FIRST ENGROSSMENT

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1241

Introduced by

Representative DeKrey

Senator Nething

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

nonprofit corporations, limited partnerships, partnerships, limited liability partnerships, and limited liability limited partnerships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

SECTION 2. AMENDMENT. Section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Acquiring organization" means the ~~corporation,~~ foreign ~~corporation,~~ or domestic ~~or foreign limited liability company~~ organization acquiring ~~in an exchange~~ the ~~shares~~ ownership interests of ~~a corporation or~~ another foreign ~~corporation or the membership interests of a domestic or foreign limited liability company~~ or domestic organization participating in an exchange.
3. "Address" means:
   a. In the case of a registered office or principal executive office, the mailing address, including the zip code, of the actual office location, which may not be only a post-office box; and
   b. In any other case, the mailing address, including the zip code.
4. "Articles" means:
   a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares,

a statement of cancellation of authorized shares, articles of merger, articles of abandonment, articles of conversion, and articles of dissolution.

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

5. "Authenticated electronic communication" means:

a. That the electronic communication is delivered:

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

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

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

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

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

8. "Board member" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

    b. That the secretary of state did then:

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

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

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

27. "Foreign limited liability company" means a limited liability company organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.

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

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

30. "Governing body" means for an organization that is:

a. A corporation, its board of directors;

b. A limited liability company, its board of governors; or

c. Any other organization, the body selected by its owners that has the ultimate power to determine the policies of the organization and to control its policies.

31. "Governing statute" of an organization means:

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

(1) If a corporation, then this chapter;

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

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

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

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

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

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

~~31.~~ 32. "Intentionally" means that the person referred to has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute:

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

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

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

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

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

~~35.~~ 36. "Notice":

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

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

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice.

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

b. Is given by a publicly held corporation to a shareholder if the notice is addressed to the shareholder or group of shareholders in a manner permitted

by the rules and regulations under the Securities Exchange Act of 1934, as amended, provided that the corporation has first received any affirmative written consent or implied consent required under those rules and regulations.

c. Is given, in all other cases:

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

(2) When handed to the person;

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

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

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

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

~~37.~~ 38. "Organization" means:

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

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

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

a. A corporation, its articles of incorporation;

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

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

d. A limited liability partnership, its registration; or

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

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

~~39.~~ 41. "Owners" means~~:~~

~~a. Shareholders in the case of a corporation; and~~

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

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

a. A corporation, its shares;

b. A limited liability company, its membership interests;

c. A limited partnership, its partnership interests;

d. A general partnership, its partnership interests;

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

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

g. Any other organization, its governance or transferable interests.

~~41.~~ 43. "Parent" of a specified ~~corporation~~ organization means ~~a corporation, a foreign corporation, a limited liability company, or a foreign limited liability company~~ an organization that directly, or indirectly through related organizations, owns more than fifty percent of the voting power of the ~~shares~~ ownership interests entitled to vote for directors or other members of the governing body of the specified ~~corporation~~ organization.

~~42.~~ 44. "Principal executive office" means:

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

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

~~43.~~ 45. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~44.~~ 46. "Registered office" means the place in this state designated in a corporation's articles of incorporation or in a foreign corporation's certificate of authority as the registered office.

~~45.~~ 47. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:

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

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

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

~~46.~~ 48. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by

which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

~~47.~~ 49. "Security" has the meaning given in section 10-04-02.

~~48.~~ 50. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to a corporation's articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.

~~49.~~ 51. "Share" means one of the units, however designated, into which the shareholders' proprietary interests of the shareholder in a corporation are divided.

~~50.~~ 52. "Shareholder" means a person registered on the books or records of a corporation or the corporation's transfer agent or registrar as the owner of whole or fractional shares of the corporation.

~~51.~~ 53. "Signed" means:

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

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

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

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

~~52.~~ 54. "Subscriber" means a person that subscribes for shares in a corporation, whether before or after incorporation.

~~53.~~ 55. "Subsidiary" of a specified ~~corporation~~ organization means~~:~~

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

~~b. A limited liability company or a foreign limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company~~ an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

~~54.~~ 56. "Surviving corporation" means the domestic or foreign corporation resulting from a merger which:

a. May preexist the merger; or

b. May be created by the merger.

~~55.~~ 57. "Surviving organization" means the ~~corporation or foreign corporation or domestic or foreign limited liability company~~ organization resulting from a merger which:

a. May preexist the merger; or

b. May be created by the merger.

~~56.~~ 58. "Vote" includes authorization by written action.

~~57.~~ 59. "Written action" means:

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

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

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

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

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

10-19.1-01.2. Knowledge and notice.

1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:
   a. Knows of the fact;
   b. Has received notice of the fact as provided in subsection ~~35~~ 36 of section 10-19.1-01;
   c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or
   d. Has notice of it under subsection 3.
3. Subject to subsection 8, a person has notice of:
   a. The intention of a corporation to dissolve, ninety days after the effective date of the filed notice of intent to dissolve;
   b. The dissolution of a corporation, ninety days after the effective date of the filed articles of dissolution;
   c. The conversion of a corporation, ninety days after the effective date of the filed articles of conversion; or
   d. The merger of a corporation, ninety days after the effective date of the filed articles of merger.
4. A person notifies or gives a notification to another person by taking the steps provided in subsection ~~35~~ 36 of section 10-19.1-01, whether or not the other person learns of it.
5. A person receives a notification as provided in subsection ~~35~~ 36 of section 10-19.1-01.
6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection ~~35~~ 36 of section 10-19.1-01, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.

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

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

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

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

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

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

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

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

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

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

10-19.1-10. Articles.

1. The articles of incorporation must contain:
   a. The name of the corporation.
   b. The address of the registered office of the corporation and the name of its registered agent at that address.
   c. The aggregate number of shares that the corporation has authority to issue.
   d. The name and address of each incorporator.
   e. The effective date of incorporation if a later date than that on which the certificate of incorporation is issued by the secretary of state, which may not be later than ninety days after the date on which the certificate of incorporation is issued.
2. ~~The articles of incorporation may not contain;~~
   ~~a. Any provision limiting the right of cumulative voting as guaranteed by section 6 of article XII of the Constitution of North Dakota.~~
   ~~b. Any provision authorizing the issuance of stocks or bonds in violation of section 9 of article XII of the Constitution of North Dakota.~~

~~3.~~ The following provisions govern a corporation unless modified in the articles:
   a. A corporation has general business purposes as provided in section 10-19.1-08.
   b. A corporation has perpetual existence and certain powers as provided in section 10-19.1-26.
   c. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-19.1-31.

d. A corporation must allow cumulative voting for directors as provided in section 10-19.1-39.

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

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

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

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

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

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

~~j.~~ k. Subject to article XII of the Constitution of North Dakota, the board or the shareholders may issue shares for any consideration or for no consideration to effectuate share dividends or splits and determine the value of nonmonetary consideration as provided in subsection 1 of section 10-19.1-63.

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

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

n. A shareholder has certain preemptive rights, unless otherwise provided by the board as provided in section 10-19.1-65.

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

(1) A plurality of the votes cast as provided in subsection 1 of section 10-19.1-39; or

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

p. A written action of shareholders must be signed by all shareholders as provided in section 19-19.1-75.

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

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

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

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

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

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

~~4.~~ 3. The following provisions govern a corporation unless modified either in the articles or in the bylaws:

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

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

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

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

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

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

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

h. A committee ~~must~~:

(1) Must consist of one or more ~~persons~~ individuals, who need not be directors, appointed by affirmative vote of a majority of the directors present as provided in subsection 2 of section 10-19.1-48; and

(2) May create one or more subcommittees, each consisting of one or more members of the committees and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-19.1-48.

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

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

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

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

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

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

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

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

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

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

~~5.~~ 4. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board fixing a greater than majority director or shareholder vote or giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:

a. The members of the first board may be named in the articles as provided in subsection 1 of section 10-19.1-32.

b. A manner for increasing or decreasing the number of directors as provided in section 10-19.1-33.

c. Additional qualifications for directors may be imposed as provided in section 10-19.1-34.

d. Directors may be classified as provided in section 10-19.1-38.

e. The day or date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-19.1-43.

f. Absent directors may be permitted to give written consent or opposition to a proposal as provided in section 10-19.1-44.

g. A larger than majority vote may be required for board action as provided in section 10-19.1-46.

h. Authority to sign and deliver certain documents may be delegated to an officer or agent of the corporation other than the president as provided in section 10-19.1-53.

i. Additional officers may be designated as provided in section 10-19.1-52.

j. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-19.1-53.

k. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-19.1-58.

l. A certain officer or agent may be authorized to sign share certificates as provided in subsection 1 of section 10-19.1-66.

m. The transfer or registration of transfer of securities may be restricted as provided in section 10-19.1-70.

n. The day or date, time, and place of regular shareholder meetings may be fixed as provided in subsection 3 of section 10-19.1-71.

o. Certain persons may be authorized to call special meetings of shareholders as provided in subsection 1 of section 10-19.1-72.

p. Notices of shareholder meetings may be required to contain certain information as provided in subsection 3 of section 10-19.1-73.

