May not revoke or nullify the record.

3. The statement of correction must be filed with the secretary of state.

4. With respect to the effective date of correction:

a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.

b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:

(1) On the date the statement of correction was filed:

(a) As to persons adversely affected by the correction; and

(b) For the purposes of subsection 3 of section 10-19.1-01.2; and

(2) On the date the original record was filed as to all other persons and for all other purposes.

SECTION 43. AMENDMENT. Section 10-19.1-149 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-149. Secretary of state - Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of ~~documents~~ records filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated.

2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing ~~documents~~ records 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 44. AMENDMENT. Section 10-19.1-149.1 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-149.1. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any ~~document~~ record filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any ~~document~~ record is released to the public.

SECTION 45. AMENDMENT. Section 10-19.1-150 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-150. Secretary of state - Forms to be furnished by the secretary of state. All annual reports required by this chapter to be filed in the office of the secretary of state must be made on forms prescribed by the secretary of state. Forms for all other ~~documents~~ records to be filed in the office of the secretary of state may be furnished by the secretary of state upon request. However, the use of such ~~documents~~ records, unless otherwise specifically required by law, is not mandatory.

SECTION 46. AMENDMENT. Section 10-31-07.3 of the North Dakota Century Code is amended and reenacted as follows:

10-31-07.3. Issuance and transfer of partnership interests. A professional organization in the form of a limited liability partnership may issue partnership interests only to ~~persons~~ individuals who are licensed to render the same specific professional services as those for which the partnership was registered. A partner may voluntarily transfer partnership interests in a professional limited liability partnership only to a person owning or eligible to own a partnership interest. The issuance of any partnership interests issued in violation of this section is void. The voluntary transfer of any partnership interests in violation of this section is void. No partnership interest may be transferred upon the books of the professional limited liability partnership or issued by the professional limited liability partnership until there is presented to and filed with the limited liability partnership a certificate from the regulating board stating that the person to whom the transfer is to be made or the partnership interest issued is

licensed to render the same specific professional services as those for which the limited liability partnership was registered.

SECTION 47. AMENDMENT. Section 10-32-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Acquiring organization" means the ~~foreign or domestic~~ limited liability company or foreign limited liability company, or ~~domestic~~ corporation or foreign corporation that acquires in an exchange the shares of a ~~domestic or foreign~~ corporation or foreign corporation 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. "Articles" or "articles of organization" means:
   a. In the case of a limited liability company organized under this chapter, articles of organization, articles of amendment, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of abandonment, articles of conversion, and articles of termination.
   b. In the case of a foreign limited liability company, the term includes all ~~documents~~ records serving a similar function required to be filed with the secretary of state or other state office of the limited liability company's state of organization.
4. "Authenticated electronic communication" means:
   a. That the electronic communication is delivered:
      (1) To the principal place of business of the limited liability company; or
      (2) To a manager or agent of the limited liability company authorized by the limited liability company to receive the electronic communication; and

b. That the electronic communication sets forth information from which the limited liability company can reasonably conclude that the electronic communication was sent by the purported sender.

5. "Ballot" means a written ballot or a ballot transmitted by electronic communications.

6. "Board" or "board of governors" means the board of governors of a limited liability company.

~~6.~~ 7. "Board member" means:

a. An individual serving on the board of governors in the case of a limited liability company; and

b. An individual serving on the board of directors in the case of a corporation.

~~7.~~ 8. "Bylaws" means any rule, resolution, or other provision, regardless how designated, that:

a. Relates to the management of the business or the regulation of the affairs of the limited liability company; and

b. Was expressly part of the bylaws by the action, taken from time to time under section 10-32-68, by the board or the members.

~~8.~~ 9. "Class", when used with reference to membership interests, means a category of membership interests which differs in one or more rights or preferences from another category of membership interests of the limited liability company.

~~9.~~ 10. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.

~~10.~~ 11. "Constituent organization" means a limited liability company or a domestic or foreign corporation that:

a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or

b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.

~~11.~~ 12. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services,

which a member contributes to a limited liability company in the capacity of that member as a member.

~~12.~~ 13. "Contribution agreement" means an agreement between a person and a limited liability company under which:

a. The person agrees to make a contribution in the future; and

b. The limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.

~~13.~~ 14. "Contribution allowance agreement" means an agreement between a person and a limited liability company under which:

a. The person has the right, but not the obligation, to make a contribution in the future; and

b. The limited liability company agrees that, if the person makes the specified contribution at the time specified in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.

15. "Converted organization" means the organization resulting from a conversion under sections 10-32-108.1 through 10-32-108.6.

16. "Converting organization" means the organization that effects a conversion under sections 10-32-108.1 through 10-32-108.6.

17. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under chapter 10-19.1.

~~14.~~ 18. "Dissolution" means that the limited liability company incurred an event under subsection 1 of section 10-32-109, subject only to sections 10-32-116 and 10-32-124, that obligates the limited liability company to wind up the limited liability company's affairs and to terminate the limited liability company's existence as a legal entity.

~~15.~~ 19. "Dissolution avoidance consent" means the consent of all remaining members:

a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after the occurrence of any event that terminates the continued membership of a member in the limited liability company; and

b. That the limited liability company must be continued as a legal entity without dissolution.

~~16.~~ 20. "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a limited liability company to any of the limited liability company's 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.

~~17. "Domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by chapter 10-19.1.~~

~~18.~~ 21. "Domestic organization" means an organization created under the laws of this state.

~~19.~~ 22. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

~~20.~~ 23. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:

a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and

b. That may be directly reproduced in paper form by the recipient through an automated process.

~~21.~~ 24. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

~~22.~~ 25. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.

~~23.~~ 26. "Filed with the secretary of state" means except as otherwise permitted by law or rule:

a. That a ~~document~~ record meeting the applicable requirements of this chapter, together with the fees provided in section 10-32-150, has been delivered or communicated to the secretary of state by a method or medium of

communication acceptable by the secretary of state, and has been determined by the secretary of state to conform to law.

b. That the secretary of state ~~shall~~ did then:

(1) Record the actual date on which the ~~document is~~ record was filed, and if different, the effective date of filing; and

(2) Record the ~~document~~ record in the office of the secretary of state.

~~24.~~ 27. "Financial rights" means a member's rights:

a. To share in profits and losses as provided in section 10-32-36;

b. To share in distributions as provided in section 10-32-60;

c. To receive interim distributions as provided in section 10-32-61; and

d. To receive termination distributions as provided in subdivision c of subsection 1 of section 10-32-131.

~~25.~~ 28. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under chapter 10-19.1.

~~26.~~ 29. "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.

~~27.~~ 30. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.

~~28.~~ 31. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

~~29.~~ 32. "Governance rights" means all of a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.

~~30.~~ 33. "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.

34. "Governing statute" of an organization means:

a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:

(1) If a corporation, then chapter 10-19.1;

(2) If a limited liability company, then this chapter;

(3) If a general partnership, then chapters 45-13 through 45-21;

(4) If a limited partnership, then chapter 45-10.2;

(5) If a limited liability partnership, then chapter 45-22; and

(6) If a limited liability limited partnership, then chapter 45-23; and

b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and which govern the internal affairs of the organization.

~~31.~~ 35. "Governor" means an individual serving on the board.

~~32.~~ 36. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute:

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

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

~~33. "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.~~

~~34.~~ 37. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.

~~35.~~ 38. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under this chapter.

~~36.~~ 39. "Manager" means:

a. An individual who is eighteen years of age or more and who is elected, appointed, or otherwise designated as a manager by the board; and

b. An individual considered elected as a manager pursuant to section 10-32-92.

~~37.~~ 40. "Member" means a person, with or without voting rights, reflected in the required records of a limited liability company as the owner of a membership interest in the limited liability company.

~~38.~~ 41. "Membership interest" means one of the units, however designated, into which a member's proprietary interest in a limited liability company is divided consisting of:

a. 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.

~~39.~~ 42. "Notice":

a. Is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company:

(1) When in writing and mailed or delivered to the limited liability company or the manager at the registered office or principal executive office of the limited liability company.

(2) When given by a form of electronic communication consented to by the limited liability company or a manager to which the notice is given:

(a) If by facsimile communication, when directed to a telephone number at which the limited liability company or a manager has consented to receive notice;

(b) If by electronic mail, when directed to an electronic mail address at which the limited liability company or a manager has consented to receive notice;

(c) If by posting on an electronic network on which the limited liability company or a manager has consented to receive notice, together with separate notice to the limited liability company or a manager of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice; or

(d) If by any other form of electronic communication by which the limited liability company or a manager has consented to receive notice, when directed to the limited liability company or a manager.

b. Is given, in all other cases:

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

(2) When handed to the person;

(3) When left at the office of the person with a clerk or other person in charge of the office or:

(a) If there is no one in charge, when left in a conspicuous place in the office; or

(b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion who is residing there; or

(4) When given by a form of electronic communication consented to by the person to whom the notice is given:

(a) If by facsimile communication, when directed to a telephone number at which the person has consented to receive notice.

(b) If by electronic mail, when directed to an electronic mail address at which the person has consented to receive notice.

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

[1] The posting; or

[2] The giving of the separate notice.

(d) If by any other form of electronic communication by which the person has consented to receive notice when directed to the person.

(5) When the method is fair and reasonable when all of the circumstances are considered.

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

d. Is deemed received when it is given.

~~40.~~ 43. "Organization" means:

a. Whether domestic or foreign, a limited liability company, corporation, partnership, limited partnership, limited liability partnership, limited liability limited partnership, ~~joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity~~ or any other person having a governing statute; but

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

~~41.~~ 44. "Owners" means:

a. Members in the case of a limited liability company or a nonprofit corporation; and

b. Shareholders in the case of a corporation.

~~42.~~ 45. "Ownership interests" means:

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

b. Shares in the case of a corporation.

~~43.~~ 46. "Parent" of a specified limited liability company means a limited liability company ~~or~~, a foreign limited liability company, a corporation, or a foreign corporation that directly or indirectly, through related organizations, owns more than fifty percent of the voting power of the membership interests entitled to vote for governors of the specified limited liability company.

~~44.~~ 47. "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.

~~45.~~ 48. "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.

~~46.~~ 49. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~47.~~ 50. "Registered office" means the place in this state designated in ~~the~~ a limited liability company's articles of organization or a foreign limited liability company's certificate of authority as the registered office ~~of the limited liability company~~.

~~48.~~ 51. "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.

~~49.~~ 52. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

~~50.~~ 53. "Required records" are those records required to be maintained under section 10-32-51.

~~51.~~ 54. "Security" has the meaning given in section 10-04-02.

~~52.~~ 55. "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.

~~53.~~ 56. "Signed" means:

a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09.

b. With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state, that:

(1) The ~~document~~ record has been signed by a person authorized to do so by this chapter, the articles of organization, a member-control agreement, or the bylaws or a resolution approved by the governors as required by section 10-32-83 or the members as required by section 10-32-42; and

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

~~54.~~ 57. "Subsidiary" of a specified limited liability company means:

a. A limited liability company or a foreign limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly or indirectly through related organizations by the specified limited liability company; or

b. A domestic corporation or a foreign corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly through related organizations by the specified limited liability company.

~~55.~~ 58. "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.

~~56.~~ 59. "Surviving organization" means the ~~foreign~~ limited liability company or ~~domestic~~ foreign limited liability company or domestic or foreign corporation resulting from a merger which:

a. May preexist the merger; or

b. May be created by the merger.

~~57.~~ 60. "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. 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.

~~58.~~ 61. "Vote" includes authorization by written action.

~~59.~~ 62. "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on business, except to the extent necessary for concluding affairs, and disposing of assets under section 10-32-131.

~~60.~~ 63. "Written action" means:

a. A written ~~document~~ record signed by every person required to take the action described; and

b. The counterparts of a written ~~document~~ record signed by any person taking the action described.

(1) Each counterpart constitutes the action of the persons signing it; and

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

SECTION 48. Section 10-32-02.2 of the North Dakota Century Code is created and enacted as follows:

10-32-02.2. Knowledge and notice.

1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:
   a. Knows of the fact;
   b. Has received notice of the fact as provided in subsection 42 of section 10-32-02;
   c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or
   d. Has notice of it under subsection 3.
3. Subject to subsection 8, a person has notice of:
   a. The intention of a limited liability company to dissolve, ninety days after the effective date of the filed notice of dissolution;
   b. The dissolution of a limited liability company, ninety days after the effective date of the filed articles of dissolution;
   c. The conversion of a limited liability company, ninety days after the effective date of the filed articles of conversion; or
   d. The merger of the limited liability company, ninety days after the effective date of the filed articles of merger.
4. A person notifies or gives a notification to another person by taking the steps provided in subsection 42 of section 10-32-03, whether or not the other person learns of it.
5. A person receives a notification as provided in subsection 42 of section 10-32-02.
6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection 42 of section 10-32-02, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.

a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.

b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

7. Knowledge, notice, or receipt of a notification of a fact relating to the limited liability company by a manager or governor is effective immediately as knowledge of, notice to, or receipt of a notification by the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of the manager or governor. Knowledge, notice, or receipt of a notification of a fact relating to the limited liability company by a manager or governor is not effective as knowledge by, notice to, or receipt of a notification by the limited liability company.

8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a limited liability company unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.

9. With respect to notice given by a form of electronic communication:

a. Consent by a manager or governor to notice given by electronic communication may be given in writing or by authenticated electronic communication. The limited liability company is entitled to rely on any consent so given until revoked by the manager or governor. However, no revocation affects the validity of any notice given before receipt by the limited liability company of revocation of the consent.

b. An affidavit of a manager or governor or authorized agent of the limited liability company that the notice has been given by a form of electronic

communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

SECTION 49. AMENDMENT. Subsections 2 and 4 of section 10-32-07 of the North Dakota Century Code are amended and reenacted as follows:

2. The following provisions govern a limited liability company unless modified in the articles of organization or a member-control agreement under section 10-32-50:
   a. A limited liability company has general business purposes as provided in section 10-32-04;
   b. A limited liability company has certain powers as provided in section 10-32-23;
   c. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in subsection 2 of section 10-32-68;
   d. A limited liability company must allow cumulative voting for governors as provided in section 10-32-76;
   e. The affirmative vote of the greater of a majority of governors present or a majority of the minimum number of governors constituting a quorum is required for an action of the board as provided in section 10-32-83;
   f. A written action by the board taken without a meeting must be signed by all governors as provided in section 10-32-84;
   g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements as provided in subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59;
   h. All membership interests are ordinary membership interests entitled to vote and are of one class with no series as provided in subdivisions a and b of subsection 5 of section 10-32-56;
   i. All membership interests have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivision b of subsection 5 of section 10-32-56;
   j. The value of previous contributions must be restated when a new contribution is accepted as provided in subsections 3 and 4 of section 10-32-57;

k. A member has certain preemptive rights, unless otherwise provided by the board as provided in section 10-32-37;

l. The affirmative vote of the greater of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting or a majority of the voting power of the membership interests with voting rights constituting the minimum voting power needed for a quorum for the transaction of business is required for an action of the members, except ~~if~~ when this chapter requires the affirmative vote of ~~a~~:

(1) A plurality of the votes cast as provided in subsection 1 of section 10-32-76; or

(2) A majority of the voting power of all membership interests entitled, to vote as provided in subsection 1 of section 10-32-42;

m. The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members as provided in section 10-32-40.1;

n. Members share in distributions in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-60;

o. Members share profits and losses in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-36;

p. A written action by the members taken without a meeting must be signed by all members as provided in section 10-32-43;

q. Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind as provided in section 10-32-62;

r. A member is not subject to expulsion as provided in subsection 2 of section 10-32-30;

s. Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32;

t. For a limited liability company whose existence begins before July 1, 1999, unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109;

u. The termination of a person's membership interest has specified consequences as provided in section 10-32-30; and

v. Restrictions apply to the assignment of governance rights as provided in section 10-32-32.

4. The provisions in subdivisions a, g, o, p, and r may be included in the articles of organization or a member-control agreement under section 10-32-50. The provisions in subdivisions b through f, h, i, j, k, l, m, n, and q may be included in the articles of organization, in a member-control agreement under section 10-32-50, or, in the bylaws:

a. The persons to serve as the first board may be named in the articles of organization as provided in subsection 1 of section 10-32-69;

b. A manner for increasing or decreasing the number of governors may be provided as provided in section 10-32-70;

c. Additional qualifications for governors may be imposed as provided in section 10-32-71;

d. Governors may be classified as provided in section 10-32-75;

e. The date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-32-80;

f. Absent governors may be permitted to give written consent or opposition to a proposal as provided in section 10-32-81;

g. A larger than majority vote may be required for board action as provided in section 10-32-83;

h. Authority to sign and deliver certain ~~documents~~ records may be delegated to a manager or agent of the limited liability company other than the president as provided in section 10-32-89;

i. Additional managers may be designated as provided in section 10-32-88;

j. Additional powers, rights, duties, and responsibilities may be given to managers as provided in section 10-32-89;

k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-32-94;

l. The date, time, and place of regular member meetings may be fixed as provided in subsection 3 of section 10-32-38;

m. Certain persons may be authorized to call special meetings of members as provided in subsection 1 of section 10-32-39;

n. Notices of member meetings may be required to contain certain information as provided in subsection 3 of section 10-32-40;

o. A larger than majority vote may be required for member action as provided in section 10-32-42;

p. Voting rights may be granted in or pursuant to the articles of organization to persons who are not members as provided in subsection 3 of section 10-32-40.1;

q. Limited liability company actions giving rise to 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 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.

SECTION 50. AMENDMENT. Section 10-32-10 of the North Dakota Century Code is amended and reenacted as follows:

10-32-10. Limited liability company name.

1. The limited liability company name:

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

b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state;

c. ~~May not contain a word or phrase that indicates or implies that it may not be organized under this chapter;~~

~~d.~~ May not contain the word "corporation", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words;

~~e.~~ d. May not contain a word or phrase that indicates or implies that ~~it is~~ the limited liability company:

(1) Is organized for a purpose other than ~~a legal~~:

(a) A lawful business purpose for which a limited liability company may be organized under this chapter; ~~and~~ or

(b) For a purpose stated in its articles of organization; or

(2) May not be organized under this chapter; and

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

(1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a ~~document~~ record which complies with subsection 3, of:

(a) Another limited liability company;

(b) A corporation;

(c) A limited partnership;

(d) A limited liability partnership; or

(e) A limited liability limited partnership;

(2) A name, the right of which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, ~~45-10.1-03~~ 45-10.2-11, 45-13-04.2, or 45-22-05;

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

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

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

3. If the secretary of state determines that a limited liability company name is deceptively similar to another name for purposes of this chapter, then the limited liability company name may not be used unless there is filed with the articles:

a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or

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

~~This subsection does not affect the right of a domestic limited liability company existing on July 1, 1993, or a foreign limited liability company authorized to do business in this state on July 1, 1993, to continue the use of its name.~~

4. This section and section 10-32-11 do not:

a. Abrogate or limit:

(1) The law of unfair competition or unfair practices;

(2) Chapter 47-25;

(3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or

(4) Any other rights to the exclusive use of names or symbols.

b. Derogate the common law or the principles of equity.

5. A limited liability company that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the organization whose name is sought to be used:

a. Was organized, incorporated, formed or registered under the laws of this state;

b. Is authorized to transact business or conduct activities in this state;

c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, ~~45-10.1-03~~ <u>45-10.2-11, 45-13-04.2</u>, or 45-22-05;

d. Holds a fictitious name registered in the manner provided in chapter 45-11; or

e. Holds a trade name registered in the manner provided in chapter 47-25.

6. The use of a name by a limited liability company in violation of this section does not affect or vitiate its limited liability company existence. However, a court in this

state may, upon application of the state or of an interested or affected person, enjoin the limited liability company from doing business under a name assumed in violation of this section, although its articles of organization may have been filed with the secretary of state and a certificate of organization issued.

