Sixty-first Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2009

HOUSE BILL NO. 1298
(Representative DeKrey)
(Senator Nething)

AN ACT to create and enact subsection 4 to section 10-19.1-124, subsection 4 to section 10-32-128, subsection 4 to section 10-33-115, chapter 10-36, and a new subsection to section 45-11-08.2 of the North Dakota Century Code, relating to limited liability companies, nonprofit corporations, nonprofit limited liability companies, and partnership fictitious names; to amend and reenact subsection 2 of section 10-01.1-03, section 10-01.1-06, subsection 3 of section 10-15-36, subsection 5 of section 10-15-38, sections 10-15-52.3, 10-19.1-01, 10-19.1-10, and 10-19.1-23, subsection 1 of section 10-19.1-43, section 10-19.1-46, subsection 1 of section 10-19.1-48, subsection 2 of section 10-19.1-51, subsection 1 of section 10-19.1-75, section 10-19.1-76.2, subsection 6 of section 10-19.1-87, subsection 1 of section 10-19.1-91, subsection 3 of section 10-19.1-104.4, sections 10-19.1-105 and 10-19.1-107, subsection 2 of section 10-19.1-137, section 10-19.1-146, subsection 26 of section 10-19.1-147, subsection 5 of section 10-19.1-148, sections 10-32-02, 10-32-04, and 10-32-06, subsection 1 of section 10-32-10, sections 10-32-18 and 10-32-20, subsection 2 of section 10-32-43, section 10-32-48, subsection 1 of section 10-32-80, subsection 1 of section 10-32-85, subsection 2 of section 10-32-87, subsection 1 of section 10-32-99, subsection 4 of section 10-32-107, subsection 3 of section 10-32-108.4, subsection 1 of section 10-32-109, sections 10-32-110 and 10-32-111, subsection 3 of section 10-32-140, subsection 3 of section 10-32-149, section 10-32-150, subsection 5 of section 10-32-152, sections 10-33-01 and 10-33-18, subsection 1 of section 10-33-39, subsection 1 of section 10-33-44, subsection 2 of section 10-33-46, subsection 1 of section 10-33-84, section 10-33-130, subsection 3 of section 10-33-139, subsection 2 of section 10-33-140, subsection 5 of section 10-33-141, section 38-08.1-03, subsections 27 and 28 of section 45-10.2-02, section 45-10.2-21, subsection 8 of section 45-10.2-24, subsection 3 of section 45-10.2-41, section 45-10.2-64, subsection 2 of section 45-10.2-81, subsection 3 of section 45-10.2-97, subsection 26 of section 45-10.2-109, subsection 5 of section 45-10.2-111, subsections 17 and 18 of section 45-13-01, subsections 15 and 16 of section 45-22-01, subsection 3 of section 45-22-03, subsection 2 of section 45-22-22, subsection 5 of section 45-22-23, subsections 18 and 19 of section 45-23-01, and subsection 26 of section 45-23-08 of the North Dakota Century Code, relating to commercial registered agent listing, cooperative associations, business corporations, limited liability companies, nonprofit corporations, geophysical exploration companies, limited partnerships, general partnerships, limited liability partnerships, and limited liability limited partnerships; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 10-01.1-03 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state shall collect the following fees for copying and certifying a copy of any document filed under this chapter:

   a. ~~One dollar for every four pages, or fraction thereof,~~ The fee provided in section 54-09-04 for copying a record;

   b. Fifteen dollars for furnishing a certificate; and

   c. Five dollars for a search of records when supplying copies, certification, or written verification of facts.

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

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

1. An individual residing in this state or a domestic or foreign corporation or limited liability company may become listed as a commercial registered agent by filing with the secretary of state a commercial registered agent listing statement signed by or on behalf of the person which states:

   a. The name of the individual or the name, type, and jurisdiction of organization of the entity;

   b. That the person is in the business of serving as a commercial registered agent in this state; and

   c. The address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.

