

Sixty-first
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1298

Introduced by

Representative DeKrey

Senator Nething

1 A BILL for an Act to create and enact subsection 4 to section 10-19.1-124, subsection 4 to
2 section 10-32-128, subsection 4 to section 10-33-115, chapter 10-36, and a new subsection to
3 section 45-11-08.2 of the North Dakota Century Code, relating to limited liability companies,
4 nonprofit corporations, nonprofit limited liability companies, and partnership fictitious names; to
5 amend and reenact section 10-01.1-06, subsection 3 of section 10-15-36, sections 10-19.1-01
6 and 10-19.1-10, subsection 1 of section 10-19.1-43, section 10-19.1-46, subsection 1 of section
7 10-19.1-48, subsection 2 of section 10-19.1-51, subsection 1 of section 10-19.1-75, section
8 10-19.1-76.2, subsection 6 of section 10-19.1-87, subsection 1 of section 10-19.1-91, sections
9 10-19.1-105, 10-19.1-107, and 10-19.1-146, subsection 5 of section 10-19.1-148, sections
10 10-32-02, 10-32-04, and 10-32-06, subsection 1 of section 10-32-10, section 10-32-18,
11 subsection 2 of section 10-32-43, section 10-32-48, subsection 1 of section 10-32-80,
12 subsection 1 of section 10-32-85, subsection 2 of section 10-32-87, subsection 1 of section
13 10-32-99, subsection 4 of section 10-32-107, subsection 1 of section 10-32-109, sections
14 10-32-110 and 10-32-111, subsection 3 of section 10-32-149, subsection 5 of section
15 10-32-152, section 10-33-01, subsection 1 of section 10-33-39, subsection 1 of section
16 10-33-44, subsection 2 of section 10-33-46, subsection 1 of section 10-33-84, subsection 3 of
17 section 10-33-139, subsection 5 of section 10-33-141, section 38-08.1-03, subsections 27 and
18 28 of section 45-10.2-02, section 45-10.2-21, subsection 3 of section 45-10.2-41, section
19 45-10.2-64, subsection 5 of section 45-10.2-111, subsections 17 and 18 of section 45-13-01,
20 subsections 15 and 16 of section 45-22-01, subsection 3 of section 45-22-03, subsection 5 of
21 section 45-22-23, and subsections 18 and 19 of section 45-23-01 of the North Dakota Century
22 Code, relating to commercial registered agent listing, cooperative associations, business
23 corporations, limited liability companies, nonprofit corporations, geophysical exploration
24 companies, limited partnerships, general partnerships, limited liability partnerships, and limited
25 liability limited partnerships; and to provide a penalty.

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

2 **SECTION 1. AMENDMENT.** Section 10-01.1-06 of the North Dakota Century Code is
3 amended and reenacted as follows:

4 **10-01.1-06. Listing of commercial registered agent.**

- 5 1. An individual residing in this state or a domestic or foreign corporation or limited
6 liability company may become listed as a commercial registered agent by filing
7 with the secretary of state a commercial registered agent listing statement signed
8 by or on behalf of the person which states:
- 9 a. The name of the individual or the name, type, and jurisdiction of organization
10 of the entity;
 - 11 b. That the person is in the business of serving as a commercial registered
12 agent in this state; and
 - 13 c. The address of a place of business of the person in this state to which service
14 of process and other notice and documents being served on or sent to entities
15 represented by it may be delivered.
- 16 2. An individual residing in this state or a domestic or foreign corporation or limited
17 liability company may file additional listings as a commercial registered agent if
18 filed with trade names registered under chapter 47-25. The filing must be in the
19 same manner as provided in subsection 1 and disclose the trade name being
20 used. A listing with a trade name may provide an alternate address of a place of
21 business of the person in this state to which service of process and other notice
22 and documents being served on or sent to entities represented by it may be
23 delivered.
- 24 3. If the name of a person filing a commercial registered agent listing statement is not
25 distinguishable on the records of the secretary of state from the name of another
26 commercial registered agent listed under this section, the person must adopt and
27 register a fictitious trade name that is so distinguishable and use that name in its
28 statement and when it does business in this state as a commercial registered
29 agent.
- 30 ~~3.~~ 4. A commercial registered agent listing statement takes effect on filing.

1 4. ~~5.~~ The secretary of state shall note the filing of the commercial registered agent
2 listing statement in the record of the represented entity and in the index of filings
3 maintained by the secretary of state for each entity represented by the registered
4 agent at the time of the filing. The statement has the effect of deleting the address
5 of the registered agent from the registered agent filing of each of those entities.

6 **SECTION 2. AMENDMENT.** Subsection 3 of section 10-15-36 of the North Dakota
7 Century Code is amended and reenacted as follows:

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

17 **SECTION 3. AMENDMENT.** Section 10-19.1-01 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **10-19.1-01. Definitions.** For purposes of this chapter, unless the context otherwise
20 requires:

- 21 1. "Acquiring corporation" means the domestic or foreign corporation that acquires
22 the shares of a corporation in an exchange.
- 23 2. "Acquiring organization" means the foreign or domestic organization acquiring the
24 ownership interests of another foreign or domestic organization participating in an
25 exchange.
- 26 3. "Address" means:
- 27 a. In the case of a registered office or principal executive office, the mailing
28 address, including the zip code, of the actual office location, which may not be
29 only a post-office box; and
- 30 b. In any other case, the mailing address, including the zip code.
- 31 4. "Articles" means:

- 1 a. In the case of a corporation incorporated under or governed by this chapter,
2 articles of incorporation, articles of amendment, a resolution of election to
3 become governed by this chapter, a demand retaining the two-thirds majority
4 for shareholder approval of certain transactions, a statement of change of
5 registered office, registered agent, or name of registered agent, a statement
6 establishing or fixing the rights and preferences of a class or series of shares,
7 a statement of cancellation of authorized shares, articles of merger, articles of
8 abandonment, articles of conversion, and articles of dissolution.
- 9 b. In the case of a foreign corporation, the term includes all records serving a
10 similar function required to be filed with the secretary of state or other officer
11 of the state of incorporation of the foreign corporation.
- 12 5. "Authenticated electronic communication" means:
- 13 a. That the electronic communication is delivered:
- 14 (1) To the principal place of business of the corporation; or
15 (2) To an officer or agent of the corporation authorized by the corporation
16 to receive the electronic communication; and
- 17 b. That the electronic communication sets forth information from which the
18 corporation can reasonably conclude that the electronic communication was
19 sent by the purported sender.
- 20 6. "Ballot" means a written ballot or a ballot transmitted by electronic
21 communications.
- 22 7. "Board" or "board of directors" means the board of directors of a corporation.
- 23 8. "Board member" means:
- 24 a. An individual serving on the board of directors in the case of a corporation;
25 and
26 b. An individual serving on the board of governors in the case of a limited liability
27 company.
- 28 9. "Bylaws" means the code adopted for the regulation or management of the internal
29 affairs of a corporation, regardless of how that code is designated.

- 1 10. "Class", when used with reference to ownership interests, means a category of
2 ownership interests that differs in designation or one or more rights or preferences
3 from another category of ownership interests of the organization.
- 4 11. "Closely held corporation" means a corporation that does not have more than
5 thirty-five shareholders.
- 6 12. "Constituent corporation" means a corporation or a foreign corporation that:
7 a. In a merger, is either the surviving corporation or a foreign or domestic
8 corporation that is merged into the surviving organization; or
9 b. In an exchange, is either the acquiring corporation or a foreign or domestic
10 corporation whose shares are acquired by the acquiring organization.
- 11 13. "Constituent organization" means an organization that:
12 a. In a merger, is either the surviving organization or an organization that is
13 merged into the surviving organization; or
14 b. In an exchange, is either the acquiring organization or an organization whose
15 securities are acquired by the acquiring organization.
- 16 14. "Converted organization" means the organization into which a converting
17 organization converts pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
- 18 15. "Converting organization" means an organization that converts into another
19 organization pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
- 20 16. "Corporation" or "domestic corporation" means a corporation, other than a foreign
21 corporation, organized for profit and incorporated under or governed by this
22 chapter.
- 23 17. "Director" means a member of the board.
- 24 18. "Distribution" means a direct or indirect transfer of money or other property, other
25 than its own shares, with or without consideration, or an incurrence or issuance of
26 indebtedness, by a corporation to any of its shareholders in respect of its shares,
27 and may be in the form of a dividend, an interim distribution, or a distribution in
28 liquidation, or as consideration for the purchase, redemption, or other acquisition of
29 its shares, or otherwise.

- 1 19. "Division" or "combination" means dividing or combining shares of a class or
2 series, whether issued or unissued, into a greater or lesser number of shares of
3 the same class or series.
- 4 20. "Domestic organization" means an organization created under the laws of this
5 state.
- 6 21. "Electronic" means relating to technology having electrical, digital, magnetic,
7 wireless, optical, electromagnetic, or similar capabilities.
- 8 22. "Electronic communication" means any form of communication, not directly
9 involving the physical transmission of paper that:
- 10 a. Creates a record that may be retained, retrieved, and reviewed by a recipient
11 of the communication; and
- 12 b. May be directly reproduced in paper form by the recipient through an
13 automated process.
- 14 23. "Electronic record" means a record created, generated, sent, communicated,
15 received, or stored by electronic means.
- 16 24. "Electronic signature" means an electronic sound, symbol, or process attached to
17 or logically associated with a record and signed or adopted by a person with the
18 intent to sign the record.
- 19 25. "Filed with the secretary of state" means, except as otherwise permitted by law or
20 rule:
- 21 a. That a record meeting the applicable requirements of this chapter, together
22 with the fees provided in section 10-19.1-147, was delivered or
23 communicated to the secretary of state by a method or medium of
24 communication acceptable by the secretary of state and was determined by
25 the secretary of state to conform to law.
- 26 b. That the secretary of state did then:
- 27 (1) Record the actual date on which the record was filed, and if different
28 the effective date of filing; and
- 29 (2) Record the record in the office of the secretary of state.

- 1 26. "Foreign corporation" means a corporation organized for profit which is
2 incorporated under laws other than the laws of this state for a purpose for which a
3 corporation may be incorporated under this chapter.
- 4 27. "Foreign limited liability company" means a limited liability company organized
5 under laws other than the laws of this state for a purpose for which a limited liability
6 company may be organized under chapter 10-32.
- 7 28. "Foreign organization" means an organization created under laws other than the
8 laws of this state for a purpose for which an organization may be created under the
9 laws of this state.
- 10 29. "Good faith" means honesty in fact in the conduct of an act or transaction.
- 11 30. "Governing body" means for an organization that is:
- 12 a. A corporation, its board of directors;
13 b. A limited liability company, its board of governors; or
14 c. Any other organization, the body selected by its owners that has the ultimate
15 power to determine the policies of the organization and to control its policies.
- 16 31. "Governing statute" of an organization means:
- 17 a. With respect to a domestic organization, the following chapters of this code
18 which govern the internal affairs of the organization:
- 19 (1) If a corporation, then this chapter;
20 (2) If a limited liability company, then chapter 10-32;
21 (3) If a general partnership, then chapters 45-13 through 45-21;
22 (4) If a limited partnership, then chapter 45-10.2;
23 (5) If a limited liability partnership, then chapter 45-22; and
24 (6) If a limited liability limited partnership, then chapter 45-23; and
- 25 b. With respect to a foreign organization, the laws of the jurisdiction under which
26 the organization is created and under which the internal affairs of the
27 organization are governed.
- 28 32. "Intentionally" means that the person referred to has a purpose to do or fail to do
29 the act or cause the result specified or believes that the act or failure to act, if
30 successful, will cause that result. A person "intentionally" violates a statute:

- 1 a. If the person intentionally does the act or causes the result prohibited by the
2 statute; or
- 3 b. If the person intentionally fails to do the act or cause the result required by the
4 statute, even though the person may not know of the existence or
5 constitutionality of the statute or the scope or meaning of the terms used in
6 the statute.
- 7 33. "Legal representative" means a person empowered to act for another person,
8 including an agent, a manager, an officer, a partner, or an associate of an
9 organization; a trustee of a trust; a personal representative; a trustee in
10 bankruptcy; and a receiver, guardian, custodian, or conservator.
- 11 34. "Limited liability company" or "domestic limited liability company" means a limited
12 liability company, other than a foreign limited liability company, organized under or
13 governed by chapter 10-32.
- 14 35. "Nonprofit corporation" means a corporation, whether domestic or foreign,
15 incorporated under or governed by chapter 10-33.
- 16 36. "Notice":
- 17 a. Is given by a shareholder of a corporation to the corporation or an officer of
18 the corporation:
- 19 (1) When in writing and mailed or delivered to the corporation or the officer
20 at the registered office or principal executive office of the corporation;
21 or
- 22 (2) When given by a form of electronic communication consented to by the
23 corporation to which the notice is given if by:
- 24 (a) Facsimile communication, when directed to a telephone number
25 at which the corporation has consented to receive notice.
- 26 (b) Electronic mail, when directed to an electronic mail address at
27 which the corporation has consented to receive notice.
- 28 (c) Posting on an electronic network on which the corporation has
29 consented to receive notice, together with separate notice to the
30 corporation of the specific posting, upon the later of:
- 31 [1] The posting; or

- 1 [2] The giving of the separate notice.
- 2 (d) Any other form of electronic communication by which the
- 3 corporation has consented to receive notice, when directed to the
- 4 corporation.
- 5 b. Is given by a publicly held corporation to a shareholder if the notice is
- 6 addressed to the shareholder or group of shareholders in a manner permitted
- 7 by the rules and regulations under the Securities Exchange Act of 1934, as
- 8 amended, provided that the corporation has first received any affirmative
- 9 written consent or implied consent required under those rules and regulations.
- 10 c. Is given, in all other cases:
- 11 (1) When mailed to the person at an address designated by the person or
- 12 at the last-known address of the person;
- 13 (2) When deposited with a nationally recognized overnight delivery service
- 14 for overnight delivery or, if overnight delivery to the person is not
- 15 available, for delivery as promptly as practicable to the person at an
- 16 address designated by the person or at the last-known address of the
- 17 person;
- 18 (3) When handed to the person;
- 19 ~~(3)~~ (4) When left at the office of the person with a clerk or other person in
- 20 charge of the office or:
- 21 (a) If there is no one in charge, when left in a conspicuous place in
- 22 the office; or
- 23 (b) If the office is closed or the person to be notified has no office,
- 24 when left at the dwelling house or usual place of abode of the
- 25 person with some person of suitable age and discretion then
- 26 residing there;
- 27 ~~(4)~~ (5) When given by a form of electronic communication consented to by the
- 28 person to whom the notice is given if by:
- 29 (a) Facsimile communication, when directed to a telephone number
- 30 at which the person has consented to receive notice.

- 1 (b) Electronic mail, when directed to an electronic mail address at
2 which the person has consented to receive notice.
- 3 (c) Posting on an electronic network on which the person has
4 consented to receive notice, together with separate notice to the
5 person of the specific posting, upon the later of:
6 [1] The posting; or
7 [2] The giving of the separate notice.
- 8 (d) Any other form of electronic communication by which the person
9 has consented to receive notice, when directed to the person; or
10 ~~(5)~~ (6) When the method is fair and reasonable when all of the circumstances
11 are considered.
- 12 d. Is given by mail when deposited in the United States mail with sufficient
13 postage affixed.
- 14 e. Is given by deposit for delivery when deposited for delivery as provided in
15 paragraph 2 of subdivision c, after having made sufficient arrangements for
16 payment by the sender.
- 17 f. Is deemed received when it is given.
- 18 37. "Officer" means an individual who is eighteen years of age or more who is:
19 a. Elected, appointed, or otherwise designated as an officer by the board; or
20 b. Deemed elected as an officer pursuant to section 10-19.1-56.
- 21 38. "Organization" ~~means:~~
22 a. ~~Whether~~ Means, whether domestic or foreign, a corporation, limited liability
23 company, general partnership, limited partnership, limited liability partnership,
24 limited liability limited partnership, or any other person subject to a governing
25 statute; but
26 b. Excludes ~~any:~~
27 (1) Any nonprofit corporation, whether a domestic nonprofit corporation
28 which is incorporated under chapter 10-33 or a foreign nonprofit
29 corporation which is incorporated in another jurisdiction; and
30 (2) Any nonprofit limited liability company, whether a domestic nonprofit
31 limited liability company which is organized under chapter 10-36 or a

- 1 foreign nonprofit limited liability company which is organized in another
2 jurisdiction.
- 3 39. "Originating records" means for an organization that is:
4 a. A corporation, its articles of incorporation;
5 b. A limited liability company, its articles of organization;
6 c. A limited partnership, its certificate of limited partnership;
7 d. A limited liability partnership, its registration; or
8 e. A limited liability limited partnership, its certificate of limited liability limited
9 partnership.
- 10 40. "Outstanding shares" means all shares duly issued and not reacquired by a
11 corporation.
- 12 41. "Owners" means the holders of ownership interests in an organization.
- 13 42. "Ownership interests" means for a domestic or foreign organization that is:
14 a. A corporation, its shares;
15 b. A limited liability company, its membership interests;
16 c. A limited partnership, its partnership interests;
17 d. A general partnership, its partnership interests;
18 e. A limited liability partnership, its partnership interests;
19 f. A limited liability limited partnership, its partnership interests; or
20 g. Any other organization, its governance or transferable interests.
- 21 43. "Parent" of a specified organization means an organization that directly, or
22 indirectly through related organizations, owns more than fifty percent of the voting
23 power of the ownership interests entitled to vote for directors or other members of
24 the governing body of the specified organization.
- 25 44. "Principal executive office" means:
26 a. If the corporation has an elected or appointed president, then an office where
27 the elected or appointed president of a corporation has an office; or
28 b. If the corporation has no elected or appointed president, then the registered
29 office of the corporation.
- 30 45. "Record" means information that is inscribed on a tangible medium or that is stored
31 in an electronic or other medium and is retrievable in perceivable form.