7. A limited liability company whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-32-149 may reacquire the right to use that name by refiling articles of organization pursuant to section 10-32-20, ~~amending pursuant to section 10-32-130.1, or reinstating pursuant to section 10-32-149,~~ unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A limited liability company that cannot reacquire the use of its limited liability company name shall adopt a new limited liability company name which complies with the provisions of this section:

   a. By refiling the articles of organization pursuant to section 10-32-07;

   b. By amending pursuant to section 10-32-18; or

   c. By restating pursuant to section 10-32-149.

8. Subject to section 10-32-136, this section applies to any foreign limited liability company transacting business in this state, having a certificate of authority to transact business in this state or applying for a certificate of authority.

SECTION 51. AMENDMENT. Subsection 2 of section 10-32-12 of the North Dakota Century Code is amended and reenacted as follows:

2. A limited liability company shall appoint and continuously maintain a registered agent. The registered agent may be an individual residing in this state, a ~~domestic~~ corporation or a ~~domestic~~ limited liability company, or a foreign corporation or foreign limited liability company authorized to transact business in this state. The registered agent must maintain a business office that is identical with the registered office. Proof of the registered agent's consent to serve in such capacity must be filed with the secretary of state, together with the fees provided in section 10-32-150.

SECTION 52. AMENDMENT. Subsection 4 of section 10-32-13 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 53. AMENDMENT. Section 10-32-17 of the North Dakota Century Code is amended and reenacted as follows:

10-32-17. Class or series voting on amendments. The owners of the outstanding membership interests of a class or series are entitled to vote as a class or series upon a proposed amendment 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, or effect a combination of outstanding membership interests of a class or series into a lesser number of membership interests of the class or series where each other class or series is not subject to a similar combination;
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.~~ 5. 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 to do so;

~~7.~~ 6. Limit or deny any existing preemptive rights of the membership interests of the class or series; or

~~8.~~ 7. Cancel or otherwise affect distributions on the membership interests of the class or series.

SECTION 54. AMENDMENT. Section 10-32-20 of the North Dakota Century Code is amended and reenacted as follows:

10-32-20. Filing of 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 section 10-32-150, then the articles of amendment must be recorded in the office of the secretary of state. A limited liability company that amends its name and which is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the limited liability company's name in each registration when the limited liability company files an amendment.

SECTION 55. AMENDMENT. Section 10-32-24 of the North Dakota Century Code is amended and reenacted as follows:

10-32-24. Limited liability company seal. A limited liability company may have a limited liability company seal. The use or nonuse of a limited liability company seal does not affect the validity, recordability, or enforceability of a ~~document~~ record or act. If a limited liability company has a limited liability company seal, the use of the seal by the limited liability company on a ~~document~~ record is not necessary.

SECTION 56. AMENDMENT. Section 10-32-42 of the North Dakota Century Code is amended and reenacted as follows:

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

1. ~~The~~ Unless this chapter or the articles or a member-control agreement require a larger proportion or voting by class and except for the election of governors which is governed by section 10-32-76, the members shall take action by the affirmative vote of the owners of the greater of ~~a~~:
   a. A majority of the voting power of the membership interests present and entitled to vote on that item of business; or ~~a~~
   b. 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, then the articles or member-control agreement control.
2. In any case when a class or series of membership interests is entitled by this chapter, the articles of organization, 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. Unless otherwise stated in the articles, a member-control agreement or the bylaws in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 10-32-44.
3. Unless otherwise provided in the articles of organization, a member-control agreement, or the bylaws, members may take action at a meeting by ~~voice~~:
   a. Voice or ballot~~, action~~;
   b. Action without a meeting pursuant to section 10-32-43~~, written ballot~~;
   c. Ballot pursuant to section 10-32-43.1~~,~~; or ~~by electronic~~
   d. Remote communication pursuant to section 10-32-43.2.

SECTION 57. AMENDMENT. Subsection 1 of section 10-32-43 of the North Dakota Century Code is amended and reenacted as follows:

1. If the articles or a member-control agreement so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present. <u>After the adoption of the initial articles or the first making of a member-control agreement, an amendment to the articles or to a member-control agreement to permit written action to be taken by less than all members requires the approval of all the members entitled to vote on the amendment.</u>

SECTION 58. AMENDMENT. Section 10-32-43.1 of the North Dakota Century Code is amended and reenacted as follows:

10-32-43.1. ~~Action~~ <u>Member action</u> by ~~written~~ ballot.

1. Except as provided in subsection 5, and unless prohibited or limited by the articles or 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 the bylaws, a written ballot may not be revoked.

6. With respect to a ballot by electronic communication:

a. A limited liability company may deliver a ballot by electronic communication only if the limited liability company complies with subsection 4 of section 10-32-43.2 as if the ballot were a notice.

b. Consent by a member to receive notice by electronic communication in a certain manner constitutes consent to receive a ballot by electronic communication in the same manner.

SECTION 59. AMENDMENT. Subsection 2 of section 10-32-51 of the North Dakota Century Code is amended and reenacted as follows:

2. A member of a limited liability company has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the limited liability company shall make available within ten days after receipt by a manager of the limited liability company of the written demand, all ~~documents~~ records referred to in subsection 1.

SECTION 60. AMENDMENT. Section 10-32-53 of the North Dakota Century Code is amended and reenacted as follows:

10-32-53. Actions by members. No action may be brought in this state for violations of this chapter by a member in the right of a ~~domestic~~ limited liability company or foreign limited liability company unless the plaintiff is a member at the time of the transaction of which the plaintiff complains, or the plaintiff's membership interests thereafter devolved upon the plaintiff by operation of law from a person who was a member at such time.

1. In any action thereafter instituted in the right of any ~~domestic~~ limited liability company or foreign limited liability company by the member, the court having jurisdiction, upon final judgment and finding that the action was brought without reasonable cause, may require the plaintiff to pay the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in defense of such action.

2. In any action now pending or hereafter instituted or maintained in the right of any ~~domestic~~ limited liability company or foreign limited liability company by the owner of less than five percent of the membership interests, unless the membership interest of such owner has a market value in excess of twenty-five thousand dollars, the limited liability company in whose right such action is brought is entitled at any time before final judgment to require the plaintiff to give security for the reasonable expenses, including attorney's fees, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable.
   a. Market value must be determined on the date the plaintiff institutes the action or, in the case of an intervenor, on the date the intervenor becomes a party to the action.
   b. The amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive.
   c. The limited liability company has recourse to such security in such amount as the court having jurisdiction determines upon the termination of the action, whether or not the court finds the action was brought without reasonable cause.

SECTION 61. AMENDMENT. Section 10-32-54 of the North Dakota Century Code is amended and reenacted as follows:

10-32-54. Rights of dissenting members.

1. Subject to a member-control agreement under section 10-32-50, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:
   a. ~~An~~ Unless otherwise provided in the articles, an amendment of the articles of organization, 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; <u>or</u>

<u>(7) Eliminates the right to obtain payment under this subdivision;</u>

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~~ <u>that requires</u> member approval under <u>subsection 2 of</u> section 10-32-108, ~~a~~ <u>but not including:</u>

<u>(1) A</u> disposition in dissolution described in subsection 4 of section 10-32-113~~, a~~<u>;</u>

<u>(2) A</u> disposition pursuant to an order of a court~~,~~<u>;</u> or ~~a~~

<u>(3) A</u> 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 the member's respective membership interests within one year after the date of disposition;

c. A plan of merger to which the limited liability company is a constituent organization;

d. A plan of exchange to which the limited liability company is a constituent organization 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. A plan of conversion adopted by the limited liability company; or

f. 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 bylaws, or a resolution approved by the board directs that dissenting members may obtain payment for the dissenting members' membership interests.

2. A member may not assert dissenters' rights as to less than all the membership interests registered in the name of the member, unless the member dissents with respect to all the membership interests that are beneficially owned by another person but registered in the name of the member and discloses the name and address of each beneficial owner on which behalf the member dissents. In that event, the rights of the dissenter must be determined as if the membership interests to which the member has dissented and the other membership interests were registered in the names of different members. The beneficial owner of membership interests who is not the member may assert dissenters' rights with respect to membership interests held on behalf of the beneficial owner, and must be treated as a dissenting member under the terms of this section and section 10-32-55, if the beneficial owner submits to the limited liability company at the time of or before the assertion of the rights a written consent of the member.

3. Unless the articles, the bylaws, a member-control agreement, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the members of:

a. The surviving limited liability company in a merger with respect to membership interests of the members are not entitled to be voted on the merger and are not canceled or exchanged in the merger; or

b. The limited liability company whose membership interests will be acquired by the acquiring limited liability company in a plan of exchange with respect to membership interests of the members that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.

4. 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.~~ 5. 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 62. AMENDMENT. Subsections 3 and 4 of section 10-32-55 of the North Dakota Century Code are amended and reenacted as follows:

3. If the proposed action must be approved by the members and the limited liability company calls a meeting of members, then a member who is entitled to dissent under section 10-32-54 and who wishes to exercise dissenters' rights 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 may not vote the membership interests in favor of the proposed action.

4. After the proposed action is approved by the board and, if necessary, the members, the limited liability company shall send to all members who complied with subsection 3, and all members who did not sign or consent to a written action that gave effect to the action creating the right to obtain payment under section 10-32-54 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.

SECTION 63. AMENDMENT. Section 10-32-56 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Subject to any restrictions in the articles of organization or a member-control agreement and only when authorized by the board 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. Subject to subsection 3, a person may make a contribution to a limited liability company.
3. No purported contribution is to be treated or considered as a contribution, unless:
   a. The board 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 as to the amount or fair value or the fairness to the limited liability company of the contribution accepted or to be accepted by the limited liability company or the terms of payment or performance, including under a contribution agreement in section 10-32-58, and a contribution allowance agreement in section 10-32-59, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Governors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the limited liability company, or overvalue property or services received or to be received by the limited liability company as a contribution, are jointly and severally liable to the limited liability company for the benefit of the then members who did not consent to and are damaged by the action, to the extent of the damages of those members. A governor against whom a claim is asserted pursuant to this subsection, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other governors who are liable under this subsection.
5. All the membership interests of a limited liability company must:

a. Be of one class, without series, unless a member-control agreement or the articles of organization establish, or authorize the board to establish, more than one class or series within classes;

b. Be ordinary membership interests entitled to vote as provided in section 10-32-40.1, and have equal rights and preferences in all matters not otherwise provided for by the board unless and to the extent the articles of organization 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.

~~7.~~ a. A statement 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.

b. 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.~~ 7. 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;

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 64. AMENDMENT. Section 10-32-76 of the North Dakota Century Code is amended and reenacted as follows:

10-32-76. ~~Cumulative voting~~ Voting for governors and cumulative voting.

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

2. 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 member's 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.~~ 3. An amendment to the articles, a member-control agreement, or 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 under cumulative voting are cast against the amendment.

SECTION 65. AMENDMENT. Subsections 3 and 5 of section 10-32-80 of the North Dakota Century Code are amended and reenacted as follows:

3. Unless the articles of organization, a member-control agreement, or 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.

   a. The notice need not state the purpose of the meeting unless the articles, a member-control agreement, or the bylaws otherwise require.

   b. Any notice to a governor given under any provision of this chapter, the articles, a member-control agreement, or the bylaws by a form of electronic communication consented to by the governor to whom the notice is given is effective when given.

   c. Consent by a governor to notice given by electronic communication may be given in writing or by authenticated electronic communication.

      (1) Any consent so given may be relied upon until revoked by the governor.

      (2) However, no revocation affects the validity of any notice given before receipt of revocation of the consent.

5. A governor may waive notice of a meeting of the board. 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, by authenticated electronic communication, or by attendance. Attendance by a governor at a meeting is a waiver of notice of that meeting, except when 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 66. AMENDMENT. Section 10-32-91 of the North Dakota Century Code is amended and reenacted as follows:

10-32-91. Multiple managerial positions. Any number of managerial positions or functions of those positions may be held or exercised by the same individual. If a ~~document~~ record must be signed by individuals holding different positions or functions and an individual holds or exercises more than one of those positions or functions, that individual may sign the ~~document~~ record in more than one capacity, but only if the ~~document~~ record indicates each capacity in which the individual signs.

SECTION 67. AMENDMENT. Subsection 1 of section 10-32-99 of the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:
   a. "Limited liability company" includes a ~~domestic~~ limited liability company 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, 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, employee, or agent whose indemnification is in issue.

SECTION 68. AMENDMENT. Subsections 1 and 2 of section 10-32-100 of the North Dakota Century Code are amended and reenacted as follows:

1. With or without a business purpose, a limited liability company may merge:

   a. With another limited liability company pursuant to a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-106.

   b. With a ~~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 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.

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.

SECTION 69. AMENDMENT. Subsections 1 and 5 of section 10-32-102 of the North Dakota Century Code are amended and reenacted as follows:

1. A resolution containing the plan of merger or exchange must be approved by 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. The plan of merger or exchange may require that it be submitted to the owners whether or not the governing board determines at any time after the governing board's initial approval of the plan that the plan is no longer advisable and recommends that the owners reject it. If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange pursuant to this subsection, written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders in the case of a ~~domestic~~ corporation and 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.

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 70. AMENDMENT. Subsection 2 of section 10-32-106 of the North Dakota Century Code is amended and reenacted as follows:

2. When a merger becomes effective:

a. The constituent organizations become a single entity, the surviving corporation, or surviving limited liability company;

b. The separate existence of all constituent organizations except the surviving constituent organization ceases;

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

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

(1) If the surviving organization is a limited liability company, the surviving limited liability company has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a limited liability company organized under this chapter; and

(2) If the surviving organization is a ~~domestic~~ corporation, the surviving ~~domestic~~ corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a ~~domestic~~ corporation;

e. The surviving constituent organization, whether a limited liability company or a domestic or foreign corporation, possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations.

(1) All property, real, personal, and mixed, and all debts due on any account, including subscriptions to shares and contribution agreements, as the case may be, and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving constituent organization without any further act or deed.

(2) Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by its current officers or managers, as the case may be, or, if the organization no longer exists, by its last officers or managers, as the case may be.

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

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

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

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

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

SECTION 71. Section 10-32-106.1 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 72. AMENDMENT. Subsections 1 and 4 of section 10-32-107 of the North Dakota Century Code are amended and reenacted as follows:

1. A limited liability company may merge with<u>, including a merger pursuant to section 10-32-104,</u> 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 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 of which the ownership interests will be acquired is a limited liability company or a ~~domestic~~ corporation, regardless of whether the exchange is permitted by the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized.

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

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

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

c. An agreement that the surviving organization promptly will 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 the dissenting owners are entitled under section 10-19.1-88 or 10-32-55.

SECTION 73. AMENDMENT. Subsection 2 of section 10-32-108 of the North Dakota Century Code is amended and reenacted as follows:

2. <u>With respect to member approval:</u>

<u>a.</u> A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its goodwill, not in the usual and

regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote.

(1) Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting.

(2) The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company.

b. Member approval is not required under subdivision a if, following the sale, lease, transfer, or other disposition of its property and assets, the limited liability company retains a significant continuing business activity. The limited liability company will conclusively be deemed to have retained a significant continuing business activity if the limited liability company retains a business activity that represented at least:

(1) Twenty-five percent of the limited liability company's total assets at the end of the most recently completed fiscal year; and

(2) Twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, measured on a consolidated basis with its subsidiaries for paragraph 1 and this paragraph.

SECTION 74. Section 10-32-108.1 of the North Dakota Century Code is created and enacted as follows:

10-32-108.1. Conversion.

1. An organization other than a limited liability company may convert to a limited liability company, and a limited liability company may convert to another organization other than a general partnership as provided in this section and sections 10-32-108.2 through 10-32-108.6 and a plan of conversion, if:

a. The governing statute of the other organization authorizes the conversion;

b. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and

c. The other organization complies with its governing statute in effecting the conversion.

2. For the purposes of sections 10-32-108.1 through 10-32-108.6, unless the context otherwise requires:

a. "Act of the board" means action by the board as provided in section 10-32-83 whether:

(1) At a meeting of the board as provided in section 10-32-80; or

(2) By a written action of the board as provided in section 10-32-84.

b. "Act of the members" means action by the members as provided in section 10-32-42 whether:

(1) At a meeting of the members as provided in sections 10-32-38 and 10-32-39; or

(2) By a written action of the members as provided in section 10-32-43.

c. "Certificate of creation" means:

(1) A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under chapter 10-19.1;

(2) A certificate of organization, if the converted organization is a limited liability company deemed to be organized under this chapter;

(3) A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under chapter 45-10.2;

(4) The filed registration of a limited liability partnership, if the converted organization is a limited liability partnership deemed to be established under chapter 45-22; or

(5) A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.

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

(1) A corporation which is:

(a) The converting organization was incorporated; or

(b) The converted organization is deemed to be incorporated;

(2) A limited liability company which is:

(a) The converting organization was organized; or

(b) The converted organization is deemed to be organized;

(3) A general partnership that is the converting organization was formed;

(4) A limited partnership which is:

(a) The converting organization was formed; or

(b) The converted organization is deemed to be formed;

(5) A limited liability partnership which is:

(a) The converting organization was formed; or

(b) The converted organization is deemed to be formed; and

(6) A limited liability limited partnership which is:

(a) The converting organization was formed; or

(b) The converted organization is deemed to be formed.

e. "Filed registration" means the registration of a limited liability partnership which has been filed with the secretary of state.

f. "General partnership" means an organization formed by two or more persons under chapters 45-13 through 45-21.

g. "Organizational records" means for an organization that is:

(1) A corporation, its articles of incorporation and bylaws;

(2) A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;

(3) A limited partnership, its partnership agreement;

(4) A limited liability partnership, its partnership agreement; or

(5) A limited liability limited partnership, its partnership agreement.

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

(1) A corporation, its articles of incorporation;

(2) A limited liability company, its articles of organization;

(3) A limited partnership, its certificate of limited partnership;

(4) A limited liability partnership, its registration; or

(5) A limited liability limited partnership, its certificate of limited liability limited partnership.

SECTION 75. Section 10-32-108.2 of the North Dakota Century Code is created and enacted as follows:

10-32-108.2. Plan of conversion. A plan of conversion must be in a record and must contain:

1. The name and form of the converting organization before conversion;
2. The name and form of the converted organization after conversion;
3. The terms and conditions of the proposed conversion;
4. The manner and basis of converting each ownership interest in the converting organization into ownership interests in the converted organization or, in whole or in part, into money or other property;
5. The organizational records of the converted organization; and
6. Any other provisions with respect to the proposed conversion that are deemed necessary or desirable.

SECTION 76. Section 10-32-108.3 of the North Dakota Century Code is created and enacted as follows:

10-32-108.3. Plan approval and amendment.

1. If the converting organization is a limited liability company, then:
   a. A resolution containing or amending the plan of conversion must be approved by an act of the board of the converting limited liability company and must then be approved by an act of its members.
      (1) In the action by the members, a class or series of membership interests is entitled to vote as a class or series on the approval or amendment of the plan.
      (2) Any amendment of the plan is subject to any contractual rights.
   b. If the resolution containing or amending the plan of conversion is approved by the members:
      (1) At a member meeting, then:
         (a) Written notice must be given to every member of the converting limited liability company, whether or not entitled to vote at the

meeting, not less than fourteen days nor more than fifty days before the meeting, in the manner provided in section 10-32-40.

(b) The written notice must state that a purpose of the meeting is to consider the proposed plan of conversion or an amendment to it.

(c) A copy or short description of the plan of conversion or the amendment to it must be included in or enclosed with the notice.

(2) By a written action of the members, then a copy or short description of the plan of conversion or the amendment to it must be included in or attached to the written action.

2. If the converting organization is not a limited liability company, then the approval and amendment of the plan of conversion must comply with its governing statute in effecting the conversion.