2. An individual residing in this state or a domestic or foreign corporation or limited liability company may file additional listings as a commercial registered agent if filed with trade names registered under chapter 47-25. The filing must be in the same manner as provided in subsection 1 and disclose the trade name being used. A listing with a trade name may provide an alternate address of a place of business of the person in this state to which service of process and other notice and documents being served on or sent to entities represented by it may be delivered.

3. If the name of a person filing a commercial registered agent listing statement is not distinguishable on the records of the secretary of state from the name of another commercial registered agent listed under this section, the person must adopt and register a ~~fictitious~~ trade name that is so distinguishable and use that name in its statement and when it does business in this state as a commercial registered agent.

~~3.~~ 4. A commercial registered agent listing statement takes effect on filing.

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

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

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

SECTION 4. AMENDMENT. Subsection 5 of section 10-15-38 of the North Dakota Century Code is amended and reenacted as follows:

5. A cooperative that amends its name and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general

partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an amendment.

SECTION 5. AMENDMENT. Section 10-15-52.3 of the North Dakota Century Code is amended and reenacted as follows:

10-15-52.3. Amended certificate of authority. A foreign cooperative authorized to transact business in this state must procure an amended certificate of authority if it changes its cooperative name or desires to pursue in this state purposes other than those set forth in its prior application for a certificate of authority by making application to the secretary of state.

The requirements in respect to the application and the issuance of an amended certificate of authority and the effect thereof are the same as an original application for a certificate of authority.

In addition, an application must be accompanied by a certificate of fact of amendment duly authenticated by the proper officer of the state or country where the cooperative is incorporated.

A foreign cooperative which amends its name and applies for an amended certificate of authority, and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership which is on file with the secretary of state, must change or amend its name in each registration when it files an application for an amended certificate of authority.

SECTION 6. AMENDMENT. Section 10-19.1-01 of the North Dakota Century Code is amended and reenacted as follows:

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

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

2. "Acquiring organization" means the foreign or domestic organization acquiring the ownership interests of another foreign or domestic organization participating in an exchange.

3. "Address" means:

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

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

4. "Articles" means:

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

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

5. "Authenticated electronic communication" means:

a. That the electronic communication is delivered:

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

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

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

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

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

8. "Board member" means:

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

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

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

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

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

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

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

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

13. "Constituent organization" means an organization that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

    b. That the secretary of state did then:

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

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

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

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

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

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

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

a. A corporation, its board of directors;

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

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

31. "Governing statute" of an organization means:

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

(1) If a corporation, then this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

36. "Notice":

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

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

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice.

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

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

c. Is given, in all other cases:

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

(2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable to the person at an address designated by the person or at the last-known address of the person;

(3) When handed to the person;

~~(3)~~ (4) When left at the office of the person with a clerk or other person in charge of the office or:

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

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

~~(4)~~ (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

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

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

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

[1] The posting; or

[2] The giving of the separate notice.

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

~~(5)~~ (6) When the method is fair and reasonable when all of the circumstances are considered.

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

e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.

f. Is deemed received when it is given.

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

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

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

38. "Organization" ~~means~~:

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

b. Excludes ~~any~~:

(1) Any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated in another jurisdiction; and

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

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

a. A corporation, its articles of incorporation;

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

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

d. A limited liability partnership, its registration; or

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

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

41. "Owners" means the holders of ownership interests in an organization.

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

a. A corporation, its shares;

b. A limited liability company, its membership interests;

c. A limited partnership, its partnership interests;

d. A general partnership, its partnership interests;

e. A limited liability partnership, its partnership interests;

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

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

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

44. "Principal executive office" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

53. "Signed" means:

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

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

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

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

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

55. "Subsidiary" of a specified organization means an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

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

    a. May preexist the merger; or

    b. May be created by the merger.

57. "Surviving organization" means the organization resulting from a merger which:

    a. May preexist the merger; or

    b. May be created by the merger.