- 1 46. "Registered office" means the place in this state designated in a corporation's
2 articles of incorporation or in a foreign corporation's certificate of authority as the
3 registered office.
- 4 47. "Related organization" means an organization that controls, is controlled by, or is
5 under common control with another organization with control existing if an
6 organization:
- 7 a. Owns, directly or indirectly, at least fifty percent of the ownership interests of
8 another organization;
- 9 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
10 more of the voting members of the governing body of another organization; or
- 11 c. Has the power, directly or indirectly, to direct or cause the direction of the
12 management and policies of another organization, whether through the
13 ownership of voting interests, by contract, or otherwise.
- 14 48. "Remote communication" means communication via electronic communication,
15 conference telephone, videoconference, the internet, or such other means by
16 which persons not physically present in the same location may communicate with
17 each other on a substantially simultaneous basis.
- 18 49. "Security" has the meaning given in section 10-04-02.
- 19 50. "Series" means a category of shares, within a class of shares authorized or issued
20 by a corporation by or pursuant to a corporation's articles, that have some of the
21 same rights and preferences as other shares within the same class, but that differ
22 in designation or one or more rights and preferences from another category of
23 shares within that class.
- 24 51. "Share" means one of the units, however designated, into which the shareholders'
25 proprietary interests of the shareholder in a corporation are divided.
- 26 52. "Shareholder" means a person registered on the books or records of a corporation
27 or the corporation's transfer agent or registrar as the owner of whole or fractional
28 shares of the corporation.
- 29 53. "Signed" means:
- 30 a. That the signature of a person, which may be a facsimile affixed, engraved,
31 printed, placed, stamped with indelible ink, transmitted by facsimile

- 1 telecommunication or electronically, or in any other manner reproduced on
2 the record, is placed on a record with the present intention to authenticate
3 that record; and
- 4 b. With respect to a record required by this chapter to be filed with the secretary
5 of state, that:
- 6 (1) The record is signed by a person authorized to do so by this chapter,
7 the articles or bylaws, or a resolution approved by the directors as
8 required under section 10-19.1-46 or the shareholders as required
9 under section 10-19.1-74; and
- 10 (2) The signature and the record are communicated by a method or
11 medium of communication acceptable by the secretary of state.
- 12 54. "Subscriber" means a person that subscribes for shares in a corporation, whether
13 before or after incorporation.
- 14 55. "Subsidiary" of a specified organization means an organization having more than
15 fifty percent of the voting power of its ownership interests entitled to vote for
16 directors, governors, or other members of the governing body of the organization
17 owned directly, or indirectly, through related organizations, by the specified
18 organization.
- 19 56. "Surviving corporation" means the domestic or foreign corporation resulting from a
20 merger which:
- 21 a. May preexist the merger; or
22 b. May be created by the merger.
- 23 57. "Surviving organization" means the organization resulting from a merger which:
- 24 a. May preexist the merger; or
25 b. May be created by the merger.
- 26 58. "Vote" includes authorization by written action.
- 27 59. "Written action" means:
- 28 a. A written record signed by all of the persons required to take the action; or
29 b. The counterparts of a written record signed by any of the persons taking the
30 action described.
- 31 (1) Each counterpart constitutes the action of the person signing; and

- 1 g. The board may authorize the issuance of securities and rights to purchase
2 securities as provided in subsection 1 of section 10-19.1-61.
- 3 h. All shares are common shares entitled to vote and are of one class and one
4 series as provided in subdivisions a and b of subsection 2 of section
5 10-19.1-61.
- 6 i. All shares have equal rights and preferences in all matters not otherwise
7 provided for by the board as provided in subdivisions a and b of subsection 2
8 of section 10-19.1-61.
- 9 j. The par value of shares is fixed at one cent per share for certain purposes
10 and may be fixed by the board for certain other purposes as provided in
11 subdivisions a and b of subsection 2 of section 10-19.1-61.
- 12 k. ~~Subject to article XII of the Constitution of North Dakota, the~~ The board may
13 effect share dividends, divisions, and combinations under certain
14 circumstances without shareholder approval as provided in section
15 10-19.1-61.1.
- 16 l. The board or the shareholders may issue shares for any consideration or for
17 no consideration to effectuate share dividends or splits and determine the
18 value of nonmonetary consideration as provided in subsection 1 of section
19 10-19.1-63.
- 20 ~~l.~~ m. Shares of a class or series may not be issued to holders of shares of another
21 class or series to effectuate share dividends or splits, unless authorized by a
22 majority of the voting power of the shares of the same class or series as the
23 shares to be issued as provided in subsection 1 of section 10-19.1-63.
- 24 ~~m.~~ n. A corporation may issue rights to purchase securities whose terms,
25 provisions, and conditions are fixed by the board as provided in section
26 10-19.1-64.
- 27 ~~n.~~ o. A shareholder has certain preemptive rights, unless otherwise provided by the
28 board as provided in section 10-19.1-65.
- 29 p. Each share has one vote unless otherwise provided in the terms of the share
30 as provided in subsection 5 of section 10-19.1-73.2.

- 1 c. The method provided in section 10-19.1-41 or 10-19.1-41.1 must be used for
2 removal of directors.
- 3 d. The method provided in section 10-19.1-42 must be used for filling board
4 vacancies.
- 5 e. If the board fails to select a place for a board meeting, it must be held at the
6 principal executive office as provided in subsection 1 of section 10-19.1-43.
- 7 f. A director may call a board meeting, and the notice of the meeting need not
8 state the purpose of the meeting as provided in subsection 3 of section
9 10-19.1-43.
- 10 g. A majority of the board is a quorum for a board meeting as provided in section
11 10-19.1-45.
- 12 h. A committee:
- 13 (1) Must consist of one or more individuals, who need not be directors,
14 appointed by affirmative vote of a majority of the directors present as
15 provided in subsection 2 of section 10-19.1-48; and
- 16 (2) May create one or more subcommittees, each consisting of one or
17 more members of the committees and may delegate to the
18 subcommittee any or all of the authority of the committee as provided in
19 subsection 7 of section 10-19.1-48.
- 20 i. The board may establish a special litigation committee as provided in section
21 10-19.1-48.
- 22 j. Unless the board determines otherwise, the officers have specified duties as
23 provided in section 10-19.1-53.
- 24 k. Officers may delegate some or all of their duties and powers, if not prohibited
25 by the board from doing so as provided in section 10-19.1-59.
- 26 l. The corporation may establish uncertificated shares as provided in
27 subsection 6 of section 10-19.1-66.
- 28 m. Regular meetings of shareholders need not be held, unless demanded by a
29 shareholder under certain conditions as provided in section 10-19.1-71.
- 30 n. No fewer than ten nor more than fifty days' notice is required for a meeting of
31 shareholders as provided in subsection 3 of section 10-19.1-73.

- 1 o. The board may fix a date up to fifty days before the date of a shareholders'
2 meeting as the date for the determination of the holders of shares entitled to
3 notice of and entitled to vote at the meeting as provided in subsection 1 of
4 section 10-19.1-73.2.
- 5 p. The number of shares required for a quorum at a shareholders' meeting is a
6 majority of the voting power of the shares entitled to vote at the meeting as
7 provided in section 10-19.1-76.
- 8 ~~p. The board may fix a date up to fifty days before the date of a shareholders'~~
9 ~~meeting as the date for the determination of the holders of shares entitled to~~
10 ~~notice of and entitled to vote at the meeting as provided in subsection 1 of~~
11 ~~section 10-19.1-73.2.~~
- 12 q. Indemnification of certain persons is required as provided in section
13 10-19.1-91.
- 14 r. The board may authorize, and the corporation may make, distributions not
15 prohibited, limited, or restricted by an agreement as provided in subsection 1
16 of section 10-19.1-92.
- 17 4. The following provisions relating to the management of the business or the
18 regulation of the affairs of a corporation may be included either in the articles or,
19 except for naming members of the first board fixing a greater than majority director
20 or shareholder vote or giving or prescribing the manner of giving voting rights to
21 persons other than shareholders otherwise than pursuant to the articles, or
22 eliminating or limiting a director's personal liability, in the bylaws:
- 23 a. The members of the first board may be named in the articles as provided in
24 subsection 1 of section 10-19.1-32.
- 25 b. A manner for increasing or decreasing the number of directors as provided in
26 section 10-19.1-33.
- 27 c. Additional qualifications for directors may be imposed as provided in section
28 10-19.1-34.
- 29 d. Directors may be classified as provided in section 10-19.1-38.
- 30 e. The day or date, time, and place of board meetings may be fixed as provided
31 in subsection 1 of section 10-19.1-43.

- 1 f. Absent directors may be permitted to give written consent or opposition to a
2 proposal as provided in section 10-19.1-44.
- 3 g. A larger than majority vote may be required for board action as provided in
4 section 10-19.1-46.
- 5 h. A director's personal liability to the corporation or its shareholders for
6 monetary damages for breach of fiduciary duty as a director may be
7 eliminated or limited in the articles as provided in section 10-19.1-50.
- 8 i. Authority to sign and deliver certain documents may be delegated to an
9 officer or agent of the corporation other than the president as provided in
10 section 10-19.1-53.
- 11 ~~i.~~ j. Additional officers may be designated as provided in section 10-19.1-52.
- 12 ~~j.~~ k. Additional powers, rights, duties, and responsibilities may be given to officers
13 as provided in section 10-19.1-53.
- 14 ~~k.~~ l. A method for filling vacant offices may be specified as provided in
15 subsection 3 of section 10-19.1-58.
- 16 ~~l.~~ m. A certain officer or agent may be authorized to sign share certificates as
17 provided in subsection 1 of section 10-19.1-66.
- 18 ~~m.~~ n. The transfer or registration of transfer of securities may be restricted as
19 provided in section 10-19.1-70.
- 20 ~~n.~~ o. The day or date, time, and place of regular shareholder meetings may be
21 fixed as provided in subsection 3 of section 10-19.1-71.
- 22 ~~o.~~ p. Certain persons may be authorized to call special meetings of shareholders
23 as provided in subsection 1 of section 10-19.1-72.
- 24 ~~p.~~ q. Notices of shareholder meetings may be required to contain certain
25 information as provided in subsection 3 of section 10-19.1-73.
- 26 ~~q.~~ r. A larger than majority vote may be required for shareholder action as
27 provided in section 10-19.1-74.
- 28 ~~r.~~ s. Voting rights may be granted in or pursuant to the articles to persons who are
29 not shareholders as provided in subsection 6 of section 10-19.1-73.2.
- 30 ~~s.~~ t. Corporate actions giving rise to dissenter rights may be designated as
31 provided in subdivision d of subsection 1 of section 10-19.1-87.

- 1 a. If the articles, bylaws, or board fail to select a place for a meeting, the
2 meeting must be held at the principal executive office, unless the articles or
3 bylaws provide otherwise.
- 4 b. The board may determine under subsection 2 that a meeting of the board
5 shall be held solely by means of remote communication.
- 6 c. Any participation in a meeting by ~~either of the a~~ means set forth in
7 subsection 2 constitutes presence in person at the meeting.

8 **SECTION 6. AMENDMENT.** Section 10-19.1-46 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **10-19.1-46. Act of the board.**

- 11 1. The board shall take action by the affirmative vote of the greater of a majority of
12 the directors present at a duly held meeting at the time the action is taken, or a
13 majority of the minimum proportion or number of directors that would constitute a
14 quorum for the transaction of business at the meeting, except when this chapter or
15 the articles require the affirmative vote of a larger proportion or number. If the
16 articles require a larger proportion or number than is required by this chapter for a
17 particular action, then the articles control.
- 18 2. The articles of a domestic corporation that is not incorporated under chapter 10-35
19 may confer upon one or more directors voting powers greater than or less than
20 those of other directors.
- 21 a. After the adoption of the initial articles, an amendment to the articles to confer
22 upon one or more directors voting powers greater than or less than those of
23 other directors requires the approval of all of the shareholders entitled to vote
24 on the amendment.
- 25 b. If the articles provide that any director has more or less than one vote on any
26 matter, then:
- 27 (1) Every reference in this chapter to a majority or other proportion of the
28 directors shall refer to a majority or other proportion of the voting power
29 of the directors.
- 30 (2) Unless otherwise provided in the articles, the bylaws, or the resolution
31 establishing the committee or the subcommittee, any such provision

1 conferring greater or lesser voting power applies to voting in a
2 committee or subcommittee.

3 **SECTION 7. AMENDMENT.** Subsection 1 of section 10-19.1-48 of the North Dakota
4 Century Code is amended and reenacted as follows:

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

13 **SECTION 8. AMENDMENT.** Subsection 2 of section 10-19.1-51 of the North Dakota
14 Century Code is amended and reenacted as follows:

15 2. The contract or transaction described in subsection 1 is not void or voidable if:
16 a. The contract or transaction was, and the person asserting the validity of the
17 contract or transaction was, fair and reasonable as to the corporation at the
18 time it was authorized, approved, or ratified;
19 b. The material facts as to the contract or transaction and as to the director's or
20 directors' interest are fully disclosed or known to the holders of all outstanding
21 shares, whether or not entitled to vote, and the contract or transaction is
22 approved in good faith by:
23 (1) The holders of two-thirds of the voting power of the shares entitled to
24 vote which are owned by persons other than the interested director or
25 directors; or
26 (2) The unanimous affirmative vote of the holder of all outstanding shares,
27 whether or not entitled to vote;
28 c. The material facts as to the contract or transaction and as to the director's or
29 directors' interest are fully disclosed or known to the board or a committee,
30 and the board or committee authorizes, approves, or ratifies the contract or
31 transaction in good faith by a majority of the ~~board~~ directors or committee

1 members currently holding office, but the interested director or directors shall
2 not be counted in determining the presence of a quorum and shall not vote; or
3 d. The contract or transaction is a distribution described in subsection 1 of
4 section 10-19.1-92 or a merger or exchange described in subsection 1 or 2 of
5 section 10-19.1-96.

6 **SECTION 9. AMENDMENT.** Subsection 1 of section 10-19.1-75 of the North Dakota
7 Century Code is amended and reenacted as follows:

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

23 **SECTION 10. AMENDMENT.** Section 10-19.1-76.2 of the North Dakota Century Code
24 is amended and reenacted as follows:

25 **10-19.1-76.2. Proxies.**

- 26 1. At or before the meeting for which the appointment is to be effective, a shareholder
27 may cast or authorize the casting of a vote:
- 28 a. By filing with an officer authorized to tabulate votes a written appointment of a
29 proxy which is signed by the shareholder.
- 30 b. By ~~telephonic transmission~~ remote communication or authenticated electronic
31 communication to an officer authorized to tabulate votes, whether or not

1 accompanied by written instructions of the shareholder, of an appointment of
2 a proxy.

3 (1) The ~~telephonic transmission~~ remote communication or authenticated
4 electronic communication must set forth or be submitted with
5 information from which it can be determined that the appointment is
6 authorized by the shareholder. If it is reasonably concluded that the
7 ~~telephonic transmission~~ remote communication or authenticated
8 electronic communication is valid, the inspectors of election or, if there
9 are no inspectors, the other persons making that determination of
10 validity shall specify the information upon which they relied to make that
11 determination.

12 (2) A proxy so appointed may vote on behalf of the shareholder, or
13 otherwise participate, in a meeting by remote communication according
14 to section 10-19.1-75.2 to the extent the shareholder appointing the
15 proxy would have been entitled to participate by remote communication
16 according to section 10-19.1-75.2 if the shareholder did not appoint the
17 proxy.

18 c. A copy, facsimile telecommunication, or other reproduction of the original
19 writing or transmission may be substituted or used in lieu of the original
20 writing or transmission for any purpose for which the original writing or
21 transmission could be used if the copy, facsimile telecommunication, or other
22 reproduction is a complete and legible reproduction of the entire original
23 writing or transmission.

24 d. An appointment of a proxy for shares held jointly by two or more shareholders
25 is valid if signed or consented to by authenticated electronic communication
26 by any one of the shareholders, unless the corporation receives from any of
27 those shareholders written notice or authenticated electronic communication
28 either denying the authority of that person to appoint a proxy or appointing a
29 different proxy.

30 2. The appointment of a proxy is valid for eleven months, unless a longer period is
31 expressly provided in the appointment. No appointment is irrevocable unless the

- 1 appointment is coupled with an interest, including a security interest, in the shares
2 or in the corporation. A shareholder who revokes a proxy is not liable in any way
3 for damages, restitution, or other claim.
- 4 3. An appointment may be revoked at will, unless the appointment is coupled with an
5 interest, in which case it may not be revoked except in accordance with the terms
6 of an agreement, if any, between the parties to the appointment. Appointment of a
7 proxy is revoked by the person appointing the proxy by:
- 8 a. Attending a meeting and voting in person; ~~or~~
9 b. Signing and delivering to ~~the~~ an officer or to a duly authorized agent
10 ~~authorized to tabulate proxy votes of the corporation~~ either:
11 (1) A writing stating the appointment of the proxy is revoked; or
12 (2) A ~~later~~ new appointment; or
13 c. Remote communication or by authenticated electronic communication,
14 whether or not accompanied by written instructions of the shareholder, of:
15 (1) A statement that the proxy is revoked; or
16 (2) A new appointment.
- 17 4. Revocation in either manner provided in subdivision b or c of subsection 3 revokes
18 all earlier proxy appointments and is effective ~~when~~;
19 a. When filed with an officer or with a duly authorized agent of the corporation;
20 or
21 b. When the remote communication or the authenticated electronic
22 communication is received by an officer or by the duly authorized agent of the
23 corporation.
24 The remote communication or the authenticated electronic communication must
25 set forth or be submitted with information from which it can be determined that the
26 revocation or the new appointment was authorized by the shareholder.
- 27 5. The death or incapacity of a person appointing a proxy does not affect the right of
28 the corporation to accept the authority of the proxy, unless written notice of the
29 death or incapacity is received by an officer authorized to tabulate votes before the
30 proxy exercises authority under that appointment.

- 1 6. Unless the appointment specifically provides otherwise, if two or more persons are
2 appointed as proxies for a shareholder:
- 3 a. Any one of them may vote the shares on each item of business in accordance
4 with specific instructions contained in the appointment; and
- 5 b. If no specific instructions are contained in the appointment with respect to
6 voting the shares on a particular item of business, the shares must be voted
7 as a majority of the proxies determine. If the proxies are equally divided, the
8 shares may not be voted.
- 9 7. Subject to section 10-19.1-76.3 and an express restriction, limitation, or specific
10 reservation of authority of the proxy appearing on the appointment, the corporation
11 may accept a vote or action by the proxy as the action of the shareholder. The
12 vote of a proxy is final, binding, and not subject to challenge. However, the proxy
13 is liable to the shareholder or beneficial owner for damages resulting from a failure
14 to exercise the proxy or from an exercise of the proxy in violation of the authority
15 granted in the appointment.
- 16 8. If a proxy is given authority by a shareholder to vote on less than all items of
17 business considered at a meeting of shareholders, the shareholder is considered
18 to be present and entitled to vote by the proxy for purposes of subsection 1 of
19 section 10-19.1-74, only with respect to those items of business for which the
20 proxy has authority to vote. A proxy who is given authority by a shareholder who
21 abstains with respect to an item of business is considered to have authority to vote
22 on the item of business for purposes of this subsection.