SECTION 77. Section 10-32-108.4 of the North Dakota Century Code is created and enacted as follows:

10-32-108.4. Articles of conversion.

1. Upon receiving the approval required by section 10-32-108.3, articles of conversion must be prepared in a record that must contain:

a. A statement that the converting organization is being converted into another organization including:

(1) The name of the converting organization immediately before the filing of the articles of conversion;

(2) The name to which the name of the converting organization is to be changed, which must be a name that satisfies the laws applicable to the converted organization;

(3) The form of organization that the converted organization will be; and

(4) The jurisdiction of the governing statute of the converted organization;

b. A statement that the plan of conversion has been approved by the converting organization as provided in section 10-32-108.3;

c. A statement that the plan of conversion has been approved as required by the governing statute of the converted organization;

d. The plan of conversion without organizational records;

e. A copy of the originating record of the converted organization; and

f. If the converted organization is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office which the secretary of state may use for the purposes of subsection 4 of section 10-32-108.6.

2. The articles of conversion must be signed on behalf of the converting organization and filed with the secretary of state.

a. If the converted organization is a domestic organization:

(1) Then the filing of the articles of conversion must also include the filing with the secretary of state of the originating record of the converted organization.

(2) Upon both the articles of conversion and the originating record of the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of creation to the converted organization or its legal representative.

b. If the converted organization is a foreign organization:

(1) That is transacting business or conducting activities in this state, then:

(a) The filing of the articles of conversion must include the filing with the secretary of state of an application for a certificate of authority by the converted organization.

(b) Upon both the articles of conversion and the application for a certificate of authority by the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of authority to the converted organization or the legal representative.

(2) That is not transacting business or conducting activities in this state, then, upon the articles of conversion being filed with the secretary of state, the secretary of state shall issue a certificate of conversion to the converted organization or its legal representative.

3. A converting organization that 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 a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

SECTION 78. Section 10-32-108.5 of the North Dakota Century Code is created and enacted as follows:

10-32-108.5. Abandonment of conversion.

1. If the articles of conversion have not been filed with the secretary of state, and:
   a. If the converting organization is a limited liability company, then:
      (1) Before a plan of conversion has been approved by the converting limited liability company as provided in section 10-32-108.3, it may be abandoned by an act of its board.
      (2) After a plan of conversion has been approved by the converting limited liability company as provided in section 10-32-108.3, and before the effective date of the plan, it may be abandoned:
         (a) If the members of the converting limited liability company entitled to vote on the approval of the plan as provided in section 10-32-108.3 have approved the abandonment by an act of the members; or
         (b) If the plan provides for abandonment and if all conditions for abandonment set forth in the plan are met.
   b. If the converting organization is not a limited liability company, then the abandonment of the plan of conversion must comply with its governing statute.
2. If articles of conversion have been filed with the secretary of state, but have not yet become effective, then the converting organization shall file with the secretary of state articles of abandonment that contain:
   a. The name of the converting organization;
   b. The provision of this section under which the plan is abandoned; and

c. If the plan is abandoned:

(1) By an act of the board under paragraph 1 of subdivision a of subsection 1, or by an act of the members under subparagraph a of paragraph 2 of subdivision a of subsection 1, then the text of the resolution abandoning the plan; or

(2) As provided in the plan under subparagraph b of paragraph 2 of subdivision a of subsection 1, then a statement that the plan provides for abandonment and that all conditions for abandonment set forth in the plan are met.

SECTION 79. Section 10-32-108.6 of the North Dakota Century Code is created and enacted as follows:

10-32-108.6. Effective date of conversion - Effect.

1. A conversion is effective when the filing requirements of subsection 2 of section 10-32-108.4 have been fulfilled or on a later date specified in the articles of conversion.

2. With respect to the effect of conversion on the converting organization and on the converted organization:

a. An organization that has been converted as provided in sections 10-32-108.1 through 10-32-108.6 is for all purposes the same entity that existed before the conversion.

b. Upon a conversion becoming effective:

(1) If the converted organization:

(a) Is a limited liability company, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a limited liability company organized under this chapter; or

(b) Is not a limited liability company, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to the duties and liabilities as provided in its governing statute;

(2) All property owned by the converting organization remains vested in the converted organization;

(3) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(4) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(5) Except as otherwise provided by other law, all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization; and

(6) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

3. When a conversion becomes effective, each ownership interest in the converting organization is deemed to be converted into ownership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan, subject to any dissenters' rights under section 10-32-54.

4. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited liability company, if before the conversion the converting limited liability company was subject to suit in this state on the obligation.

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

SECTION 80. AMENDMENT. Subsection 1 of section 10-32-114 of the North Dakota Century Code is amended and reenacted as follows:

1. If notice to creditors and claimants is given, 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 ~~39~~ 42 of section 10-32-02.

SECTION 81. AMENDMENT. Section 10-32-132 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The registered agent must be an agent of the limited liability company or foreign limited liability company and any nonresident governor upon whom any process, notice, or demand required or permitted by law to be served on the limited liability company, the foreign limited liability company, or a governor may be served.
   a. When a foreign limited liability company transacts business with a certificate of authority, or when the certificate of authority of a foreign limited liability company is suspended or revoked, the secretary of state is an agent of the foreign limited liability company for service of process, notice, or demand.
   b. Acceptance of a governorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
2. A process, notice, or demand required or permitted by law to be served upon a limited liability company or foreign limited liability company may be served ~~either~~:
   a. ~~Upon~~ On the registered agent of the limited liability company or foreign limited liability company;
   b. ~~Upon~~ On a manager of the limited liability company or foreign limited liability company; ~~or~~
   c. ~~Upon~~ On any responsible person found at the registered office or at the principal executive office if located in this state; or
   d. On the secretary of state as provided in this section.
3. If neither the ~~limited liability company's~~ registered agent nor ~~an officer of the limited liability company~~ a responsible person can be found at the registered office or the principal executive office if located in this state, or if a limited liability company or foreign limited liability company fails to maintain a registered agent in this state ~~and a manager of the limited liability company cannot be found at the registered office~~, then the secretary of state is ~~the~~ an agent of the limited liability company or foreign limited liability company upon whom the process, notice, or demand may be served.

a. Service on the secretary of state:

~~a.~~ (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;

~~b.~~ (2) Shall include the return of the sheriff, or the affidavit of a person not a party, verifying that neither the registered agent nor a ~~manager~~ responsible person can be found at the registered office or at the principal executive office; ~~and~~

~~c.~~ (3) Is deemed personal service upon the limited liability company or foreign limited liability company and ~~is~~ must be made by filing with the secretary of state:

~~(1)~~ (a) Three copies of the process, notice, or demand; and

~~(2)~~ (b) The fees provided for in section 10-32-150; and

(4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

b. The secretary of state shall immediately forward, by registered mail, addressed to the limited liability company at its registered office or principal executive office, a copy of the process, notice, or demand. ~~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 limited liability company as provided in this subsection. The court shall determine if service is proper. If a limited liability company has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subsection 2 so long as claims are not finally barred under section 10-32-128. If a limited liability company has been involuntarily dissolved pursuant to section 10-32-149, then service may be made according to subsection 2.

5. ~~A~~ The secretary of state shall maintain a record ~~must be maintained in the office of the secretary of state~~ of ~~all processes, notices~~ every process, notice, and ~~demands~~ demand served upon 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.

~~5.~~ 6. Nothing in this section limits the right of a person to serve any process, notice, or demand required or permitted by law to be served upon a limited liability company or foreign limited liability company in any other manner permitted by law.

SECTION 82. AMENDMENT. Subsection 1 of section 10-32-144 of the North Dakota Century Code is amended and reenacted as follows:

1. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state upon the occurrence of either of these events:
   a. The foreign limited liability company has failed to appoint and maintain a registered agent as required by this chapter, file a report upon any change in the name or business address of the registered agent, or file in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-32-140; or
   b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other ~~document~~ record submitted by the foreign limited liability company pursuant to this chapter.

SECTION 83. AMENDMENT. Section 10-32-148 of the North Dakota Century Code is amended and reenacted as follows:

10-32-148. Service of process on a foreign limited liability company. Service of process on a foreign limited liability company must be as provided in section 10-32-132. ~~When the certificate of authority of a foreign limited liability company is suspended or revoked, the secretary of state is an agent of the foreign limited liability company for service of process, notice, or demand.~~

SECTION 84. AMENDMENT. Subsections 1, 2, 3, 4, and 7 of section 10-32-149 of the North Dakota Century Code are amended and reenacted as follows:

1. Each limited liability company, and each foreign limited liability company authorized to transact business in this state, shall file, within the time ~~prescribed~~ provided by subsection 3, an annual report setting forth:
   a. The name of the limited liability company or foreign limited liability company and the state or country under the laws of which it is organized.

b. The address of the registered office of the limited liability company or foreign limited liability company in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.

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

d. The names and respective addresses of the managers and governors of the limited liability company or foreign limited liability company or the name or names and respective address or addresses of the managing member or members of the limited liability company or foreign limited liability company.

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as ~~prescribed~~ provided in subsection ~~53~~ 56 of section 10-32-02, the articles, the bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the governors or members entitled to vote. If the limited liability company or foreign limited liability company is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited liability company or foreign limited liability company by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.

3. The annual report of a limited liability company or foreign limited liability company must be delivered to the secretary of state before November sixteenth of each year, except that the first annual report of a limited liability company or foreign limited liability company must be delivered before November sixteenth of the year following the calendar year in which the certificate of organization or certificate of authority was issued by the secretary of state.

a. An annual report in a sealed envelope postmarked by the United States postal service before November sixteenth, or an annual report in a sealed packet with a verified shipment date by any other carrier service before November sixteenth, is in compliance with this requirement.

b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.

(1) If the report does not conform, it must be returned to the limited liability company or foreign limited liability company for any necessary corrections.

(2) If the report is filed before the deadlines ~~prescribed~~ provided in this subsection, penalties for the failure to file a report within the time provided do not apply if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

c. The secretary of state may extend the annual filing date of any limited liability company or foreign limited liability company, if a written application for an extension is delivered before November sixteenth.

4. After the date established under subsection 3, the secretary of state shall notify any limited liability company or foreign limited liability company failing to file its annual report that its certificate of organization or certificate of authority is not in good standing and that it may be terminated or revoked pursuant to subsection 5.

a. The secretary of state must mail notice of termination or revocation to the last registered agent at the last registered office of record.

b. If the limited liability company or foreign limited liability company files its annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as ~~prescribed~~ provided by section 10-32-150, the secretary of state will restore its certificate of organization or certificate of authority to good standing.

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

SECTION 85. AMENDMENT. Section 10-32-150 of the North Dakota Century Code is amended and reenacted as follows:

10-32-150. Secretary of state - Fees and charges.

~~1.~~ The secretary of state shall charge and collect for:

~~a.~~ 1. Filing articles of organization and issuing a certificate of organization, one hundred twenty-five dollars.

~~b.~~ 2. Filing articles of amendment, fifty dollars.

3. Filing articles of correction, fifty dollars.

~~c.~~ 4. Filing restated articles of organization, one hundred twenty-five dollars.

5. Filing articles of conversion of a limited liability company, fifty dollars and:

a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or

b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.

6. Filing abandonment of conversion, fifty dollars.

~~d.~~ 7. Filing articles of merger and issuing a certificate of merger, fifty dollars.

~~e.~~ 8. Filing abandonment of merger or exchange, fifty dollars.

~~f.~~ 9. Filing an application to reserve a name, ten dollars.

~~g.~~ 10. Filing a notice of transfer of a reserved name, ten dollars.

~~h.~~ 11. Filing a cancellation of reserved name, ten dollars.

~~i.~~ 12. Filing a consent to use of name, ten dollars.

~~j.~~ 13. Filing a statement of change of address of registered office or change of registered agent or both, ten dollars.

~~k.~~ 14. 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.~~ 15. Filing a registered agent's consent to serve in such capacity, ten dollars.

~~m.~~ 16. Filing a resignation as registered agent, ten dollars.

~~n.~~ 17. Filing a resolution for the establishment of a class or series of membership interest, fifty dollars.

~~o.~~ 18. Filing a notice of dissolution, ten dollars.

~~p.~~ 19. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.

~~q.~~ 20. Filing articles of dissolution and termination, twenty dollars.

~~r.~~ 21. 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.~~ 22. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.

~~t.~~ 23. Filing a certificate of fact stating a merger of a foreign limited liability company holding a certificate of authority to transact business in this state, fifty dollars.

24. Filing a certified statement of conversion of foreign limited liability company, fifty dollars.

~~u.~~ 25. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.

~~v.~~ 26. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars.

a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:

(1) After the date ~~prescribed~~ provided in subsection 3 of section 10-32-149, fifty dollars; and

(2) After the termination of the limited liability company, or the revocation of the certificate of authority of a foreign limited liability company, the reinstatement fee of one hundred twenty-five dollars.

b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-32-149, or the annual report lacks sufficient payment as required by this subsection.

~~w.~~ 27. Filing any process, notice, or demand for service, twenty-five dollars.

~~x.~~ 28. Submitting any ~~document~~ record for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the ~~document~~ record.

~~y.~~ 29. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.

~~2. The secretary of state shall charge and collect for:~~

~~a.~~ 30. Furnishing a copy of any ~~document, instrument~~ record, or paper relating to a limited liability company or a foreign limited liability company~~, one~~:

a. One dollar for every four pages, or fraction thereof; and

b. Five dollars for a search of records.

~~b. A certificate certifying a copy or reciting facts related to a limited liability company or a foreign limited liability company, twenty dollars.~~

31. Furnishing a certificate of good standing, existence, or authorization:

a. Fifteen dollars; and

b. Five dollars for a search of records.

~~c.~~ 32. Each page of any ~~document~~ record or form sent by electronic transmission, one dollar.

SECTION 86. AMENDMENT. Section 10-32-152 of the North Dakota Century Code is amended and reenacted as follows:

10-32-152. Secretary of state - Powers - Enforcement - Appeal.

1. The secretary of state has the power and authority reasonably necessary to efficiently administer this chapter and to perform the duties imposed thereby.

2. The secretary of state may propound to any limited liability company, domestic or foreign, subject to the provisions of this chapter and to any manager or governor thereof, such interrogatories as may be reasonably necessary and proper to ascertain whether such limited liability company has complied with all provisions of this chapter applicable to such limited liability company.

a. Such interrogatories must be answered within thirty days after mailing or within such additional time as must be fixed by the secretary of state. The answers to such interrogatories must be full and complete and must be made in writing and under oath.

b. If such interrogatories be directed:

(1) To an individual, they must be answered by that individual; or

(2) To a limited liability company, they must be answered by the president, vice president, secretary, or assistant secretary of the limited liability company.

c. The secretary of state need not file any ~~document~~ record to which such interrogatories relate until such interrogatories have been answered, and not then if the answers disclose that such ~~document~~ record is not in conformity with the provisions of this chapter.

d. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto, which disclose a violation of any of the provisions of this chapter.

e. Each manager or governor of a limited liability company, domestic or foreign, who fails or refuses within the time provided by subdivision a of subsection 2 to answer truthfully and fully all interrogatories propounded to that person by the secretary of state is guilty of an infraction.

f. Interrogatories propounded by the secretary of state and the answers thereto are not open to public inspection. The secretary of state may not disclose any facts or information obtained from such interrogatories or answers except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.

3. If the secretary of state rejects any ~~document~~ record required by this chapter to be approved by the secretary of state before the same may be filed, then the secretary of state shall give written notice of the rejection to the person who delivered the ~~document~~ record, specifying the reasons for rejection.

a. ~~From such rejection such person~~ Within thirty days after the service of the notice of denial, the limited liability company or foreign limited liability company, as the case may be, may appeal to the district court ~~of the county in which the registered office of such limited liability company is, or is proposed to be, situated~~ in the judicial district serving Burleigh County by filing with the clerk of such court a petition setting forth a copy of the

~~document~~ record sought to be filed and a copy of the written rejection of the ~~document~~ record by the secretary of state.

b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take such action as the court may deem proper.

4. If the secretary of state dissolves a limited liability company or revokes the certificate of authority to transact business in this state of any foreign limited liability company, pursuant to the provisions of section 10-32-144, ~~such~~ then the limited liability company or foreign limited liability company may appeal to district court ~~of the county where the registered office of such limited liability company in this state is situated~~ in the judicial district serving Burleigh County by filing with the clerk of such court a petition ~~setting forth a~~ including:

a. A copy of ~~its~~ the limited liability company's articles of organization and a copy of the notice of dissolution given by the secretary of state; or

b. A copy of the foreign limited liability company's certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state.

The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take such action as the court may deem proper.

5. If the court order sought is one for reinstatement of a limited liability company that has been dissolved as provided in subsection 5 of section 10-32-149, or for reinstatement of the certificate of authority of a foreign limited liability company that has been revoked as provided in subsection 6 of section 10-32-149, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the limited liability company or foreign limited liability company to:

a. File all past-due annual reports;

b. Pay the fees to the secretary of state for each annual report as provided in subsection 26 of section 10-32-150; and

c. Pay the reinstatement fee to the secretary of state as provided in subsection 26 of section 10-32-150.

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

SECTION 87. Section 10-32-152.1 of the North Dakota Century Code is created and enacted as follows:

10-32-152.1. Delivery to and filing of records by secretary of state and effective date.

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person who delivered it to the secretary of state for filing. That person shall then send a copy of the filed record to the person on whose behalf the record was filed.

2. Upon request and payment of a fee provided in section 10-32-150, the secretary of state shall send to the requester a certified copy of the requested record.

3. Except as otherwise specifically provided in this chapter, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:

   a. If the record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.

   b. If the record specifies a delayed effective date within ninety days, then on the specified date.

SECTION 88. Section 10-32-152.2 of the North Dakota Century Code is created and enacted as follows:

10-32-152.2. Correcting a filed record. With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.
2. A statement of correction:
   a. Must:
      (1) Be signed by:
         (a) The person who signed the original record; or
         (b) By a person authorized to sign on behalf of that person;
      (2) Set forth the name of the limited liability company that filed the record;
      (3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;
      (4) Identify the inaccuracy, error, or defect to be corrected; and
      (5) Set forth a statement in corrected form of the portion of the record to be corrected.
   b. May not revoke or nullify the record.
3. The statement of correction must be filed with the secretary of state.
4. With respect to the effective date of correction:
   a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.
   b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:
      (1) On the date the statement of correction was filed:
         (a) As to persons adversely affected by the correction; and
         (b) For the purposes of subsection 3 of section 10-32-02.2; and
      (2) On the date the original record was filed as to all other persons and for all other purposes.

SECTION 89. AMENDMENT. Section 10-32-153 of the North Dakota Century Code is amended and reenacted as follows:

10-32-153. Secretary of state - Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of ~~documents~~ records filed in accordance with this chapter, when certified by the secretary of state, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated.
2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability companies which would not appear from a certified copy of any of the foregoing ~~documents~~ records or certificates, must be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts stated therein.

SECTION 90. AMENDMENT. Section 10-32-153.1 of the North Dakota Century Code is amended and reenacted as follows:

10-32-153.1. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any ~~document~~ record filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any ~~document~~ record is released to the public.

SECTION 91. AMENDMENT. Section 10-32-154 of the North Dakota Century Code is amended and reenacted as follows:

10-32-154. Secretary of state - Forms. All annual reports required by this chapter to be filed in the office of the secretary of state must be made on forms prescribed by the secretary of state. Forms for all other ~~documents~~ records to be filed in the office of the secretary of state may be furnished by the secretary of state upon request. However, the use of such ~~documents~~ forms, unless otherwise specifically required by law, is not mandatory.