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

r. Voting rights may be granted in or pursuant to the articles to persons who are not shareholders as provided in subsection 6 of section 10-19.1-73.2.

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

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

u. A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles as provided in section 10-19.1-50.

~~6.~~ 5. The articles may contain other provisions not inconsistent with section 10-19.1-32 or any other provision of law relating to the management of the business or the regulation of the affairs of the corporation.

~~7.~~ 6. It is not necessary to set forth in the articles any of the corporate powers granted by this chapter.

~~8.~~ 7. Subsection ~~5~~ 4 does not limit the right of the board, by resolution, to take an action that the bylaws may authorize under this section without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.

8. Except for provisions included pursuant to subsection 1, any provision of the articles may:

a. Be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and

b. Incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the corporation, but only if the corporation retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

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

10-19.1-13. Corporate name.

1. The corporate name:

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

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

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

d. May not contain a word or phrase that indicates or implies the corporation:

(1) Is incorporated for a purpose other than:

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

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

(2) May not be incorporated under this chapter.

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

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

(a) Another corporation;

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

(c) A limited liability company;

(d) A limited partnership;

(e) A limited liability partnership; or

(f) A limited liability limited partnership;

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

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

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

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

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

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

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

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

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

   a. Abrogate or limit:

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

      (2) Chapter 47-25;

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

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

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

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

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

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

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

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

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

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

8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-19.1-146 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-19.1-11, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment as provided in subsection 2. A corporation that cannot reacquire the use of its corporate name shall adopt a new corporate name that complies with the provisions of this section:
   a. By refiling articles of incorporation pursuant to section 10-19.1-11;
   b. By amending pursuant to section 10-19.1-17; or
   c. By reinstating pursuant to section 10-19.1-146.
9. Subject to section 10-19.1-133, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.
10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the shareholders as provided in section 10-19.1-18.

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

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

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

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

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

10-19.1-41. Nonjudicial removal of directors.

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

~~then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which the director is a part, would be sufficient to elect the~~ entitled to vote at an election of directors. However, if a director~~. Whenever the holders of the~~ has been elected solely by the holders of a class or series of shares, as stated in the articles or bylaws, then that director may be removed only by the affirmative vote of the holders of a majority of the voting power of all shares of ~~any~~ that class ~~are~~ or series entitled to ~~elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole~~ vote at an election of that director.

4. ~~New directors may be elected at a meeting at which directors are~~ In a corporation having cumulative voting, unless the entire board is removed simultaneously, a director is not removed from the board if there are cast against removal of the director the votes of a proportion of the voting power sufficient to elect the director at an election of the entire board under cumulative voting.

5. New directors may be elected at a meeting at which directors are removed. If the corporation allows cumulative voting and if a shareholder notifies the presiding officer at any time prior to the election of new directors of interest to cumulate the votes of the shareholders, then the presiding officer shall announce before the election that cumulative voting is in effect and shareholders shall cumulate their votes as provided in subdivision b of subsection 2 of section 10-19.1-39.

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

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

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

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

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

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

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

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

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

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

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

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

3. The determinations of the board or the shareholders as to the amount or fair value or the fairness to the corporation of the consideration received or to be received by the corporation for its shares or the terms of payment, as well as the agreement to issue shares for that consideration, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Unless otherwise required by the articles, the consideration may be less than the par value, if any, of the shares. Directors or shareholders who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving an issue of shares for a consideration that is unfair to the corporation, or overvalue property ~~or services~~ received or to be received by the corporation as consideration for shares issued, are jointly and severally liable to the corporation for the benefit of the then shareholders who did not consent to and are damaged by the action, to the extent of the damages of those shareholders. A director or shareholder against whom a claim is asserted pursuant to this ~~section~~ subsection, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other directors or shareholders who are liable under this section.

4. A corporation may issue only shares that are nonassessable or that are assessable but are issued with the unanimous consent of the shareholders. "Nonassessable" shares are shares for which the agreed consideration has been fully paid, delivered, or rendered to the corporation.

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

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

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

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

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

5. A pledgee or holder of any other security interest in all or any shares that have been issued in violation of subsection 4 is not liable under subdivision b of subsection 4 if all those shares are surrendered to the corporation. The surrender does not impair any rights of the pledgee or holder of any other security interest against the pledgor or person granting the security interest.

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

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

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

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

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

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

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

   a. The ~~resolution~~ action by the corporation provided in this subsection does not apply to shares represented by a certificate until the certificate is surrendered to the corporation.

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

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

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

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

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

1. A holder of or subscriber for shares of a corporation is under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration of which such shares were issued or to be issued. As such, a shareholder is not personally liable for the acts or debts of the corporation.

2. Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefore has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

3. A personal representative, conservator, guardian, trustee, assignee for the benefit of creditors, or a receiver is not personally liable to the corporation as a holder of or subscriber for shares of a corporation but the estate and funds in said person's hands are liable.

4. No pledgee or other holder of shares as collateral security is personally liable as a shareholder.

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

10-19.1-74.1. Contractual requirement to submit matter to shareholders. A corporation may agree to submit a matter to its shareholders whether or not the board

determines, at any time after approving the matter, that the matter is no longer advisable and recommends that the shareholders reject it.

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

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

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

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

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

2. A corporation shall keep, at its principal executive office, or, if its principal executive office is outside of this state, shall make available at its registered office within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subsection 4 or 5, originals or copies of:
   a. Records of all proceedings of shareholders for the last three years;

b. Records of all proceedings of the board for the last three years;

c. Its articles and all amendments currently in effect;

d. Its bylaws and all amendments currently in effect;

e. Financial statements required by section 10-19.1-85 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;

f. Reports made to shareholders generally within the last three years;

g. A statement of the names and usual business addresses of its directors and principal officers;

h. Voting trust agreements described in section 10-19.1-81;

i. Shareholder control agreements described in section 10-19.1-83; and

j. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsection ~~3~~ 8 of section ~~10-19.1-61~~ 10-19.1-10.

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

10-19.1-87. Rights of dissenting shareholders.

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

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

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

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

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

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

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

b. A sale, lease, transfer, or other disposition of property and assets of the corporation that requires shareholder approval under subsection 2 of section 10-19.1-104, but not including:

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

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

(3) A disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;

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

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

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

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

2. A shareholder may not assert dissenters' rights as to less than all of the shares registered in the name of the shareholder, unless the shareholder dissents with respect to all the shares that are beneficially owned by another person but registered in the name of the shareholder and discloses the name and address of each beneficial owner on whose behalf the shareholder dissents. In that event, the

rights of the dissenter must be determined as if the shares as to which the shareholder has dissented and the other shares were registered in the names of different shareholders. The beneficial owner of shares who is not the shareholder may assert dissenters' rights with respect to shares held on behalf of the beneficial owner, and must be treated as a dissenting shareholder under the terms of this section and section 10-19.1-88, if the beneficial owner submits to the corporation at the time of or before the assertion of the rights a written consent of the shareholder.

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

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

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

4. The shareholders of a corporation who have a right under this section to obtain payment for their shares, or who would have the right to obtain payment for their shares absent the exception set for in subsection 6, do not have a right at law or in equity to have a corporate action described in subsection 1 set aside or rescinded, except when the corporate action is fraudulent with regard to the complaining shareholder or the corporation.

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

6. Notwithstanding subsection 1, the right to obtain payment under this section, other than in connection with a plan of merger adopted under section 10-19.1-100, is limited in accordance with the following provisions:
   a. The right to obtain payment under this section is not available for the holders of shares of any class or series of shares that is listed on the New York stock exchange or the American stock exchange or designated as a national market ~~system~~ security on ~~an interdealer quotation system by the national association of securities dealers, incorporated~~ the nasdaq stock market.
   b. The applicability of subdivision a is determined as of:
      (1) The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action described in subsection 1; or
      (2) The day before the effective date of corporate action described in subsection 1 if there is no meeting of shareholders.
   c. Subdivision a is not applicable, and the right to obtain payment under this section is available pursuant to subsection 1, for the holders of any class or series of shares who are required by the terms of the corporate action described in subsection 1 to accept for such shares anything other than shares, or cash in lieu of fractional shares, of any class or any series of shares of the domestic or foreign corporation, or any other ~~proprietary~~ ownership interest of any other ~~entity~~ organization, that satisfies the standards set forth in subdivision a at the time the corporate action becomes effective.