23 **SECTION 11. AMENDMENT.** Subsection 6 of section 10-19.1-87 of the North Dakota
24 Century Code is amended and reenacted as follows:

- 25 6. Notwithstanding subsection 1, the right to obtain payment under this section, other
26 than in connection with a plan of merger adopted under section 10-19.1-100, is
27 limited in accordance with the following provisions:
- 28 a. The right to obtain payment under this section is not available for the holders
29 of shares of any class or series of shares that is listed on the New York stock
30 exchange or, the American stock exchange or ~~designated as a national~~

1 ~~market security on the, nasdaq stock global market, or the nasdaq global~~
2 ~~select market.~~

3 b. The applicability of subdivision a is determined as of:

- 4 (1) The record date fixed to determine the shareholders entitled to receive
5 notice of, and to vote at, the meeting of shareholders to act upon the
6 corporate action described in subsection 1; or
7 (2) The day before the effective date of corporate action described in
8 subsection 1 if there is no meeting of shareholders.

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

17 **SECTION 12. AMENDMENT.** Subsection 1 of section 10-19.1-91 of the North Dakota
18 Century Code is amended and reenacted as follows:

19 1. For purposes of this section:

- 20 a. "Corporation" includes a domestic or foreign corporation that was the
21 predecessor of the corporation referred to in this section in a merger or other
22 transaction in which the predecessor's existence ceased upon consummation
23 of the transaction.
24 b. "Official capacity" means:
25 (1) With respect to a director, the position of director in a corporation;
26 (2) With respect to a person other than a director, the elective or appointive
27 office or position held by an officer, member of a committee of the
28 board, or the employment relationship undertaken by an employee of
29 the corporation; and
30 (3) With respect to a director, officer, or employee of the corporation who,
31 while a director, officer, or employee of the corporation, is or was

1 serving at the request of the corporation or whose duties in that position
2 involve or involved service as a governor, director, officer, manager,
3 partner, trustee, employee, or agent of another organization or
4 employee benefit plan, the position of that person as a governor,
5 director, officer, manager, partner, trustee, employee, or agent, as the
6 case may be, of the other organization or employee benefit plan.

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

10 d. "Special legal counsel" means counsel who has not ~~represented in the~~
11 preceding five years:

12 (1) Represented the corporation or a related organization; in any capacity
13 other than special legal counsel; or

14 (2) Represented a director, officer, member of a committee of the board, or
15 employee whose indemnification is in issue.

16 **SECTION 13. AMENDMENT.** Section 10-19.1-105 of the North Dakota Century Code
17 is amended and reenacted as follows:

18 **10-19.1-105. Methods of dissolution.** A corporation may be dissolved:

19 1. ~~By the incorporators~~ Before the issuance of shares, pursuant to section
20 10-19.1-106;

21 2. ~~By the shareholders~~ After the issuance of shares, pursuant to sections
22 10-19.1-107 through 10-19.1-113.1; or

23 3. By order of a court pursuant to sections 10-19.1-114 through 10-19.1-122.

24 **SECTION 14. AMENDMENT.** Section 10-19.1-107 of the North Dakota Century Code
25 is amended and reenacted as follows:

26 **10-19.1-107. Voluntary dissolution ~~by shareholders~~ after the issuance of shares.**

27 ~~A~~ After the issuance of shares, a corporation may be dissolved ~~by the shareholders~~ when
28 authorized in the manner set forth in this section:

29 1. If the corporation has outstanding shares, then:

30 a. Written notice must be given to each shareholder, whether or not entitled to

31 vote at a meeting of shareholders within the time and in the manner provided

1 in section 10-19.1-73 for notice of meetings of shareholders and, whether the
2 meeting is a regular or a special meeting, must state that a purpose of the
3 meeting is to consider dissolving the corporation.

4 2- b. The proposed dissolution must be submitted for approval at a meeting of
5 shareholders. If the proposed dissolution is approved at a meeting by the
6 affirmative vote of the holders of a majority of the voting power of all shares
7 entitled to vote, the dissolution must be commenced.

8 2. If the corporation no longer has any outstanding shares, then the directors may
9 authorize and commence the dissolution. If the directors take that action, then:

10 a. The notice of dissolution filed under section 10-19.1-108 shall so reflect; and

11 b. The directors shall have the right to revoke the dissolution proceedings in
12 accordance with section 10-19.1-112.

13 **SECTION 15.** Subsection 4 to section 10-19.1-124 of the North Dakota Century Code
14 is created and enacted as follows:

15 4. Any statutory and common-law rights of persons who may bring claims of injury to
16 a person, including death, are not affected by dissolution under this chapter.

17 **SECTION 16. AMENDMENT.** Section 10-19.1-146 of the North Dakota Century Code
18 is amended and reenacted as follows:

19 **10-19.1-146. Secretary of state - Annual report of corporations and foreign**
20 **corporations - Involuntary dissolution - Revocation of certificate of authority.**

21 1. Each corporation and each foreign corporation authorized to transact business in
22 this state shall file, within the time provided in subsection 3, an annual report
23 setting forth:

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

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

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

- 1 d. The names and respective addresses of the officers and directors of the
2 corporation or foreign corporation.
- 3 e. In the case of a domestic ~~or foreign~~ corporation, a statement of the aggregate
4 number of shares the corporation ~~or foreign corporation~~ has authority to
5 issue, itemized by classes, par value of shares, shares without par value, and
6 series, if any, within a class.
- 7 f. In the case of a domestic ~~or foreign~~ corporation, a statement of the aggregate
8 number of issued shares, itemized by classes, par value of shares, shares
9 without par value, and series, if any, within a class.
- 10 2. The annual report must be submitted on forms prescribed by the secretary of state.
11 The information provided must be given as of the date of the execution of the
12 report. The annual report must be signed as provided in subsection 52 of section
13 10-19.1-01, or the articles or the bylaws or a resolution approved by the affirmative
14 vote of the required proportion or number of the directors or holders of shares
15 entitled to vote. If the corporation or foreign corporation is in the hands of a
16 receiver or trustee, it must be signed on behalf of the corporation or foreign
17 corporation by the receiver or trustee. The secretary of state may destroy all
18 annual reports provided for in this section after they have been on file for six years.
- 19 3. Except for the first annual report, the annual report must be delivered to the
20 secretary of state:
- 21 a. By a corporation, before August second of each year; and
22 b. By a foreign corporation, before May sixteenth of each year.
- 23 The first annual report of either a corporation or foreign corporation must be
24 delivered before the date provided in the year following the calendar year in which
25 the certificate of incorporation or certificate of authority was issued by the secretary
26 of state, or in the case of a corporation, in the year following the calendar year of
27 the effective date stated in the articles of incorporation. An annual report in a
28 sealed envelope postmarked by the United States postal service before the date
29 provided in this subsection, or an annual report in a sealed packet with a verified
30 shipment date by any other carrier service before the date provided in this
31 subsection, is compliance with this requirement. When the filing date falls on

- 1 Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or
2 verified shipment date on the next business day is compliance with this
3 requirement.
- 4 4. The secretary of state must file the annual report if the annual report conforms to
5 the requirements of this section and all fees have been paid as provided in section
6 10-19.1-147.
- 7 a. If the annual report does not conform, it must be returned to the corporation
8 or foreign corporation for any necessary correction or payment.
- 9 b. If the annual report is corrected and filed before the date provided in
10 subsection 3, or within thirty days after the annual report was returned by the
11 secretary of state for correction, then the penalties provided in section
12 10-19.1-147 for the failure to file an annual report within the time provided do
13 not apply.
- 14 5. ~~The secretary of state may extend the annual report filing date provided in~~
15 ~~subsection 3 if a written application for an extension is delivered before the date~~
16 ~~provided in subsection 3. A corporation or foreign corporation may make a written~~
17 ~~request for an extension to apply to reports for subsequent years.~~
- 18 6. Three months after the date provided in subsection 3, any corporation or foreign
19 corporation failing to file its annual report is not in good standing. After the
20 corporation or foreign corporation becomes not in good standing, the secretary of
21 state shall notify the corporation or foreign corporation that its certificate of
22 incorporation or certificate of authority is not in good standing and that it may be
23 dissolved or revoked as provided in subsection ~~7~~ 6 or ~~8~~ 7.
- 24 a. The secretary of state must mail the notice of impending dissolution or
25 revocation to the last registered agent at the last registered office.
- 26 b. If the corporation or foreign corporation files its annual report after the notice
27 is mailed, together with the filing fee and the late filing penalty fee provided in
28 section 10-19.1-147, then the secretary of state shall restore its certificate of
29 incorporation or certificate of authority to good standing.
- 30 ~~7.~~ 6. A corporation that fails to file its annual report, together with the filing and penalty
31 fees for late filing provided in section 10-19.1-147, within one year after the date

1 provided in subsection 3 ceases to exist as a corporation and is considered
2 involuntarily dissolved by operation of law.

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

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

8 ~~8-~~ 7. A foreign corporation that fails to file its annual report, together with the filing and
9 penalty fees for late filing provided in section 10-19.1-147, within one year after the
10 date provided in subsection 3 forfeits its authority to transact business in this state.

11 a. The secretary of state shall note the revocation of the foreign corporation's
12 certificate of authority on the records of the secretary of state and shall give
13 notice of the action to the foreign corporation.

14 b. Notice by the secretary of state must be mailed to the foreign corporation's
15 last registered agent at the last registered office.

16 c. The decision by the secretary of state that a certificate of authority must be
17 revoked under this subsection is final.

18 ~~9-~~ 8. A corporation dissolved for failure to file an annual report, or a foreign corporation
19 whose authority was forfeited ~~by~~ for failure to file an annual report, may be
20 reinstated by filing a the most recent past-due report, together with the filing and
21 penalty fees for ~~an all past-due annual report reports~~ and a reinstatement fee as
22 provided in section 10-19.1-147. The fees must be paid and an annual report filed
23 within one year following the involuntary dissolution or revocation. Reinstatement
24 under this subsection does not affect the rights or liability for the time from the
25 dissolution or revocation to the reinstatement.

26 **SECTION 17. AMENDMENT.** Subsection 5 of section 10-19.1-148 of the North
27 Dakota Century Code is amended and reenacted as follows:

28 5. If the court order sought is one for reinstatement of a corporation that has been
29 dissolved as provided in subsection ~~7~~ 6 of section 10-19.1-146, or for
30 reinstatement of the certificate of authority of a foreign corporation that has been
31 revoked as provided in subsection ~~8~~ 7 of section 10-19.1-146, then together with

1 any other actions the court deems proper, any such order which reverses the
2 decision of the secretary of state shall require the corporation or foreign
3 corporation to:

- 4 a. File ~~all~~ the most recent past-due annual ~~reports~~ report;
- 5 b. Pay the fees to the secretary of state for ~~each~~ all past-due annual ~~report~~
6 reports as provided in subsection 24 of section 10-19.1-147; and
- 7 c. Pay the reinstatement fee to the secretary of state as provided in
8 subsection 24 of section 10-19.1-147.

9 **SECTION 18. AMENDMENT.** Section 10-32-02 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **10-32-02. Definitions.** For purposes of this chapter, unless the context otherwise
12 requires:

- 13 1. "Acquiring organization" means the domestic or foreign organization that acquires
14 the ownership interests of another foreign or domestic organization in an
15 exchange.
- 16 2. "Address" means:
- 17 a. In the case of a registered office or principal executive office, the mailing
18 address, including a zip code, of the actual office location which may not be
19 only a post-office box; and
- 20 b. In all other cases, the mailing address, including a zip code.
- 21 3. "Articles" or "articles of organization" means:
- 22 a. In the case of a limited liability company organized under this chapter, articles
23 of organization, articles of amendment, a statement of change of registered
24 office, registered agent, or name of registered agent, a statement establishing
25 or fixing the rights and preferences of a class or series of membership
26 interests, articles of merger, articles of abandonment, articles of conversion,
27 and articles of termination.
- 28 b. In the case of a foreign limited liability company, the term includes all records
29 serving a similar function required to be filed with the secretary of state or
30 other state office of the state of organization of the foreign limited liability
31 company.

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

- 1 a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after
2 the occurrence of any event that terminates the continued membership of a
3 member in the limited liability company; and
- 4 b. That the limited liability company must be continued as a legal entity without
5 dissolution.
- 6 20. "Distribution" means a direct or indirect transfer of money or other property, other
7 than its own membership interests, with or without consideration, or an incurrence
8 or issuance of indebtedness, by a limited liability company to any of its members in
9 respect of its membership interests and may be in the form of an interim
10 distribution or a termination distribution, or as consideration for the purchase,
11 redemption, or other acquisition of its membership interests, or otherwise.
- 12 21. "Domestic organization" means an organization created under the laws of this
13 state.
- 14 22. "Electronic" means relating to technology having electrical, digital, magnetic,
15 wireless, optical, electromagnetic, or similar capabilities.
- 16 23. "Electronic communication" means any form of communication, not directly
17 involving the physical transmission of paper:
- 18 a. That creates a record that may be retained, retrieved, and reviewed by a
19 recipient of the communication; and
- 20 b. That may be directly reproduced in paper form by the recipient through an
21 automated process.
- 22 24. "Electronic record" means a record created, generated, sent, communicated,
23 received, or stored by electronic means.
- 24 25. "Electronic signature" means an electronic sound, symbol, or process attached to
25 or logically associated with a record and signed or adopted by a person with the
26 intent to sign the record.
- 27 26. "Filed with the secretary of state" means except as otherwise permitted by law or
28 rule:
- 29 a. That a record meeting the applicable requirements of this chapter, together
30 with the fees provided in section 10-32-150, has been delivered or
31 communicated to the secretary of state by a method or medium of

- 1 communication acceptable by the secretary of state, and has been
2 determined by the secretary of state to conform to law.
- 3 b. That the secretary of state did then:
- 4 (1) Record the actual date on which the record was filed, and if different,
5 the effective date of filing; and
- 6 (2) Record the record in the office of the secretary of state.
- 7 27. "Financial rights" means a member's rights:
- 8 a. To share in profits and losses as provided in section 10-32-36;
9 b. To share in distributions as provided in section 10-32-60;
10 c. To receive interim distributions as provided in section 10-32-61; and
11 d. To receive termination distributions as provided in subdivision c of
12 subsection 1 of section 10-32-131.
- 13 28. "Foreign corporation" means a corporation organized for profit that is incorporated
14 under laws other than the laws of this state for a purpose for which a corporation
15 may be incorporated under chapter 10-19.1.
- 16 29. "Foreign limited liability company" means a limited liability company which is
17 organized under or governed by laws other than the laws of this state for a
18 purpose for which a limited liability company may be organized under this chapter.
- 19 30. "Foreign organization" means an organization created under laws other than the
20 laws of this state for a purpose for which an organization may be created under the
21 laws of this state.
- 22 31. "Good faith" means honesty in fact in the conduct of the act or transaction
23 concerned.
- 24 32. "Governance rights" means all of a member's rights as a member in the limited
25 liability company other than financial rights and the right to assign financial rights.
- 26 33. "Governing body" means for an organization that is:
- 27 a. A corporation, its board of directors;
28 b. A limited liability company, its board of governors; or
29 c. Any other organization, the body selected by its owners that has the ultimate
30 power to determine the policies of the organization and to control its policies.
- 31 34. "Governing statute" of an organization means:

- 1 a. With respect to a domestic organization, the following chapters of this code
2 which govern the internal affairs of the organization:
3 (1) If a corporation, then chapter 10-19.1;
4 (2) If a limited liability company, then this chapter;
5 (3) If a general partnership, then chapters 45-13 through 45-21;
6 (4) If a limited partnership, then chapter 45-10.2;
7 (5) If a limited liability partnership, then chapter 45-22; and
8 (6) If a limited liability limited partnership, then chapter 45-23; and
9 b. With respect to a foreign organization, the laws of the jurisdiction under which
10 the organization is created and which govern the internal affairs of the
11 organization.
- 12 35. "Governor" means an individual serving on the board.
- 13 36. "Intentionally" means that the person referred to either has a purpose to do or fail
14 to do the act or cause the result specified or believes that the act or failure to act, if
15 successful, will cause that result. A person "intentionally" violates a statute:
16 a. If the person intentionally does the act or causes the result prohibited by the
17 statute; or
18 b. If the person intentionally fails to do the act or cause the result required by the
19 statute, even though the person may not know of the existence or
20 constitutionality of the statute or the scope or meaning of the terms used in
21 the statute.
- 22 37. "Legal representative" means a person empowered to act for another person,
23 including an agent, manager, officer, partner, or associate of an organization; a
24 trustee of a trust; a personal representative; a trustee in bankruptcy; and a
25 receiver, guardian, custodian, or conservator.
- 26 38. "Limited liability company" or "domestic limited liability company" means a limited
27 liability company, other than a foreign limited liability company, organized under or
28 governed by this chapter excluding a nonprofit limited liability company organized
29 under or governed by chapter 10-36.
- 30 39. "Manager" means:

- 1 a. An individual who is eighteen years of age or more and who is elected,
2 appointed, or otherwise designated as a manager by the board; and
3 b. An individual considered elected as a manager pursuant to section 10-32-92.
- 4 40. "Member" means a person, with or without voting rights, reflected in the required
5 records of a limited liability company as the owner of a membership interest in the
6 limited liability company.
- 7 41. "Membership interest" means one of the units, however designated, into which the
8 proprietary interest of the members in a limited liability company is divided
9 consisting of:
- 10 a. The financial rights of a member;
11 b. The right of a member to assign financial rights as provided in section
12 10-32-31;
13 c. The governance rights of a member, if any; and
14 d. The right of a member to assign any governance rights owned as provided in
15 section 10-32-32.
- 16 42. "Nonprofit limited liability company" means a limited liability company organized
17 under or governed by chapter 10-36.
- 18 43. "Notice":
- 19 a. Is given by a member of a limited liability company to the limited liability
20 company or a manager of a limited liability company:
- 21 (1) When in writing and mailed or delivered to the limited liability company
22 or the manager at the registered office or principal executive office of
23 the limited liability company.
- 24 (2) When given by a form of electronic communication consented to by the
25 limited liability company or a manager to which the notice is given:
- 26 (a) If by facsimile communication, when directed to a telephone
27 number at which the limited liability company or a manager has
28 consented to receive notice;
- 29 (b) If by electronic mail, when directed to an electronic mail address
30 at which the limited liability company or a manager has
31 consented to receive notice;

- 1 (c) If by posting on an electronic network on which the limited liability
2 company or a manager has consented to receive notice, together
3 with separate notice to the limited liability company or a manager
4 of the specific posting, upon the later of:
5 [1] The posting; or
6 [2] The giving of the separate notice; or
7 (d) If by any other form of electronic communication by which the
8 limited liability company or a manager has consented to receive
9 notice, when directed to the limited liability company or a
10 manager.
- 11 b. Is given, in all other cases:
- 12 (1) When mailed to the person at an address designated by the person or
13 at the last-known address of the person;
- 14 (2) When deposited with a nationally recognized overnight delivery service
15 for overnight delivery or, if overnight delivery to the person is not
16 available, for delivery as promptly as practicable, to the person at an
17 address designated by the person or at the last known address of the
18 person;
- 19 (3) When handed to the person;
- 20 ~~(3)~~ (4) When left at the office of the person with a clerk or other person in
21 charge of the office or:
22 (a) If there is no one in charge, when left in a conspicuous place in
23 the office; or
24 (b) If the office is closed or the person to be notified has no office,
25 when left at the dwelling house or usual place of abode of the
26 person with some person of suitable age and discretion who is
27 residing there; or
- 28 ~~(4)~~ (5) When given by a form of electronic communication consented to by the
29 person to whom the notice is given:
30 (a) If by facsimile communication, when directed to a telephone
31 number at which the person has consented to receive notice.