SECTION 92. AMENDMENT. Section 10-33-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Activity" or "activities" means, in a corporation organized under this chapter, the functional equivalent of "business" in a corporation organized under chapter 10-19.1.
2. "Address" means:
   a. In the case of a registered office or principal executive office, the mailing address, including a zip code, of the actual office location which may not be only a post-office box; and
   b. In any other case, the mailing address, including a zip code.
3. "Articles" means:
   a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a 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~~ records serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.
4. "Authenticated electronic communication" means:
   a. That the electronic communication is delivered:
      (1) To the principal place of activity of the corporation; or
      (2) To an officer or agent of the corporation authorized by the corporation to receive the electronic communication; and
   b. That the electronic communication sets forth information from which the corporation can reasonably conclude that the electronic communication was sent by the purported sender.
5. "Ballot" means a written ballot or a ballot transmitted by electronic communication.
6. "Board" means the board of directors of a corporation.

~~6.~~ 7. "Board member" means an individual serving on the board.

~~7.~~ 8. "Bylaws" means the code adopted for the regulation or management of the internal affairs of a corporation, regardless of how designated.

~~8.~~ 9. "Corporation" means a corporation, other than a foreign corporation, that is incorporated under or governed by this chapter.

~~9.~~ 10. "Director" means a member of the board.

~~10.~~ 11. "Domestic organization" means an organization created under the laws of this state.

~~11.~~ 12. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

~~12.~~ 13. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:

a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and

b. That may be directly reproduced in paper form by the recipient through an automated process.

~~13.~~ 14. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

~~14.~~ 15. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.

~~15.~~ 16. "Filed with the secretary of state" means except as otherwise permitted by law or rule:

a. That a ~~document~~ record meeting the applicable requirements of this chapter, together with the fees provided in section 10-33-140, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law:

b. That the secretary of state ~~shall~~ did then:

(1) Record the actual date on which the ~~document is~~ record was filed, and if different, the effective date of filing; and

(2) Record the ~~document~~ record in the office of the secretary of state.

~~16.~~ 17. "Foreign corporation" means a corporation that is formed under laws other than the laws of this state for a purpose for which a corporation may be organized under this chapter.

~~17.~~ 18. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.

~~18.~~ 19. "Good faith" means honesty in fact in the conduct of an act or transaction.

~~19.~~ 20. "Intentionally" means the person referred to has a purpose to do or fail to do the act or cause the result specified, or believes the act or failure to act, if successful, will cause that result. A person intentionally violates a statute:

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

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

~~20.~~ 21. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and successive federal revenue acts.

~~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.~~

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

23. "Member" means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.

24. "Members with voting rights" means members or a class of members that has voting rights with respect to the purpose or matter involved.

25. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving pecuniary gain to any officer, director, or member, other than a member that is a nonprofit organization or subdivision, unit, or agency of the United States or a state or local government.

26. "Notice":

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

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

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

(a) ~~If by facsimile~~ <u>Facsimile</u> communication, when directed to a telephone number at which the corporation has consented to receive notice.

(b) ~~If by electronic~~ <u>Electronic</u> mail, when directed to an electronic mail address at which the corporation has consented to receive notice.

(c) ~~If by posting~~ <u>Posting</u> on an electronic network on which the corporation has consented to receive notice, together with separate notice to the corporation of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

(d) ~~If by any~~ <u>Any</u> other form of electronic communication by which the corporation has consented to receive notice, when directed to the corporation.

b. Is given, in all other cases:

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

(2) When handed to the person;

(3) When left at the office of the person with a clerk or other person in charge of the office or:

(a) If there is no one in charge, when left in a conspicuous place in the office; or

(b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing there; or

(4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

(a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the person has consented to receive notice.

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

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

[1] The posting; or

[2] The giving of the separate notice.

(5) When the method is fair and reasonable when all of the circumstances are considered.

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

d. Is deemed received when it is given.

27. "Officer" means an individual who is more than eighteen years of age and who is:

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

b. Considered elected as an officer pursuant to section 10-33-52.

28. "Organization" means:

a. Whether domestic or foreign, a corporation, ~~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~~;~~, limited liability limited partnership~~;~~ ~~joint venture; association;~~, business trust~~; estate; trust; enterprise;~~, or any other ~~legal or commercial entity~~ person having a governing statute; but

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

29. "Principal executive office" means:

a. If the corporation has an elected or appointed president, then an office where the elected or appointed president of the corporation has an office; or

b. If the corporation has no elected or appointed president, then the registered office of the corporation.

30. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

31. "Registered office" means the place in this state designated in ~~the~~ a corporation's articles of incorporation or in a ~~corporation~~ foreign corporation's certificate of authority as the registered office ~~of the corporation~~.

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

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

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

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

33. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by

which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

34. "Signed" means:

a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09; and

b. With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state, that:

(1) The ~~document~~ record is signed by a person authorized to do so by this chapter, the articles, or bylaws, a resolution approved by the directors as required by section 10-33-42, or the members with voting rights, if any, as required by section 10-33-72; and

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

35. "Subsidiary" of a specified corporation means:

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

b. A limited liability company or a foreign limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through organizations, by the specified limited liability company.

36. "Surviving corporation" means the ~~domestic~~ corporation or foreign corporation resulting from a merger which:

a. May preexist the merger; or

b. May be created by the merger.

37. "Vote" includes authorization by written action.

38. "Written action" means:

a. A written ~~document~~ record signed by all of the persons required to take the action; or

b. The counterparts of a written ~~document~~ record signed by any of the persons taking the action.

(1) Each counterpart constitutes the action of the persons signing it; and

(2) All the counterparts are one written action by all of the persons signing them.

SECTION 93. Section 10-33-01.2 of the North Dakota Century Code is created and enacted as follows:

10-33-01.2. Knowledge and notice.

1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.

2. A person has notice of a fact if the person:

a. Knows of the fact;

b. Has received notice of the fact as provided in subsection 18 of section 10-33-01;

c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or

d. Has notice of it under subsection 3.

3. Subject to subsection 8, a person has notice of:

a. The intention of a corporation to dissolve, ninety days after the effective date of the filed notice of intent to dissolve stating that the corporation intends to dissolve;

b. The dissolution of a corporation, ninety days after the effective date of the filed articles of dissolution; and

c. A merger under sections 10-33-86 through 10-33-92, ninety days after the effective date of the filed articles of merger.

4. A person notifies or gives a notification to another person by taking the steps provided in subsection 18 of section 10-33-01, whether or not the other person learns of it.

5. A person receives a notification as provided in subsection 18 of section 10-33-01.

6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection 18 of section 10-33-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.

   a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.

   b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

7. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by an officer or director is effective immediately as knowledge of, notice to, or receipt of a notification by the corporation, except in the case of a fraud on the corporation committed by or with the consent of the officer or director. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by a member who is not an officer or director, is not effective as knowledge by, notice to, or receipt of a notification by the corporation.

8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a corporation unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the statement, amendment, or articles is located.

9. With respect to notice given by a form of electronic communication:

a. Consent by an officer or director to notice given by electronic communication may be given in writing or by authenticated electronic communication. The corporation is entitled to rely on any consent so given until revoked by the officer or director. However, no revocation affects the validity of any notice given before receipt by the corporation of revocation of the consent.

b. An affidavit of an officer or director or an authorized agent of the corporation, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

SECTION 94. AMENDMENT. Subsection 3 of section 10-33-06 of the North Dakota Century Code is amended and reenacted as follows:

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

a. A corporation has a general purpose of engaging in any lawful nonprofit activity as provided in section 10-33-04;

b. A corporation has perpetual existence and certain powers as provided in section 10-33-21;

c. The power to initially adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-33-26;

d. The affirmative vote of a majority of the directors present is required for an action of the board as provided in section 10-33-42;

e. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-33-43; ~~and~~

f. Members are of one class as provided in section 10-33-57; and

g. A written action by the members must be signed by all members as provided in section 10-33-73.

SECTION 95. AMENDMENT. Section 10-33-10 of the North Dakota Century Code is amended and reenacted as follows:

10-33-10. Corporate name.

1. The corporate name:

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

b. Need not contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.

c. ~~May not contain 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.~~ d. May not contain a word or phrase that indicates or implies that ~~it is~~ the corporation:

(1) Is incorporated for a purpose other than ~~a legal~~:

(a) A lawful nonprofit purpose for which a corporation may be incorporated under this chapter; or

(b) For a purpose stated in its articles; or

(2) May not be incorporated under this chapter.

~~f.~~ e. ~~Unless a document in compliance with subsection 2 is filed with the articles, may~~ May not be the same as or deceptively similar to:

(1) The name, whether foreign and authorized to conduct activities in this state or domestic unless there is filed with the articles a record that complies with subsection 2, of:

(a) Another corporation;

(b) A corporation incorporated or authorized to do business in this state under another provision of this code;

(c) A limited liability company;

(d) A limited partnership;

(e) A limited liability partnership; or

(f) A limited liability limited partnership;

(2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, ~~45-10.1-03~~ 45-10.2-11, 45-13-04.2, or 45-22-05;

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

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

2. ~~If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:~~

   ~~a. The written consent of the holder of the rights to the name the proposed name is determined to be deceptively similar to; or~~

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

   ~~This subsection does not affect the right of a domestic corporation existing on August 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.~~

~~3.~~ The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.

3. If the secretary of state determines that a corporate name is "deceptively similar" to another name for purposes of this chapter, then the corporate name may not be used unless there is filed with the articles:

   a. The written consent of the holder of the rights to the name the proposed name is determined to be deceptively similar to; or

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

4. Subsection 3 does not affect the right of a corporation existing on August 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.

~~4.~~ 5. This section and section 10-33-11 do not:

   a. Abrogate or limit:

      (1) The law of unfair competition or unfair practices;

      (2) Chapter 47-25;

      (3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, or service marks; or

      (4) Any other rights to the exclusive use of names or symbols; or

   b. Derogate the common law or the principles of equity.

~~5.~~ 6. A corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:

a. Was incorporated, organized, formed, or registered under the laws of this state~~.~~;

b. Is authorized to conduct activities or transact business in this state;

c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32-11, 10-33-11, ~~45-10.1-03~~ 45-10.2-11, 45-13-04.2, or 45-22-05;

d. Holds a fictitious name registered in the manner provided in chapter 45-11; or

e. Holds a trade name registered in the manner provided in chapter 47-25.

~~6.~~ 7. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from conducting activities under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.

~~7.~~ 8. ~~If a corporation's~~ A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-33-139~~, the corporation~~ may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-33-08~~; amending pursuant to section 10-33-118; or reinstating pursuant to section 10-33-139. If~~ unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A corporation that cannot reacquire the use of its corporate name must adopt a new corporate name that complies with the provisions of this section:

a. By refiling articles of incorporation pursuant to section 10-33-08;

b. By amending pursuant to section 10-33-14; or

c. By reinstating pursuant to section 10-33-139.

9. Subject to section 10-33-126, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

SECTION 96. AMENDMENT. Subsection 2 of section 10-33-12 of the North Dakota Century Code is amended and reenacted as follows:

2. A corporation shall appoint and continuously maintain a registered agent. The registered agent may be an individual residing in this state, ~~a domestic~~ another corporation whether incorporated under this chapter or under another ~~provision~~ chapter of this code, a limited liability company, a foreign corporation whether authorized to do business or conduct activities in the state under this chapter or under another provision of this code, or foreign limited liability company authorized to conduct activities in this state. The registered agent shall maintain a business office that is identical with the registered office. Proof of the registered agent's consent to serve in that capacity must be filed with the secretary of state, together with the fees provided in section 10-33-140.

SECTION 97. AMENDMENT. Subsection 4 of section 10-33-13 of the North Dakota Century Code is amended and reenacted as follows:

4. With respect to fees:

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

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

SECTION 98. AMENDMENT. Section 10-33-18 of the North Dakota Century Code is amended and reenacted as follows:

10-33-18. Filing articles of amendment. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to the filing requirements of this chapter and that all fees have been paid

as provided in section 10-33-140, then the articles of amendment must be recorded in the office of the secretary of state. A corporation that amends the corporate name and which is the owner of a trademark or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the corporation's name in each registration when the corporation files an amendment.

SECTION 99. AMENDMENT. Section 10-33-22 of the North Dakota Century Code is amended and reenacted as follows:

10-33-22. Corporate seal. A corporation may, but need not, have a corporate seal. The use or nonuse of a corporate seal does not affect the validity, recordability, or enforceability of a ~~document~~ record or act. If a corporation has a corporate seal, the use of the seal by the corporation on a ~~document~~ record is not necessary.

SECTION 100. AMENDMENT. Section 10-33-34 of the North Dakota Century Code is amended and reenacted as follows:

10-33-34. Cumulative voting for directors. Unless the articles provide otherwise or except as provided in ~~section 1 of~~ article XII of the Constitution of North Dakota, there is no cumulative voting.

SECTION 101. AMENDMENT. Subsections 3 and 5 of section 10-33-39 of the North Dakota Century Code are amended and reenacted as follows:

3. Unless the articles or bylaws provide for a different time period, a director may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings pursuant to subsection 2 of section 10-33-25, at least three days' notice, to all directors of the date, time, and place of the meeting.
   a. The notice need not state the purpose of the meeting unless the articles or bylaws require it.
   b. Any notice to a director given under any provision of this chapter, the articles, or the bylaws by a form of electronic communication consented to by the director to whom the notice is given is effective when given.
   c. Consent by a director to notice given by electronic communication may be given in writing or by authenticated electronic communication. Any consent

so given may be relied upon until revoked by the director, provided that no revocation affects the validity of any notice given before receipt of revocation of the consent.

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

SECTION 102. AMENDMENT. Section 10-33-47 of the North Dakota Century Code is amended and reenacted as follows:

10-33-47. Immunity of officers, directors, and trustees. Any person who serves as a director, officer, or trustee of a corporation that is, or would qualify as a nonprofit organization that is described in paragraphs 3, 4, 5, 6, 7, 10, and 19 of section ~~501(c)(3)~~ 501(c) of the Internal Revenue Code of 1954, as amended [26 U.S.C. 501(c)(3), (4), (5), (6), (7), (10), and (19)], is immune from civil liability for any act or omission resulting in damage or injury if at the time of the act or omission all of the following are met:

1. The officer, director, or trustee was acting in good faith and in the scope of that person's official duties as a director, officer, or trustee.
2. The act or omission did not constitute willful misconduct or gross negligence on the part of the officer, director, or trustee.
3. The officer, director, or trustee did not receive or expect to receive reimbursement for or payment of expenses in excess of two thousand dollars per year for expenses actually incurred as a result of providing services as a director, officer, or trustee, and did not receive or expect to receive compensation or anything in lieu of compensation as payment for services provided as a director, officer, or trustee.

SECTION 103. AMENDMENT. Section 10-33-51 of the North Dakota Century Code is amended and reenacted as follows:

10-33-51. Multiple offices. Any number of offices or functions of those offices may be held or exercised by the same individual. If a ~~document~~ record must be signed by individuals

holding different offices or functions and an individual holds or exercises more than one of those offices or functions, that individual may sign the ~~document~~ record in more than one capacity, but only if the ~~document~~ record indicates each capacity in which the individual signs.

SECTION 104. AMENDMENT. Section 10-33-72 of the North Dakota Century Code is amended and reenacted as follows:

10-33-72. Act of the members.

1. Unless this chapter or the articles or bylaws require a greater vote or voting by class and except for the election of directors which is governed by section 10-32-34, the members shall take action by the affirmative vote of the greater of:
   a. A majority of the members with voting rights present and entitled to vote on that item of business; or
   b. A majority of the voting power of the minimum number of members with voting rights that would constitute a quorum for the transaction of business at the meeting.

   If the articles or bylaws require a larger proportion or number than is required by this chapter for a particular action, then the articles or bylaws control.
2. Unless otherwise provided in the articles or bylaws, members may take action at a meeting:
   a. By voice or ballot.
   b. By action without a meeting pursuant to section 10-33-73.
   c. By ~~written~~ ballot pursuant to section 10-33-74.
   d. By ~~electronic~~ remote communication pursuant to section 10-33-75.

SECTION 105. AMENDMENT. Section 10-33-73 of the North Dakota Century Code is amended and reenacted as follows:

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

1. If the articles so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who

hold voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.

a. After the adoption of the initial articles, an amendment to the articles to permit written action to be taken by less than all members requires the approval of all members entitled to vote on the amendment.

b. When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date no later than five days after the effective time of the action.

~~b.~~ c. Failure to provide the notice does not invalidate the written action.

~~c.~~ d. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

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

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

SECTION 106. AMENDMENT. Section 10-33-74 of the North Dakota Century Code is amended and reenacted as follows:

10-33-74. ~~Action~~ Shareholder action by ~~written~~ ballot.

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

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

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

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

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

4. Solicitations for votes by ~~written~~ ballot must:
   a. Indicate the number of responses needed to meet the quorum requirements;
   b. State the percentage of approvals necessary to approve each matter other than election of directors; and
   c. Specify the time by which a ballot must be received by the corporation in order to be counted.
5. Except as otherwise provided in the articles or bylaws, a ~~written~~ ballot may not be revoked.
6. With respect to a ballot by electronic communication:
   a. A corporation may deliver a ballot by electronic communication only if the corporation complies with subsection 4 of section 10-33-68 as if the ballot were a notice.
   b. Consent by a member to receive notice by electronic communication in a certain manner constitutes consent to receive a ballot by electronic communication in the same manner.

SECTION 107. AMENDMENT. Subsections 2, 5, and 7 of section 10-33-80 of the North Dakota Century Code are amended and reenacted as follows:

2. A member or a director, or the agent or attorney of a member or a director, may inspect all ~~documents~~ records referred to in subsection 1 or 3 for any proper purpose at any reasonable time. A proper purpose is one reasonably related to the interest of the person as a member or director of the corporation.
5. The corporation may charge the requesting party a reasonable fee to cover the expenses of providing copies of ~~documents~~ records under this section.
7. A member or a director who is wrongfully denied access to or copies of ~~documents~~ records under this section may bring an action for injunctive relief, damages, and costs and reasonable attorney's fees.

SECTION 108. AMENDMENT. Section 10-33-120 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The registered agent must be an agent of the corporation or foreign corporation, and any nonresident director upon whom any process, notice, or demand required or permitted by law to be served on the corporation, the foreign corporation, or a director may be served.
   a. When a foreign corporation transacts business without a certificate of authority, or when the certificate of authority of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notice, or demand.
   b. Acceptance of a directorship includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.
2. A process, notice, or demand required or permitted by law to be served upon a corporation or foreign corporation may be served ~~either upon~~:
   a. On the registered agent of the corporation~~,~~ or ~~upon~~ foreign corporation;
   b. On an officer of the corporation~~,~~ or ~~upon~~ foreign corporation;
   c. On any responsible person found at the registered office or at the principal executive office if located in this state; or
   d. On the secretary of state as provided in this section.
3. If neither the ~~corporation's~~ registered agent nor ~~an officer of the corporation~~ a responsible person 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~~ responsible person cannot be found at the ~~registered~~ principal executive office if located in this state, then the secretary of state is ~~the~~ an agent of the corporation upon whom the process, notice, or demand may be served.
   a. Service on the secretary of state:
      ~~a.~~ (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication;
      ~~b.~~ (2) Shall include the return of the sheriff, or the affidavit of a person who is not a party, verifying that neither the registered agent nor ~~an officer~~ a responsible person can be found at the registered office or at the principal executive office if located in this state; ~~and~~

~~c.~~ (3) Is deemed personal service upon the corporation or foreign corporation and must be made by filing with the secretary of state:

~~(1)~~ (a) Three copies of the process, notice, or demand; and

~~(2)~~ (b) The fees provided in section 10-33-140; and

(4) Is returnable in not less than thirty days notwithstanding a shorter period specified in the process, notice, or demand.

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

4. Process, notice, or demand may be served on a dissolved corporation as provided in this subsection. The court shall determine if service is proper. If a corporation has voluntarily dissolved or a court has entered a decree of dissolution, service may be made according to subsection 2 as long as claims are not finally barred under section 10-33-115. If a corporation has been involuntarily dissolved pursuant to section 10-33-139, service may be made according to subsection 2.