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

1. A corporation may acquire its own shares, subject to section 10-19.1-92.
   a. If a corporation acquires its own shares, then any of the acquired shares that are not pledged by the corporation as security for the future payment of some or all of the purchase price for the shares constitute authorized but unissued shares of the corporation, unless the articles provide that they may not be

reissued. If the articles prohibit reissue, the number of authorized shares is reduced by the number of shares acquired.

b. If a corporation pledges acquired shares as security for future payment of all or part of the purchase price for the shares and reissues the pledged shares in its own name, then:

(1) The shares must continue to be issued and outstanding except for voting and determination of a quorum, and the shares are not considered to be present and entitled to vote at any meeting of shareholders;

(2) The corporation may not vote or exercise any other rights of a shareholder with respect to the pledged shares, but the pledgee shall have any rights, other than the right to vote, with respect to the shares which the pledgee is entitled to <u>by</u> contract;

(3) If the pledge is foreclosed, the corporation shall reissue and deliver the pledged shares to or at the direction of the pledgee; and

(4) Shares that are released from a pledge have the status specified in subdivision a.

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

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

1. With or without a business purpose, a corporation may merge with~~:~~

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

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

~~c. A foreign corporation or foreign limited liability company under a plan of merger in the manner provided in section 10-19.1-103~~ <u>another domestic or foreign organization under a plan of merger approved in the manner provided in this section and in sections 10-19.1-97 through 10-19.1-103 and in the manner provided in the governing statute of the other organization</u>.

2. With respect to an exchange:

a. A corporation may acquire all the ownership interests of one or more classes or series of another domestic ~~corporation~~ or foreign organization under a plan of exchange approved in the manner provided in this section and in sections 10-19.1-97 through 10-19.1-103 in the case of a domestic corporation and in the manner provided in the governing statute in the case of any other organization.

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

~~c.~~ ~~A limited liability company~~ Another domestic or foreign organization may acquire all the ~~ownership interests~~ shares of one or more classes or series of a corporation under a plan of exchange approved in the manner provided in this section and in sections 10-19.1-97 through 10-19.1-103 ~~and chapter 10-32~~ in the case of a domestic corporation and in the manner provided in the governing statute in the case of any other organization.

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

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

4. A corporation may participate in a merger or exchange ~~with a limited liability company~~ only as permitted by this section and by sections 10-19.1-97 through 10-19.1-103. The dissenter's rights for shareholders of a corporation are governed by this chapter.

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

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

1. A plan of merger or exchange must contain:

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

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

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

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

c. The manner and basis for converting or exchanging ownership interests:

(1) In the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into securities of the surviving organization or of any other organization or, in whole or in part, into money or other property; or

(2) In the case of an exchange, the manner and basis of exchanging the ownership interests to be acquired for securities of the acquiring organization or any other organization or, in whole or in part, into money or other property;

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

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

2. This section does not limit the power of a corporation to acquire all or part of the ownership interests of one or more classes or series of ~~another~~ any other organization through a negotiated agreement with the owners or otherwise.

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

10-19.1-98. Plan approval.

1. A resolution containing the plan of merger or exchange must be approved by the governing ~~board~~ body as required by section 10-19.1-46 in the case of a domestic corporation, or ~~10-32-83~~ by the governing statute of each other constituent organization and must then be submitted at a regular or special meeting to the owners of each constituent organization, in the case of a plan of merger or the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of a plan of exchange. ~~The plan of merger or exchange may require that it be submitted to the~~

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

2. At the meeting a vote of the owners must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests entitled to vote. Except as provided in subsection 3, a class or series of ~~shares~~ ownership interests of the ~~corporation~~ constituent organization is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles ~~of incorporation~~, or a member-control agreement, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series ~~solely because the plan of merger or exchange affects a cancellation or exchange of ownership interests of the class or series~~ if the plan of merger or exchange affects a cancellation or exchange of all ownership interests of the constituent organization of all classes and series that are outstanding immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section 10-19.1-87, or would have the right to

obtain payment for their ownership interests absent the exception set forth in subsection 6 of section 10-19.1-87, in the case of a domestic corporation, or ~~10-32-54~~ under its governing statute in the case of any other organization in the event of the merger or exchange.

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

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

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

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

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

5. If the merger or exchange is with an organization other than a domestic ~~limited liability company~~ corporation, the plan of merger or exchange must also be

approved in the manner provided in ~~chapter 10-32~~ the governing statute of the other organization.

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

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

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

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

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

body of the parent as required by its governing statute in the case of any other organization must set forth a plan of merger that contains:

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

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

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

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

3. ~~If~~ Notwithstanding subsection 1:

a. If the parent is a domestic corporation and the conditions of subsection 4 of section 10-19.1-98 are not met with respect to the parent, then the resolution is not effective unless it is approved by the affirmative vote of the holders of a majority of the voting power of all shares of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98; and

b. If the parent is a domestic or foreign organization and is not the surviving organization in the merger, then the resolution is not effective unless it is also approved in the manner provided in the governing statute of the parent.

4. Notwithstanding subsection 3, if the parent is a constituent organization and is the surviving organization in the merger, it may change its corporate name, without a vote of its owners, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the board members of the parent present. Upon the effective date of the merger, the name of the parent must be changed.

~~4. If the parent is a constituent organization but is not the surviving constituent organization in a merger, the resolution is not effective unless the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98 if the parent is a domestic corporation, section 10-32-102 if the parent is a limited liability company, or in accordance with the laws of the jurisdiction under which the parent is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.~~

5. ~~Notice~~ If the subsidiary is a domestic organization, then notice of the action, including a copy of the plan of merger must be given to each owner, other than the parent and any subsidiary, of each subsidiary that is a constituent organization in the merger before, or within ten days after, the effective date of the merger.

6. Articles of merger must be prepared which contain:

   a. The plan of merger;

   b. The number of outstanding ownership interests of each class and series of the subsidiary that is a constituent organization in the merger, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, and the number of ownership interests of each class and series owned, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, by the parent directly, or indirectly through related constituent organizations; and

   c. A statement that the plan of merger is approved by the parent under this section.

7. The articles of merger must be signed on behalf of the parent and filed with the secretary of state, with the fees provided in section 10-19.1-147.

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

9. If all of the ownership interests of one or more domestic subsidiaries that is a constituent organization to a merger under this section are not owned by the

parent directly, or indirectly through related constituent organizations, immediately before the merger, then the owners of each domestic subsidiary which is either a limited liability company or a corporation, have dissenter's rights under section 10-19.1-87 or 10-32-54, without regard to subsection 3 of section 10-19.1-87 or subsection 2 of section 10-32-54, and under section 10-19.1-88 or 10-32-55.

a. If the parent is a constituent organization but is not the surviving organization in the merger, the articles of incorporation or articles of organization of the surviving organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54, and the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, then that owner of the parent has dissenter's rights as provided under section 10-19.1-87 or 10-32-54.

b. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this section.

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

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

1. For purposes of this section:

a. "Holding company" means the corporation that is or becomes the direct parent of the surviving corporation of a merger accomplished under this section.

b. "Parent constituent corporation" means the parent corporation that merges with or into the subsidiary constituent corporation.

c. "Subsidiary constituent corporation" means the subsidiary corporation that the parent constituent corporation merges with or into in the merger.

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

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

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

the case of a domestic corporation or by its governing statute in the case of any other organization, subject to the contract rights of any other person under the plan.

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

   a. The names of the constituent organizations;

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

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

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

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

2. When a merger becomes effective:

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

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

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

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

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

and liabilities of ~~a domestic limited liability company~~ the specified organization under its governing statute.

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

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

(1) All property and all debts due on any account, including subscriptions to ~~shares~~ ownership interests and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving organization without any further act or deed.

(2) Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by the organization's current officers ~~or~~, managers, or governing body, as the case may be, or, if the organization no longer exists, by the ~~organization's~~ last officers ~~or~~, managers, or governing body of the organization.