- 1 (b) If by electronic mail, when directed to an electronic mail address
2 at which the person has consented to receive notice.
- 3 (c) If by posting on an electronic network on which the person has
4 consented to receive notice, together with separate notice to the
5 person of the specific posting, upon the later of:
6 [1] The posting; or
7 [2] The giving of the separate notice.
- 8 (d) If by any other form of electronic communication by which the
9 person has consented to receive notice when directed to the
10 person.
- 11 ~~(5)~~ (6) When the method is fair and reasonable when all of the circumstances
12 are considered.
- 13 c. Is given by mail when deposited in the United States mail with sufficient
14 postage affixed.
- 15 d. Is given by deposit for delivery when deposited for delivery as provided in
16 paragraph 2 of subdivision b, after having made sufficient arrangements for
17 payment by the sender.
- 18 e. Is deemed received when it is given.
- 19 ~~43.~~ 44. "Organization" means:
- 20 a. ~~Whether Means, whether~~ domestic or foreign, a limited liability company,
21 corporation, partnership, limited partnership, limited liability partnership,
22 limited liability limited partnership, or any other person having a governing
23 statute; but
- 24 b. Excludes any:
- 25 (1) Any nonprofit corporation, whether a domestic nonprofit corporation
26 which is incorporated under chapter 10-33 or a foreign nonprofit
27 corporation which is incorporated in another jurisdiction; or
- 28 (2) Any nonprofit limited liability company, whether a domestic nonprofit
29 limited liability company which is organized under chapter 10-36 or a
30 foreign nonprofit limited liability company which is organized in another
31 jurisdiction.

- 1 ~~44.~~ 45. "Originating records" means for an organization which is:
- 2 a. A corporation, its articles of incorporation;
- 3 b. A limited liability company, its articles of organization;
- 4 c. A limited partnership, its certificate of limited partnership;
- 5 d. A limited liability partnership, its registration; or
- 6 e. A limited liability limited partnership, its certificate of limited liability limited
- 7 partnership.
- 8 ~~45.~~ 46. "Owners" means the holder of ownership interests in an organization.
- 9 ~~46.~~ 47. "Ownership interests" means for a domestic or foreign organization that is:
- 10 a. A corporation, its shares;
- 11 b. A limited liability company, its membership interests;
- 12 c. A limited partnership, its partnership interests;
- 13 d. A general partnership, its partnership interests;
- 14 e. A limited liability partnership, its partnership interests;
- 15 f. A limited liability limited partnership, its partnership interests; or
- 16 g. Any other organization, its governance or transferable interests.
- 17 ~~47.~~ 48. "Parent" of a specified organization means an organization that directly or
- 18 indirectly, through related organizations, owns more than fifty percent of the voting
- 19 power of the ownership interests entitled to vote for governors, or other members
- 20 of the governing body of the specified organization.
- 21 ~~48.~~ 49. "Pertains" means a contribution "pertains":
- 22 a. To a particular series when the contribution is made in return for a
- 23 membership interest in that particular series.
- 24 b. To a particular class when the class has no series and the contribution is
- 25 made in return for a membership interest in the class.
- 26 A contribution that pertains to a series does not pertain to the class of which the
- 27 series is a part.
- 28 ~~49.~~ 50. "Principal executive office" means:
- 29 a. If the limited liability company has an elected or appointed president, an office
- 30 where the elected or appointed president of the limited liability company has
- 31 an office; or

- 1 b. If the limited liability company has no elected or appointed president, the
2 registered office of the limited liability company.
- 3 ~~50.~~ 51. "Record" means information that is inscribed on a tangible medium or that is stored
4 in an electronic or other medium and is retrievable in perceivable form.
- 5 ~~51.~~ 52. "Registered office" means the place in this state designated in a limited liability
6 company's articles of organization or a foreign limited liability company's certificate
7 of authority as the registered office.
- 8 ~~52.~~ 53. "Related organization" means an organization that controls, is controlled by, or is
9 under common control with another organization with control existing if an
10 organization:
11 a. Owns, directly or indirectly, at least fifty percent of the ownership interests of
12 another organization;
13 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
14 more of the voting members of the governing body of another organization; or
15 c. Has the power, directly or indirectly, to direct or cause the direction of the
16 management and policies of another organization, whether through the
17 ownership of voting interests, by contract, or otherwise.
- 18 ~~53.~~ 54. "Remote communication" means communication via electronic communication,
19 conference telephone, videoconference, the internet, or such other means by
20 which persons not physically present in the same location may communicate with
21 each other on a substantially simultaneous basis.
- 22 ~~54.~~ 55. "Required records" are those records required to be maintained under section
23 10-32-51.
- 24 ~~55.~~ 56. "Security" has the meaning given in section 10-04-02.
- 25 ~~56.~~ 57. "Series" means a category of membership interests, within a class of membership
26 interests, that has some of the same rights and preferences as other membership
27 interests within the same class, but that differ in one or more rights and
28 preferences from another category of membership interests within that class.
- 29 ~~57.~~ 58. "Signed" means:
30 a. That the signature of a person, which may be a facsimile affixed, engraved,
31 printed, placed, stamped with indelible ink, transmitted by facsimile

- 1 telecommunication or electronically, or in any other manner reproduced on
2 the record, is placed on a record with the present intention to authenticate
3 that record.
- 4 b. With respect to a record required by this chapter to be filed with the secretary
5 of state, that:
- 6 (1) The record has been signed by a person authorized to do so by this
7 chapter, the articles of organization, a member-control agreement, or
8 the bylaws or a resolution approved by the governors as required by
9 section 10-32-83 or the members as required by section 10-32-42; and
- 10 (2) The signature and the record are communicated by a method or
11 medium acceptable by the secretary of state.
- 12 ~~58.~~ 59. "Subsidiary" of a specified organization means an organization having more than
13 fifty percent of the voting power of its ownership interests entitled to vote for
14 governors, or other members of the governing body of the organization owned
15 directly, or indirectly, through related organizations, by the specified organization.
- 16 ~~59.~~ 60. "Successor organization" means an organization that, pursuant to a business
17 continuation agreement or an order of the court under subsection 6 of section
18 10-32-119, continues the business of the dissolved and terminated limited liability
19 company.
- 20 ~~60.~~ 61. "Surviving organization" means the organization resulting from a merger which:
21 a. May preexist the merger; or
22 b. May be created by the merger.
- 23 ~~61.~~ 62. "Termination" means the end of the existence of a limited liability company as a
24 legal entity and occurs when a notice of termination is:
25 a. Filed with the secretary of state under section 10-32-117 together with the
26 fees provided in section 10-32-150; or
27 b. Considered filed with the secretary of state under subdivision c of
28 subsection 2 of section 10-32-106 together with the fees provided in section
29 10-32-150.
- 30 ~~62.~~ 63. "Vote" includes authorization by written action.

1 ~~63.~~ 64. "Winding up" means the period triggered by dissolution during which the limited
2 liability company ceases to carry on business, except to the extent necessary for
3 concluding affairs, and disposing of assets under section 10-32-131.

4 ~~64.~~ 65. "Written action" means:

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

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

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

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

12 **SECTION 19. AMENDMENT.** Section 10-32-04 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **10-32-04. Purposes.** A limited liability company may be organized under this chapter
15 for any ~~business~~ lawful purpose, unless some other statute of this state requires organization
16 for any of those purposes under a different law. Unless otherwise provided in its articles of
17 organization, a limited liability company has general business purposes.

18 **SECTION 20. AMENDMENT.** Section 10-32-06 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **10-32-06. Number of members required.** A Subject to section 10-32-67 and
21 subsection 1 of section 10-32-109, a limited liability company must have one or more members.

22 **SECTION 21. AMENDMENT.** Subsection 1 of section 10-32-10 of the North Dakota
23 Century Code is amended and reenacted as follows:

24 1. The limited liability company name:

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

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

31 c. May not contain ~~the~~;

- 1 (1) The word "corporation", "incorporated", "limited partnership", "limited
2 liability partnership", "limited liability limited partnership", or any
3 abbreviation of these words; or
4 (2) The words "limited" or "company" without association to the words
5 "limited liability company" or the abbreviations of these words as
6 provided in subdivision b;
- 7 d. May not contain a word or phrase that indicates or implies that the limited
8 liability company:
- 9 (1) Is organized for a purpose other than:
- 10 (a) A lawful business purpose for which a limited liability company
11 may be organized under this chapter; or
12 (b) For a purpose stated in its articles of organization; or
- 13 (2) May not be organized under this chapter; and
- 14 e. May not be the same as, or deceptively similar to:
- 15 (1) The name, whether foreign and authorized to do business in this state
16 or domestic, unless there is filed with the articles a record which
17 complies with subsection 3, of:
- 18 (a) Another limited liability company;
19 (b) A corporation;
20 (c) A limited partnership;
21 (d) A limited liability partnership; or
22 (e) A limited liability limited partnership;
- 23 (2) A name, the right of which is, at the time of organization, reserved in
24 the manner provided in section 10-19.1-14, 10-32-11, 10-33-11,
25 45-10.2-11, 45-13-04.2, or 45-22-05;
- 26 (3) A fictitious name registered in the manner provided in chapter 45-11; or
27 (4) A trade name registered in the manner provided in chapter 47-25.

28 **SECTION 22. AMENDMENT.** Section 10-32-18 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **10-32-18. Articles of amendment.** When an amendment has been adopted, articles
31 of amendment must be prepared that contain:

- 1 1. The name of the limited liability company;
- 2 2. The amendment adopted;
- 3 3. The date of the adoption of the amendment by the members, or by the organizers
- 4 or the board when no membership interests have been issued;
- 5 4. If the amendment ~~provides for but does not establish the manner for effecting an~~
- 6 ~~exchange, reclassification, division, combination, or cancellation of membership~~
- 7 ~~interests, a statement of the manner in which it will be effected~~ restates the articles
- 8 in their entirety, a statement that the restated articles supersede the original
- 9 articles and all amendments to the original articles; and
- 10 4. 5. A statement that the amendment has been adopted pursuant to this chapter.

11 **SECTION 23. AMENDMENT.** Subsection 2 of section 10-32-43 of the North Dakota
12 Century Code is amended and reenacted as follows:

- 13 2. The written action is effective when signed, or consented to by authenticated
- 14 electronic communication, by the required members, unless a different effective
- 15 time is provided in the written action.
- 16 a. When written action is permitted to be taken by less than all members, all
- 17 members must be notified ~~immediately~~ of its text and effective date no later
- 18 than five days after the date on which the action is taken.
- 19 b. Failure to provide the notice does not invalidate the written action.
- 20 c. A member who does not sign or consent to the written action has no liability
- 21 for the action or actions taken by the written action.

22 **SECTION 24. AMENDMENT.** Section 10-32-48 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **10-32-48. Proxies.**

- 25 1. At or before the meeting at which the appointment is to be effective, a member
- 26 may cast or authorize the casting of a vote:
- 27 a. By filing with a manager authorized to tabulate votes a written appointment of
- 28 a proxy which is signed by the member.
- 29 b. By ~~telephonic transmission~~ remote communication or authenticated electronic
- 30 communication to a manager authorized to tabulate votes, whether or not

- 1 accompanied by written instructions of the member, of an appointment of a
2 proxy.
- 3 (1) The ~~telephonic transmission~~ remote communication or authenticated
4 electronic communication must set forth or be submitted with
5 information from which it can be determined that the appointment is
6 authorized by the member. If it is reasonably concluded that the
7 ~~telephonic transmission~~ remote communication or authenticated
8 electronic communication is valid, the inspectors of election or, if there
9 are not inspectors, the other persons making that determination of
10 validity shall specify the information upon which they relied to make that
11 determination.
- 12 (2) A proxy so appointed may vote on behalf of the member, or otherwise
13 participate, in a meeting by remote communication according to section
14 10-32-43.2, to the extent the member appointing the proxy would have
15 been entitled to participate by remote communication according to
16 section 10-32-43.2 if the member did not appoint the proxy.
- 17 c. ~~Any~~ A copy, facsimile telecommunication, or other reproduction of the original
18 writing or transmission may be substituted or used in lieu of the original
19 writing or transmission for any purpose for which the original transmission
20 could be used, if the copy, facsimile telecommunication, or other reproduction
21 is a complete and legible reproduction of the entire original writing or
22 transmission.
- 23 d. An appointment of a proxy for membership interests owned jointly by two or
24 more members is valid if signed or consented to by authenticated electronic
25 communication by any one of the members, unless the limited liability
26 company receives from any one of those members written notice or an
27 authenticated electronic communication either denying the authority of that
28 person to appoint a proxy or appointing a different proxy.
- 29 2. The appointment of a proxy is valid for eleven months, unless a longer period is
30 expressly provided in the appointment. No appointment is irrevocable unless the

- 1 appointment is coupled with an interest in the membership interests of the limited
2 liability company.
- 3 3. An appointment may be revoked at will unless the appointment is coupled with an
4 interest, in which case the appointment may not be terminated except in
5 accordance with the terms of an agreement, if any, between the parties to the
6 appointment. Appointment of a proxy is revoked by the person appointing the
7 proxy by ~~attending~~:
- 8 a. Attending a meeting and voting in person; or ~~signing~~
9 b. Signing and delivering to the manager or agent authorized to tabulate proxy
10 votes either a:
11 (1) A writing stating that the appointment of the proxy is revoked; or ~~a later~~
12 (2) A new appointment; or
13 c. Remote communication or by authenticated electronic communication,
14 whether or not accompanied by written instructions of the member, of:
15 (1) A statement that the proxy is revoked; or
16 (2) A new appointment.
- 17 4. Revocation in either manner provided in subdivision b or c of subsection 3 revokes
18 all prior proxy appointments and is effective ~~when~~:
- 19 a. When filed with a manager or with a duly authorized agent of the limited
20 liability company; or
21 b. When the remote communication or the authenticated electronic
22 communication is received by a manager or by the duly authorized agent of
23 the limited liability company.
- 24 The remote communication or the authenticated electronic communication must
25 set forth or be submitted with information from which it can be determined that the
26 revocation or the new appointment was authorized by the member.
- 27 4. 5. The death or incapacity of a person appointing a proxy does not revoke or affect
28 the right of the limited liability company to accept the authority of the proxy, unless
29 written notice of the death or incapacity is received by a manager authorized to
30 tabulate votes before the proxy exercises the authority under that appointment.

- 1 ~~5-~~ 6. Unless the appointment specifically provides otherwise, if two or more persons are
2 appointed as proxies for a member:
- 3 a. Any one of them may vote the membership interests on each item of business
4 in accordance with specific instructions contained in the appointment; and
- 5 b. If no specific instructions are contained in the appointment with respect to
6 voting the membership interests on a particular item of business, the
7 membership interests must be voted as a majority of the proxies determine. If
8 the proxies are equally divided, the membership interests must not be voted.
- 9 ~~6-~~ 7. Subject to section 10-32-48.1 and an express restriction, limitation, or specific
10 reservation of authority of the proxy appearing in the appointment, the limited
11 liability company may accept a vote or action by the proxy as the action of the
12 member. The vote of a proxy is final, binding, and not subject to challenge, but the
13 proxy is liable to the member for damages resulting from a failure to exercise the
14 proxy or from an exercise of the proxy in violation of the authority granted in the
15 appointment.
- 16 ~~7-~~ 8. If a proxy is given authority by a member to vote on less than all items of business
17 considered at a meeting of members, the member is considered to be present and
18 entitled to vote by the proxy for purposes of subsection 1 of section 10-32-42 only
19 with respect to those items of business for which the proxy has authority to vote. A
20 proxy who is given authority by a member who abstains with respect to an item of
21 business is considered to have authority to vote on the item of business for
22 purposes of this subsection.

23 **SECTION 25. AMENDMENT.** Subsection 1 of section 10-32-80 of the North Dakota
24 Century Code is amended and reenacted as follows:

- 25 1. Meetings of the board may be held from time to time as provided in the articles of
26 organization, a member-control agreement, or the bylaws at any place within or
27 without the state that the board may select or by any means described in
28 subsection 2.
- 29 a. If the articles, bylaws, or board fails to select a place for a meeting, the
30 meeting must be held at the principal executive office, unless the articles, a
31 member-control agreement, or the bylaws provide otherwise.

- 1 b. The board may determine under subsection 2 that a meeting of the board
2 shall be held solely by means of remote communication.
- 3 c. Participation in a meeting by ~~either of the a~~ means set forth in subsection 2
4 constitutes ~~personal~~ presence in person at the meeting.

5 **SECTION 26. AMENDMENT.** Subsection 1 of section 10-32-85 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 1. A resolution approved by the affirmative vote of a majority of the ~~board~~ governors
8 then holding office may establish committees having the authority of the board in
9 the management of the business of the limited liability company only to the extent
10 provided in the resolution. Committees may include a special litigation committee
11 consisting of one or more independent governors or other independent persons to
12 consider legal rights or remedies of the limited liability company and whether those
13 rights and remedies should be pursued. Committees other than special litigation
14 committees are subject at all times to the direction and control of the board.