5. ~~A~~ The secretary of state shall maintain a record of ~~all processes, notices, and demands~~ every process, notice, and demand served ~~upon~~ on the secretary of state under this section, including the date of service and the action taken with reference to ~~it, must be maintained in the office of the secretary of state~~ the process, notice, or demand.

6. ~~Nothing in this~~ This section ~~limits~~ does not limit the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation or foreign corporation in any other manner permitted by law.

SECTION 109. AMENDMENT. Subsections 1 and 2 of section 10-33-123 of the North Dakota Century Code are amended and reenacted as follows:

1. When it appears to the attorney general it is in the public interest that an investigation should be made to ascertain whether a proceeding by the attorney general, as provided in this chapter, should be commenced, the attorney general may:

a. Examine under oath any person in connection with the affairs of the corporation.

b. Examine any record, book, ~~document~~ record, account, or paper as the attorney general determines necessary.

c. Pursuant to an order of the district court, impound any record, book, ~~document,~~ account, or paper, and retain it in the attorney general's possession until the completion of all proceedings undertaken under this chapter.

2. To accomplish the objectives and to carry out the duties ~~prescribed~~ provided by this chapter, the attorney general may issue subpoenas to any person.

SECTION 110. AMENDMENT. Subsection 1 of section 10-33-134 of the North Dakota Century Code is amended and reenacted as follows:

1. The certificate of authority of a foreign corporation to conduct activities in this state may be revoked by the secretary of state if:

a. The foreign corporation has failed to:

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

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

(3) File a report upon any change in the address of its registered office;

(4) File a report upon any change in the name or business address of the registered agent; or

(5) File in the office of the secretary of state any amendment to its application for a certificate of authority as specified in section 10-33-130; or

b. A misrepresentation has been made of any material matter in any application, report, affidavit, or other ~~document~~ record submitted by the foreign corporation pursuant to this chapter.

SECTION 111. AMENDMENT. Section 10-33-138 of the North Dakota Century Code is amended and reenacted as follows:

10-33-138. Foreign corporation - Service of process. Service of process on a foreign corporation must be as provided in section 10-33-120. ~~When the certificate of authority~~

~~of a foreign corporation is suspended or revoked, the secretary of state is an agent of the foreign corporation for service of process, notice, or demand.~~

SECTION 112. AMENDMENT. Section 10-33-139 of the North Dakota Century Code is amended and reenacted as follows:

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

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

first of the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state.

a. An annual report in a sealed envelope postmarked by the United States postal service before February first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before February first, complies with this requirement. When the filing date falls on a Saturday or holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day complies with this requirement.

b. The secretary of state must file the report if the report conforms to the requirements of subsection 2.

(1) If the report does not conform, it must be returned to the corporation for any necessary corrections.

(2) If the report is filed before the deadlines ~~prescribed~~ provided in this subsection, penalties for the failure to file a report within the time provided do not apply, if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

c. The secretary of state may extend the annual filing date of any corporation or foreign corporation if a written application for an extension is delivered before February first.

4. After the date established under subsection 3, the secretary of state shall notify any corporation or foreign corporation failing to file its annual report that its certificate of incorporation or certificate of authority is not in good standing and that it may be dissolved or revoked pursuant to subsections 5 and 6. The secretary of state must mail the notice to the last registered agent at the last registered office of record. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as ~~prescribed by~~ provided in section 10-33-140, the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.

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

SECTION 113. AMENDMENT. Section 10-33-140 of the North Dakota Century Code is amended and reenacted as follows:

10-33-140. Secretary of state - Fees and charges.

1. The secretary of state shall charge and collect for:

a. Filing articles of incorporation and issuing a certificate of incorporation, thirty dollars.

b. Filing articles of amendment, twenty dollars.

c. Filing articles of correction, twenty dollars.

d. Filing restated articles of incorporation, thirty dollars.

~~d.~~ e. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifty dollars.

~~e.~~ f. Filing an intent to dissolve, ten dollars.

~~f.~~ g. Filing articles of dissolution, twenty dollars.

~~g.~~ h. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.

~~h.~~ i. Filing a registered agent's consent to serve in that capacity, ten dollars.

~~i.~~ j. Filing a resignation as registered agent, ten dollars.

~~j.~~ k. Filing an application to reserve a corporate name, ten dollars.

~~k.~~ l. Filing a notice of transfer of a reserved corporate name, ten dollars.

~~l.~~ m. Filing a cancellation of reserved corporate name, ten dollars.

~~m.~~ n. Filing a consent to use of a deceptively similar name, ten dollars.

~~n.~~ o. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, forty dollars.

~~o.~~ p. Filing an application of a foreign corporation for an amended certificate of authority, forty dollars.

~~p.~~ q. Filing a certified statement of merger of a foreign corporation holding a certificate of authority to conduct activities in this state, fifty dollars.

~~q.~~ r. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.

~~r.~~ s. Filing an annual report of a domestic or foreign corporation, ten dollars.

(1) The secretary of state shall charge and collect additional fees for late filing of the annual report:

~~(1)~~ (a) After the date ~~prescribed~~ provided in subsection 3 of section 10-33-139, five dollars; and

~~(2)~~ (b) After the dissolution of a corporation, or the revocation of the certificate of authority of a foreign corporation, the reinstatement fee of forty dollars.

(2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-33-139, or the annual report lacks sufficient payment as required by this subdivision.

~~s.~~ t. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this subsection for filing the record.

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

2. The secretary of state shall charge and collect:

a. For furnishing a certified copy of any ~~document~~ record, instrument, or paper relating to a corporation, one dollar for every four pages or fraction thereof and fifteen dollars for the certificate and affixing the seal to the certificate.

b. At the time of any service of process on the secretary of state as resident agent of a corporation, twenty-five dollars, which may be recovered as taxable costs by the party to the claim for relief causing the service to be made if that party prevails in the suit or action.

SECTION 114. AMENDMENT. Section 10-33-141 of the North Dakota Century Code is amended and reenacted as follows:

10-33-141. Secretary of state - Enforcement - Penalty - Appeal.

1. The secretary of state may administer this chapter.

2. The secretary of state may propound to any corporation or foreign corporation that is subject to this chapter and to any officer, director, or employee thereof any interrogatory as may be reasonably necessary and proper to ascertain whether the corporation has complied with this chapter applicable to the corporation.

a. The interrogatory must be answered within thirty days after mailing or within any additional time as must be fixed by the secretary of state. The answers to the interrogatory must be full and complete and must be made in writing and under oath.

b. If the interrogatory is directed:

(1) To an individual, it must be answered by that individual; or

(2) To a corporation, it must be answered by the president, vice president, secretary, or assistant secretary of the corporation.

c. The secretary of state need not file any ~~document~~ record to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose that the ~~document~~ record is not in conformity with this chapter.

d. The secretary of state shall certify to the attorney general, for action the attorney general may deem appropriate, an interrogatory and answers thereto, which discloses a violation of this chapter.

e. Each officer, director, or employee of a corporation or foreign corporation who fails or refuses within the time provided by subdivision a to answer truthfully and fully an interrogatory propounded to that person by the secretary of state is guilty of an infraction.

f. An interrogatory propounded by the secretary of state and the answers are not open to public inspection. The secretary of state may not disclose any facts or information obtained from the interrogatory or answers except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.

3. If the secretary of state rejects any ~~document~~ record required by this chapter to be approved by the secretary of state before the ~~document~~ record may be filed, then the secretary of state shall give written notice of the rejection to the person who delivered the ~~document~~ record, specifying the reasons for rejection.

a. ~~From such rejection the person~~ Within thirty days after the service of the notice of denial, the corporation or foreign corporation as the case may be, may appeal to the district court ~~of the county in which the registered office of such corporation is, or is proposed to be, situated~~ in the judicial district serving Burleigh County by filing with the clerk of the court a petition setting forth a copy of the ~~document~~ record sought to be filed and a copy of the written rejection of the ~~document~~ record by the secretary of state.

b. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take the action the court determines proper.

4. If the secretary of state dissolves a corporation or revokes the certificate of authority to conduct activities in this state of any foreign corporation, pursuant to section 10-33-134, then, the corporation or foreign corporation may appeal to the district court ~~of the county where the registered office of the foreign corporation in this state is situated~~ in the judicial district serving Burleigh County by filing with the clerk of the court a petition ~~setting forth a~~ including:

a. A copy of the corporation's articles of incorporation and a copy of the notice of dissolution given by the secretary of state; or

b. A copy of the foreign corporation's certificate of authority to conduct activities in this state and a copy of the notice of revocation given by the secretary of state. The matter must be tried de novo by the court. The court shall sustain the action of the secretary of state or shall direct the secretary of state to take the action the court determines proper.

5. If the court order sought is one for reinstatement of a corporation that has been dissolved as provided in subsection 5 of section 10-33-139, or for reinstatement of the certificate of authority of a foreign corporation that has been revoked as provided in subsection 6 of section 10-33-139, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the corporation or foreign corporation to:

a. File all past-due annual reports;

b. Pay the fees to the secretary of state for each annual report as provided in subdivision s of subsection 1 of section 10-33-140; and

c. Pay the reinstatement fee to the secretary of state as provided in subdivision s of subsection 1 of section 10-33-140.

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

SECTION 115. Section 10-33-141.1 of the North Dakota Century Code is created and enacted as follows:

10-33-141.1. Delivery to and filing of records by secretary of state and effective date.

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person who delivered it to the secretary of state for filing. That person shall then send a copy of the filed record to the person on whose behalf the record was filed.
2. Upon request and payment of a fee provided in section 10-33-139, the secretary of state shall send to the requester a certified copy of the requested record.
3. Except as otherwise specifically provided in this chapter, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:
   a. If the record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.
   b. If the record specifies a delayed effective date within ninety days, then on the specified date.

SECTION 116. Section 10-33-141.2 of the North Dakota Century Code is created and enacted as follows:

10-33-141.2. Correcting a filed record. With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.

2. A statement of correction:
   a. Must:
      (1) Be signed by:
         (a) The person who signed the original record; or
         (b) By a person authorized to sign on behalf of that person;
      (2) Set forth the name of the corporation that filed the record;
      (3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;
      (4) Identify the inaccuracy, error, or defect to be corrected; and
      (5) Set forth a statement in corrected form of the portion of the record to be corrected.
   b. May not revoke or nullify the record.
3. The statement of correction must be filed with the secretary of state.
4. With respect to the effective date of correction:
   a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.
   b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:
      (1) On the date the statement of correction was filed:
         (a) As to persons adversely affected by the correction; and
         (b) For the purposes of subsection 3 of section 10-33-01.2; and
      (2) On the date the original record was filed as to all other persons and for all other purposes.

SECTION 117. AMENDMENT. Section 10-33-142 of the North Dakota Century Code is amended and reenacted as follows:

10-33-142. Secretary of state - Evidence.

1. All certificates issued by the secretary of state and all copies of ~~documents~~ records filed in accordance with this chapter, when certified by the secretary of state, must

be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated.

2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing ~~documents~~ records 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 118. AMENDMENT. Section 10-33-142.1 of the North Dakota Century Code is amended and reenacted as follows:

10-33-142.1. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any ~~document~~ record filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any ~~document~~ record is released to the public.

SECTION 119. AMENDMENT. Section 10-33-143 of the North Dakota Century Code is amended and reenacted as follows:

10-33-143. Secretary of state - Forms. All annual reports required by this chapter to be filed in the office of the secretary of state must be made on forms prescribed by the secretary of state. Forms for all other ~~documents~~ records to be filed in the office of the secretary of state may be furnished by the secretary of state upon request. However, the use of the forms, unless otherwise specifically required by law, is not mandatory.

SECTION 120. AMENDMENT. Subsection 2 of section 10-33-145 of the North Dakota Century Code is amended and reenacted as follows:

2. Upon receipt of a notice under section 10-33-144, the attorney general may review the proposed agreement or transaction to determine whether consummation of the proposed agreement or transaction by the nonprofit corporation or entity operating or controlling a hospital or nursing home is consistent with the purposes of the nonprofit corporation or entity operating or controlling a hospital or nursing home and the fiduciary obligations of the officers and directors of the nonprofit corporation or entity operating or controlling a hospital or nursing home 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 nonprofit corporation or entity operating or controlling a hospital or nursing home to safeguard restricted assets transferred to the acquiring entity;

b. Whether appropriate steps were taken by the nonprofit corporation or entity operating or controlling a hospital or nursing home to ensure that any proceeds of the proposed agreement or transaction are used for purposes consistent with restrictions placed on assets of and with the purposes of the nonprofit corporation or entity operating or controlling a hospital or nursing home;

c. Whether the terms and conditions of the proposed agreement or transaction are fair and reasonable to the nonprofit corporation or entity operating or controlling a hospital or nursing home, including whether the nonprofit corporation or entity operating or controlling the hospital or nursing home will receive fair market value for its assets and, in a proposed agreement or transaction involving a nursing home, whether the proposed agreement or transaction constitutes a bona fide transaction;

d. Whether any conflict of interest or breach of fiduciary duty exists or 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 nonprofit corporation or entity operating or controlling a hospital or nursing home and any other party to the agreement or transaction;

e. Whether the agreement or transaction will result in inurement, pecuniary gain, or excess benefit to any person associated with the nonprofit corporation or entity operating or controlling a hospital or nursing home or to any other person;

f. Whether the transaction is in the best interests of the nonprofit corporation or entity operating or controlling a hospital or nursing home; and

g. Whether the transaction is authorized by the nonprofit corporation's governing ~~documents~~ records.

SECTION 121. AMENDMENT. Section 45-13-01 of the North Dakota Century Code is amended and reenacted as follows:

45-13-01. (101) Definitions. ~~In~~ For the purposes of chapters 45-13 through 45-21 unless the context ~~or subject matter~~ 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 any other case, the mailing address, including the zip code.
2. "Authenticated electronic communication" means:
   a. That the electronic communication is delivered:
      (1) To the principal place of business of the partnership; or
      (2) To a managing partner or agent of the partnership authorized by the partnership to receive the electronic communication; and
   b. That the electronic communication sets forth information from which the partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. "Ballot" means a written ballot or a ballot transmitted by electronic communication.
4. "Business" includes every trade, occupation, and profession.

~~4.~~ 5. "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.

~~5.~~ 6. "Distribution" means a transfer of money or other property from a partnership to a partner in the ~~partner's~~ capacity of the partner as a partner or to the ~~partner's~~ transferee of the partner.

~~6.~~ 7. "Domestic organization" means an organization created under the laws of this state.

~~7.~~ 8. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

~~8.~~ 9. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:

a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and

b. That may be directly reproduced in paper form by the recipient through an automated process.

~~9.~~ 10. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

~~10.~~ 11. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.

~~11.~~ 12. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:

a. That a ~~document~~ record meeting the applicable requirements of this chapter together with the fees provided in section 45-13-05 was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.

b. That the secretary of state ~~shall~~ did then:

(1) Record the actual date on which the ~~documents are~~ record was filed, and if different, the effective date of filing; and

(2) Record the ~~document~~ record in the office of the secretary of state.

~~12.~~ 13. "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.

~~13.~~ 14. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.

~~14.~~ 15. "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.

~~15.~~ 16. "Managing partner" means ~~one of the partners~~ a partner charged with the management of the partnership in this state and if no partners are specifically so designated, then all partners.

~~16.~~ 17. "Notice":

a. Is given to a partnership ~~or to a partner of a partnership~~:

(1) When in writing and mailed or delivered to ~~the partnership or to the partner at~~ the principal executive office of the partnership; or

(2) When given by a form of electronic communication consented to by ~~the partnership or~~ a managing partner to which the notice is given if by:

(a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the ~~partnership or a~~ managing partner has consented to receive notice.

(b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which the ~~partnership or a~~ managing partner has consented to receive notice.

(c) ~~If by posting~~ Posting on an electronic network on which the ~~partnership or a~~ managing partner has consented to receive notice, together with separate notice to the ~~partnership or a~~ managing partner ~~if~~ of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

(d) ~~If by any~~ Any other form of electronic communication by which ~~the partnership or~~ a managing partner has consented to receive notice, when directed to the partnership.

b. Is given~~, in all other cases~~ to a partner of the partnership:

(1) When in writing and mailed or delivered to the ~~person~~ partner at ~~an address designated by the person or at the last known~~ the principal executive office address of the ~~person~~ partnership; or

(2) When ~~handed to the person;~~ given by a form of electronic communication consented to by the partner to which the notice is given if by:

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

(d) Any other form of electronic communication by which the partner has consented to receive notice, when directed to the partner.

c. Is given in all other cases:

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

(2) When handed to the person;

(3) When left at the office of the person with a clerk or other person in charge of the office 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 other usual place of abode of the person with some person of suitable age and discretion residing there; ~~or~~

(4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

(a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the person has consented to receive notice.

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

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

[1] The posting; or

[2] The giving of the separate notice.

(d) ~~If by any~~ Any other form of electronic communication by which the person has consented to receive notice, when directed to the person~~.~~; or

~~c. Is given when deposited in the United States mail with sufficient postage affixed.~~

~~d. Is deemed received when it is given.~~

(5) When the method is fair and reasonable when all circumstances are considered.

~~17.~~ 18. "Organization" means:

a. Whether domestic or foreign, a corporation ~~incorporated in or authorized to do business in this state under this or another chapter of this code~~, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, ~~joint venture, association, business trust, estate, trust, enterprise,~~ and any other ~~legal or commercial entity~~ person subject to a governing statute; but

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

~~18.~~ 19. "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.

~~19.~~ 20. "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

~~20.~~ 21. "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.

~~21.~~ 22. "Partnership interest" or "partner's interest in the partnership" means all of ~~a partner's~~ the interests of a partner in the partnership, including the ~~partner's~~ transferable interest of the partner and all management and other rights.

~~22.~~ 23. "Principal executive office" means an office from which the partnership conducts business.

~~23.~~ 24. "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

~~24.~~ 25. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~25.~~ 26. "Signed" means:

a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically~~,~~ or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09; and

b. With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state, that:

(1) The ~~document~~ record is signed by a person authorized to do so by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

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

~~26.~~ 27. "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.

~~27.~~ 28. "Statement" means:

a. A statement of partnership authority under section 45-15-03;

b. A statement of denial under section 45-15-04;

c. A statement of dissociation under section 45-19-04;

d. A statement of dissolution under section 45-20-05;

e. A statement of conversion under section 45-21-04;

f. A statement of merger under section 45-21-07; or

~~f.~~ g. An amendment or cancellation of any of the foregoing.

29. "Surviving organization" means an organization into which one or more other organizations are merged and which:

a. May preexist the merger; or

b. Are created by the merger.

~~28.~~ 30. "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

SECTION 122. Section 45-13-01.1 of the North Dakota Century Code is created and enacted as follows:

45-13-01.1. Legal recognition of electronic records and electronic signatures. For purposes of this chapter:

1. A record of signature may not be denied legal effect or enforceability solely because it is in electronic form;

2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;

3. If a provision requires a record to be in writing, an electronic record satisfies the requirement;

4. If a provision requires a signature, an electronic signature satisfies the requirement; and

5. The provisions of this chapter relating to electronic records and electronic transactions do not limit or supersede chapter 9-16.

SECTION 123. AMENDMENT. Section 45-13-02 of the North Dakota Century Code is amended and reenacted as follows:

45-13-02. (102) Knowledge and notice.