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

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

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

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

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

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

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

SECTION 31. AMENDMENT. Section 10-19.1-103 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A domestic corporation may merge with, including a merger pursuant to section 10-19.1-100, or participate in an exchange with a foreign ~~corporation or foreign limited liability company~~ organization by following the procedures set forth in this section, if:
   a. With respect to a merger, the merger is permitted by ~~the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized~~ its governing statute.
   b. With respect to an exchange, the constituent organization whose ownership interests will be acquired is a domestic ~~corporation or limited liability company~~ organization, regardless of whether the exchange is permitted by ~~the laws of the jurisdiction under which the foreign corporation or foreign limited liability company is incorporated or organized~~ its governing statute.
2. Each domestic corporation shall comply with the provisions of sections 10-19.1-96 through 10-19.1-103 with respect to the merger or exchange of ownership interests and each foreign ~~corporation or foreign limited liability company~~ organization shall

comply with the applicable provisions of ~~the laws of the jurisdiction under which it was incorporated or organized or by which it is governed~~ its governing statute.

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

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

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

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

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

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

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

1. A corporation, by affirmative vote of a majority of the directors present upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, and without shareholder approval, may:

   a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;

b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or

c. Transfer any or all of its property to ~~a corporation~~ an organization all the ~~shares~~ ownership interests of which are owned by the corporation.

2. With respect to shareholders' approval:

a. A corporation, by affirmative vote of a majority of the directors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its good will, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board deems expedient, when approved at a regular or special meeting of the shareholders by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote.

(1) Written notice of the meeting must be given to all shareholders whether or not they are entitled to vote at the meeting.

(2) The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation.

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

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

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

3. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current officers or, if the corporation no longer exists, by its last officers.

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

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

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

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

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

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

   b. "Act of the governing body" means action by the governing body of any organization, other than a domestic corporation, in the manner provided in the governing statute.

   c. "Act of the owners" means action by the owners of an organization, other than a domestic corporation, in the manner provided in its governing statute.

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

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

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

   ~~c.~~ e. "Certificate of creation" means:

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

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

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

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

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

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

(1) A corporation which is:

(a) The converting organization was incorporated; or

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

(2) A limited liability company which is:

(a) The converting organization was organized; or

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

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

(4) A limited partnership which is:

(a) The converting organization was formed; or

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

(5) A limited liability partnership which is:

(a) The converting organization was formed; or

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

(6) A limited liability limited partnership which is:

(a) The converting organization was formed; or

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

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

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

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

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

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

(3) A limited partnership, its partnership agreement;

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

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

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

~~(1) A corporation, its articles of incorporation;~~

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

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

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

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

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

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

a. Publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located; and

b. Giving written notice to known creditors and claimants pursuant to subsection ~~35~~ 36 of section 10-19.1-01.

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

10-19.1-139.1. Foreign corporation - Conversion of foreign corporation authorized to transact business in this state. If a foreign corporation authorized to transact business in this state converts to another organization permitted by its governing statute, within thirty days after the conversion becomes effective, the newly created organization resulting

from the conversion shall file with the secretary of state a certified statement of conversion duly authenticated by the proper officer of the jurisdiction in which the statutory conversion was effected. Any foreign organization that is the converted organization in a conversion and which will continue to transact business in this state shall obtain a certificate of authority or applicable registration in accordance with the North Dakota governing statute applicable to the converted organization.

SECTION 36. AMENDMENT. Section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

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

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

~~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 provided in subsection ~~51~~ 52 of section 10-19.1-01, or the articles or the bylaws or a resolution approved by the affirmative vote of the required proportion or number of the directors or holders of shares entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years. ~~The secretary of state, or any employee or legal representative of the secretary of state, may not disclose the~~

~~information reported under subdivision g of subsection 1 to any person, except a person that is verified to be a shareholder of the corporation or foreign corporation, a legal representative of the shareholder for which information is requested, or to the tax commissioner or any employee or legal representative of the tax commissioner, who may not disclose the information and may use the information only for the administration of the tax laws.~~

3. Except for the first annual report, the annual report must be delivered to the secretary of state:
   a. By a corporation, before August second of each year; and
   b. By a foreign corporation, before May sixteenth of each year.

   The first annual report of either a corporation or foreign corporation must be delivered before the date provided in the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state, or in the case of a corporation, in the year following the calendar year of the effective date stated in the articles of incorporation. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this subsection, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this subsection, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.
4. The secretary of state must file the annual report if the annual report conforms to the requirements of this section and all fees have been paid as provided in section 10-19.1-147.
   a. If the annual report does not conform, it must be returned to the corporation or foreign corporation for any necessary correction or payment.
   b. If the annual report is corrected and filed before the date provided in subsection 3, or within thirty days after the annual report was returned by the secretary of state for correction, then the penalties provided in section

10-19.1-147 for the failure to file an annual report within the time provided do not apply.

5. The secretary of state may extend the annual report filing date provided in subsection 3 if a written application for an extension is delivered before the date provided in subsection 3. A corporation or foreign corporation ~~with a fiscal year ending within three months before the date provided in subsection 3~~ may make a written request for an extension~~,~~ to apply to reports for subsequent years ~~until the fiscal year is changed~~.

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

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

   b. If the corporation or foreign corporation files its annual report after the notice is mailed, together with the filing fee and the late filing penalty fee provided in section 10-19.1-147, then the secretary of state shall restore its certificate of incorporation or certificate of authority to good standing.

7. A corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 ceases to exist as a corporation and is considered involuntarily dissolved by operation of law.

   a. The secretary of state shall note the dissolution of the corporation's certificate of incorporation on the records of the secretary of state and shall give notice of the action to the dissolved corporation.

   b. Notice by the secretary of state must be mailed to the last registered agent at the last registered office of record.

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

SECTION 37. AMENDMENT. Section 10-19.1-147 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Filing articles of incorporation and issuing a certificate of incorporation, ~~thirty~~ <u>ninety</u> 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22. Filing articles of dissolution, twenty dollars.

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

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

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

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

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

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

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

        (2) Thereafter, sixty dollars; and

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

    b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-19.1-146, or the annual report lacks sufficient payment as required by this subsection.

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

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

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

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

        ~~(1) Filing articles of incorporation;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~33.~~ 31. Filing any other statement of a corporation or foreign corporation, ten dollars.

SECTION 38. AMENDMENT. Section 10-32-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Acquiring organization" means the ~~limited liability company or~~ domestic or foreign ~~limited liability company, or corporation or foreign corporation~~ organization that acquires ~~in an exchange~~ the ~~shares~~ ownership interests of ~~a corporation or~~

another foreign ~~corporation the membership interests of a limited liability company~~ or domestic organization in an exchange.

2. "Address" means:

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

b. In all other cases, the mailing address, including a zip code.

3. "Articles" or "articles of organization" means:

a. In the case of a limited liability company organized under this chapter, articles of organization, articles of amendment, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of abandonment, articles of conversion, and articles of termination.

b. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed with the secretary of state or other state office of the ~~limited liability company's~~ state of organization of the foreign limited liability company.

4. "Authenticated electronic communication" means:

a. That the electronic communication is delivered:

(1) To the principal place of business of the limited liability company; or

(2) To a manager or agent of the limited liability company authorized by the limited liability company to receive the electronic communication; and

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

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

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

7. "Board member" means:

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

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

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

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

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

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

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

11. "Constituent organization" means ~~a limited liability company or a domestic or foreign corporation~~ <u>an organization</u> that:

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

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

12. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in the capacity of that member as a member.

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

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

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

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

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

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

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

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

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

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

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

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

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

    b. That the secretary of state did then:

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

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

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

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

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

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

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

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

29. "Foreign limited liability company" means a limited liability company which is organized under or governed by laws other than the laws of this state for a purpose for which a limited liability company may be organized under this chapter.

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

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

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

33. "Governing ~~board~~ body" means for an organization that is:

a. ~~The~~ A corporation, its board of ~~governors in the case of a~~ directors;

b. A limited liability company, its board of governors; ~~and~~

~~b. The board of directors in the case of a corporation~~ or

c. Any other organization, the body selected by its owners that has the ultimate power to determine the policies of the organization and to control its policies.

34. "Governing statute" of an organization means:

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

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

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

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

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

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

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

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

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

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

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

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

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

38. "Limited liability company" <u>or "domestic limited liability company"</u> means a limited liability company, other than a foreign limited liability company, organized under <u>or governed by</u> this chapter.

39. "Manager" means:

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

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

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

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

a. ~~A member's~~ <u>The</u> financial rights <u>of a member</u>;

b. ~~A member's~~ The right of a member to assign financial rights as provided in section 10-32-31;

c. ~~A member's~~ The governance rights of a member, if any; and

d. ~~A member's~~ The right of a member to assign any governance rights owned as provided in section 10-32-32.

42. "Notice":

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

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

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

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

b. Is given, in all other cases:

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

(2) When handed to the person;

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

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

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

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice.