15 **SECTION 27. AMENDMENT.** Subsection 2 of section 10-32-87 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 2. The contract or transaction described in subsection 1 is not void or voidable if:
- 18 a. The contract or transaction was, and the person asserting the validity of the
19 contract or transaction sustains the burden of establishing that the contract or
20 transaction was, fair and reasonable as to the limited liability company at the
21 time it was authorized, approved, or ratified;
- 22 b. The material facts as to the contract or transaction and as to the governor's
23 interest are fully disclosed or known to the members, whether entitled to vote,
24 and the contract or transaction is approved in good faith by:
- 25 (1) The owners of two-thirds of the voting power of membership interests
26 entitled to vote which are owned by persons other than the interested
27 governor; or
- 28 (2) The unanimous affirmative vote of all members, whether entitled to
29 vote;
- 30 c. The material facts as to the contract or transaction and as to the governor's
31 interest are fully disclosed or known to the board or a committee, and the

1 board or committee authorizes, approves, or ratifies the contract or
2 transaction in good faith by a majority of the ~~board~~ governors or committee
3 members currently holding office, but the interested governor is not counted
4 in determining the presence of a quorum and ~~may~~ shall not vote; or

5 d. The contract or transaction is a distribution described in subsection 1 of
6 section 10-32-64 or a merger or exchange described in subsection 1 or 2 of
7 section 10-32-100.

8 **SECTION 28. AMENDMENT.** Subsection 1 of section 10-32-99 of the North Dakota
9 Century Code is amended and reenacted as follows:

10 1. For purposes of this section:

11 a. "Limited liability company" includes a limited liability company or foreign
12 limited liability company that was the predecessor of the limited liability
13 company referred to in this section in a merger or other transaction in which
14 the predecessor's existence ceased upon consummation of the transaction.

15 b. "Official capacity" means:

16 (1) With respect to a governor, the position of governor in a limited liability
17 company;

18 (2) With respect to a person other than a governor, the elective or
19 appointive office or position held by a manager, member of a
20 committee of the board, the employment relationship undertaken by an
21 employee, agent of the limited liability company, or the scope of the
22 services provided by members of the limited liability company who
23 provide services to the limited liability company; and

24 (3) With respect to a governor, manager, member, employee, or agent of
25 the limited liability company who, while a governor, manager, member,
26 or employee of the limited liability company, is or was serving at the
27 request of the limited liability company or whose duties in that position
28 involve or involved service as a governor, director, manager, officer,
29 member, partner, trustee, employee, or agent of another organization
30 or employee benefit plan, the position of that person as a governor,
31 director, manager, officer, member, partner, trustee, employee, or

1 agent, as the case may be, of the other organization or employee
2 benefit plan.

3 c. "Proceeding" means a threatened, pending, or completed civil, criminal,
4 administrative, arbitration, or investigative proceeding, including a proceeding
5 by or in the right of the limited liability company.

6 d. "Special legal counsel" means counsel who has not ~~represented~~ in the
7 preceding five years:

8 (1) Represented the limited liability company or a related organization, in a
9 capacity other than special legal counsel; or

10 (2) Represented a governor, manager, member of a committee of the
11 board, employee, or agent whose indemnification is in issue.

12 **SECTION 29. AMENDMENT.** Subsection 4 of section 10-32-107 of the North Dakota
13 Century Code is amended and reenacted as follows:

14 4. If the surviving organization in a merger will be a foreign organization and will
15 transact business in this state, then the surviving organization shall comply with its
16 governing statute. In every case, the surviving organization shall file with the
17 secretary of state:

18 a. An agreement that the surviving organization may be served with process in
19 this state in a proceeding for the enforcement of an obligation of a constituent
20 organization and in a proceeding for the enforcement of the rights of a
21 dissenting owner of an ownership interest of a constituent organization
22 against the surviving foreign organization;

23 b. An irrevocable appointment of the secretary of state as the agent of the
24 surviving organization to accept service of process in any proceeding, and an
25 address to which process may be forwarded as provided in section
26 10-01.1-13; and

27 c. An agreement that the surviving foreign organization promptly will pay to the
28 dissenting owners of ownership interests of each constituent organization the
29 amount, if any, to which the dissenting owners are entitled under its governing
30 statute.

1 **SECTION 30. AMENDMENT.** Subsection 1 of section 10-32-109 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 1. A limited liability company dissolves upon the occurrence of any of the following
4 events:
- 5 a. When the period, if any, fixed in the articles of organization for the duration of
6 the limited liability company expires;
 - 7 b. By order of a court pursuant to sections 10-32-119 and 10-32-122;
 - 8 c. ~~By action of the organizers~~ Prior to accepting contributions pursuant to
9 section 10-32-110;
 - 10 d. ~~By action of the members~~ After accepting contributions pursuant to section
11 10-32-111;
 - 12 e. For a limited liability company with articles of organization filed with the
13 secretary of state:
 - 14 (1) Before July 1, 1999, except as otherwise provided in the articles of
15 organization or a member-control agreement, upon the occurrence of
16 an event that terminates the continued membership of a member in the
17 limited liability company, but the limited liability company is not
18 dissolved and is not required to be wound up by reason of any event
19 that terminates the continued membership of a member:
 - 20 (a) If there is at least one remaining member and the existence and
21 business of the limited liability company is continued by the
22 consent of all the remaining members obtained no later than
23 ninety days after the termination of the continued membership; or
 - 24 (b) If the membership of the last or sole member terminates and the
25 legal representative of that last or sole member causes the
26 limited liability company to admit at least one member.
 - 27 (2) After June 30, 1999, upon the occurrence of an event terminating the
28 continued membership of a member in the limited liability company:
 - 29 (a) If the articles of organization or a member-control agreement
30 specifically provide that the termination causes dissolution and in

- 1 that event only as provided in the articles or member-control
2 agreement; or
3 (b) If the membership of the last or sole member terminates and the
4 legal representative of that last or sole member does not cause
5 the limited liability company to admit at least one member within
6 one hundred eighty days after the termination;
7 f. A merger in which the limited liability company is not the surviving
8 organization; or
9 g. When terminated by the secretary of state pursuant to section 10-32-149.

10 **SECTION 31. AMENDMENT.** Section 10-32-110 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **10-32-110. Voluntary dissolution and termination ~~by organizers prior to~~**
13 **accepting contributions.** A limited liability company that has not accepted contributions may
14 be dissolved and terminated ~~by the organizers~~ in the manner set forth in this section.

- 15 1. A majority of the organizers or governors shall sign articles of dissolution and
16 termination containing:
17 a. The name of the limited liability company;
18 b. The date of organization;
19 c. A statement that contributions have not been accepted; and
20 d. A statement that no debts remain unpaid.
21 2. The articles of dissolution and termination must be filed with the secretary of state
22 together with the fees provided in section 10-32-150.
23 3. When the articles of dissolution and termination have been filed with the secretary
24 of state, the limited liability company is terminated.
25 4. The secretary of state shall issue to the terminated limited liability company or its
26 legal representative a certificate of termination that contains:
27 a. The name of the limited liability company;
28 b. The date the articles of dissolution and termination were filed with the
29 secretary of state; and
30 c. A statement that the limited liability company is terminated.

1 **SECTION 32. AMENDMENT.** Section 10-32-111 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **10-32-111. Voluntary dissolution ~~by members~~ after accepting contributions.** A
4 limited liability company may be dissolved ~~by the members~~ after accepting contributions when
5 authorized in the manner set forth in this section.

6 1. If the limited liability company has members, then:

7 a. Written notice must be given to each member, whether or not entitled to vote
8 at a meeting of members, within the time and in the manner provided in
9 section 10-32-40 for notice of meetings of members and, whether the meeting
10 is a regular or a special meeting, must state that a purpose of the meeting is
11 to consider dissolving the limited liability company and that dissolution must
12 be followed by the winding up and termination of the limited liability company.

13 ~~2.~~ b. The proposed dissolution must be submitted for approval at a meeting of
14 members. If the proposed dissolution is approved at a meeting by the
15 affirmative vote of the owners of a majority of the voting power of all
16 membership interests entitled to vote, the limited liability company is
17 dissolved.

18 2. If the limited liability company no longer has any members, then the governors
19 may authorize and commence the dissolution. If the governors take that action,
20 then:

21 a. The notice of dissolution filed under section 10-32-112 shall so reflect this
22 fact; and

23 b. The governors shall have the right to revoke the dissolution proceedings in
24 accordance with section 10-32-116.

25 **SECTION 33.** Subsection 4 to section 10-32-128 of the North Dakota Century Code is
26 created and enacted as follows:

27 4. Any statutory and common-law rights of persons who may bring claims of injury to
28 a person, including death, are not affected by dissolution under this chapter.

29 **SECTION 34. AMENDMENT.** Subsection 3 of section 10-32-149 of the North Dakota
30 Century Code is amended and reenacted as follows:

1 3. The annual report of a limited liability company or foreign limited liability company
2 must be delivered to the secretary of state before November sixteenth of each
3 year, except that the first annual report of a limited liability company or foreign
4 limited liability company must be delivered before November sixteenth of the year
5 following the calendar year in which the certificate of organization or certificate of
6 authority was issued by the secretary of state.

7 a. An annual report in a sealed envelope postmarked by the United States
8 postal service before November sixteenth, or an annual report in a sealed
9 packet with a verified shipment date by any other carrier service before
10 November sixteenth, is in compliance with this requirement.

11 b. The secretary of state must file the report if the report conforms to the
12 requirements of subsection 2.

13 (1) If the report does not conform, it must be returned to the limited liability
14 company or foreign limited liability company for any necessary
15 corrections.

16 (2) If the report is filed before the deadlines provided in this subsection,
17 penalties for the failure to file a report within the time provided do not
18 apply if the report is corrected to conform to the requirements of
19 subsection 2 and returned to the secretary of state within thirty days
20 after the annual report was returned by the secretary of state for
21 correction.

22 ~~e. The secretary of state may extend the annual filing date of any limited liability~~
23 ~~company or foreign limited liability company, if a written application for an~~
24 ~~extension is delivered before November sixteenth.~~

25 **SECTION 35. AMENDMENT.** Subsection 5 of section 10-32-152 of the North Dakota
26 Century Code is amended and reenacted as follows:

27 5. If the court order sought is one for reinstatement of a limited liability company that
28 has been dissolved as provided in subsection 5 of section 10-32-149, or for
29 reinstatement of the certificate of authority of a foreign limited liability company that
30 has been revoked as provided in subsection 6 of section 10-32-149, then together
31 with any other actions the court deems proper, any such order which reverses the

1 decision of the secretary of state shall require the limited liability company or
2 foreign limited liability company to:

- 3 a. File ~~at~~ the most recent past-due annual ~~reports~~ report;
- 4 b. Pay the fees to the secretary of state for ~~each~~ all past-due annual ~~report~~
5 reports as provided in subsection 26 of section 10-32-150; and
- 6 c. Pay the reinstatement fee to the secretary of state as provided in
7 subsection 26 of section 10-32-150.

8 **SECTION 36. AMENDMENT.** Section 10-33-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

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

- 12 1. "Activity" or "activities" means, in a corporation organized under this chapter, the
13 functional equivalent of "business" in a corporation organized under chapter
14 10-19.1.
- 15 2. "Address" means:
- 16 a. In the case of a registered office or principal executive office, the mailing
17 address, including a zip code, of the actual office location which may not be
18 only a post-office box; and
- 19 b. In any other case, the mailing address, including a zip code.
- 20 3. "Articles" means:
- 21 a. In the case of a corporation incorporated under or governed by this chapter,
22 articles of incorporation, articles of amendment, a resolution of election to
23 become governed by this chapter, a statement of change of registered office,
24 registered agent, or name of registered agent, articles of merger, articles of
25 consolidation, articles of abandonment, articles of dissolution, and any annual
26 report in which a registered office or registered agent has been established or
27 changed.
- 28 b. In the case of a foreign corporation, the term includes all records serving a
29 similar function required to be filed with the secretary of state or other officer
30 of the state of incorporation of the foreign corporation.
- 31 4. "Authenticated electronic communication" means:

- 1 a. That the electronic communication is delivered:
- 2 (1) To the principal place of activity of the corporation; or
- 3 (2) To an officer or agent of the corporation authorized by the corporation
- 4 to receive the electronic communication; and
- 5 b. That the electronic communication sets forth information from which the
- 6 corporation can reasonably conclude that the electronic communication was
- 7 sent by the purported sender.
- 8 5. "Ballot" means a written ballot or a ballot transmitted by electronic communication.
- 9 6. "Board" means the board of directors of a corporation.
- 10 7. "Board member" means an individual serving on the board.
- 11 8. "Bylaws" means the code adopted for the regulation or management of the internal
- 12 affairs of a corporation, regardless of how designated.
- 13 9. "Corporation" means a corporation, other than a foreign corporation, that is
- 14 incorporated under or governed by this chapter.
- 15 10. "Director" means a member of the board.
- 16 11. "Domestic organization" means an organization created under the laws of this
- 17 state.
- 18 12. "Electronic" means relating to technology having electrical, digital, magnetic,
- 19 wireless, optical, electromagnetic, or similar capabilities.
- 20 13. "Electronic communication" means any form of communication, not directly
- 21 involving the physical transmission of paper:
- 22 a. That creates a record that may be retained, retrieved, and reviewed by a
- 23 recipient of the communication; and
- 24 b. That may be directly reproduced in paper form by the recipient through an
- 25 automated process.
- 26 14. "Electronic record" means a record created, generated, sent, communicated,
- 27 received, or stored by electronic means.
- 28 15. "Electronic signature" means an electronic sound, symbol, or process attached to
- 29 or logically associated with a record and signed or adopted by a person with the
- 30 intent to sign the record.

- 1 16. "Filed with the secretary of state" means except as otherwise permitted by law or
2 rule:
- 3 a. That a record meeting the applicable requirements of this chapter, together
4 with the fees provided in section 10-33-140, was delivered or communicated
5 to the secretary of state by a method or medium of communication acceptable
6 by the secretary of state and was determined by the secretary of state to
7 conform to law; and
- 8 b. That the secretary of state did then:
- 9 (1) Record the actual date on which the record was filed, and if different,
10 the effective date of filing; and
- 11 (2) Record the record in the office of the secretary of state.
- 12 17. "Foreign corporation" means a corporation that is formed under laws other than the
13 laws of this state for a purpose for which a corporation may be organized under
14 this chapter.
- 15 18. "Foreign organization" means an organization created under laws other than the
16 laws of this state for a purpose for which an organization may be created under the
17 laws of this state.
- 18 19. "Good faith" means honesty in fact in the conduct of an act or transaction.
- 19 20. "Intentionally" means the person referred to has a purpose to do or fail to do the
20 act or cause the result specified, or believes the act or failure to act, if successful,
21 will cause that result. A person intentionally violates a statute:
- 22 a. If the person intentionally does the act or causes the result prohibited by the
23 statute; or
- 24 b. If the person intentionally fails to do the act or cause the result required by the
25 statute, even though the person may not know of the existence or
26 constitutionality of the statute or the scope or meaning of the terms used in
27 the statute.
- 28 21. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended
29 from time to time, and successive federal revenue Acts.
- 30 22. "Legal representative" means a person empowered to act for another person,
31 including an agent, manager, officer, partner, or associate of an organization; a

- 1 trustee of a trust; a personal representative; a trustee in bankruptcy; or a receiver,
2 guardian, custodian, or conservator.
- 3 23. "Member" means a person with membership rights in a corporation under its
4 articles or bylaws, regardless of how the person is identified.
- 5 24. "Members with voting rights" means members or a class of members that has
6 voting rights with respect to the purpose or matter involved.
- 7 25. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving
8 pecuniary gain to any officer, director, or member, other than a member that is a
9 nonprofit organization or subdivision, unit, or agency of the United States or a state
10 or local government.
- 11 26. "Notice":
- 12 a. Is given by a member of a corporation to the corporation or an officer of the
13 corporation:
- 14 (1) When in writing and mailed or delivered to the corporation or the officer
15 at the registered office or principal executive office of the corporation;
16 or
- 17 (2) When given by a form of electronic communication consented to by the
18 corporation to which the notice is given if by:
- 19 (a) Facsimile communication, when directed to a telephone number
20 at which the corporation has consented to receive notice.
- 21 (b) Electronic mail, when directed to an electronic mail address at
22 which the corporation has consented to receive notice.
- 23 (c) Posting on an electronic network on which the corporation has
24 consented to receive notice, together with separate notice to the
25 corporation of the specific posting, upon the later of:
- 26 [1] The posting; or
27 [2] The giving of the separate notice.
- 28 (d) Any other form of electronic communication by which the
29 corporation has consented to receive notice, when directed to the
30 corporation.
- 31 b. Is given, in all other cases:

- 1 (1) When mailed to the person at an address designated by the person or
2 at the last-known address of the person;
- 3 (2) When deposited with a nationally recognized overnight delivery service
4 for overnight delivery or, if overnight delivery to the person is not
5 available, for delivery as promptly as practicable, to the person at an
6 address designated by the person or at the last known address of the
7 person;
- 8 (3) When handed to the person;
- 9 ~~(3)~~ (4) When left at the office of the person with a clerk or other person in
10 charge of the office or:
- 11 (a) If there is no one in charge, when left in a conspicuous place in
12 the office; or
- 13 (b) If the office is closed or the person to be notified has no office,
14 when left at the dwelling house or usual place of abode of the
15 person with some person of suitable age and discretion then
16 residing there;
- 17 ~~(4)~~ (5) When given by a form of electronic communication consented to by the
18 person to whom the notice is given if by:
- 19 (a) Facsimile communication, when directed to a telephone number
20 at which the person has consented to receive notice;
- 21 (b) Electronic mail, when directed to an electronic mail address at
22 which the person has consented to receive notice; or
- 23 (c) Posting on an electronic network on which the person has
24 consented to receive notice, together with separate notice to the
25 person of the specific posting, upon the later of:
- 26 [1] The posting; or
- 27 [2] The giving of the separate notice; or
- 28 ~~(5)~~ (6) When the method is fair and reasonable when all of the circumstances
29 are considered.
- 30 c. Is given by mail when deposited in the United States mail with sufficient
31 postage affixed.