1. A person knows a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:
   a. Knows of ~~it~~ the fact;
   b. Has received ~~a notification of it~~ notice of the fact as provided in subsection 17 of section 45-13-01; or
   c. Has reason to know ~~it~~ the fact exists from all of the facts known to the person at the time in question.
3. A person notifies or gives a notification to another by taking the steps ~~reasonably required to inform the other person in ordinary course~~ provided in subsection 17 of section 45-13-01, whether or not the other person learns of it.
4. A person receives a notification ~~when the notification:~~ as provided in subsection 17 of section 45-13-01.
   ~~a. Comes to the person's attention; or~~
   ~~b. Is duly delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.~~
5. Except as otherwise provided in subsection 6, and except as otherwise provided in subsection 17 of section 45-13-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the ~~individual's~~ attention of the individual if the person had exercised reasonable diligence. ~~The~~
   a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
   b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the ~~individual's~~ regular duties of the individual or the individual has reason to know of the

transaction and that the transaction would be materially affected by the information.

6. ~~A partner's knowledge~~ Knowledge, notice, or receipt of a notification of a fact relating to the partnership by a managing partner is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership, except in the case of a fraud on the partnership committed by or with the consent of that partner.

7. With respect to notice given by a form of electronic communication:

a. Consent by a managing partner to notice given by electronic communication may be given in writing or by authenticated electronic communication. The partnership is entitled to rely on any consent so given until revoked by the managing partner. However, no revocation affects the validity of any notice given before receipt by the partnership of revocation of the consent.

b. An affidavit of a managing partner or an authorized agent of the partnership, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

SECTION 124. AMENDMENT. Section 45-13-04.1 of the North Dakota Century Code is amended and reenacted 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~~ the name of any partner;

c. May not contain ~~a~~ the 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~~ "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words;

d. May not contain ~~the~~ a word ~~"corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability partnership", "limited~~

~~liability limited partnership", or any abbreviation of these words; and~~ or phrase that indicates or implies that the partnership:

(1) Is organized for a purpose other than a lawful purpose for which a partnership may be organized under this chapter; or

(2) May not be formed under this chapter.

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

(1) The name, whether foreign and authorized to do business in this state or domestic, unless filed with the statement is a ~~document~~ record 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~~ 45-10.2-11, 45-13-04.2, or 45-22-05;

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

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

2. The secretary of state shall determine whether a 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, then 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 does not affect the right of a 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.

5. 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.~~ 6. A partnership that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations if the other organization whose name is sought to be used:

a. 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~~ 10-19.1-14, 10-32-11, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

d. Holds a fictitious name registered in the manner provided in chapter 45-11; or

e. Holds a trade name registered in the manner provided in chapter 47-25.

~~6.~~ 7. The use of a name by a partnership in violation of this section does not affect or vitiate the partnership existence of the partnership. 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.~~ 8. If ~~a partnership's~~ the period of existence of the partnership is expired or a ~~partnership's~~ statement of a partnership filed under section 45-13-05 is expired, then 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~~ 3. A partnership that cannot reacquire the use of ~~the partnership's~~ its partnership name shall adopt a new partnership name that complies with this section.

SECTION 125. AMENDMENT. Subsections 3 and 4 of section 45-13-04.2 of the North Dakota Century Code are amended and reenacted as follows:

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~~.

SECTION 126. AMENDMENT. Subsection 8 of section 45-13-05 of the North Dakota Century Code is amended and reenacted as follows:

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-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 or abandonment of conversion, fifty dollars and:

(a) If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a

new organization like the organization resulting from the conversion; or

(b) If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.

(9) Filing a statement of merger, fifty dollars.

(10) Any ~~document~~ record submitted for approval before the actual time of submission for filing, half of the fee provided in this section for filing the ~~document~~ record.

b. The officer responsible for recording transfers of real property may collect a fee for recording a statement.

SECTION 127. AMENDMENT. Section 45-21-01 of the North Dakota Century Code is amended and reenacted as follows:

45-21-01. (901) Definitions - Conversions and Mergers. ~~In~~ For the purposes of this chapter, unless the context otherwise requires:

1. "Certificate of creation" means:

a. A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under chapter 10-19.1;

b. A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter 10-32;

c. A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under chapter 45-10.2;

d. The filed registration, if the converted organization is a limited liability partnership deemed to be established under chapter 45-22; or

e. A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.

2. "Constituent organization" means an organization that is party to a merger.

3. "Constituent partnership" means a constituent organization that is a partnership.

4. "Converted organization" means the organization into which a converting organization converts pursuant to sections 45-21-01 through 45-21-07.1.

5. "Converting organization" means an organization that converts into another organization pursuant to sections 45-21-01 through 45-21-07.1.

6. "Converting partnership" means a converting organization that is a partnership.

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

   a. A corporation that is:

      (1) The converting organization was incorporated; or

      (2) The converted organization is deemed to be incorporated;

   b. A limited liability company that is:

      (1) The converting organization was organized; or

      (2) The converted organization is deemed to be organized;

   c. A general partnership that is the converting organization was formed;

   d. A general partnership that is the converted organization was formed;

   e. A limited partnership that is:

      (1) The converting organization was formed; or

      (2) The converted organization is deemed to be formed; or

   f. A limited liability partnership that is:

      (1) The converting organization was established; or

      (2) The converted organization is deemed to be established; and

   g. A limited liability limited partnership that is:

      (1) The converting organization was formed; or

      (2) The converted organization was deemed to be formed.

8. "Filed registration" means the registration of a limited liability partnership that has been filed with the secretary of state.

9. "General partner" means a partner in a partnership and a general partner in a limited partnership.

10. "General partnership" means an organization formed by two or more persons under chapters 45-13 through 45-21.

11. "Governing statute" means:

a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:

(1) If a corporation, then chapter 10-19.1;

(2) If a limited liability company, then chapter 10-32;

(3) If a limited partnership, then chapter 45-10.2;

(4) If a general partnership, then chapters 45-13 through 45-21;

(5) If a limited liability partnership, then chapter 45-22; and

(6) If a limited liability limited partnership, then chapter 45-23; and

b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.

~~2.~~ 12. "Limited partner" means a limited partner in a limited partnership.

~~3.~~ 13. "Limited partnership" means a ~~limited~~ partnership ~~created~~ that is formed by two or more persons under chapter ~~45-10.1~~ 45-10.2, predecessor law, or comparable law of another jurisdiction and which has one or more general partners and one or more limited partners.

14. "Organizational records" means for an organization that is:

a. A corporation, its articles of incorporation and bylaws;

b. A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;

c. A limited partnership, its partnership agreement;

d. A general partnership, its partnership agreement;

e. A limited liability partnership, its partnership agreement; or

f. A limited liability limited partnership, its partnership agreement.

15. "Originating record" means for an organization that is:

a. A corporation, its articles of incorporation;

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

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

d. A limited liability partnership, its registration; or

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

16. "Ownership interest" means for an organization which is:

a. A corporation, its shares;

b. A limited liability company, its membership interests;

c. A limited partnership, its partnership interests;

d. A general partnership, its partnership interests;

e. A limited liability partnership, its partnership interests; or

f. A limited liability limited partnership, its partnership interests.

~~4.~~ 17. "Partner" includes both a general partner and a limited partner.

18. "Surviving organization" means an organization into which one or more other organizations are merged and which:

a. May preexist the merger; or

b. Be created by the merger.

SECTION 128. AMENDMENT. Section 45-21-02 of the North Dakota Century Code is amended and reenacted as follows:

45-21-02. (902) Conversion ~~of partnership to limited partnership~~.

~~1.~~ ~~A partnership~~ Other organizations may ~~be converted~~ not convert to a ~~limited~~ partnership. However, a partnership may convert to another organization pursuant to ~~this section.~~ sections 45-21-01 through 45-21-07.1 and a plan of conversion, if:

1. The governing statute of the other organization authorizes the conversion;

2. The ~~terms and conditions of a~~ conversion ~~of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.~~ is not prohibited by the law of the jurisdiction that enacted the governing statute; and

3. ~~After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:~~ The other organization complies with its governing statute in effecting the conversion.

~~a. A statement that the partnership was converted to a limited partnership from a partnership;~~

~~b. Its former name; and~~

~~c. A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.~~

~~4. The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.~~

~~5. A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in chapter 45-10.1.~~

SECTION 129. Section 45-21-02.1 of the North Dakota Century Code is created and enacted as follows:

45-21-02.1. Plan of conversion. A plan of conversion must be in a record and must include:

1. The name and form of the converting organization before conversion;
2. The name and form of the converted organization after conversion;
3. The terms and conditions of the conversion;
4. The manner and basis for converting each ownership interest in the converting organization into ownership interests in the converted organization, or in whole or in part, into money or other property;
5. The organizational records of the converted organization; and
6. Any other provisions with respect to the proposed conversion that are deemed to be necessary or desirable.

SECTION 130. AMENDMENT. Section 45-21-03 of the North Dakota Century Code is amended and reenacted as follows:

45-21-03. (903) ~~Conversion of limited partnership to partnership~~ Plan of conversion approval and amendment.

1. ~~A limited~~ If the converting organization is a partnership ~~may be converted to a partnership pursuant to this section~~, then:

   a. A plan of conversion must be consented to by all of the partners of a converting partnership.

   ~~2.~~ b. ~~Notwithstanding a provision to the contrary in a limited partnership agreement, the terms and conditions of~~ Subject to any contractual rights, after a conversion ~~of a limited partnership to a partnership must be~~ is approved ~~by all of the partners~~, and at any time before a filing is made under section 45-21-04, a converting partnership may amend the plan or abandon the planned conversion:

      (1) As provided in the plan; and

      (2) Except as prohibited by the plan, by the same consent as was required to approve the plan.

2. If the converting organization is not a partnership, then the approval and the amendment of the plan of conversion must comply with the governing statute in effecting the conversion.

~~3. After the conversion is approved by the partners, the limited partnership shall cancel its certificate of limited partnership.~~

~~4. The conversion takes effect when the certificate of limited partnership is canceled.~~

~~5. A limited partner who becomes a general partner as a result of the conversion remains liable only as a limited partner for an obligation incurred by the limited partnership before the conversion takes effect. The partner is liable as a general partner for an obligation of the partnership incurred after the conversion takes effect.~~

SECTION 131. AMENDMENT. Section 45-21-04 of the North Dakota Century Code is amended and reenacted as follows:

45-21-04. (904) ~~Effect of~~ Statement of conversion ~~- Entity unchanged~~.

1. ~~A partnership or limited partnership that has been converted pursuant to this chapter is for all purposes the same entity that existed before the~~ Upon receiving the approval required by section 45-21-03, a statement of conversion must be prepared in a record that must contain:

a. A statement that the converting organization is being converted into another organization, including:

(1) The name of the converting organization immediately before the filing of the statement of conversion;

(2) The name to which the name of the converting organization is to be changed, which must be a name that satisfies the laws applicable to the converted organization;

(3) The form of organization that the converted organization will be; and

(4) The jurisdiction of the governing statute of the converted organization;

b. A statement that the plan of conversion has been approved by the converting organization as provided in section 45-21-03;

c. A statement that the plan of conversion has been approved as required by the governing statute of the converted organization;

d. The plan of conversion without organizational records;

e. A copy of the originating record of the converted organization; and

f. If the converted organization is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office which the secretary of state may use for the purposes of subsection 3 of section 45-21-03.

2. ~~When a~~ The statement of conversion ~~takes effect:~~ must be signed on behalf of the converting organization and filed with the secretary of state.

a. ~~All property owned by the converting partnership or limited partnership remains vested in the converted entity;~~ If the converted organization is a domestic organization, then:

(1) The filing of the statement of conversion must also include the filing with the secretary of state of the originating record of the converted organization.

(2) Upon both the statement of conversion and the originating record of the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the

appropriate certificate of creation to the converted organization or its legal representative.

b. ~~All obligations of~~ If the ~~converting partnership or limited partnership continue as obligations of the~~ converted ~~entity; and~~ organization is a foreign organization:

(1) That is transacting business or conducting activities in this state, then:

(a) The filing of the statement of conversion must include the filing with the secretary of state of an application for certificate of authority by the converted organization.

(b) Upon both the statement of conversion and the application for a certificate of authority by the converted organization being filed with the secretary of state, the secretary of state shall issue a certificate of conversion and the appropriate certificate of authority to the converted organization or the legal representative.

(2) That is not transacting business or conducting activities in this state, then upon the statement of conversion being filed with the secretary of state, the secretary of state shall issue the appropriate certificate of conversion to the converted organization or its legal representative.

~~c. An action or proceeding pending against the converting partnership or limited partnership may be continued as if the conversion had not occurred.~~

3. A converting organization that 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 a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the statement of conversion.

SECTION 132. Section 45-21-04.1 of the North Dakota Century Code is created and enacted as follows:

45-21-04.1. Abandonment of conversion.

1. If the statement of conversion has not been filed with the secretary of state, and:

a. If the converting organization is a partnership, then subject to any contractual rights, after a conversion is approved, and at any time before the effective date of the plan, a converting partnership may abandon the planned conversion:

(1) As provided in the plan; and

(2) Except as provided otherwise by the plan, by the same consent as was required to approve the plan.

b. If the converting organization is not a partnership, then the abandonment of the plan of conversion must comply with its governing statute.

2. If the statement of conversion has been filed with the secretary of state, but has not yet become effective, then the converting organization shall file with the secretary of state articles of abandonment that contain:

a. The name of the converting organization;

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

c. If the plan is abandoned:

(1) By the consent of all of the partners, then the text of the resolution abandoning the plan; or

(2) As provided in the plan, then a statement that the plan provides for abandonment and that all conditions for abandonment set forth in the plan are met.

SECTION 133. Section 45-21-04.2 of the North Dakota Century Code is created and enacted as follows:

45-21-04.2. Effective date of conversion - Effect.

1. A conversion is effective when the filing requirements of subsection 2 of section 45-21-04 have been fulfilled or on a later date specified in the statement of conversion.

2. With respect to the effect of conversion on the converting organization and on the converted organization:

a. An organization that has been converted as provided in sections 45-21-01 through 45-21-07.1 is for all purposes the same entity that existed before the conversion.

b. Upon a conversion becoming effective:

(1) If the converted organization is not a partnership, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to the duties and liabilities as provided in its governing statute;

(2) All property owned by the converting organization remains vested in the converted organization;

(3) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(4) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(5) Except as otherwise provided by other law, all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization;

(6) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(7) Except as otherwise agreed, the conversion does not dissolve a converting partnership for the purposes of sections 45-20-01 through 45-20-07.

3. When a conversion becomes effective, each ownership interest in the converting organization is deemed to be converted into ownership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan.

4. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligations owed by the converting partnership, if before the conversion the converting partnership was subject to suit in this state on the obligation.

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

SECTION 134. AMENDMENT. Section 45-21-05 of the North Dakota Century Code is amended and reenacted as follows:

45-21-05. (905) Merger of partnerships.

1. Pursuant to a plan of merger approved as provided in subsection 3, a partnership may be merged with one or more other organizations.
2. The plan of merger must set forth:
   a. The name of:
      (1) The partnership;
      (2) Each other constituent organization proposing to merge; and
      (3) The surviving organization into which the other organizations will merge;
   b. The status of each partner;
   c. The terms and conditions of the merger;
   d. The manner and basis of converting the ownership interests of each ~~party to the merger~~ constituent organization into ownership interests or obligations of the surviving organization, or into money or other property in whole or part; and
   e. The street address of the principal executive office of the surviving organization.
3. The plan of merger must be approved:
   a. In the case of a partnership that is a party to the merger, by all of the partners, or a number or percentage specified for merger in the partnership agreement; and
   b. In the case of a ~~limited~~ constituent organization other than a partnership that is a party to the merger, by the vote required for approval of a merger by the ~~law of the state or foreign jurisdiction in which the limited partnership~~ governing statute of the constituent organization in the jurisdiction in which the constituent organization is organized ~~and, in the absence of such a specifically applicable law, by all of the partners, notwithstanding a provision to the contrary in the partnership agreement~~.

4. After a plan of merger is approved and before the merger takes effect, the plan may be amended or abandoned as provided in the plan.
5. The merger takes effect on the later of:
   a. The approval of the plan of merger by all ~~parties to the merger~~ constituent organizations, as provided in subsection 3;
   b. The filing of all ~~documents~~ records required by law to be filed as a condition to the effectiveness of the merger; or
   c. Any effective date specified in the plan of merger.

SECTION 135. AMENDMENT. Section 45-21-06 of the North Dakota Century Code is amended and reenacted as follows:

45-21-06. (906) Effect of merger.

1. When a merger takes effect:
   a. The separate existence of ~~every partnership or limited~~ each constituent partnership that is a party to the merger, other than the surviving ~~entity~~ organization, ceases;
   b. All property owned by each of the ~~merged partnerships or limited~~ constituent partnerships vests in the surviving ~~entity~~ organization;
   c. All obligations of ~~every partnership or limited~~ each constituent partnership ~~that is a party to the merger~~ become the obligations of the surviving ~~entity~~ organization; and
   d. An action or proceeding pending against a constituent partnership ~~or limited partnership that is a party to the merger~~ may be continued as if the merger had not occurred, or the surviving ~~entity~~ organization may be substituted as a party to the action or proceeding.
2. The secretary of state of this state is the agent for service of process in an action or proceeding against a surviving foreign partnership ~~or limited partnership~~ to enforce an obligation of a ~~domestic~~ partnership ~~or limited partnership~~ that is a ~~party to a merger~~ constituent organization. The surviving ~~entity~~ organization shall promptly notify the secretary of state of the mailing address of its principal executive office and of any change of address. Upon receipt of process, the

secretary of state shall mail a copy of the process to the surviving foreign partnership ~~or limited partnership~~.

3. A general partner of the surviving partnership ~~or limited partnership~~ is liable for:
   a. All obligations of a party to the merger for which the general partner was personally liable before the merger;
   b. All other obligations of the surviving ~~entity~~ organization incurred before the merger by a ~~party to the merger~~ constituent organization, but those obligations may be satisfied only out of property of the ~~entity~~ surviving organization; and
   c. All obligations of the surviving ~~entity~~ organization incurred after the merger takes effect~~, but those obligations may be satisfied only out of property of the entity if the partner is a limited partner~~.
4. If the obligations incurred before the merger by a ~~party to the merger~~ constituent partnership are not satisfied out of the property of the surviving ~~partnership or limited partnership~~ organization, then the general partners of ~~that party~~ the constituent partnership immediately before the effective date of the merger shall contribute the amount necessary to satisfy ~~that party's~~ the obligations of the constituent partnership to the surviving ~~entity~~ organization, in the manner provided in section 45-20-07 ~~or in the Limited Partnership Act of the jurisdiction in which the party was formed, as the case may be, as if the merged party were dissolved~~.
5. A partner of a ~~party to a merger~~ constituent partnership who does not ~~become a partner~~ receive an ownership interest of the surviving ~~partnership or limited partnership~~ organization is dissociated from the ~~entity~~ partnership, of which that partner was a partner, as of the date the merger takes effect. The surviving ~~entity~~ organization shall cause the ~~partner's~~ ownership interest of the partner in the ~~entity~~ constituent partnership to be purchased under section 45-19-01 or another statute specifically applicable to that ~~partner's~~ ownership interest of that partner with respect to a merger. The surviving ~~entity~~ organization is bound under section 45-19-02 by an act of a general partner dissociated under this subsection, and the partner is liable under section 45-19-03 for transactions entered into by the surviving ~~entity~~ organization after the merger takes effect.

SECTION 136. AMENDMENT. Section 45-21-07 of the North Dakota Century Code is amended and reenacted as follows:

45-21-07. (907) Statement of merger.