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

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

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

d. Is deemed received when it is given.

43. "Organization" means:

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

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

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

a. A corporation, its articles of incorporation;

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

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

d. A limited liability partnership, its registration; or

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

~~44.~~ 45. "Owners" means~~:~~

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

~~b. Shareholders in the case of a corporation~~ the holder of ownership interests in an organization.

~~45.~~ 46. "Ownership interests" means for a domestic or foreign organization that is:

a. ~~Membership interests in the case of a limited liability company or a nonprofit~~ A corporation, it shares; ~~and~~

b. ~~Shares in the case of a corporation~~ A limited liability company, its membership interests;

c. A limited partnership, its partnership interests;

d. A general partnership, its partnership interests;

e. A limited liability partnership, its partnership interests;

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

g. Any other organization, its governance or transferable interests.

~~46.~~ 47. "Parent" of a specified ~~limited liability company~~ organization means ~~a limited liability company, a foreign limited liability company, a corporation, or a foreign corporation~~ an organization that directly or indirectly, through related organizations,

owns more than fifty percent of the voting power of the ~~membership~~ ownership interests entitled to vote for governors, or other members of the governing body of the specified ~~limited liability company~~ organization.

~~47.~~ 48. "Pertains" means a contribution "pertains":

a. To a particular series when the contribution is made in return for a membership interest in that particular series.

b. To a particular class when the class has no series and the contribution is made in return for a membership interest in the class.

A contribution that pertains to a series does not pertain to the class of which the series is a part.

~~48.~~ 49. "Principal executive office" means:

a. If the limited liability company has an elected or appointed president, an office where the elected or appointed president of the limited liability company has an office; or

b. If the limited liability company has no elected or appointed president, the registered office of the limited liability company.

~~49.~~ 50. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~50.~~ 51. "Registered office" means the place in this state designated in a limited liability company's articles of organization or a foreign limited liability company's certificate of authority as the registered office.

~~51.~~ 52. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:

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

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

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

~~52.~~ 53. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

~~53.~~ 54. "Required records" are those records required to be maintained under section 10-32-51.

~~54.~~ 55. "Security" has the meaning given in section 10-04-02.

~~55.~~ 56. "Series" means a category of membership interests, within a class of membership interests, that has some of the same rights and preferences as other membership interests within the same class, but that differ in one or more rights and preferences from another category of membership interests within that class.

~~56.~~ 57. "Signed" means:

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

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

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

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

~~57.~~ 58. "Subsidiary" of a specified ~~limited liability company~~ organization means~~:~~

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

~~b. A domestic corporation or a foreign corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly or indirectly through related organizations by the specified limited liability company~~ an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

~~58.~~ 59. "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under subsection 6 of section 10-32-119, continues the business of the dissolved and terminated limited liability company.

~~59.~~ 60. "Surviving organization" means the ~~limited liability company or foreign limited liability company or domestic or foreign corporation~~ organization resulting from a merger which:

a. May preexist the merger; or

b. May be created by the merger.

~~60.~~ 61. "Termination" means the end of the existence of a limited liability ~~company's existence~~ company as a legal entity and occurs when a notice of termination is:

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

b. Considered filed with the secretary of state under subdivision c of subsection 2 of section 10-32-106 together with the fees provided in section 10-32-150.

~~61.~~ 62. "Vote" includes authorization by written action.

~~62.~~ 63. "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on business, except to the extent necessary for concluding affairs, and disposing of assets under section 10-32-131.

~~63.~~ 64. "Written action" means:

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

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

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

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

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

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

SECTION 40. AMENDMENT. Section 10-32-07 of the North Dakota Century Code is amended and reenacted as follows:

10-32-07. Articles of organization.

1. The articles of organization must contain:

a. The name of the limited liability company;

b. The address of the registered office of the limited liability company and the name of the limited liability company's registered agent at that address;

c. The name and address of each organizer;

d. The effective date of organization:

(1) If a later date than that on which the certificate of organization is issued by the secretary of state; and

(2) Which may not be later than ninety days after the date on which the certificate of organization is issued; and

e. If the articles of organization are filed with the secretary of state:

(1) Before July 1, 1999, a statement stating in years that the period of existence for the limited liability company must be a period of thirty years from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly authorize a shorter or longer period of duration, which may be perpetual.

(2) After June 30, 1999, a statement stating in years the period of existence of the limited liability company, if other than perpetual.

2. The following provisions govern a limited liability company unless modified in the articles of organization or a member-control agreement under section 10-32-50:

a. A limited liability company has general business purposes as provided in section 10-32-04;

b. A limited liability company has certain powers as provided in section 10-32-23;

c. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in subsection 2 of section 10-32-68;

d. A limited liability company must allow cumulative voting for governors as provided in section 10-32-76;

e. The affirmative vote of the greater of a majority of governors present or a majority of the minimum number of governors constituting a quorum is required for an action of the board as provided in section 10-32-83;

f. A written action by the board taken without a meeting must be signed by all governors as provided in section 10-32-84;

g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements as provided in subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59;

h. All membership interests are ordinary membership interests entitled to vote and are of one class with no series as provided in subdivisions a and b of subsection 5 of section 10-32-56;

i. All membership interests have equal rights and preferences in all matters not otherwise provided for by the board as provided in subdivision b of subsection 5 of section 10-32-56;

j. The value of previous contributions must be restated when a new contribution is accepted as provided in subsections 3 and 4 of section 10-32-57;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The following provisions govern a limited liability company unless modified in the articles of organization, a member-control agreement under section 10-32-50, or in the bylaws:

a. Governors serve for an indefinite term that expires at the next regular meeting of members as provided in section 10-32-72;

b. The compensation of governors is fixed by the board as provided in section 10-32-74;

c. A certain method must be used for removal of governors as provided in section 10-32-78;

d. A certain method must be used for filling board vacancies as provided in section 10-32-79;

e. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-32-80;

f. The notice of a board meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-32-80;

g. A majority of the board is a quorum for a board meeting as provided in section 10-32-82;

h. A committee ~~consists~~:

(1) Must consist of one or more individuals, who need not be governors, appointed by affirmative vote of a majority of the governors present as provided in subsection 2 of section 10-32-85; and

(2) A committee may create one or more subcommittees, each consisting of one or more members of the committees and may delegate to the

subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-32-85;

i. The board may establish a special litigation committee as provided in section 10-32-85;

j. The president and treasurer have specified duties, until the board determines otherwise as provided in section 10-32-89;

k. Managers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-32-95;

l. Regular meetings of members need not be held, unless demanded by a member under certain conditions as provided in section 10-32-38;

m. In all instances when a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members as provided in subsection 2 of section 10-32-40;

n. For a quorum at a members' meeting, there is required a majority of the voting power of the membership interests entitled to vote at the meeting as provided in section 10-32-44;

o. The board may fix a date up to fifty days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-32-40.1;

p. Indemnification of certain persons is required as provided in section 10-32-99;

q. The board may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-32-64; and

r. Members have no right to interim distributions except as provided through the bylaws or an act of the board as provided in section 10-32-61.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

q. Limited liability company actions giving rise to dissenters' rights may be designated as provided in subdivision d of subsection 1 of section 10-32-55; and

r. A governor's personal liability to the limited liability company or the limited liability company's members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles as provided in subsection 4 of section 10-32-86.

5. ~~Subsection 4 does not limit the right of the board, by resolution, to take an action the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.~~ The articles of organization may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the limited liability company.

6. ~~The~~ It is not necessary to set forth in the articles of organization ~~may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs~~ any of the limited liability company powers granted by this chapter.

7. ~~It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by~~ Subsection 4 does not limit the right of the board by resolution to take an action the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.

8. Except for provisions included pursuant to subsection 1, any provision of the articles may:

a. Be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and

b. Incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the limited liability company, but only if the limited liability company retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

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

10-32-10. Limited liability company name.

1. The limited liability company name:
   a. Must be in the English language or in any other language expressed in English letters or characters;
   b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state;
   c. May not contain the word "corporation", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words;
   d. May not contain a word or phrase that indicates or implies that the limited liability company:
      (1) Is organized for a purpose other than:
         (a) A lawful business purpose for which a limited liability company may be organized under this chapter; or
         (b) For a purpose stated in its articles of organization; or
      (2) May not be organized under this chapter; and
   e. May not be the same as, or deceptively similar to:
      (1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record which complies with subsection 3, of:
         (a) Another limited liability company;
         (b) A corporation;

(c) A limited partnership;

(d) A limited liability partnership; or

(e) A limited liability limited partnership;

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

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

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

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

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

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

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

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

a. Abrogate or limit:

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

(2) Chapter 47-25;

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

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

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

5. A <u>domestic or foreign</u> limited liability company that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name,

subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the organization whose name is sought to be used:

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

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

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

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

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

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

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

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

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

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

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

9. An amendment that only changes the name of the limited liability company may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the members as provided in section 10-32-15.