- 1 d. Is given by deposit for delivery when deposited for delivery as provided in
2 paragraph 2 of subdivision b, after having made sufficient arrangements for
3 payment by the sender.
- 4 e. Is deemed received when it is given.
- 5 27. "Officer" means an individual who is more than eighteen years of age and who is:
- 6 a. Elected, appointed, or otherwise designated as an officer by the board or the
7 members; or
- 8 b. Considered elected as an officer pursuant to section 10-33-52.
- 9 28. "Organization" ~~means~~:
- 10 a. ~~Whether~~ Means, whether domestic or foreign, a corporation, limited liability
11 company, partnership, limited partnership, limited liability partnership, limited
12 liability limited partnership, business trust, or any other person having a
13 governing statute; but
- 14 b. Excludes ~~any~~:
- 15 (1) Any nonprofit corporation, whether a domestic nonprofit corporation
16 which is incorporated under this chapter or a foreign nonprofit
17 corporation which is incorporated in another jurisdiction; or
- 18 (2) Any nonprofit limited liability company, whether a domestic nonprofit
19 limited liability company which is organized under chapter 10-36 or a
20 foreign nonprofit limited liability company which is organized in another
21 jurisdiction.
- 22 29. "Principal executive office" means:
- 23 a. If the corporation has an elected or appointed president, then an office where
24 the elected or appointed president of the corporation has an office; or
- 25 b. If the corporation has no elected or appointed president, then the registered
26 office of the corporation.
- 27 30. "Record" means information that is inscribed on a tangible medium or that is stored
28 in an electronic or other medium and is retrievable in perceivable form.
- 29 31. "Registered office" means the place in this state designated in a corporation's
30 articles of incorporation or in a foreign corporation's certificate of authority as the
31 registered office.

- 1 32. "Related organization" means an organization that controls, is controlled by, or is
2 under common control with another organization with control existing if an
3 organization:
- 4 a. Owns, directly or indirectly, at least fifty percent of the ownership interests of
5 another organization;
- 6 b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or
7 more of the voting members of the governing body of another organization; or
8 c. Has the power, directly or indirectly, to direct or cause the direction of the
9 management and policies of another organization, whether through the
10 ownership of voting interests, by contract, or otherwise.
- 11 33. "Remote communication" means communication via electronic communication,
12 conference telephone, videoconference, the internet, or such other means by
13 which persons not physically present in the same location may communicate with
14 each other on a substantially simultaneous basis.
- 15 34. "Signed" means:
- 16 a. That the signature of a person, which may be a facsimile affixed, engraved,
17 printed, placed, stamped with indelible ink, transmitted by facsimile
18 telecommunication or electronically, or in any other manner reproduced on
19 the record with the present intention to authenticate that record; and
20 b. With respect to a record required by this chapter to be filed with the secretary
21 of state, that:
- 22 (1) The record is signed by a person authorized to do so by this chapter,
23 the articles, or bylaws, a resolution approved by the directors as
24 required by section 10-33-42, or the members with voting rights, if any,
25 as required by section 10-33-72; and
26 (2) The signature and the record are communicated by a method or
27 medium of communication acceptable by the secretary of state.
- 28 35. "Subsidiary" of a specified organization means an organization having more than
29 fifty percent of the voting power of its ownership interests entitled to vote for
30 directors, governors, or other members of the governing body of the organization

- 1 owned directly, or indirectly, through related organizations, by the specified
2 organization.
- 3 36. "Surviving corporation" means the corporation or foreign corporation resulting from
4 a merger which:
- 5 a. May preexist the merger; or
6 b. May be created by the merger.
- 7 37. "Vote" includes authorization by written action.
- 8 38. "Written action" means:
- 9 a. A written record signed by all of the persons required to take the action; or
10 b. The counterparts of a written record signed by any of the persons taking the
11 action.
- 12 (1) Each counterpart constitutes the action of the persons signing it; and
13 (2) All the counterparts are one written action by all of the persons signing
14 them.

15 **SECTION 37. AMENDMENT.** Subsection 1 of section 10-33-39 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 1. Meetings of the board may be held from time to time as provided in the articles or
18 bylaws at any place within or without the state that the board may select or by any
19 means described in subsection 2.
- 20 a. Unless the articles or bylaws provide otherwise, a meeting of the board must
21 be held at least once per year.
- 22 b. If the articles, bylaws, or board fails to select a place for a meeting, the
23 meeting must be held at the principal executive office.
- 24 c. The board may determine under subsection 2 that a meeting of the board
25 shall be held solely by means of remote communication.
- 26 d. Participation in a meeting by ~~either of the~~ a means set forth in subsection 2
27 constitutes presence in person at the meeting.

28 **SECTION 38. AMENDMENT.** Subsection 1 of section 10-33-44 of the North Dakota
29 Century Code is amended and reenacted as follows:

- 30 1. A resolution approved by the affirmative vote of a majority of the ~~board~~ directors
31 currently holding office may establish committees having the authority of the board

1 in the management of the activities of the corporation to the extent provided in the
2 resolution. Committees may include a special litigation committee consisting of
3 one or more independent directors or other independent persons to consider legal
4 rights or remedies of the corporation and whether those rights or remedies should
5 be pursued. Committees other than special litigation committees are subject at all
6 times to the direction and control of the board.

7 **SECTION 39. AMENDMENT.** Subsection 2 of section 10-33-46 of the North Dakota
8 Century Code is amended and reenacted as follows:

- 9 2. A contract or transaction described in subsection 1 is not void or voidable if:
- 10 a. The contract or transaction was, and the person asserting the validity of the
11 contract or transaction has the burden of establishing that the contract or
12 transaction was, fair and reasonable as to the corporation when it was
13 authorized, approved, or ratified;
- 14 b. The material facts as to the contract or transaction and as to the director's
15 interest are fully disclosed or known to the members and the contract or
16 transaction is approved in good faith by two-thirds of the members entitled to
17 vote, not counting any vote that the interested director might otherwise have,
18 or the unanimous affirmative vote of all members, whether or not entitled to
19 vote;
- 20 c. The material facts as to the contract or transaction and as to the director's
21 interest are fully disclosed or known to the board or a committee, and the
22 board or committee authorizes, approves, or ratifies the contract or
23 transaction in good faith by a majority of ~~the board~~ directors or committee
24 members currently holding office, not counting any vote that the interested
25 director might otherwise have, and not counting the director in determining
26 the presence of a quorum; or
- 27 d. The contract or transaction is a merger or consolidation described in section
28 10-33-85.

29 **SECTION 40. AMENDMENT.** Subsection 1 of section 10-33-84 of the North Dakota
30 Century Code is amended and reenacted as follows:

- 31 1. For purposes of this section:

- 1 a. "Corporation" includes a domestic or foreign corporation that was the
2 predecessor of the corporation referred to in this section in a merger or other
3 transaction in which the predecessor's existence ceased upon consummation
4 of the transaction.
- 5 b. "Official capacity" means:
- 6 (1) With respect to a director, the position of director in a corporation;
- 7 (2) With respect to a person other than a director, the elective or appointive
8 office or position held by an officer, member of a committee of the
9 board, or the employment relationship undertaken by an employee of
10 the corporation; and
- 11 (3) With respect to a director, officer, or employee of the corporation who,
12 while a director, officer, or employee of the corporation, is or was
13 serving at the request of the corporation or whose duties in that position
14 involve or involved service as a director, governor, officer, manager,
15 partner, trustee, employee, or agent of another organization or
16 employee benefit plan, the position of that person as a director,
17 governor, officer, manager, partner, trustee, employee, or agent, as the
18 case may be, of the other organization or employee benefit plan.
- 19 c. "Proceeding" means a threatened, pending, or completed civil, criminal,
20 administrative, arbitration, or investigative proceeding, including a proceeding
21 by or in the right of the corporation.
- 22 d. "Special legal counsel" means counsel who has not ~~represented in the~~
23 preceding five years:
- 24 (1) Represented the corporation or a related organization; in any capacity
25 other than special legal counsel; or
- 26 (2) Represented a director, officer, member of a committee of the board, or
27 employee whose indemnification is in issue.

28 **SECTION 41.** Subsection 4 to section 10-33-115 of the North Dakota Century Code is
29 created and enacted as follows:

1 4. All other statutory and common-law rights of persons who may bring claims of
2 injury to a person, including death, are not affected by dissolution under this
3 chapter.

4 **SECTION 42. AMENDMENT.** Subsection 3 of section 10-33-139 of the North Dakota
5 Century Code is amended and reenacted as follows:

6 3. The annual report must be delivered to the secretary of state before February first
7 of each year, except that the first annual report must be delivered before February
8 first of the year following the calendar year in which the certificate of incorporation
9 or certificate of authority was issued by the secretary of state.

10 a. An annual report in a sealed envelope postmarked by the United States
11 postal service before February first, or an annual report in a sealed packet
12 with a verified shipment date by any other carrier service before February
13 first, complies with this requirement. When the filing date falls on a Saturday
14 or holiday as defined in section 1-03-01, a postmark or verified shipment date
15 on the next business day complies with this requirement.

16 b. The secretary of state must file the report if the report conforms to the
17 requirements of subsection 2.

18 (1) If the report does not conform, it must be returned to the corporation for
19 any necessary corrections.

20 (2) If the report is filed before the deadlines provided in this subsection,
21 penalties for the failure to file a report within the time provided do not
22 apply, if the report is corrected to conform to the requirements of
23 subsection 2 and returned to the secretary of state within thirty days
24 after the annual report was returned by the secretary of state for
25 correction.

26 ~~e. The secretary of state may extend the annual filing date of any corporation or~~
27 ~~foreign corporation if a written application for an extension is delivered before~~
28 ~~February first.~~

29 **SECTION 43. AMENDMENT.** Subsection 5 of section 10-33-141 of the North Dakota
30 Century Code is amended and reenacted as follows:

- 1 5. If the court order sought is one for reinstatement of a corporation that has been
2 dissolved as provided in subsection 5 of section 10-33-139, or for reinstatement of
3 the certificate of authority of a foreign corporation that has been revoked as
4 provided in subsection 6 of section 10-33-139, then together with any other actions
5 the court deems proper, any such order which reverses the decision of the
6 secretary of state shall require the corporation or foreign corporation to:
- 7 a. File ~~at~~ the most recent past-due annual reports report;
- 8 b. Pay the fees to the secretary of state for ~~each~~ all past-due annual report
9 reports as provided in subdivisions of subsection 1 of section 10-33-140; and
- 10 c. Pay the reinstatement fee to the secretary of state as provided in
11 subdivisions of subsection 1 of section 10-33-140.

12 **SECTION 44.** Chapter 10-36 of the North Dakota Century Code is created and enacted
13 as follows:

14 **10-36-01. Citation.** This chapter may be cited as the North Dakota Nonprofit Limited
15 Liability Company Act.

16 **10-36-02. Definitions.** For purposes of this chapter, unless the context otherwise
17 requires:

- 18 1. "Foreign nonprofit limited liability company" means a nonprofit limited liability
19 company which is organized under laws other than the laws of this state for a
20 purpose for which a nonprofit limited liability company may be organized under this
21 chapter.
- 22 2. "Nonprofit limited liability company" means a nonprofit limited liability company,
23 other than a foreign nonprofit limited liability company, that is organized under or
24 governed by this chapter.

25 **10-36-03. Applicability of chapters 10-32 and 10-33.**

- 26 1. In any case not provided for in this chapter, chapter 10-33 governs.
- 27 2. In applying chapter 10-33 to a nonprofit limited liability company and unless the
28 context otherwise requires, all references in chapter 10-33 to:
- 29 a. "Board" refers to the board of governors.
- 30 b. "Corporation" refers to a nonprofit limited liability company.
- 31 c. "Director" refers to a governor.

1 d. "Foreign corporation" refers to a foreign nonprofit limited liability company.

2 e. "Officer" refers to a manager.

3 3. Section 10-32-10 applies to the name of a nonprofit limited liability company as if it
4 were a limited liability company governed under chapter 10-32.

5 **10-36-04. Tax status of a nonprofit limited liability company.** The status of a
6 nonprofit limited liability company under this chapter is not determinative of its tax treatment.

7 **10-36-05. Limitations on persons who may be members.** An individual may not be
8 a member of, or own any financial rights or governance rights in, a nonprofit limited liability
9 company.

10 **10-36-06. Notice to and authority of attorney general.** The attorney general has the
11 same authority and powers with regard to a nonprofit limited liability company as the attorney
12 general has with regard to a corporation governed by chapter 10-33, including sections
13 10-33-121, 10-33-122, 10-33-137, 10-33-144, 10-33-145, 10-33-146, 10-33-147, 10-33-148,
14 and 10-33-149.

15 **10-36-07. Secretary of state - Annual report of nonprofit limited liability**
16 **companies and foreign nonprofit limited liability companies.**

17 1. Each nonprofit limited liability company, and each foreign nonprofit limited liability
18 company authorized to conduct activities in this state, shall file, within the time
19 provided in subsection 3, an annual report setting forth:

20 a. The name of the nonprofit limited liability company or foreign nonprofit limited
21 liability company and the state or country under the laws of which it is
22 organized.

23 b. The address of the registered office of the nonprofit limited liability company
24 or foreign nonprofit limited liability company in this state, the name of its
25 registered agent in this state at that address, and the address of its principal
26 executive office.

27 c. A brief statement of the character of the activities in which the nonprofit
28 limited liability company or foreign nonprofit limited liability company is
29 actually engaged in this state.

30 d. The names and respective addresses of the managers and governors of the
31 nonprofit limited liability company or foreign nonprofit limited liability company

1 or the name or names and respective address or addresses of the managing
2 member or members of the nonprofit limited liability company or foreign
3 nonprofit limited liability company.

4 e. The section of the Internal Revenue Code by which its tax status is
5 established.

6 2. The annual report must be submitted on forms prescribed by the secretary of state.
7 The information provided must be given as of the date of the execution of the
8 report. The annual report must be signed as provided in section 10-33-01 or in the
9 articles or bylaws, or in a resolution approved by the affirmative vote of the
10 required proportion or number of the governors or members entitled to vote. If the
11 nonprofit limited liability company or foreign nonprofit limited liability company is in
12 the hands of a receiver or trustee, it must be signed on behalf of the nonprofit
13 limited liability company or foreign nonprofit limited liability company by the
14 receiver or trustee. The secretary of state may destroy all annual reports provided
15 for in this section after they have been on file for six years.

16 3. The annual report must be delivered to the secretary of state before February
17 second of each year, except that the first annual report must be delivered before
18 February second of the year following the calendar year in which the certificate of
19 organization or certificate of authority was issued by the secretary of state.

20 a. An annual report in a sealed envelope postmarked by the United States
21 postal service before February second, or an annual report in a sealed packet
22 with a verified shipment date by any other carrier service before February
23 second, complies with this requirement. When the filing date falls on a
24 Saturday or holiday as defined in section 1-03-01, a postmark or verified
25 shipment date on the next business day complies with this requirement.

26 b. The secretary of state must file the report if the report conforms to the
27 requirements of subsection 2.

28 (1) If the report does not conform, it must be returned to the nonprofit
29 limited liability company or foreign nonprofit limited liability company for
30 any necessary corrections.

- 1 (2) If the report is filed before the deadlines provided in this subsection,
2 penalties for the failure to file a report within the time provided do not
3 apply, if the report is corrected to conform to the requirements of
4 subsection 2 and returned to the secretary of state within thirty days
5 after the annual report was returned by the secretary of state for
6 correction.
- 7 4. After the date established under subsection 3, the secretary of state shall notify
8 any nonprofit limited liability company or foreign nonprofit limited liability company
9 failing to file its annual report that its certificate of organization or certificate of
10 authority is not in good standing and that it may be dissolved or revoked pursuant
11 to subsections 5 and 6. The secretary of state must mail the notice to the last
12 registered agent at the last registered office. If the nonprofit limited liability
13 company or foreign nonprofit limited liability company files its annual report after
14 the notice is mailed, together with the annual report filing fee and late filing penalty
15 fee as provided in section 10-36-08, the secretary of state shall restore its
16 certificate of organization or certificate of authority to good standing.
- 17 5. A nonprofit limited liability company that does not file its annual report, along with
18 the statutory filing and penalty fees, within one year after the date established in
19 subsection 3 ceases to exist and is considered involuntarily dissolved by operation
20 of law.
- 21 a. Thereafter, the secretary of state shall note the termination of the nonprofit
22 limited liability company's certificate of organization on the records of the
23 secretary of state and shall give notice of the action to the dissolved nonprofit
24 limited liability company.
- 25 b. Notice by the secretary of state must be mailed to the last registered agent at
26 the last registered office.
- 27 6. A foreign nonprofit limited liability company that does not file its annual report,
28 along with the statutory filing and penalty fees, within one year after the date
29 established by subsection 3 forfeits its authority to conduct activities in this state.
- 30 a. The secretary of state shall note the revocation of the foreign nonprofit limited
31 liability company's certificate of authority on the records of the secretary of

- 1 state and shall give notice of the action to the foreign nonprofit limited liability
2 company.
- 3 b. Notice by the secretary of state must be mailed to the foreign nonprofit limited
4 liability company's last registered agent at the last registered office.
- 5 c. The decision by the secretary of state that a certificate of authority must be
6 revoked under this subsection is final.
- 7 7. A nonprofit limited liability company that was dissolved for failure to file an annual
8 report, or a foreign nonprofit limited liability company whose authority was forfeited
9 by failure to file an annual report, may be reinstated by filing a past-due report,
10 together with the statutory filing and penalty fees for an annual report and a
11 reinstatement fee as provided in section 10-36-08. The fees must be paid and the
12 report filed within one year following the involuntary dissolution or revocation.
13 Reinstatement under this subsection does not affect the rights or liability for the
14 time from the dissolution or revocation to the reinstatement.
- 15 8. The secretary of state may waive any penalties provided in this section when an
16 annual report form could not be delivered to the nonprofit limited liability company.

17 **10-36-08. Secretary of state - Fees and charges.**

- 18 1. The secretary of state shall charge and collect for:
- 19 a. Filing articles of organization and issuing a certificate of organization, forty
20 dollars.
- 21 b. Filing articles of amendment, twenty dollars.
- 22 c. Filing articles of correction, twenty dollars.
- 23 d. Filing restated articles of organization, thirty dollars.
- 24 e. Filing articles of merger or consolidation and issuing a certificate of merger or
25 consolidation, fifty dollars.
- 26 f. Filing a notice of dissolution, ten dollars.
- 27 g. Filing articles of dissolution and termination, twenty dollars.
- 28 h. Filing a statement of change of address of registered office or change of
29 registered agent, or both, the fee provided in section 10-01.1-03.
- 30 i. Filing an application to reserve a name, ten dollars.
- 31 j. Filing a notice of transfer of a reserved name, ten dollars.