1. After a merger, the surviving organization may file a statement that one or more partnerships or ~~limited partnerships~~ other constituent organizations have merged into the surviving organization.
2. A statement of merger must be accompanied by the plan of merger without organizational records and must contain:
   a. The name of:
      (1) The partnership;
      (2) Each other constituent organization that is a party to the merger; and
      (3) The surviving organization into which the other constituent organizations were merged~~.~~;
   b. The form of organization that the surviving organization will be;
   c. The jurisdiction of the governing statute of the surviving organization; and
   d. The street address of the principal executive office of the surviving organization and of an office in this state, if any.
3. Except as otherwise provided in subsection 4, for the purposes of section 45-15-02, property of the surviving ~~partnership or limited partnership~~ organization which before the merger was held in the name of another party to the merger is property held in the name of the surviving ~~entity~~ organization upon filing a statement of merger.
4. For the purposes of section 45-15-02, real property of the surviving ~~partnership or limited partnership~~ organization which before the merger was held in the name of another ~~party to the merger~~ constituent organization is property held in the name of the surviving ~~entity~~ organization upon recording a certified copy of the statement of merger in the office for recording transfers of that real property.
5. A filed and, if appropriate, recorded statement of merger, ~~executed~~ signed and declared to be accurate pursuant to subsection 3 of section 45-13-05, stating the name of a constituent partnership ~~or limited partnership~~ that is a ~~party to the merger~~ constituent organization in whose name property was held before the

merger and the name of the surviving ~~entity~~ organization, but not containing all of the other information required by subsection 2, operates with respect to the ~~partnerships or limited partnerships named~~ constituent partnership and the surviving organization to the extent provided in subsections 3 and 4.

SECTION 137. Section 45-21-07.1 of the North Dakota Century Code is created and enacted as follows:

45-21-07.1. Liability of general partner after conversion or merger.

1. A conversion or merger under this chapter does not discharge any liability under sections 45-15-06, 45-15-07, and 45-15-08 of a person that was a general partner in or dissociated as a general partner from a converting or constituent partnership, but:
   a. The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;
   b. For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent partnership; and
   c. If a person is required to pay any amount under this subsection, then:
      (1) The person has a right of contribution from each other person that was liable as a general partner under section 45-15-06 when the obligation was incurred and has not been released from the obligation under section 45-20-06; and
      (2) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligations were incurred as provided in section 45-20-07.
2. In addition to any other liability provided by law:
   a. A person that immediately before a conversion or merger became effective was a general partner in a converting or constituent partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:

(1) Does not have notice of the conversion or merger; and

(2) Reasonably believes that:

(a) The converted or surviving organization or business is the converting or constituent partnership; and

(b) The person is a general partner in the converting or constituent partnership; and

b. A person that was dissociated as a general partner from a converting or constituent partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if at the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and the third party:

(1) Does not have notice of the dissociation;

(2) Does not have notice of the conversion or merger; and

(3) Reasonably believes that:

(a) The converted or surviving organization or business is the converting or constituent partnership; and

(b) The person is a general partner in the converting or constituent partnership.

SECTION 138. AMENDMENT. Section 45-22-01 of 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~~ the zip code.

2. "Authenticated electronic communication" means:

a. That the electronic communication is delivered:

(1) To the principal place of business of the limited liability partnership; or

(2) To a partner or agent of the limited liability partnership authorized by the limited liability partnership to receive the electronic communication; and

b. That the electronic communication sets forth information from which the limited liability partnership can reasonably conclude that the electronic communication was sent by the purported sender.

3. "Domestic limited liability partnership" means a partnership ~~that is organized~~ formed by two or more persons under ~~the laws of~~ this ~~state~~ chapter with a registration in effect and which is not a foreign limited liability partnership.

4. "Domestic organization" means an organization created under the laws of this state.

5. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

6. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:

a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and

b. That may be directly reproduced in paper form by the recipient through an automated process.

7. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

8. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and ~~executed~~ signed or adopted by a person with the intent to sign the record.

9. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:

a. That a ~~document~~ record meeting the applicable requirements of this chapter, together with the fees provided in section 45-22-23, has been delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and has been determined by the secretary of state to conform to law.

b. That the secretary of state ~~shall~~ did then:

(1) Record the actual date on which the ~~document is~~ record was filed, and if different, the effective date of filing; and

(2) Record the ~~document~~ record in the office of the secretary of state.

10. "Foreign limited liability partnership" means a partnership ~~organized~~ formed by two or more persons as a limited liability partnership under the laws of a jurisdiction other than ~~the laws of~~ this state which is in good standing in ~~the partnership's~~ its jurisdiction of origin.

11. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which ~~an~~ the organization may be created under the laws of this state.

12. "Jurisdiction of origin" means the jurisdiction in which the limited liability partnership status of the foreign limited liability partnership was created.

13. "Limited liability partnership" means a domestic limited liability partnership or a foreign limited liability partnership.

14. "Managing partner" means ~~one of the partners~~ a partner charged with the management of the limited liability partnership or foreign limited liability partnership in this state and if no partners are so specifically designated, then all partners.

15. "Notice":

a. Is given to a limited liability ~~partnership or to a partner of the limited liability partnership~~:

(1) When in writing and mailed or delivered to ~~the limited liability partnership or the~~ a managing partner at the registered office or principal executive office of the limited liability partnership; or

(2) When given by a form of electronic communication consented to by ~~the limited liability partnership or the~~ a managing partner of the limited liability partnership to which the notice is given if by:

(a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which a managing partner of the limited liability partnership or the partner has consented to receive notice.

(b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which a managing partner of the limited liability partnership ~~or the partner~~ has consented to receive notice.

(c) ~~If by posting~~ Posting on an electronic network on which a managing partner of the limited liability partnership ~~or the partner~~ has consented to receive notice, together with separate notice to the limited liability partnership ~~or the partner~~ if the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

(d) ~~If by any~~ Any other form of electronic communication by which ~~the limited liability partnership or~~ a managing partner of the limited liability partnership has consented to receive notice, when directed to the limited liability partnership.

b. Is given~~, in all other cases~~ to a partner of the limited liability partnership:

(1) When in writing and mailed or delivered to the ~~person~~ partner at ~~an address designated by the person~~ the registered office or at the ~~last known address of the person~~ principal executive office of the limited liability partnership; or

(2) When ~~handed~~ given by a form of electronic communication consented to ~~the person;~~ by the partner to which the notice is given if by:

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

(d) Any other form of electronic communication by which the partner has consented to receive notice, when directed to the partner.

c. Is given in all other cases:

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

(2) When handed to the person;

(3) When left at the office of the person with a clerk or other person in charge of the office 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; or

(4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

(a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the person has consented to receive notice.

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

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

[1] The posting; or

[2] The giving of the separate notice.

(d) ~~If by any~~ Any other form of electronic communication by which the person has consented to receive notice, when directed to the person.

~~c. Is given when deposited in the United States mail with sufficient postage affixed.~~

~~d. Is deemed received when given.~~

(5) When the method is fair and reasonable when all circumstances are considered.

16. "Organization" means:

a. Whether domestic or foreign, a corporation ~~incorporated in or authorized to do business in this state under this or another chapter of this code~~, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, ~~joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity~~ or any other person subject to a governing statute; but

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

17. "Originally registered" and "original registration" means the ~~document~~ record establishing the limited liability partnership status of the foreign limited liability partnership in the jurisdiction of origin of the foreign limited liability ~~partnership's jurisdiction of origin~~ partnership.

18. "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.

19. "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 the limited liability partnership conducts business, the registered office of the limited liability partnership.

20. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

21. "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.

22. "Registered office" means the place in this state designated as the registered office of the limited liability partnership or foreign limited liability partnership.

23. "Registration" means the ~~document~~ record 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.

24. "Signed" means:

a. That the signature of a person which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by telecommunication or electronically, or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09; and

b. With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state means that:

(1) The ~~document~~ record is signed by a person authorized to do so by this chapter, or by or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners~~.~~; and

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

SECTION 139. AMENDMENT. Section 45-22-04 of 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~~:~~

~~(1)~~ ~~The~~ the words "limited liability partnership" or the abbreviation "L.L.P." or the abbreviation "LLP", either of which abbreviations 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 origin.~~

~~c.~~ ~~May not contain a word or phrase indicating or implying the limited liability partnership may not be formed under this chapter.~~

~~d.~~ c. May not contain the word "corporation", "company", "incorporated", "limited liability company", "limited partnership", "limited liability limited partnership", or any abbreviation of these words.

~~e.~~ d. May not contain a word or phrase ~~indicating~~ that indicates or ~~implying~~ that implies that the limited liability partnership ~~is~~:

(1) Is formed for a purpose other than ~~one or more business purposes for which a~~:

(a) A lawful purpose for which a limited liability partnership may be formed under ~~North Dakota law~~ this chapter; or

(b) For a purpose stated in its registration; or

(2) May not be formed under this chapter.

~~f.~~ e. May not be the same as or deceptively similar to:

(1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the registration a ~~document~~ record that complies with subsection 3 of this section, of:

(a) Another limited liability partnership;

(b) A corporation;

(c) A limited liability company;

(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~~ 45-10.2-11, 45-13-04.2, or 45-22-05;

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

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

~~g.~~ f. Need not be filed as provided in chapter 45-11 except 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~~ chapter.

3. If the secretary of state determines that a limited liability partnership name is deceptively similar to another name for purposes of this chapter, 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 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 the surviving organization in a merger with one or more 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 organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought:

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~~ 45-10.2-11, 45-13-04.2, or 45-22-05;

d. Holds a fictitious name registered in the manner provided in chapter 45-11; or

e. Holds a trade name registered in the manner provided in chapter 47-25.

6. The use of a name by a limited liability partnership in violation of this section does not affect or vitiate the limited liability partnership's status as a limited liability partnership. 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 the limited liability partnership's registration may have been filed with the secretary of state.

7. A limited liability partnership whose registration has expired or whose registration has been forfeited as provided in section 45-22-21.1 may reacquire the right to use that name by refiling a registration as provided in section 45-22-03 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3. A limited liability partnership that cannot reacquire the use of its limited liability partnership name shall adopt a new limited liability partnership name that complies with this section:

a. By refiling a registration as provided in section 45-22-03;

b. By amending its registration as provided in section 45-22-03; or

c. By reinstating the limited liability partnership pursuant to section 45-22-21.1, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3.

8. 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

the name is the same under which the foreign limited liability partnership is authorized in the jurisdiction of original registration.

b. A fictitious name certificate must be filed as provided in chapter 45-11 only if registering under a name other than the name as authorized in the jurisdiction of original registration.

SECTION 140. AMENDMENT. Section 45-22-05 of 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 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 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 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 destroy ~~any~~ all reserved name ~~request~~ requests and ~~name request~~ the index thereof one year after expiration.

SECTION 141. AMENDMENT. Section 45-22-17 of the North Dakota Century Code is amended and reenacted as follows:

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

1. The registered agent must be an agent of the limited liability partnership or foreign limited liability partnership and any nonresident partner upon whom any process, notice, or demand required or permitted by law to be served on the limited liability partnership, the foreign limited liability partnership, or a partner may be served.

   a. When a foreign limited liability partnership transacts business without a registration or when the registration of a foreign limited liability partnership is suspended or revoked, the secretary of state is an agent of the foreign limited liability partnership for service of process, notice, or demand.

   b. Acceptance of a managing partnership status in a limited liability partnership or foreign limited liability partnership includes the appointment of the secretary of state as an agent for personal service of legal process, notice, or demand.

2. A process, notice, or demand required or permitted by law to be served on a limited liability partnership or foreign limited liability partnership may be served ~~on~~:

   a. On the registered agent ~~or on~~;

   b. On any responsible person found at the registered office or ~~on~~ at the principal executive office if located in this state;

   c. On a managing partner of the partnership; or

   d. On the secretary of state as provided in this section.

~~2.~~ 3. If neither the registered agent nor a responsible person can be found at the registered office and if a responsible person affiliated with the limited liability partnership or foreign limited liability partnership cannot be found at the principal place of business in this state, then the secretary of state is ~~the~~ an agent of the limited liability partnership or foreign limited liability partnership on whom the process, notice, or demand may be served.

   a. Service on the secretary of state:

   ~~a.~~ (1) Shall be made by registered mail or personal delivery to the secretary of state and not by electronic communication.

   ~~b.~~ (2) Shall include the return of the sheriff or affidavit of a person not a party, verifying that neither a registered agent nor a responsible person can

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

~~c.~~ (3) Is deemed personal service on the limited liability partnership or foreign limited liability partnership and may be made by filing with the secretary of state:

~~(1)~~ (a) Three copies of the process, notice, or demand; and

~~(2)~~ (b) The fees provided in section 45-22-22.

(4) Is returnable in not less than thirty days, notwithstanding a shorter period specified in the process, notice, or demand.

~~d.~~ b. The secretary of state immediately shall forward, by ~~certified~~ registered mail addressed to the limited liability partnership or foreign limited liability partnership at the ~~limited liability partnership's~~ registered office or principal place of business in this state, a copy of the process, notice, or demand.

~~e. 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 limited liability partnership or foreign limited liability partnership that has voluntarily withdrawn its registration or which has forfeited its registration as provided in section 45-22-21.1. The court shall determine if service is proper:

a. If a limited liability partnership or foreign limited liability partnership has voluntarily withdrawn its registration, then service may be made as provided in subsection 2.

b. If a limited liability partnership or foreign limited liability partnership has forfeited its registration as provided in section 45-22-21.1, then service may be made as provided in subsection 3.

~~3.~~ 5. The secretary of state shall maintain a record of every process, notice, and demand served on the secretary of state under this section, including the date of service and the action taken with reference to the process, notice, or demand.

~~4.~~ 6. This section does not limit the right of a person to serve process, notice, or demand required or permitted by law to be served on a limited liability partnership or foreign limited liability partnership in any other manner permitted by law.

SECTION 142. AMENDMENT. Section 45-22-21.1 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Each domestic limited liability partnership and each foreign limited liability partnership authorized to transact business in this state, shall file, within the time ~~prescribed~~ provided by subsection 3, an annual report setting forth:
   a. The name of the limited liability partnership and ~~the~~ its jurisdiction of origin.
   b. The address of the registered office of the limited liability partnership in this state, and the name of the limited liability partnership's registered agent in this state at that address.
   c. The address of the limited liability partnership's chief executive office.
   d. A brief statement of the character of the business in which the limited liability partnership is actually engaged in this state.
   e. The name and respective address of each managing partner of the domestic limited liability partnership or foreign limited liability partnership.
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~~ provided in subsection 24 of section 45-22-01, the partnership agreement, or in a resolution approved by the affirmative vote of the required proportion or number of partners. If the limited liability partnership is in the hands of a receiver or trustee, the annual report must be signed on behalf of the limited liability partnership by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.
3. The annual report of a limited liability partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited liability partnership must be delivered before April first of the year following the calendar year in which the registration is filed by the secretary of state. A limited liability partnership in existence on July 1, 1999, shall file the first annual

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

a. An annual report in a sealed envelope postmarked by the United States postal service before April first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before April first, complies with this requirement.

b. The secretary of state must file the annual report if the annual report conforms to the requirements of subsection 2.

(1) If the annual report does not conform, the annual report must be returned to the limited liability partnership for any necessary corrections.

(2) If the annual report is filed before the deadlines ~~prescribed~~ provided in this subsection, penalties for the failure to file a report within the time provided do not apply if the annual report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

4. After the date established under subsection 3, the secretary of state shall notify any limited liability partnership failing to file an annual report that the limited liability partnership's registration is not in good standing and that the registration of the limited liability partnership may be revoked pursuant to subsection 5.

a. The secretary of state shall mail notice of revocation to the last registered agent at the last registered office of record.

b. If the limited liability partnership files an annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as ~~prescribed~~ provided by section 45-22-22, the secretary of state shall restore the limited liability partnership's registration to good standing.

5. A domestic limited liability partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established in subsection 3, forfeits the limited liability partnership's registration.

a. The secretary of state shall note the revocation of the domestic limited liability partnership's registration on the records of the secretary of state and shall give notice of the action to the revoked domestic limited liability partnership.

b. Notice by the secretary of state must be mailed to the domestic limited liability partnership's last registered agent at the last registered office of record.

6. A foreign limited liability partnership that does not file an annual report, along with the statutory filing and penalty fees, within six months after the date established by subsection 3, forfeits the foreign limited liability partnership's registration and authority to transact business in this state.

a. The secretary of state shall note the revocation of the foreign limited liability partnership's registration and authority on the records of the secretary of state and shall give notice of the action to the foreign limited liability partnership.

b. Notice by the secretary of state must be mailed to the foreign limited liability partnership's last registered agent at the last registered office 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~~ provided in section 45-22-22. The fees must be paid and the report filed within one year following the revocation. Reinstatement under this subsection does not affect any right or liability of a domestic limited liability partnership or a foreign limited liability partnership for the time from the revocation to the reinstatement.

SECTION 143. AMENDMENT. Section 45-22-22 of the North Dakota Century Code is amended and reenacted as follows:

45-22-22. Secretary of state - 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. If there are more than two managing partners, an additional three

dollars must be paid for each additional managing partner not to exceed two hundred fifty dollars.

b. Filing a registration as a foreign limited liability partnership, fifty dollars.

c. Filing an annual report of a domestic limited liability partnership or foreign limited liability partnership, twenty-five dollars.

(1) The secretary of state shall charge and collect additional fees for late filing of an annual report as follows:

~~(1)~~ (a) After the date ~~prescribed~~ provided in subsection 3 of section 45-22-21.1, twenty dollars; and

~~(2)~~ (b) After the revocation of the domestic limited liability partnership registration or the foreign limited liability partnership registration, the reinstatement fee of fifty dollars.

(2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 45-22-21.1 or the annual report lacks sufficient payment as required by this subdivision.

d. Filing a statement of correction or amended registration, twenty-five dollars.

e. Filing an application to reserve a name, ten dollars.

f. Filing a notice of transfer of a reserved name, ten dollars.

g. Filing a cancellation of reserved name, ten dollars.

h. Filing a consent to use of name, ten dollars.

i. Filing a statement of change of address of registered office or change of registered agent or both, ten dollars.

j. Filing a statement of change of address of registered office by registered agent, ten dollars for each domestic limited liability partnership or foreign limited liability partnership affected by the change.

k. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.

l. Filing a resignation as registered agent, ten dollars.

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

2. The secretary of state shall charge and collect for:

a. Furnishing a copy of any ~~document, instrument,~~ record or paper relating to a domestic limited liability partnership or foreign limited liability partnership, one dollar for every four pages, or fraction of pages.

b. A certificate certifying a copy or reciting facts related to a domestic limited liability partnership or foreign limited liability partnership, twenty dollars.

c. Each page of any ~~document~~ record or form sent by electronic transmission, one dollar.

SECTION 144. AMENDMENT. Section 45-22-23 of the North Dakota Century Code is amended and reenacted as follows:

45-22-23. Secretary of state - 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 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. 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, the interrogatory must be answered by that individual;

(2) To a domestic limited liability partnership, 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~~ record to which an interrogatory relates until the interrogatory is answered, except if the answers disclose the ~~document~~ record 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 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 fact or information obtained from an interrogatory except to the extent permitted by law or required for evidence in any criminal proceeding or other action by this state.

3. If the secretary of state rejects any ~~document~~ record required by this chapter to be approved by the secretary of state before the ~~document~~ record may be filed, the secretary of state shall give written notice of the rejection to the person who delivered the ~~document~~ record, specifying the reasons for rejection. ~~That person~~

a. Within thirty days after the service of the notice of denial, the limited liability partnership 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~~ judicial district serving Burleigh County by filing with the clerk of that court a petition setting forth a copy of the ~~document~~ record sought to be filed and a copy of the written rejection of the ~~document~~ record by the secretary of state. The court shall try the matter de novo.

b. The court shall 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, then 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~~ in the judicial district serving Burleigh County by filing with the clerk of that court a petition ~~setting forth a~~, including:

a. A copy of the foreign limited liability partnership's registration; and ~~a~~

b. A copy of the notice of revocation given by the secretary of state. The court shall try the matter de novo. The court shall sustain the action of the secretary of state or direct the secretary of state to take any action the court determines proper.