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

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

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

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

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

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

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

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

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

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

1. If the articles or a member-control agreement so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.
   a. However, in no event may written action be taken by members holding less than a majority of the voting power of all membership interests entitled to vote on the action.
   b. After the adoption of the initial articles or the first making of a member-control agreement, an amendment to the articles or to a member-control agreement to permit written action to be taken by less than all members requires the approval of all the members entitled to vote on the amendment.
2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required members, unless a different effective time is provided in the written action.
   a. When written action is permitted to be taken by less than all members, all members must be notified immediately of its text and effective date.
   b. Failure to provide the notice does not invalidate the written action.

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

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

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

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

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

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

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

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

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

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

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

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

1. With or without a business purpose, a limited liability company may merge~~:~~
   ~~a. With another limited liability company pursuant to a plan of merger approved in the manner provided in sections 10-32-101 through 10-32-106.~~
   ~~b. With a corporation under a plan of merger approved in the manner provided in sections 10-32-101 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~~ with another domestic or foreign organization under a plan of merger approved in the manner provided in this section and sections 10-32-101 through 10-32-106 and in the manner provided in its governing statutes in the case of any other organization.
2. With respect to an exchange:
   a. A limited liability company may acquire all of the ownership interests of one or more classes or series of another ~~limited liability company~~ domestic or foreign organization pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106 in the case of a domestic limited liability company and in the manner provided in its governing statutes in the case of any other organization.
   b. ~~A limited liability company may acquire all of the ownership interests of one or more classes or series of a corporation pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-107 and in chapter 10-19.1.~~
   ~~c. A corporation~~ Another domestic or foreign organization may acquire all of the ~~ownership~~ membership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in this section and in sections 10-32-101 through ~~10-32-106~~ 10-32-107 and in ~~chapter 10-19.1~~ the manner provided in its governing statute in the case of any other organization.

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

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

4. A limited liability company may participate in a merger or exchange only as permitted by this section and sections 10-32-101 through 10-32-107.

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

1. A plan of merger or exchange must contain:

   a. The name of the limited liability company and of each other constituent organization proposing to merge or participate in an exchange, and:

      (1) In the case of a merger, the name of the surviving organization~~, which may be the limited liability company or the other constituent organization~~; or

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

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

   c. The manner and basis for converting or exchanging ownership interests:

      (1) In the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into securities of the surviving organization or of any other organization or, in whole or in part, into money or other property; or

      (2) In the case of an exchange, the manner and basis of exchanging the ownership interests to be acquired for securities of the acquiring organization or any other organization or, in whole or in part, for money or other property;

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

e. Any other provisions with respect to the proposed merger that are considered necessary or desirable.

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

10-32-102. Plan approval.

1. A resolution containing the plan of merger or exchange must be approved by the governing ~~board~~ body as required by section ~~10-19.1-46 or~~ 10-32-83 in the case of a domestic limited liability company or by its governing statute in the case of ~~each constituent~~ any other organization and must then be submitted at a regular or special meeting to the owners of each constituent organization in the case of a plan of merger; and the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of an exchange. ~~The plan of merger or exchange may require that it be submitted to the owners whether or not the governing board determines at any time after the governing board's initial approval of the plan that the plan is no longer advisable and recommends that the owners reject it.~~ If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange pursuant to this subsection, then written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section ~~10-19.1-73 for notice of meetings of shareholders in the case of a corporation and in the manner provided in section~~ 10-32-40 for notice of meetings of members in the case of a limited liability company, or in the manner provided in its governing statute for any other organization. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.
2. At the meeting, a vote of the owners must be taken on the proposed plan. The plan of merger is adopted when approved by the affirmative vote of the owners of a majority of the voting power of all ownership interests entitled to vote as required by section ~~10-19.1-74 or~~ 10-32-42 in the case of a domestic limited liability

company, or in the manner provided in its governing statute in the case of any other organization. Except as provided in subsection 3 or a member-control agreement, a class or series of ownership interests of the constituent organization is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles ~~of organization~~ or a member-control agreement, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series ~~solely because the plan of merger or exchange effects a cancellation or exchange of the ownership interests of the class or series~~ if the plan of merger or exchange effects a cancellation or exchange of all ownership interests of the constituent organization of all classes and series that are existing immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section ~~10-19.1-87 or~~ 10-32-55~~, as~~ in the case of a domestic limited liability company, or in the manner provided in the governing statute in the case ~~may be~~ of any other organization, in the event of the merger or exchange.

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

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

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

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

twenty percent the voting power of the outstanding ownership interests of the constituent organization entitled to vote immediately before the transaction; and

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

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

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

1. Upon receiving the approval required by section 10-32-102, articles of merger must be prepared which contain:

a. The plan of merger; and

b. A statement that the plan has been approved by each constituent organization ~~pursuant to chapter 10-19.1 or~~ in the manner provided in this chapter in the case of a domestic limited liability company, or in the manner provided in its governing statute in the case of any other organization.

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

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

1. ~~A~~ If either the parent or the subsidiary is a domestic organization, then a parent that is a domestic or foreign organization owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary that is a

domestic or foreign organization directly, or indirectly through related organizations other than classes or series that absent this section would otherwise not be entitled to vote on the merger:

a. May merge the subsidiary into the parent, or may merge the subsidiary into any other subsidiary at least ninety percent of the outstanding ownership interest of each class and series of which is owned by the parent directly or indirectly through related organizations other than classes or series that, absent this section, would otherwise not be entitled to vote on the merger, without a vote of the owners of the parent or any subsidiary; or

b. May merge the parent, or the parent and one or more subsidiaries, into one of the subsidiaries under this section.

2. A resolution approved by the ~~directors of the parent as required by section 10-19.1-46 or by the~~ governors of the parent present as required by section 10-32-83 in the case of a domestic limited liability company, or by the present members of the governing body of the parent as required by its governing statute in the case of any other organization must set forth a plan of merger which contains:

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

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

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

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

3. ~~If~~ Notwithstanding subsection 1:

a. If the parent is a domestic limited liability company and the conditions of subsection 4 of section 10-32-102 are not met with respect to the parent, then the resolution is not effective unless it is approved by the affirmative vote of the holders of a majority of the voting power of all membership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-32-102; and

b. If the parent is a domestic or foreign organization and is not the surviving organization in the merger, then the resolution is not effective unless it is approved in accordance with the governing statute of the parent.

4. Notwithstanding subsection 3, if the parent is a constituent organization and is the surviving organization in the merger, it may change its limited liability company name, without a vote of its owners, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of the board members of the parent present. Upon the effective date of the merger, the name of the parent must be changed.

~~4. If the parent is a constituent organization but is not the surviving constituent organization in a merger, the resolution is not effective unless the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98 if the parent is a corporation, section 10-32-102 if the parent is a limited liability company, or in accordance with the laws of the jurisdiction under which the parent is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.~~

5. ~~Notice~~ If the subsidiary is a domestic organization, then notice of the action, including a copy of the plan of merger must be given to each owner, other than the parent, of each subsidiary that is a constituent organization to the merger before, or within ten days after, the effective date of the merger.

6. Articles of merger must be prepared which contain:

a. The plan of merger;

b. The number of outstanding ownership interests of each class and series of the subsidiary that is a constituent organization in the merger, other than the

classes or series that, absent this section, would otherwise not be entitled to vote on the merger, and the number of ownership interests of each class and series of the subsidiary or subsidiaries, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, owned by the parent directly or indirectly, through related ~~constituent~~ organizations; and

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

7. The articles of merger must be signed on behalf of the parent and filed with the secretary of state, together with the fees provided in section 10-32-150.

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

9. If all of the ownership interests of one or more domestic subsidiaries that are a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent organizations, immediately before the merger, then the owners of each domestic subsidiary which is either a domestic corporation or a domestic limited liability company have dissenters' rights under section 10-19.1-87 or under section 10-32-54, without regard to subsection 3 of section 10-19.1-88 or to subsection 2 of section 10-32-54, and under section 10-19.1-88 or 10-32-55.

a. If the parent is a constituent organization but is not the surviving constituent organization in the merger, and the articles of incorporation or articles of organization of the surviving constituent organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenters' rights under subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54 if the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, then that owner of the parent has

dissenters' rights as provided under section 10-19.1-87 or under section 10-32-54.

b. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this section.