58. "Vote" includes authorization by written action.

59. "Written action" means:

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

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

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

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

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

10-19.1-10. Articles.

1. The articles of incorporation must contain:

   a. The name of the corporation.

   b. The name of the registered agent as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of that noncommercial registered agent in this state.

   c. The aggregate number of shares that the corporation has authority to issue.

   d. The name and address of each incorporator.

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

2. The following provisions govern a corporation unless modified in the articles <u>or in a shareholder control agreement under section 10-19.1-83</u>:

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

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

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

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

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

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

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

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

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

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

   k. ~~Subject to article XII of the Constitution of North Dakota, the~~ <u>The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval as provided in section 10-19.1-61.1.</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3. The following provisions govern a corporation unless modified ~~either~~ in the articles, in a shareholder control agreement under section 10-19.1-83, or in the bylaws:

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

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

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

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

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

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

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

h. A committee:

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

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

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

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

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

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

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

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

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

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

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

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

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

4. The following provisions relating to the management of the business or the regulation of the affairs of a corporation may be included either in the articles or, except for naming members of the first board fixing a greater than majority director or shareholder vote or

giving or prescribing the manner of giving voting rights to persons other than shareholders otherwise than pursuant to the articles, or eliminating or limiting a director's personal liability, in the bylaws:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7. Subsection 4 does not limit ~~the~~:

   a. The permissible scope of a shareholder control agreement; or

   b. The right of the board, by resolution, to take an action that the bylaws may authorize under this section without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.

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

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

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

SECTION 8. AMENDMENT. Section 10-19.1-23 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 9. AMENDMENT. Subsection 1 of section 10-19.1-43 of the North Dakota Century Code is amended and reenacted as follows:

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2.

a. If the articles, bylaws, or board fail to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles or bylaws provide otherwise.

b. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.

c. Any participation in a meeting by ~~either of the~~ a means set forth in subsection 2 constitutes presence in person at the meeting.

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

10-19.1-46. Act of the board.

1. The board shall take action by the affirmative vote of the greater of a majority of the directors present at a duly held meeting at the time the action is taken, or a majority of the minimum proportion or number of directors that would constitute a quorum for the transaction of business at the meeting, except when this chapter or the articles require the affirmative vote of a larger proportion or number. If the articles require a larger proportion or number than is required by this chapter for a particular action, then the articles control.

2. The articles of a domestic corporation that is not incorporated under chapter 10-35 may confer upon one or more directors voting powers greater than or less than those of other directors.

   a. After the adoption of the initial articles, an amendment to the articles to confer upon one or more directors voting powers greater than or less than those of other directors requires the approval of all of the shareholders entitled to vote on the amendment.

   b. If the articles provide that any director has more or less than one vote on any matter, then:

      (1) Every reference in this chapter to a majority or other proportion of the directors shall refer to a majority or other proportion of the voting power of the directors.

      (2) Unless otherwise provided in the articles, the bylaws, or the resolution establishing the committee or the subcommittee, any such provision conferring greater or lesser voting power applies to voting in a committee or subcommittee.

SECTION 11. AMENDMENT. Subsection 1 of section 10-19.1-48 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 12. AMENDMENT. Subsection 2 of section 10-19.1-51 of the North Dakota Century Code is amended and reenacted as follows:

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

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

b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the holders of all outstanding shares, whether or not entitled to vote, and the contract or transaction is approved in good faith by:

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

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

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

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

SECTION 13. AMENDMENT. Subsection 1 of section 10-19.1-75 of the North Dakota Century Code is amended and reenacted as follows:

1. If the articles so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the shareholders who own voting power equal to the voting power that would be required to take the same action at a meeting of the shareholders at which all shareholders were present. However, in no event may written action be taken by holders of less than a majority of the voting power of all shares entitled to vote on that action.

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

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

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

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

SECTION 14. AMENDMENT. Section 10-19.1-76.2 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-76.2. Proxies.