- 1 k. Filing a cancellation of reserved name, ten dollars.
- 2 l. Filing a consent to use of a deceptively similar name, ten dollars.
- 3 m. Filing an application of a foreign nonprofit limited liability company for a
4 certificate of authority to conduct affairs in this state and issuing a certificate
5 of authority, forty dollars.
- 6 n. Filing an application of a foreign nonprofit limited liability company for an
7 amended certificate of authority, forty dollars.
- 8 o. Filing a certified statement of merger of a foreign nonprofit limited liability
9 company holding a certificate of authority to conduct activities in this state,
10 fifty dollars.
- 11 p. Filing an application for withdrawal of a foreign nonprofit limited liability
12 company and issuing a certificate of withdrawal, twenty dollars.
- 13 q. Filing an annual report of a domestic or foreign nonprofit limited liability
14 company, ten dollars.
- 15 (1) The secretary of state shall charge and collect additional fees for late
16 filing of the annual report:
- 17 (a) After the date provided in subsection 3 of section 10-36-07, five
18 dollars; and
- 19 (b) After the dissolution of a nonprofit limited liability company, or the
20 revocation of the certificate of authority of a foreign nonprofit
21 limited liability company, the reinstatement fee of forty dollars.
- 22 (2) Fees paid to the secretary of state according to this subdivision are not
23 refundable if an annual report submitted to the secretary of state cannot
24 be filed because it lacks information required by section 10-36-07, or
25 the annual report lacks sufficient payment as required by this
26 subdivision.
- 27 r. Submitting any record for approval before the actual time of submission for
28 filing, one-half of the fee provided in this subsection for filing the record.
- 29 s. Filing any other statement of a domestic or foreign nonprofit limited liability
30 company, ten dollars.
- 31 2. The secretary of state shall charge and collect:

- 1 a. For furnishing a certified copy of any record, instrument, or paper relating to a
2 nonprofit limited liability company, one dollar for every four pages or fraction
3 thereof and fifteen dollars for the certificate and affixing the seal to the
4 certificate.
- 5 b. At the time of any service of process on the secretary of state as resident
6 agent of a nonprofit limited liability company, twenty-five dollars, which may
7 be recovered as taxable costs by the party to the claim for relief causing the
8 service to be made if that party prevails in the suit or action.

9 **10-36-09. Secretary of state - Enforcement - Appeal - Penalty.**

- 10 1. The secretary of state may administer this chapter.
- 11 2. The secretary of state may propound to any nonprofit limited liability company or
12 foreign nonprofit limited liability company that is subject to this chapter and to any
13 officer, director, or employee thereof any interrogatory as may be reasonably
14 necessary and proper to ascertain whether the nonprofit limited liability company
15 has complied with this chapter applicable to the nonprofit limited liability company.
- 16 a. The interrogatory must be answered within thirty days after mailing or within
17 any additional time as must be fixed by the secretary of state. The answers
18 to the interrogatory must be full and complete and must be made in writing
19 and under oath.
- 20 b. If the interrogatory is directed:
- 21 (1) To an individual, it must be answered by that individual; or
- 22 (2) To a nonprofit limited liability company, it must be answered by the
23 president, vice president, secretary, or assistant secretary of the
24 nonprofit limited liability company.
- 25 c. The secretary of state need not file any record to which the interrogatory
26 relates until the interrogatory has been answered, and not then if the answers
27 disclose that the record is not in conformity with this chapter.
- 28 d. The secretary of state shall certify to the attorney general, for action the
29 attorney general may deem appropriate, an interrogatory and answers
30 thereto, which discloses a violation of this chapter.

- 1 e. Each governor, manager, or employee of a nonprofit limited liability company
2 or foreign nonprofit limited liability company who fails or refuses within the
3 time provided by subdivision a to answer truthfully and fully an interrogatory
4 propounded to that person by the secretary of state is guilty of an infraction.
- 5 f. An interrogatory propounded by the secretary of state and the answers are
6 not open to public inspection. The secretary of state may not disclose any
7 facts or information obtained from the interrogatory or answers except insofar
8 as may be permitted by law or insofar as is required for evidence in any
9 criminal proceedings or other action by this state.
- 10 3. If the secretary of state rejects any record required by this chapter to be approved
11 by the secretary of state before the record may be filed, then the secretary of state
12 shall give written notice of the rejection to the person that delivered the record,
13 specifying the reasons for rejection.
- 14 a. Within thirty days after the service of the notice of denial, the nonprofit limited
15 liability company or foreign nonprofit limited liability company, as the case
16 may be, may appeal to the district court in the judicial district serving Burleigh
17 County by filing with the clerk of the court a petition setting forth a copy of the
18 record sought to be filed and a copy of the written rejection of the record by
19 the secretary of state.
- 20 b. The matter must be tried de novo by the court. The court shall either sustain
21 the action of the secretary of state or direct the secretary of state to take the
22 action the court determines proper.
- 23 4. If the secretary of state dissolves a nonprofit limited liability company or revokes
24 the certificate of authority to conduct activities in this state of any foreign nonprofit
25 limited liability company, pursuant to section 10-36-07, the nonprofit limited liability
26 company or foreign nonprofit limited liability company may appeal to the district
27 court in the judicial district serving Burleigh County by filing with the clerk of the
28 court a petition, including:
- 29 a. A copy of the nonprofit limited liability company's articles of organization and
30 a copy of the notice of dissolution given by the secretary of state; or

1 b. A copy of the foreign nonprofit limited liability company's certificate of
2 authority to conduct activities in this state and a copy of the notice of
3 revocation given by the secretary of state. The matter must be tried de novo
4 by the court. The court shall sustain the action of the secretary of state or
5 shall direct the secretary of state to take the action the court determines
6 proper.

7 5. If the court order sought is one for reinstatement of a nonprofit limited liability
8 company that has been dissolved as provided in subsection 5 of section 10-36-07,
9 or for reinstatement of the certificate of authority of a foreign nonprofit limited
10 liability company that has been revoked as provided in subsection 6 of section
11 10-36-07, then together with any other actions the court deems proper, any such
12 order which reverses the decision of the secretary of state shall require the
13 nonprofit limited liability company or foreign nonprofit limited liability company to:

- 14 a. File the most recent past-due annual report;
15 b. Pay the fees to the secretary of state for all past-due annual reports as
16 provided in subdivision q of subsection 1 of section 10-36-08; and
17 c. Pay the reinstatement fee to the secretary of state as provided in
18 subdivision q of subsection 1 of section 10-36-08.

19 **SECTION 45. AMENDMENT.** Section 38-08.1-03 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **38-08.1-03. Deemed doing business within state - Resident agent.** A person must
22 be deemed doing business within this state when engaged in geophysical exploration within the
23 boundaries of this state, and shall, if not already qualified to do business within the state under
24 chapter 10-19.1, 10-32, 45-10.2, 45-22, or 45-23 prior to such exploration, file with the
25 secretary of state an authorization ~~designating an agent for the service of process provided~~
26 under the governing statute of the organization.

27 **SECTION 46. AMENDMENT.** Subsections 27 and 28 of section 45-10.2-02 of the
28 North Dakota Century Code are amended and reenacted as follows:

- 29 27. "Notice":
30 a. Is given to a limited partnership:

- 1 (1) When in writing and mailed or delivered to a general partner at the
2 registered office or principal executive office of the limited partnership;
3 or
4 (2) When given by a form of electronic communication consented to by a
5 general partner of the limited partnership to which the notice is given if
6 by:
7 (a) Facsimile communication, when directed to a telephone number
8 at which a general partner of the limited partnership has
9 consented to receive notice;
10 (b) Electronic mail, when directed to an electronic mail address at
11 which a general partner of the limited partnership has consented
12 to receive notice;
13 (c) Posting on an electronic network on which a general partner of
14 the limited partnership has consented to receive notice, together
15 with separate notice to the limited partnership of the specific
16 posting, upon the later of:
17 [1] The posting; or
18 [2] The giving of the separate notice; or
19 (d) Any other form of electronic communication by which a general
20 partner of the limited partnership has consented to receive
21 notice, when directed to the limited partnership.
22 b. Is given to a partner of the limited partnership:
23 (1) When in writing and mailed or delivered to the partner at the registered
24 office or principal executive office of the limited partnership; or
25 (2) When given by a form of electronic communication consented to by the
26 partner to which the notice is given if by:
27 (a) Facsimile communication, when directed to a telephone number
28 at which the partner has consented to receive notice;
29 (b) Electronic mail, when directed to an electronic mail address at
30 which the partner has consented to receive notice;

- 1 (c) Posting on an electronic network on which the partner has
2 consented to receive notice, together with separate notice to the
3 partner of the specific posting, upon the later of:
4 [1] The posting; or
5 [2] The giving of the separate notice; or
6 (d) Any other form of electronic communication by which the partner
7 has consented to receive notice, when directed to the partner.
- 8 c. Is given in all other cases:
- 9 (1) When mailed to the person at an address designated by the person or
10 at the last-known address of the person;
- 11 (2) When deposited with a nationally recognized overnight delivery service
12 for overnight delivery or, if overnight delivery to the person is not
13 available, for delivery as promptly as practicable, to the person at an
14 address designated by the person or at the last known address of the
15 person;
- 16 (3) When handed to the person;
- 17 ~~(3)~~ (4) When left at the office of the person with a clerk or other person in
18 charge of the office, or:
- 19 (a) If there is no one in charge, when left in a conspicuous place in
20 the office; or
- 21 (b) If the office is closed or the person to be notified has no office,
22 when left at the dwelling house or usual place of abode of the
23 person with some person of suitable age and discretion then
24 residing there;
- 25 ~~(4)~~ (5) When given by a form of electronic communication consented to by the
26 person to whom the notice is given if by:
- 27 (a) Facsimile communication, when directed to a telephone number
28 at which the person has consented to receive notice;
- 29 (b) Electronic mail, when directed to an electronic mail address at
30 which the person has consented to receive notice;

- 1 (c) Posting on an electronic network on which the person has
2 consented to receive notice, together with separate notice to the
3 person of the specific posting, upon the later of:
4 [1] The posting; or
5 [2] The giving of the separate notice; or
6 (d) Any other form of electronic communication, by which the person
7 has consented to receive notice, when directed to the person; or
8 ~~(5)~~ (6) When the method is fair and reasonable when all circumstances are
9 considered.
- 10 d. Is given when deposited in the United States mail with sufficient postage
11 affixed.
- 12 e. Is given by deposit for delivery when deposited for delivery as provided in
13 paragraph 2 of subdivision c, after having made sufficient arrangements for
14 payment by the sender.
- 15 f. Is deemed received when it is given.
- 16 28. "Organization" ~~means:~~
- 17 a. ~~Whether~~ Means, whether domestic or foreign, a corporation, limited liability
18 company, general partnership, limited partnership, limited liability partnership,
19 limited liability limited partnership, and any other person subject to a
20 governing statute; but
- 21 b. Excludes ~~any~~:
- 22 (1) Any nonprofit corporation, whether a domestic nonprofit corporation
23 which is incorporated under chapter 10-33 or a foreign nonprofit
24 corporation which is incorporated under the laws of another jurisdiction;
25 or
- 26 (2) Any nonprofit limited liability company, whether a domestic nonprofit
27 limited liability company which is organized under chapter 10-36 or a
28 foreign nonprofit limited liability company which is organized in another
29 jurisdiction.

30 **SECTION 47. AMENDMENT.** Section 45-10.2-21 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **45-10.2-21. Consent and proxies of partners.**

2 1. At or before the meeting for which the appointment is to be effective, a partner may
3 cast or authorize the casting of a vote:

4 a. By filing with a partner or agent authorized to tabulate votes a written
5 appointment of a proxy which is signed by the partner.

6 b. By ~~telephonic transmission~~ remote communication or authenticated electronic
7 communication to a partner or agent authorized to tabulate votes, whether or
8 not accompanied by written instructions of the partner, of an appointment of a
9 proxy.

10 (1) The ~~telephonic transmission~~ remote communication or authenticated
11 electronic communication must set forth or be submitted with
12 information from which it can be determined that the appointment is
13 authorized by the partner. If it is reasonably concluded that the
14 ~~telephonic transmission~~ remote communication or authenticated
15 electronic communication is valid, then the inspectors of election or, if
16 there are no inspectors, then the other persons making that
17 determination of validity shall specify the information upon which they
18 relied to make that determination.

19 (2) A proxy so appointed may vote on behalf of the partner, or otherwise
20 participate, in a meeting by remote communication according to section
21 45-10.2-20 to the extent the partner appointing the proxy would have
22 been entitled to participate by remote communication according to
23 section 45-10.2-20 if the partner did not appoint the proxy.

24 c. A copy, facsimile telecommunication, or other reproduction of the original
25 writing or transmission may be substituted or used in lieu of the original
26 writing or transmission for any purpose for which the original writing or
27 transmission could be used if the copy, facsimile telecommunication, or other
28 reproduction is a complete and legible reproduction of the entire original
29 writing or transmission.

30 d. An appointment of a proxy for partnership interests held jointly by two or more
31 partners is valid if signed or consented to by authenticated electronic

- 1 communication by any one of the partners, unless the limited partnership
2 receives from any of those partners written notice or authenticated electronic
3 communication either denying the authority of that person to appoint a proxy
4 or appointing a different proxy.
- 5 2. The appointment of a proxy is valid for eleven months, unless a longer period is
6 expressly provided in the appointment. No appointment is irrevocable unless the
7 appointment is coupled with an interest, including a security interest, in the
8 partnership interests or in the limited partnership. A partner who revokes a proxy
9 is not liable in any way for damages, restitution, or other claim.
- 10 3. An appointment may be revoked at will, unless the appointment is coupled with an
11 interest, in which case it may not be revoked except in accordance with the terms
12 of an agreement, if any, between the parties to the appointment. Appointment of a
13 proxy is revoked by the person appointing the proxy by:
- 14 a. Attending a meeting and voting in person; or
15 b. Signing and delivering to the partner or to a duly authorized agent ~~authorized~~
16 ~~to tabulate proxy votes either~~ of the partnership:
17 (1) A writing stating the appointment of the proxy is revoked; or
18 (2) A ~~later~~ new appointment; or
- 19 c. Remote communication or by authenticated electronic communication,
20 whether or not accompanied by written instructions of the partner, of:
21 (1) A statement that the proxy is revoked; or
22 (2) A new appointment.
- 23 4. Revocation in either manner provided in subdivisions b and c of subsection 3
24 revokes all earlier proxy appointments and is effective ~~when~~:
25 a. When filed with a general partner or duly authorized agent of the limited
26 partnership; or
27 b. When the remote communication or the authenticated electronic
28 communication is received by a partner or by the duly authorized agent of the
29 partnership.

- 1 The remote communication or the authenticated electronic communication must
2 set forth or be submitted with information from which it can be determined that the
3 revocation or the new appointment was authorized by the partner.
- 4 5. The death or incapacity of a person appointing a proxy does not affect the right of
5 the limited partnership to accept the authority of the proxy, unless written notice of
6 the death or incapacity is received by a partner or agent authorized to tabulate
7 votes before the proxy exercises authority under that appointment.
- 8 6. Unless the appointment specifically provides otherwise, if two or more persons are
9 appointed as proxies for a partner:
- 10 a. Then any one of them may vote the partnership interests on each item of
11 business in accordance with specific instructions contained in the
12 appointment; or
- 13 b. If no specific instructions are contained in the appointment with respect to
14 voting the partnership interests on a particular item of business, then the
15 partnership interests must be voted as a majority of the proxies determine. If
16 the proxies are equally divided, then the partnership interests may not be
17 voted.
- 18 7. Subject to section 45-10.2-22 and an express restriction, limitation, or specific
19 reservation of authority of the proxy appearing on the appointment, the limited
20 partnership may accept a vote or action by the proxy as the action of the partner.
21 The vote of a proxy is final, binding, and not subject to challenge. However, the
22 proxy is liable to the partner or beneficial owner for damages resulting from a
23 failure to exercise the proxy or from an exercise of the proxy in violation of the
24 authority granted in the appointment.
- 25 8. If a proxy is given authority by a partner to vote on less than all items of business
26 considered at a meeting of partners, then the partner is considered to be present
27 and entitled to vote by the proxy, only with respect to those items of business for
28 which the proxy has authority to vote. A proxy who is given authority by a partner
29 who abstains with respect to an item of business is considered to have authority to
30 vote on the item of business for purposes of this subsection.

1 **SECTION 48. AMENDMENT.** Subsection 3 of section 45-10.2-41 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 3. A judgment creditor of a general partner may not levy execution against the assets
4 of the general partner to satisfy a judgment based on a claim against the limited
5 partnership, unless the partner is personally liable for the claim under section
6 45-10.2-40, and:

7 a. A judgment based on the same claim has been obtained against the limited
8 partnership and a writ of execution on the judgment has been returned
9 unsatisfied in whole or in part;

10 b. The limited partnership is a debtor in bankruptcy;

11 c. The general partner has agreed that the creditor need not exhaust limited
12 partnership assets;

13 d. A court grants ~~permissions~~ permission to the judgment creditor to levy
14 execution against the assets of a general partner based on a finding:

15 (1) That limited partnership assets subject to execution are clearly
16 insufficient to satisfy the judgment;

17 (2) That exhaustion of limited partnership assets is excessively
18 burdensome; or

19 (3) That the grant of permission is an appropriate exercise of equitable
20 powers of the court; or

21 e. Liability is imposed on the general partner by law or contract independent of
22 the existence of the limited partnership.

23 **SECTION 49. AMENDMENT.** Section 45-10.2-64 of the North Dakota Century Code is
24 amended and reenacted as follows:

25 **45-10.2-64. (703) Rights of a creditor of partner or transferee.**

26 1. On application to a court of competent jurisdiction by any judgment creditor of a
27 partner or transferee, the court may charge the transferable interest of the
28 judgment debtor with payment of the unsatisfied amount of the judgment with
29 interest.

30 a. To the extent so charged, the judgment creditor has only the rights of a
31 transferee.