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

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

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

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

a. With respect to approval of the abandonment:

(1) If the owners of ownership interests of each of the constituent organizations entitled to vote on the approval of the plan as provided in section 10-32-102 have approved the abandonment at a meeting by the owners of a majority of the voting power of the ownership interests entitled to vote as required by section ~~10-19.1-74 or~~ 10-32-42 in the case of a domestic limited liability company, or by its governing statute in the case of any other organization;

(2) If the owners of a constituent organization are not entitled to vote on the approval of the plan under section 10-32-102, then if the governing ~~board~~ body of that constituent organization has approved the abandonment by the board as required by section ~~10-19.1-46 or~~ 10-32-83 in the case of a domestic limited liability company, or by its governing statute in the case of any other organization; and

(3) If the merger or exchange is with a foreign ~~corporation or foreign limited liability company~~ organization, then if abandonment is approved in the manner ~~required by the laws of the jurisdiction under which the~~

~~corporation is incorporated or the limited liability company is organized~~ provided in its governing statute;

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

c. Pursuant to subsection 2.

2. If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned before the effective date of the plan, then a resolution by the governing ~~board~~ body of any constituent organization abandoning the plan of merger or exchange may be approved by the ~~board~~ governing body as required by section ~~10-19.1-46 or~~ 10-32-83 in the case of a domestic limited liability company, or by its governing statute in the case of any other organization subject to the contract rights of any other person under the plan.

3. If articles of merger have been filed with the secretary of state, but have not yet become effective, the constituent organizations, in the case of abandonment under subdivision a of subsection 1, then the constituent organizations or any one constituent organization, in the case of abandonment under subdivision b of subsection 1, or the abandoning constituent organization in the case of abandonment under subsection 2, shall file with the secretary of state together with the fees provided in section 10-32-150, articles of abandonment that contain:

a. The names of the constituent organizations;

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

c. The text of the resolution abandoning the plan.

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

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

2. When a merger becomes effective:

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

b. The separate existence of all constituent organizations except the surviving constituent organization ceases;

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

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

~~(1)~~ ~~If the surviving organization is a limited liability company, the~~ The surviving ~~limited liability company~~ organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of ~~a limited liability company organized under this chapter; and~~

~~(2)~~ ~~If the surviving organization is a corporation, the surviving corporation has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of a corporation~~ the specified organization under it governing statute;

e. The surviving constituent organization~~, whether a limited liability company or a domestic or foreign corporation,~~ possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations.

(1) All property, real, personal, and mixed, and all debts due on any account, including subscriptions to ~~shares~~ ownership interests and contribution agreements, as the case may be, and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving constituent organization without any further act or deed.

(2) Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by its current officers ~~or~~, managers, ~~as the case may be~~ or governing body, or, if the organization no longer exists, by its last officers ~~or~~, managers, ~~as the case may be~~ or governing body.

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

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

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

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

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

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

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

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

SECTION 57. AMENDMENT. Section 10-32-107 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

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

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

SECTION 59. AMENDMENT. Section 10-33-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Activity" or "activities" means, in a corporation organized under this chapter, the functional equivalent of "business" in a corporation organized under chapter 10-19.1.

2. "Address" means:

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

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

3. "Articles" means:

a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a statement of change of registered office, registered agent, or name of registered agent, articles of merger, articles of consolidation, articles of abandonment, articles of dissolution, and any annual report in which a registered office or registered agent has been established or changed.

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

4. "Authenticated electronic communication" means:

a. That the electronic communication is delivered:

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

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

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

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

6. "Board" means the board of directors of a corporation.

7. "Board member" means an individual serving on the board.

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

9. "Corporation" means a corporation, other than a foreign corporation, that is incorporated under or governed by this chapter.

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

11. "Domestic organization" means an organization created under the laws of this state.
12. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
13. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:
    a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; and
    b. That may be directly reproduced in paper form by the recipient through an automated process.
14. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
15. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
16. "Filed with the secretary of state" means except as otherwise permitted by law or rule:
    a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-33-140, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law; and
    b. That the secretary of state did then:
        (1) Record the actual date on which the record was filed, and if different, the effective date of filing; and
        (2) Record the record in the office of the secretary of state.
17. "Foreign corporation" means a corporation that is formed under laws other than the laws of this state for a purpose for which a corporation may be organized under this chapter.

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

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

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

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

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

21. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and successive federal revenue Acts.

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

23. "Member" means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.

24. "Members with voting rights" means members or a class of members that has voting rights with respect to the purpose or matter involved.

25. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving pecuniary gain to any officer, director, or member, other than a member that is a nonprofit organization or subdivision, unit, or agency of the United States or a state or local government.

26. "Notice":

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

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

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice.

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

b. Is given, in all other cases:

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

(2) When handed to the person;

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

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

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

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

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

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

d. Is deemed received when it is given.

27. "Officer" means an individual who is more than eighteen years of age and who is:

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

b. Considered elected as an officer pursuant to section 10-33-52.

28. "Organization" means:

a. Whether domestic or foreign, a corporation, limited liability company, partnership, limited partnership, limited liability partnership, limited liability limited partnership, business trust, or any other person having a governing statute; but

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

29. "Principal executive office" means:

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

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

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

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

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

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

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

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

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

34. "Signed" means:

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

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

        (1) The record is signed by a person authorized to do so by this chapter, the articles, or bylaws, a resolution approved by the directors as required by section 10-33-42, or the members with voting rights, if any, as required by section 10-33-72; and

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

35. "Subsidiary" of a specified ~~corporation~~ organization means~~:~~

~~a. 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~~ an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

36. "Surviving corporation" means the corporation or foreign corporation resulting from a merger which:

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 record signed by all of the persons required to take the action; or

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

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

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

SECTION 61. AMENDMENT. Section 10-33-06 of the North Dakota Century Code is amended and reenacted as follows:

10-33-06. Articles.

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

2. ~~The articles of incorporation may not contain:~~
   ~~a. Any provision limiting the right of cumulative voting as guaranteed by section 6 of article XII of the Constitution of North Dakota.~~
   ~~b. Any provision authorizing the issuance of stocks or bonds in violation of section 9 of article XII of the Constitution of North Dakota.~~

~~3.~~ The following articles govern a corporation unless modified by the articles:
   a. A corporation has a general purpose of engaging in any lawful nonprofit activity as provided in section 10-33-04;
   b. A corporation has perpetual existence and certain powers as provided in section 10-33-21;
   c. The power to initially adopt, amend, or repeal the bylaws is vested in the board as provided in section 10-33-26;
   d. Cumulative voting is prohibited as provided in section 10-33-34;
   e. The affirmative vote of a majority of the directors present is required for an action of the board as provided in section 10-33-42;
   ~~e.~~ f. A written action by the board taken without a meeting must be signed by all directors as provided in section 10-33-43;

~~f.~~ g. Members are of one class as provided in section 10-33-57; and

~~g.~~ h. A written action by the members must be signed by all members as provided in section 10-33-73.

~~4.~~ 3. The following provisions govern a corporation unless modified either in the articles or bylaws:

a. A certain method must be used for amending the articles as provided in section 10-33-15;

b. Certain procedures apply to the adoption, amendment, or repeal of bylaws by the members as provided in section 10-33-26;

c. A director holds office for an indefinite term that expires upon the election of a successor as provided in section 10-33-30;

d. The term of a director filling a vacancy expires at the end of the term the director is filling as provided in section 10-33-30;

e. The compensation of directors is fixed by the board as provided in section 10-33-32;

f. The method provided in section 10-33-36 or 10-33-37 must be used for removal of directors;

g. The method provided in section 10-33-38 must be used for filling board vacancies;

h. Board meetings must be held at least once per year and if the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-33-39;

i. A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-33-39;

j. A majority of the board is a quorum as provided in section 10-33-41;

k. The affirmative vote of the majority of directors present is required for board action as provided in section 10-33-42;

l. A committee ~~consist~~:

(1) Must consist of one or more persons, who need not be directors, appointed by the board as provided in section 10-33-44; and

(2) May create one or more subcommittees, each consisting of one or more members of the committee and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-33-44.

m. Unless the articles or bylaws or a resolution adopted by the board, and not inconsistent with the articles or bylaws, provides otherwise, the officers shall have the duties provided in section 10-33-50;

n. The method provided in section 10-33-54 must be used for removal of officers;

o. If not prohibited by the board from doing so, officers may delegate some or all of their duties and powers as provided in section 10-33-55;

p. A corporation does not have members as provided in section 10-33-57;

q. The board may determine the consideration required to admit members as provided in section 10-33-57;

r. All members are entitled to vote and have equal rights and preferences in matters as provided in section 10-33-57;

s. Memberships are nontransferable except as provided in section 10-33-59;

t. A corporation with voting members must hold a regular meeting of voting members annually as provided in section 10-33-65;

u. If a specific minimum notice period has not been fixed by law, then at least five days' notice is required for a meeting of members as provided in section 10-33-68;

v. The board may fix a date up to fifty days before the date of a members' meeting as the date for determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-33-68;

w. Each member has one vote as provided in section 10-33-71;

x. The affirmative vote of the majority of members with voting rights present and entitled to vote is required for action of the members, unless this chapter or the articles or bylaws require a greater vote or voting by class as provided in section 10-33-72;

y. Members may take action at a meeting by voice or ballot, by unanimous action without a meeting, by mailed ballot, or by electronic communication as provided in section 10-33-72;

z. The number of members required for a quorum is ten percent of the members entitled to vote as provided in section 10-33-76;

aa. The procedures provided in section 10-33-78 govern acceptance of member acts; and

bb. Indemnification of certain persons is required as provided in section 10-33-84.