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

a. By filing with an officer authorized to tabulate votes a written appointment of a proxy which is signed by the shareholder.

b. By ~~telephonic transmission~~ remote communication or authenticated electronic communication to an officer authorized to tabulate votes, whether or not accompanied by written instructions of the shareholder, of an appointment of a proxy.

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

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

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

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

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

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

a. Attending a meeting and voting in person; ~~or~~

b. Signing and delivering to ~~the~~ an officer or to a duly authorized agent ~~authorized to tabulate proxy votes~~ of the corporation either:

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

(2) A ~~later~~ new appointment; or

c. Remote communication or by authenticated electronic communication, whether or not accompanied by written instructions of the shareholder, of:

(1) A statement that the proxy is revoked; or

(2) A new appointment.

4. Revocation in either manner provided in subdivision b or c of subsection 3 revokes all earlier proxy appointments and is effective ~~when~~:

   a. When filed with an officer or with a duly authorized agent of the corporation; or

   b. When the remote communication or the authenticated electronic communication is received by an officer or by the duly authorized agent of the corporation.

   The remote communication or the authenticated electronic communication must set forth or be submitted with information from which it can be determined that the revocation or the new appointment was authorized by the shareholder.

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

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

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

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

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

8. If a proxy is given authority by a shareholder to vote on less than all items of business considered at a meeting of shareholders, the shareholder is considered to be present and entitled to vote by the proxy for purposes of subsection 1 of section 10-19.1-74, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a shareholder who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

SECTION 15. AMENDMENT. Subsection 6 of section 10-19.1-87 of the North Dakota Century Code is amended and reenacted as follows:

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

   a. The right to obtain payment under this section is not available for the holders of shares of any class or series of shares that is listed on the New York stock exchange ~~or~~, the American stock exchange ~~or designated as a national market security on the~~, nasdaq ~~stock~~ global market, or the nasdaq global select market.

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

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

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

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

SECTION 16. AMENDMENT. Subsection 1 of section 10-19.1-91 of the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:

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

b. "Official capacity" means:

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

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

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

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

d. "Special legal counsel" means counsel who has not ~~represented~~ <u>in the preceding five years:</u>

<u>(1)</u> <u>Represented</u> the corporation or a related organization~~,~~ <u>in any capacity other than special legal counsel;</u> or

<u>(2)</u> <u>Represented</u> a director, officer, member of a committee of the board, or employee whose indemnification is in issue.

SECTION 17. AMENDMENT. Subsection 3 of section 10-19.1-104.4 of the North Dakota Century Code is amended and reenacted as follows:

3. A converting organization that is the owner of a <u>service mark,</u> trademark<u>,</u> or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

SECTION 18. AMENDMENT. Section 10-19.1-105 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

SECTION 19. AMENDMENT. Section 10-19.1-107 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-107. Voluntary dissolution ~~by shareholders~~ after the issuance of shares. ~~A~~ After the issuance of shares, a corporation may be dissolved ~~by the shareholders~~ when authorized in the manner set forth in this section:

1. If the corporation has outstanding shares, then:

   a. Written notice must be given to each shareholder, whether or not entitled to vote at a meeting of shareholders within the time and in the manner provided in section 10-19.1-73 for notice of meetings of shareholders and, whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the corporation.

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

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

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

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

SECTION 20. Subsection 4 to section 10-19.1-124 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 21. AMENDMENT. Subsection 2 of section 10-19.1-137 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 22. AMENDMENT. Section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

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

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

   f. In the case of a domestic ~~or foreign~~ corporation, a statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 52 of section 10-19.1-01, or the articles or the bylaws or a resolution approved by the affirmative vote of the required proportion or number of the directors or holders of shares entitled to vote. If the corporation or foreign corporation is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or foreign corporation by the receiver or trustee. The secretary of state may destroy all annual reports provided for in this section after they have been on file for six years.