- 1 b. The court may appoint a receiver of the share of the distributions due or to
2 become due to the judgment debtor in respect of the partnership and make all
3 other orders, directions, accounts, and inquiries the judgment debtor might
4 have made or which the circumstances of the case may require to give effect
5 to the charging order.
- 6 ~~2.~~ c. A charging order constitutes a lien on the transferable interest of the judgment
7 debtor. ~~The court may order a foreclosure upon the interest subject to the~~
8 ~~charging order at any time. The purchaser at the foreclosure sale has the~~
9 ~~rights of a transferee.~~
- 10 ~~3.~~ ~~At any time before foreclosure, an interest charged may be redeemed:~~
- 11 ~~a. By the judgment debtor;~~
- 12 ~~b. With property other than limited partnership property, by one or more of the~~
13 ~~other partners; or~~
- 14 ~~e. With limited partnership property, by the limited partnership with the consent~~
15 ~~of all partners whose interests are not so charged.~~
- 16 ~~4.~~ 2. This chapter does not deprive any partner or transferee of the benefit of any
17 exemption laws applicable to the transferable interest of the partner or transferee.
- 18 ~~5.~~ 3. This section provides the exclusive remedy by which a judgment creditor of a
19 partner or transferee may satisfy a judgment ~~out of~~ with request to the transferable
20 interest of the judgment debtor.

21 **SECTION 50. AMENDMENT.** Subsection 5 of section 45-10.2-111 of the North
22 Dakota Century Code is amended and reenacted as follows:

- 23 5. If the court order sought is one for reinstatement of a limited partnership that has
24 been dissolved as provided in subsection 5 of section 45-10.2-108, or for
25 reinstatement of the certificate of authority of a foreign limited partnership that has
26 been revoked as provided in subsection 6 of section 45-10.2-108, then, together
27 with any other actions the court deems proper, any such order which orders the
28 reinstatement of the limited partnership or the reinstatement of the certificate of
29 authority of a foreign limited partnership shall require the limited partnership or
30 foreign limited partnership to:
- 31 a. File ~~all~~ the most recent past-due annual reports report;

- 1 b. Pay the fees to the secretary of state for ~~each~~ all past-due annual ~~report~~
2 reports as provided in subsection 25 of section 45-10.2-109; and
3 c. Pay the reinstatement fee to the secretary of state as provided in
4 subsection 25 of section 45-10.2-109.

5 **SECTION 51.** A new subsection to section 45-11-08.2 of the North Dakota Century
6 Code is created and enacted as follows:

7 Any fictitious name when the registrant is a limited partnership, a limited liability
8 partnership, or limited liability limited partnership that has ceased to exist for six
9 months.

10 **SECTION 52. AMENDMENT.** Subsections 17 and 18 of section 45-13-01 of the North
11 Dakota Century Code are amended and reenacted as follows:

12 17. "Notice":

13 a. Is given to a partnership:

14 (1) When in writing and mailed or delivered to the principal executive office
15 of the partnership; or

16 (2) When given by a form of electronic communication consented to by a
17 managing partner to which the notice is given if by:

18 (a) Facsimile communication, when directed to a telephone number
19 at which the managing partner has consented to receive notice.

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

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

25 [1] The posting; or

26 [2] The giving of the separate notice.

27 (d) Any other form of electronic communication by which a managing
28 partner has consented to receive notice, when directed to the
29 partnership.

30 b. Is given to a partner of the partnership:

- 1 (1) When in writing and mailed or delivered to the partner at the principal
2 executive office address of the partnership; or
- 3 (2) When given by a form of electronic communication consented to by the
4 partner to which the notice is given if by:
- 5 (a) Facsimile communication, when directed to a telephone number
6 at which the partner has consented to receive notice;
- 7 (b) Electronic mail, when directed to an electronic mail address at
8 which the partner has consented to receive notice;
- 9 (c) Posting on an electronic network on which the partner has
10 consented to receive notice, together with separate notice to the
11 partner of the specific posting, upon the later of:
- 12 [1] The posting; or
- 13 [2] The giving of the separate notice; or
- 14 (d) Any other form of electronic communication by which the partner
15 has consented to receive notice, when directed to the partner.
- 16 c. Is given in all other cases:
- 17 (1) When mailed to the person at an address designated by the person or
18 at the last-known address of the person;
- 19 (2) When deposited with a nationally recognized overnight delivery service
20 for overnight delivery, if overnight delivery to the person is not
21 available, for delivery as promptly as practicable, to the person at an
22 address designated by the person or at the last known address of the
23 person;
- 24 (3) When handed to the person;
- 25 (4) When left at the office of the person with a clerk or other person in
26 charge of the office or:
- 27 (a) If there is no one in charge, when left in a conspicuous place in
28 the office; or
- 29 (b) If the office is closed or the person to be notified has no office,
30 when left at the dwelling, house, or other usual place of abode of

- 1 the person with some person of suitable age and discretion
2 residing there;
- 3 ~~(4)~~ (5) When given by a form of electronic communication consented to by the
4 person to whom the notice is given if by:
- 5 (a) Facsimile communication, when directed to a telephone number
6 at which the person has consented to receive notice;
- 7 (b) Electronic mail, when directed to an electronic mail address at
8 which the person has consented to receive notice;
- 9 (c) Posting on an electronic network on which the person has
10 consented to receive notice, together with separate notice to the
11 person of the specific posting, upon the later of:
- 12 [1] The posting; or
13 [2] The giving of the separate notice; or
- 14 (d) Any other form of electronic communication by which the person
15 has consented to receive notice, when directed to the person; or
- 16 ~~(5)~~ (6) When the method is fair and reasonable when all circumstances are
17 considered.
- 18 d. Is given by mail when deposited in the United States mail with sufficient
19 postage affixed.
- 20 e. Is given by deposit for delivery when deposited for delivery as provided in
21 paragraph 2 of subdivision c, after having made sufficient arrangements for
22 payment by the sender.
- 23 f. Is deemed received when given.
- 24 18. "Organization" means:
- 25 a. ~~Whether~~ Means, whether a domestic or foreign, a corporation, limited liability
26 company, partnership, limited partnership, limited liability partnership, limited
27 liability limited partnership, and any other person subject to a governing
28 statute; but
- 29 b. Excludes ~~any~~:

- 1 (1) A nonprofit corporation, whether a domestic nonprofit corporation which
2 is incorporated under chapter 10-33 or a foreign nonprofit corporation
- 3 which is incorporated in another jurisdiction; or
- 4 (2) Any nonprofit limited liability company, whether a domestic nonprofit
5 limited liability company which is organized under chapter 10-36 or a
6 foreign nonprofit limited liability company which is organized in another
7 jurisdiction.

8 **SECTION 53. AMENDMENT.** Subsections 15 and 16 of section 45-22-01 of the North
9 Dakota Century Code are amended and reenacted as follows:

10 15. "Notice":

11 a. Is given to a limited liability partnership:

- 12 (1) When in writing and mailed or delivered to a managing partner at the
13 registered office or principal executive office of the limited liability
14 partnership; or
- 15 (2) When given by a form of electronic communication consented to by a
16 managing partner of the limited liability partnership to which the notice
17 is given if by:
- 18 (a) Facsimile communication, when directed to a telephone number
19 at which a managing partner of the limited liability partnership or
20 the partner has consented to receive notice.
- 21 (b) Electronic mail, when directed to an electronic mail address at
22 which a managing partner of the limited liability partnership has
23 consented to receive notice.
- 24 (c) Posting on an electronic network on which a managing partner of
25 the limited liability partnership has consented to receive notice,
26 together with separate notice to the limited liability partnership if
27 the specific posting, upon the later of:
- 28 [1] The posting; or
- 29 [2] The giving of the separate notice.

- 1 (d) Any other form of electronic communication by which a managing
2 partner of the limited liability partnership has consented to
3 receive notice, when directed to the limited liability partnership.
- 4 b. Is given to a partner of the limited liability partnership:
- 5 (1) When in writing and mailed or delivered to the partner at the registered
6 office or at the principal executive office of the limited liability
7 partnership; or
- 8 (2) When given by a form of electronic communication consented to by the
9 partner to which the notice is given if by:
- 10 (a) Facsimile communication, when directed to a telephone number
11 at which the partner has consented to receive notice;
- 12 (b) Electronic mail, when directed to an electronic mail address at
13 which the partner has consented to receive notice;
- 14 (c) Posting on an electronic network on which the partner has
15 consented to receive notice, together with separate notice to the
16 partner of the specific posting, upon the later of:
- 17 [1] The posting; or
18 [2] The giving of the separate notice; or
- 19 (d) Any other form of electronic communication by which the partner
20 has consented to receive notice, when directed to the partner.
- 21 c. Is given in all other cases:
- 22 (1) When mailed to the person at an address designated by the person or
23 at the last-known address of the person;
- 24 (2) When deposited with a nationally recognized overnight delivery service
25 for overnight delivery or, if overnight delivery to the person is not
26 available, for delivery as promptly as practicable, to the person at an
27 address designated by the person or at the last known address of the
28 person;
- 29 (3) When handed to the person;
- 30 ~~(3)~~ (4) When left at the office of the person with a clerk or other person in
31 charge of the office or:

- 1 (a) If there is no one in charge, when left in a conspicuous place in
2 the office; or
- 3 (b) If the office is closed or the person to be notified has no office,
4 when left at the dwelling house or usual place of abode of the
5 person with some person of suitable age and discretion then
6 residing there;
- 7 ~~(4)~~ (5) When given by a form of electronic communication consented to by the
8 person to whom the notice is given if by:
- 9 (a) Facsimile communication, when directed to a telephone number
10 at which the person has consented to receive notice;
- 11 (b) Electronic mail, when directed to an electronic mail address at
12 which the person has consented to receive notice;
- 13 (c) Posting on an electronic network on which the person has
14 consented to receive notice, together with separate notice to the
15 person of the specific posting, upon the later of:
- 16 [1] The posting; or
17 [2] The giving of the separate notice; or
- 18 (d) Any other form of electronic communication by which the person
19 has consented to receive notice, when directed to the person; or
- 20 ~~(5)~~ (6) When the method is fair and reasonable when all circumstances are
21 considered.
- 22 d. Is given by mail when deposited in the United States mail with sufficient
23 postage affixed.
- 24 e. Is given by deposit for delivery when deposited for delivery as provided in
25 paragraph 2 of subdivision c, after having made sufficient arrangements for
26 payment by the sender.
- 27 f. Is deemed received when it is given.
- 28 16. "Organization" means:
- 29 a. ~~Whether~~ Means, whether domestic or foreign, a corporation, limited liability
30 company, general partnership, limited partnership, limited liability partnership,

1 limited liability limited partnership, or any other person subject to a governing
2 statute; but

3 b. Excludes ~~any~~:

4 (1) A nonprofit corporation, whether a domestic nonprofit corporation which
5 is incorporated under chapter 10-33 or a foreign nonprofit corporation
6 which is incorporated in another jurisdiction; or

7 (2) Any nonprofit limited liability company, whether a domestic nonprofit
8 limited liability company which is organized under chapter 10-36 or a
9 foreign nonprofit limited liability company which is organized in another
10 jurisdiction.

11 **SECTION 54. AMENDMENT.** Subsection 3 of section 45-22-03 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 3. A registration, signed by a managing partner, must contain:

14 a. With respect to a domestic limited liability partnership:

15 (1) The name of the domestic limited liability partnership.

16 (2) The nature of the business to be transacted in this state.

17 (3) A statement indicating whether the limited liability partnership will be
18 engaged in farming or ranching in this state or owning or leasing land in
19 this state which is used for farming or ranching.

20 (4) The address of the principal executive office of the domestic limited
21 liability partnership.

22 (5) The name of the registered agent of the domestic limited liability
23 partnership as provided in chapter 10-01.1 and, if a noncommercial
24 registered agent, the address of that noncommercial registered agent in
25 this state.

26 (6) The name and address of each managing partner and, if the limited
27 liability partnership will be engaged in farming or ranching in this state
28 or owning or leasing land in this state which is used for farming or
29 ranching, then the names and addresses of all partners.

30 (7) A statement that the partnership elects to be a limited liability
31 partnership.

- 1 (8) A deferred effective date, if any.
- 2 b. With respect to a foreign limited liability partnership:
- 3 (1) The name of the foreign limited liability partnership and, if different, the
4 name under which the foreign limited liability partnership proposes to
5 transact business in this state.
- 6 (2) The jurisdiction of origin.
- 7 (3) The date on which the foreign limited liability partnership expires in the
8 jurisdiction of origin.
- 9 (4) The nature of the business to be transacted in this state.
- 10 (5) A statement indicating whether the foreign limited liability partnership
11 will be engaged in farming or ranching in this state or owning or leasing
12 land in this state which is used for farming or ranching.
- 13 (6) The address of the principal executive office of the foreign limited
14 liability partnership.
- 15 (7) The name of the registered agent of the foreign limited liability
16 partnership as provided in chapter 10-01.1 and, if a noncommercial
17 registered agent, the address of that registered agent in this state.
- 18 (8) The name and address of each managing partner and, if the foreign
19 limited liability partnership will be engaged in farming or ranching in this
20 state or owning or leasing land in this state which is used for farming or
21 ranching, then the names and addresses of all partners.
- 22 (9) An acknowledgment that the status of the foreign limited liability
23 partnership in this state will automatically expire unless the foreign
24 limited liability partnership continuously maintains limited liability
25 partnership status in the jurisdiction of origin.
- 26 c. The registration must be accompanied by payment of the fees provided in
27 section 45-22-22 together with a certificate of good standing or certificate of
28 existence authenticated by the registering officer of the state or country where
29 the foreign limited liability partnership is originally registered and the consent
30 of the designated registered agent for service of process to serve in that
31 capacity.

1 **SECTION 55. AMENDMENT.** Subsection 5 of section 45-22-23 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 5. If the court order sought is one for reinstatement of a domestic limited liability
4 partnership registration that has been revoked as provided in subsection 5 of
5 section 45-22-22.1, or for reinstatement of the registration of a foreign limited
6 liability partnership that has been revoked as provided in subsection 6 of section
7 45-22-21.1, then, together with any other action the court deems proper, any such
8 order which orders the reinstatement of the registration of a domestic or foreign
9 limited liability partnership registration shall require the domestic or foreign limited
10 liability partnership to:
- 11 a. File ~~all~~ the most recent past-due annual ~~reports~~ report;
 - 12 b. Pay the fees to the secretary of state for ~~each~~ all past-due annual ~~report~~
13 reports as provided in subsection 1 of section 45-22-22; and
 - 14 c. Pay the reinstatement fee to the secretary of state as provided in
15 subsection 1 of section 45-22-22.

16 **SECTION 56. AMENDMENT.** Subsections 18 and 19 of section 45-23-01 of the North
17 Dakota Century Code are amended and reenacted as follows:

- 18 18. "Notice":
- 19 a. Is given to a limited liability limited partnership:
 - 20 (1) When in writing and mailed or delivered to a general partner at the
21 registered office or principal executive office of the limited liability
22 limited partnership; or
 - 23 (2) When given by a form of electronic communication consented to by a
24 general partner of the limited liability limited partnership to which the
25 notice is given if by:
 - 26 (a) Facsimile communication, when directed to a telephone number
27 at which a general partner of the limited liability limited
28 partnership has consented to receive notice;
 - 29 (b) Electronic mail, when directed to an electronic mail address at
30 which a general partner of the limited liability limited partnership
31 has consented to receive notice;

- 1 (c) Posting on an electronic network on which a general partner of
2 the limited liability limited partnership has consented to receive
3 notice, together with separate notice to the limited liability limited
4 partnership of the specific posting, upon the later of:
5 [1] The posting; or
6 [2] The giving of the separate notice; or
7 (d) Any other form of electronic communication by which a general
8 partner of the limited liability limited partnership has consented to
9 receive notice, when directed to the limited liability limited
10 partnership;
- 11 b. Is given to a partner of the limited liability limited partnership:
12 (1) When in writing and mailed or delivered to the partner at the registered
13 office or principal executive office of the limited liability limited
14 partnership; or
15 (2) When given by a form of electronic communication consented to by the
16 partner to which the notice is given if by:
17 (a) Facsimile communication, when directed to a telephone number
18 at which the partner has consented to receive notice;
19 (b) Electronic mail, when directed to an electronic mail address at
20 which the partner has consented to receive notice;
21 (c) Posting on an electronic network on which the partner has
22 consented to receive notice, together with separate notice to the
23 partner of the specific posting, upon the later of:
24 [1] The posting; or
25 [2] The giving of the separate notice; or
26 (d) Any other form of electronic communication by which the partner
27 has consented to receive notice when directed to the partner;
- 28 c. Is given in all other cases:
29 (1) When mailed to the person at an address designated by the person or
30 at the last-known address of the person;

- 1 (2) When deposited with a nationally recognized overnight delivery service
2 for overnight delivery or, if overnight delivery to the person is not
3 available, for delivery as promptly as practicable, to the person at an
4 address designated by the person or at the last known address of the
5 person;
- 6 (3) When handed to the person;
- 7 ~~(3)~~ (4) When left at the office of the person with a clerk or other person in
8 charge of the office or:
- 9 (a) If there is no one in charge, when left in a conspicuous place in
10 the office; or
- 11 (b) If the office is closed or the person to be notified has no office,
12 when left at the dwelling house or usual place of abode of the
13 person with some person of suitable age and discretion residing
14 there;
- 15 ~~(4)~~ (5) When given by a form of electronic communication consented to by the
16 person to whom the notice is given if by:
- 17 (a) Facsimile communication, when directed to a telephone number
18 at which the person has consented to receive notice;
- 19 (b) Electronic mail, when directed to an electronic mail address at
20 which the person has consented to receive notice;
- 21 (c) Posting on an electronic network on which the person has
22 consented to receive notice, together with separate notice to the
23 person of the specific posting, upon the later of:
- 24 [1] The posting; or
- 25 [2] The giving of the separate notice; or
- 26 (d) Any other form of electronic communication by which the person
27 has consented to receive notice, when directed to the person; or
- 28 ~~(5)~~ (6) When the method is fair and reasonable when all circumstances are
29 considered;
- 30 d. Is given when deposited in the United States mail with sufficient postage
31 affixed; and

- 1 e. Is given by deposit for delivery when deposited for delivery as provided in
2 paragraph 2 of subdivision c, after having made sufficient arrangements for
3 payment by the sender.
- 4 f. Is deemed received when given.
- 5 19. "Organization" ~~means~~:
- 6 a. ~~Whether Means, whether~~ domestic or foreign, a corporation, limited liability
7 company, general partnership, limited partnership, limited liability partnership,
8 limited liability limited partnership, or any other person subject to a governing
9 statute; but
- 10 b. Excludes ~~any~~:
- 11 (1) Any nonprofit corporation, whether a domestic nonprofit corporation
12 which is incorporated under chapter 10-33 or a foreign nonprofit
13 corporation which is incorporated in another jurisdiction; or
- 14 (2) Any nonprofit limited liability company, whether a domestic nonprofit
15 limited liability company which is organized under chapter 10-36 or a
16 foreign nonprofit limited liability company which is organized in another
17 jurisdiction.