5. If the court order sought is one for reinstatement of a domestic limited liability partnership registration that has been revoked as provided in subsection 5 of section 45-22-22.1, or for reinstatement of the registration of a foreign limited liability partnership that has been revoked as provided in subsection 6 of section 45-22-21.1, then, together with any other action the court deems proper, any such order which orders the reinstatement of the registration of a domestic or foreign limited liability partnership registration shall require the domestic or foreign limited liability partnership to:

a. File all past-due annual reports;

b. Pay the fees to the secretary of state for each annual report as provided in subsection 1 of section 45-22-22; and

c. Pay the reinstatement fee to the secretary of state as provided in subsection 1 of section 45-22-22.

6. 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 145. Section 45-22-23.1 of the North Dakota Century Code is created and enacted as follows:

45-22-23.1. Delivery to and filing of records by secretary of state and effective date.

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person who delivered it to the secretary of state for filing. That person shall then:
   a. For a statement of dissociation, send a copy of the filed statement:
      (1) To the person which the statement indicates has dissociated as a partner; and
      (2) To the limited liability partnership; and
   b. For all other records, send a copy of the filed record to the person on whose behalf the record was filed.
2. Upon request and payment of a fee provided in section 45-22-22, the secretary of state shall send to the requester a certified copy of the requested record.
3. Except as otherwise specifically provided in this chapter, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:
   a. If the record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.
   b. If the record specifies a delayed effective date within ninety days, then on the specified date.

SECTION 146. Section 45-22-23.2 of the North Dakota Century Code is created and enacted as follows:

45-22-23.2. Correcting a filed record. With respect to correction of a filed record:

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record,

contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, the record may be corrected by filing a statement of correction.

2. A statement of correction:

a. Must:

(1) Be signed by:

(a) The person who signed the original record; or

(b) By a person authorized to sign on behalf of that person;

(2) Set forth the name of the limited liability partnership that filed the record;

(3) Identify the record to be corrected by description and by the date of its filing with the secretary of the state;

(4) Identify the inaccuracy, error, or defect to be corrected; and

(5) Set forth a statement in corrected form of the portion of the record to be corrected.

b. May not revoke or nullify the record.

3. The statement of correction must be filed with the secretary of state.

4. With respect to the effective date of correction:

a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.

b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:

(1) On the date the statement of correction was filed:

(a) As to persons adversely affected by the correction; and

(b) For the purposes of subsections 3 and 4 of section 45-10.2-06; and

(2) On the date the original record was filed as to all other persons and for all other purposes.

SECTION 147. AMENDMENT. Section 45-23-01 of the North Dakota Century Code is amended and reenacted as follows:

45-23-01. Definitions. ~~In~~ For the purposes of 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, including the zip code.
2. "Authenticated electronic communication" means:
   a. That the electronic communication is delivered:
      (1) To the principal place of business of the limited liability limited partnership; or
      (2) To a partner or agent of the limited liability limited partnership authorized by the limited liability limited partnership to receive the electronic communication; and
   b. That the electronic communication sets forth information from which the limited liability limited partnership can reasonably conclude that the electronic communication was sent by the purported sender.
3. ~~"Domestic limited liability limited partnership" means a limited liability limited partnership that is formed under this chapter.~~

~~4.~~ "Domestic organization" means an organization created under the laws of this state.

~~5.~~ 4. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

~~6.~~ 5. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
   a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
   b. That may be directly reproduced in paper form by the recipient through an automated process.

~~7.~~ 6. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

~~8.~~ 7. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record ~~and executed~~ which is signed or adopted by a person with the intent to sign the record.

~~9.~~ 8. "Filed with the secretary of state" means, except as otherwise permitted by law or rule:

a. That a ~~document~~ record meeting the applicable requirements of this chapter, together with the fees provided in section 45-23-08, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law.

b. That the secretary of state ~~shall~~ did then:

(1) Record the actual date on which the ~~document is~~ record was filed, and if different, the effective date of filing; and

(2) Record the ~~document~~ record in the office of the secretary of state.

~~10.~~ 9. "Foreign limited liability limited partnership" means a ~~limited liability limited~~ partnership that is formed by two or more persons under the laws of a jurisdiction other than this state, and:

a. ~~Organized under the laws other than the laws of this state for~~ Which is required by those laws to have one or more general partners and one or more limited partners;

b. Whose general partners and limited partners have limited liability for the obligations of the foreign limited liability limited partnership under provisions similar to this chapter;

c. For a purpose or purposes for which a limited liability limited partnership may be ~~organized~~ formed under this chapter; and

~~b.~~ d. ~~In~~ Is in good standing in the jurisdiction of origin.

~~11.~~ 10. "Foreign limited partnership" means a ~~limited~~ partnership that is~~:~~

~~a.~~ ~~Organized~~ formed by two or more persons under laws other than the laws of this state ~~for~~:

a. Which is required by those laws to have one or more general partners and one of more limited partners;

b. Whose general partners have personal liability for the obligations of the foreign limited partnership under provisions similar to chapter 45-10.2;

c. For a purpose for which a limited partnership may be organized under chapter ~~45-10.1~~ 45-10.2; and

~~b.~~ d. ~~Authorized to transact business in this state as provided in chapter 45-10.1~~ Is in good standing in its jurisdiction of origin.

~~12.~~ 11. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which ~~an~~ the organization may be created under the laws of this state.

12. "General partner" means:

a. With respect to a limited liability limited partnership, a person:

(1) That becomes a general partner under section 45-10.2-37 and has not become dissociated as a general partner under section 45-10.2-57; or

(2) That was a general partner in a limited partnership when the limited partnership became subject to chapter 45-10.2 under section 45-10.2-03 and has not become dissociated as a general partner under section 45-10.2-57; and

b. With respect to a foreign limited liability limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited liability limited partnership.

13. "Governing statute" means:

a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:

(1) If a corporation, then chapter 10-19.1;

(2) If a limited liability company, then chapter 10-32;

(3) If a limited partnership, then chapter 45-10.2;

(4) If a general partnership, then chapters 45-13 through 45-21;

(5) If a limited liability partnership, then chapter 45-22; and

(6) If a limited liability limited partnership, then this chapter; and

b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.

~~13.~~ 14. "Jurisdiction of origin" refers to the jurisdiction in which the limited liability limited partnership status of a foreign limited liability limited partnership was ~~created~~ established.

~~14.~~ 15. "Limited liability limited partnership", except in the phrase "foreign limited liability limited partnership", means a ~~domestic limited liability limited~~ partnership formed by two or more persons having one or more general partners and one or more limited partners which is formed under or elects to become subject to this chapter.

16. "Limited partner" means:

a. With respect to a limited liability limited partnership, a person that:

(1) Becomes a limited partner under section 45-10.2-31 and has not become dissociated as a limited partner under section 45-10.2-55; or

(2) Was a limited partner in a limited partnership when the limited partnership became subject to chapter 45-10.2 under section 45-10.2-03 and has not become dissociated as a limited partner under section 45-10.2-55; and

b. With respect to a foreign limited liability limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited liability limited partnership.

~~15.~~ 17. "Limited partnership", except in the phrase "foreign limited partnership" and "foreign limited liability limited partnership", means a ~~limited~~ partnership ~~formed under chapter 45-10.1~~ having one or more general partners and one or more limited partners which is formed under or elects to become subject to chapter 45-10.2.

~~16.~~ 18. "Notice":

a. Is given to a limited liability limited partnership ~~or to a partner of the limited liability limited partnership~~:

(1) When in writing and mailed or delivered to ~~the limited liability limited partnership or to the~~ a general partner at the registered office or principal executive office of the limited liability limited partnership; or

(2) When given by a form of electronic communication consented to by ~~the limited liability limited partnership or~~ a general partner of the limited liability limited partnership to which the notice is given if by:

(a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which a general partner the limited liability limited partnership ~~or a partner~~ has consented to receive notice~~.~~;

(b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which a general partner of the limited liability limited partnership ~~or a partner~~ has consented to receive notice~~.~~;

(c) ~~If by posting~~ Posting on an electronic network on which a general partner of the limited liability limited partnership ~~or a partner~~ has consented to receive notice, together with separate notice to the limited liability limited partnership ~~or a partner if~~ of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice~~.~~; or

(d) ~~If by any~~ Any other form of electronic communication by which ~~the partnership or~~ a general partner of the limited liability limited partnership has consented to receive notice, when directed to the limited liability limited partnership;

b. Is given ~~in all other cases~~ to a partner of the limited liability limited partnership:

(1) When in writing and mailed or delivered to the ~~person~~ partner at ~~an address designated by the person or at the last known address of the person~~ the registered office or principal executive office of the limited liability limited partnership; or

(2) When ~~handed~~ given by a form of electronic communication consented to by the ~~person;~~ partner to which the notice is given if by:

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

(d) Any other form of electronic communication by which the partner has consented to receive notice when directed to the partner;

c. Is given in all other cases:

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

(2) When handed to the person;

(3) When left at the office of the person with a clerk or other person in charge of the office~~,~~ or ~~if~~:

(a) If there is no one in charge, when left in a conspicuous place in the office ~~and if~~; 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; ~~or~~

(4) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

(a) ~~If by facsimile~~ Facsimile communication, when directed to a telephone number at which the person has consented to receive notice~~.~~;

(b) ~~If by electronic~~ Electronic mail, when directed to an electronic mail address at which the person has consented to receive notice~~.~~;

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

[1] The posting; or

[2] The giving of the separate notice~~.~~; or

(d) ~~If by any~~ Any other form of electronic communication by which the person has consented to receive notice, when directed to the person; or

(5) When the method is fair and reasonable when all circumstances are considered;

~~c.~~ d. Is given when deposited in the United States mail with sufficient postage affixed; and

~~d.~~ e. Is deemed received when given.

~~17.~~ 19. "Organization" means:

a. Whether domestic or foreign, a corporation ~~incorporated in or authorized to do business in this state under this or another chapter of this code~~, limited liability company, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, ~~joint venture, association, business trust, estate, trust, enterprise, and~~ or any other ~~legal or commercial entity~~ person subject to a governing statute; but

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

~~18.~~ 20. "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.

~~19.~~ 21. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~20.~~ 22. "Registered office" means the place in this state designated as the registered office of the limited liability limited partnership or foreign limited liability limited partnership.

~~21.~~ 23. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

~~22.~~ 24. "Signed" means:

a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the ~~document~~ record, is placed on a ~~document~~ record, as provided under section 41-01-09; and

b. With respect to a ~~document~~ record required by this chapter to be filed with the secretary of state, that:

(1) The ~~document~~ record is signed by a person authorized to sign by this chapter, or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

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

SECTION 148. AMENDMENT. Section 45-23-02 of the North Dakota Century Code is amended and reenacted as follows:

45-23-02. Applicability of chapter ~~45-10.1~~ 45-10.2.

1. In any case not provided for in this chapter, chapter ~~45-10.1~~ 45-10.2 governs.

2. If applying chapter ~~45-10.1~~ 45-10.2 to a limited liability limited partnership and unless the context otherwise requires:

a. All references in chapter ~~45-10.1~~ 45-10.2 to "limited partnership" refer to "limited liability limited partnership"; and

b. All references in chapter ~~45-10.1~~ 45-10.2 to "foreign limited partnership" refer to "foreign limited liability limited partnership".

3. If any provision of this chapter conflicts with chapter ~~45-10.1~~ 45-10.2, that provision of this chapter takes precedence.

SECTION 149. AMENDMENT. Section 45-23-03 of the North Dakota Century Code is amended and reenacted as follows:

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~~ 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~~ any 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~~ that indicates or ~~implying~~ that implies that the limited liability limited partnership ~~may~~:
      (1) Is organized for a purpose other than:
         (a) A lawful purpose for which a limited liability limited partnership may be organized under this chapter; or

(b) For a purpose stated in its certificate of limited liability limited partnership; or

(2) 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~~ record 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~~ 45-10.2-11, 45-13-04.2, or 45-22-05;

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

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

2. The secretary of state shall determine whether a limited liability 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~~:

a. Abrogate or limit ~~the~~:

(1) The law of unfair competition or unfair practices; ~~chapter~~

(2) Chapter 47-25; ~~the~~

(3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks; or ~~any~~

(4) Any other rights to the exclusive use of any name or symbol.

b. This section does not derogate the common law or the principles of equity.

5. A limited liability limited partnership that is the surviving organization in a merger with one or more organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization, including its name, may include in the limited liability limited partnership's name, subject to the requirements of subsection 1, the name of any of the other organizations, if the other organization whose name is sought to be used:

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~~ 45-10.2-11, 45-13-04.2, or 45-22-05;

d. Holds a fictitious name registered in the manner provided in chapter 45-11; or

e. Holds a trade name registered in the manner provided in chapter 47-25.

6. The use of a name 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.

7. A limited liability limited partnership whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 45-10.2-108 may reacquire the right to use that name by refiling a certificate of limited liability limited partnership pursuant to section 45-23-04, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 3. A limited liability limited partnership that cannot reacquire the use of its limited liability limited partnership name shall adopt a new limited liability limited partnership name that complies with the provisions of this section:

   a. By refiling the certificate of limited liability limited partnership pursuant to section 45-23-04;

   b. By amending pursuant to section 45-10.2-24; or

   c. By reinstating pursuant to section 45-10.2-108, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 3.

8. Subject to section 45-23-07, this section applies to any foreign limited liability limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

SECTION 150. AMENDMENT. Section 45-23-04 of the North Dakota Century Code is amended and reenacted as follows:

45-23-04. Limited liability limited partnership formation and conversion of a limited partnership to a limited liability limited partnership or conversion of a limited liability limited partnership to a limited partnership.

1. If a limited partnership does not exist, then 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~~ 45-10.2-23.

2. An existing limited partnership:

a. May elect to ~~become~~ convert to a limited liability limited partnership:

(1) By obtaining ~~approval to be governed by this chapter by the vote necessary~~ the consent of each general partner to ~~amend~~ convert 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;~~ a limited liability limited partnership unless:

(a) The certificate of limited partnership or the partnership agreement of the limited partnership provides for the conversion with the consent of less than all general partners; and

(b) Each general partner that does not consent to the amendment of conversion has consented to that provision of the partnership agreement.

A partner does not give the consent required by subparagraph a by consenting to a provision in the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all partners;

(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~~ 45-10.2-109 and 45-23-08, a ~~document~~ record 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~~ 45-10.2-23.

b. ~~Continues~~ Which converts to ~~be~~ a limited liability limited partnership is for all purposes the same entity ~~in existence~~ that existed before the ~~filing with the secretary of state pursuant to this section~~ conversion.

3. An existing limited liability limited partnership:

a. May elect to convert to a limited partnership:

(1) By obtaining the consent of each general partner to convert the limited liability limited partnership to a limited partnership unless:

(a) The certificate of limited liability limited partnership or the partnership agreement of the limited liability limited partnership provides for the conversion with the consent of less than all general partners; and

(b) Each general partner that does not consent to the amendment of conversion has consented to that provision of the partnership agreement.

A partner does not give the consent required by subparagraph a by consenting to a provision in the partnership agreement which permits the partnership agreement to be amended with the consent of fewer than all partners;

(2) By complying with the name requirements of section 45-10.2-11; and

(3) By filing with the secretary of state, together with the fees provided in sections 45-10.2-109 and 45-23-08, a record that is designated as both an amended certificate of limited liability limited partnership and a certificate of limited partnership which:

(a) Amends the limited liability limited partnership name to comply with the name requirements of section 45-10.2-11; and

(b) Otherwise conforms to the requirements of section 45-10.2-23.

b. Which converts to a limited partnership is for all purposes the same entity that existed before the conversion.

SECTION 151. AMENDMENT. Subsections 1 and 2 of section 45-23-05 of the North Dakota Century Code are amended and reenacted as follows:

1. If a limited partnership does not exist, then 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~~ convert to a limited liability limited partnership is governed by this chapter on the later of the filing of the ~~document~~ record 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~~ record which is within ninety days after the filing of the ~~document~~ record.

SECTION 152. AMENDMENT. Section 45-23-06 of the North Dakota Century Code is amended and reenacted as follows:

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.

1. 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.
2. This section applies notwithstanding anything inconsistent in the partnership agreement.

SECTION 153. AMENDMENT. Section 45-23-07 of the North Dakota Century Code is amended and reenacted as follows:

45-23-07. Foreign limited liability limited partnership ~~- Adopting limited liability limited partnership status~~. ~~An existing~~ With respect to a foreign limited liability limited partnership ~~authorized to transact business in this state pursuant to~~, in any case not provided for in this chapter, chapter 45-10.2 and 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~~ 45-23-02 shall govern.

SECTION 154. AMENDMENT. Section 45-23-08 of the North Dakota Century Code is amended and reenacted as follows:

45-23-08. Secretary of state - Fees for filing ~~documents~~ records. 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 statement of conversion of a limited liability limited partnership, fifty dollars and:
   a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or
   b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.
4. Filing abandonment of conversion, fifty dollars.
5. Filing limited liability limited partnership articles of merger, fifty dollars.
6. Filing abandonment of merger or exchange, fifty dollars.
7. Filing limited liability limited partnership statement of correction, forty dollars.
8. Filing a certificate of limited liability limited partnership dissolution, twenty-five dollars.

~~4.~~ 9. Filing a certificate of limited liability limited partnership cancellation, twenty-five dollars.

~~5.~~ 10. Filing a reservation of limited liability limited partnership name, ten dollars.

~~6.~~ 11. Filing a notice of transfer of reserved limited liability limited partnership name, ten dollars.

~~7.~~ 12. Filing a cancellation of a reserved limited liability limited partnership name, ten dollars.

~~8.~~ 13. Filing a consent to use of a deceptively similar name, ten dollars.

~~9.~~ 14. Filing a statement of change of address of registered office or change of registered agent, or both, ten dollars.

~~10.~~ 15. 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.~~ 16. Filing a registered agent's consent to serve in the capacity of registered agent, ten dollars.

~~12.~~ 17. Filing a resignation as registered agent, ten dollars.

~~13.~~ 18. Filing a registration of foreign limited liability limited partnership, one hundred dollars.

~~14.~~ 19. Filing a certified statement of amendment of foreign limited liability limited partnership, twenty-five dollars.

~~15.~~ 20. Filing a certified statement of dissolution of foreign limited liability limited partnership, twenty-five dollars.

21. Filing a certified statement of merger of foreign limited liability limited partnership, fifty dollars.

22. Filing a certified statement of conversion of foreign limited liability limited partnership, fifty dollars and:

a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or

b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.

~~16.~~ 23. Filing a certified statement of cancellation of foreign limited liability limited partnership, twenty-five dollars.

~~17.~~ 24. Filing a statement of withdrawal of foreign limited liability limited partnership, twenty-five dollars.

~~18.~~ 25. Filing an annual report of limited liability limited partnership, twenty-five dollars.

a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:

~~a.~~ (1) After the date ~~prescribed~~ provided in subsection 3 of section ~~45-10.1-14~~ 45-10.2-108, twenty dollars; and

~~b.~~ (2) 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.

b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 45-10.2-108 or the annual report lacks sufficient payment as required by this subsection.

~~19.~~ 26. Any ~~document~~ record submitted for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the ~~document~~ record.

27. Filing any process, notice, or demand for service, twenty-five dollars.

28. Furnishing a certificate of existence or authorization:

a. Fifteen dollars; and

b. Five dollars for a search of records.

29. Furnishing a certified copy of any record or paper relating to a limited partnership or foreign limited partnership:

a. One dollar for every four pages or fraction;

b. Fifteen dollars for the certificate and affixing the seal thereto; and

c. Five dollars for a search of records.

SECTION 155. AMENDMENT. Section 45-23-09 of the North Dakota Century Code is amended and reenacted as follows:

45-23-09. Secretary of state - Confidential records. Any social security number or federal tax identification number disclosed or contained in any ~~document~~ record filed with the

secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any ~~document~~ record is released to the public.

SECTION 156. REPEAL. Section 45-22-01.1 of the North Dakota Century Code is repealed.