~~5.~~ 4. The following provisions relating to the management or regulation of the affairs of a corporation may be included in the articles or, except for naming members of the first board, in the bylaws:

a. The first board of directors may be named in the articles as provided in section 10-33-25;

b. Additional qualifications for directors may be imposed as provided in section 10-33-29;

c. Terms of directors may be staggered as provided in section 10-33-30;

d. The date, time, and place of board meetings may be fixed as provided in section 10-33-39;

e. Additional officers may be designated as provided in section 10-33-49;

f. Additional powers, rights, duties, and responsibilities may be given to officers as provided in section 10-33-50;

g. A method for filling vacant offices may be specified as provided in section 10-33-54;

h. Membership criteria and procedures for admission may be established as provided in section 10-33-57;

i. Membership terms may be fixed as provided in section 10-33-57;

j. A corporation may issue membership certificates or preferred or common shares as the board deems appropriate as provided in section 10-33-58;

k. A corporation may levy dues, assessments, or fees on members as provided in section 10-33-60;

l. A corporation may buy memberships as provided in section 10-33-63;

m. A corporation may have delegates with some or all the authority of members as provided in section 10-33-64;

n. The date, time, and place of regular member meetings or the place of special meetings may be fixed as provided in section 10-33-65;

o. Certain persons may be authorized to call special meetings of members as provided in section 10-33-66;

p. Notices of special member meetings may be required to contain certain information as provided in section 10-33-68;

q. A larger than majority vote may be required for member action as provided in section 10-33-72;

r. Members may vote by proxy as provided in section 10-33-77; and

s. Members may enter into voting agreements as provided in section 10-33-79.

~~6.~~ 5. The articles may contain other provisions consistent with law relating to the management or regulation of the affairs of the corporation.

~~7.~~ 6. It is not necessary to state the corporate powers granted by this chapter in the articles.

~~8.~~ 7. If there is a conflict between subsection 2, 3, or 4~~, or 5~~ and another section of this chapter, then the other section controls.

~~9.~~ 8. Subsection ~~5~~ 4 does not limit the right of the board, by resolution, to take an action that the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be in the bylaws by another provision of this chapter.

9. Except for provisions included pursuant to subsection 1, any provision of the articles may:

a. Be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and

b. Incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the corporation, but only if the corporation retains at its principal executive office a copy of the

agreements, contracts, or other arrangements or the partners incorporated by reference.

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

10-33-10. Corporate name.

1. The corporate name:
   a. Must be in the English language or in any other language expressed in English letters or characters.
   b. Need not contain the word "company", "corporation", "incorporated", "limited", or an abbreviation of one or more of these words.
   c. May not contain the words "limited liability company", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words.
   d. May not contain a word or phrase that indicates or implies that the corporation:
      (1) Is incorporated for a purpose other than:
         (a) A lawful nonprofit purpose for which a corporation may be incorporated under this chapter; or
         (b) For a purpose stated in its articles; or
      (2) May not be incorporated under this chapter.
   e. May not be the same as or deceptively similar to:
      (1) The name, whether foreign and authorized to conduct activities in this state or domestic unless there is filed with the articles a record that complies with subsection 2, of:
         (a) Another corporation;
         (b) A corporation incorporated or authorized to do business in this state under another provision of this code;
         (c) A limited liability company;
         (d) A limited partnership;
         (e) A limited liability partnership; or
         (f) A limited liability limited partnership;

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

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

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

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

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

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

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

4. Subsection 3 does not affect the right of a corporation existing on August 1, 1997, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.

5. This section and section 10-33-11 do not:

a. Abrogate or limit:

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

(2) Chapter 47-25;

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

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

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

6. A <u>domestic or foreign</u> corporation that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to

the requirements of subsection 1, as that used in this state by any of the other organizations, if the other organization whose name is sought to be used:

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

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

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

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

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

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

8. A corporation whose period of existence has expired or that is involuntarily dissolved by the secretary of state pursuant to section 10-33-139 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-33-08 unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A corporation that cannot reacquire the use of its corporate name must adopt a new corporate name that complies with the provisions of this section:

a. By refiling articles of incorporation pursuant to section 10-33-08;

b. By amending pursuant to section 10-33-14; or

c. By reinstating pursuant to section 10-33-139.

9. Subject to section 10-33-126, this section applies to any foreign corporation transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

10. An amendment that only changes the name of the corporation may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the members as provided in section 10-33-15.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40. "Signed" means:
   a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile or electronically, or in any other manner reproduced on the record, is placed on

a record ~~as provided under section 41-01-11~~ with the present intention to authenticate that record; and

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

(1) The record is signed by a person authorized to sign the record by this chapter, by the partnership agreement, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

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

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

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

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

1. A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and, except for an annual report, return a copy of the filed record to the person that delivered it to the secretary of state for filing. That person shall then:

a. For a statement of dissociation, send a copy of the filed statement:

(1) To the person which the statement indicates has dissociated as a general partner; and

(2) To the limited partnership;

b. For a statement of withdrawal, send a copy of the filed statement:

(1) To the person on whose behalf the record was filed; and

(2) If the statement refers to an existing limited partnership, to the limited partnership; and

c. For all other records, send a copy of the filed record to the person on whose behalf the record was filed.

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

45-10.2-81. Foreign limited partnership - Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign limited partnership is false when made or becomes false due to changed circumstances, or if the foreign limited partnership changes its name or purposes sought in this state, then the foreign limited partnership shall file with the secretary of state an application for an amended certificate of authority signed by ~~an authorized person~~ <u>at least one general partner</u> correcting the statement and, in the case of a change in the name of the foreign limited partnership, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign limited partnership is organized.

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

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

26. "Signed" means:

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

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

(1) The record is signed by a person authorized to do so by this chapter or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

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

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

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

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

6. Any statement filed under this section must be renewed every five years from the date of the initial filing. A statement of renewal must be executed by the partnership ~~on a form furnished by the secretary of state which is sent to the address of the principal executive office at least sixty days before the deadline for filing~~ in the same manner as previously executed. If the secretary of state finds that the statement of renewal conforms to the requirements of this section, and the proper filing fee has been paid, the secretary of state shall file the statement of renewal. If the secretary of state finds that the statement of renewal does not so conform, the secretary of state shall return the statement of renewal to the

partnership for any necessary corrections. If the statement of renewal is not returned corrected within thirty days after the statement of renewal was returned for correction, the statement ~~of renewal~~ is subject to cancellation. If any partnership fails to file the statement of renewal, the secretary of state shall cancel the initial statement and shall mail notice of the cancellation to the last address of the principal executive office as recorded in the office of the secretary of state.

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

24. "Signed" means:

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

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

(1) The record is signed by a person authorized to do so by this chapter, or by or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

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

SECTION 76. AMENDMENT. Subsection 2 of section 45-22-22 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state shall charge and collect for:

a. Furnishing a copy of any record or paper relating to a domestic limited liability partnership or foreign limited liability partnership, one dollar for every four pages, or fraction of pages.

b. A certificate certifying a copy or reciting facts related to a domestic limited liability partnership or foreign limited liability partnership, ~~twenty~~ fifteen dollars.

c. Each page of any record or form sent by electronic transmission, one dollar.

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

24. "Signed" means:

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

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

(1) The record is signed by a person authorized to sign by this chapter, or pursuant to an agreement among the partners, or by a resolution approved by the affirmative vote of the required proportion or number of partners; and

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