3. Except for the first annual report, the annual report must be delivered to the secretary of state:

   a. By a corporation, before August second of each year; and

   b. By a foreign corporation, before May sixteenth of each year.

   The first annual report of either a corporation or foreign corporation must be delivered before the date provided in the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state, or in the case of a corporation, in the year following the calendar year of the effective date stated in the articles of incorporation. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this subsection, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this subsection, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.

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

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

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

5. ~~The secretary of state may extend the annual report filing date provided in subsection 3 if a written application for an extension is delivered before the date provided in subsection 3. A corporation or foreign corporation may make a written request for an extension to apply to reports for subsequent years.~~

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

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

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

~~7.~~ 6. A corporation that fails to file its annual report, together with the filing and penalty fees for late filing provided in section 10-19.1-147, within one year after the date provided in subsection 3 ceases to exist as a corporation and is considered involuntarily dissolved by operation of law.

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

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

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

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

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

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

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

SECTION 23. AMENDMENT. Subsection 26 of section 10-19.1-147 of the North Dakota Century Code is amended and reenacted as follows:

26. Furnishing a certified copy of any record, instrument, or paper relating to a corporation, ~~one dollar for every four pages or fraction~~ the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal thereto.

SECTION 24. AMENDMENT. Subsection 5 of section 10-19.1-148 of the North Dakota Century Code is amended and reenacted as follows:

5. If the court order sought is one for reinstatement of a corporation that has been dissolved as provided in subsection ~~7~~ 6 of section 10-19.1-146, or for reinstatement of the certificate of authority of a foreign corporation that has been revoked as provided in subsection ~~8~~ 7 of section 10-19.1-146, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the corporation or foreign corporation to:

   a. File ~~all~~ the most recent past-due annual ~~reports~~ report;

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

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

SECTION 25. AMENDMENT. Section 10-32-02 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Acquiring organization" means the domestic or foreign organization that acquires the ownership interests of another foreign or domestic organization in an exchange.

2. "Address" means:

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

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

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

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

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

4. "Authenticated electronic communication" means:

a. That the electronic communication is delivered:

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

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

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

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

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

7. "Board member" means:

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

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

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

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

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

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

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

11. "Constituent organization" means an organization that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20. "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a limited liability company to any of its members in respect of its membership interests and may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.

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

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

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

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

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

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

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

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

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

    b. That the secretary of state did then:

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

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

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

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

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

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

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

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

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

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

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

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

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

    a. A corporation, its board of directors;

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

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

34. "Governing statute" of an organization means:

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

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

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

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

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

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

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

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

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

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

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

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

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

38. "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by this chapter <u>excluding a nonprofit limited liability company organized under or governed by chapter 10-36</u>.

39. "Manager" means:

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

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

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

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

a. The financial rights of a member;

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

c. The governance rights of a member, if any; and

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

42. "Nonprofit limited liability company" means a limited liability company organized under or governed by chapter 10-36.

43. "Notice":

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

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

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

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

b. Is given, in all other cases:

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

(2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last known address of the person;

(3) When handed to the person;

~~(3)~~ (4) When left at the office of the person with a clerk or other person in charge of the office or:

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

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

~~(4)~~ (5) When given by a form of electronic communication consented to by the person to whom the notice is given:

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

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

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

[1] The posting; or

[2] The giving of the separate notice.

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

~~(5)~~ (6) When the method is fair and reasonable when all of the circumstances are considered.

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

d. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision b, after having made sufficient arrangements for payment by the sender.

e. Is deemed received when it is given.

~~43.~~ 44. "Organization" ~~means~~:

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

b. Excludes ~~any~~:

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

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

~~44.~~ 45. "Originating records" means for an organization which is:

a. A corporation, its articles of incorporation;

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

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

d. A limited liability partnership, its registration; or

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

~~45.~~ 46. "Owners" means the holder of ownership interests in an organization.

~~46.~~ 47. "Ownership interests" means for a domestic or foreign organization that is:

a. A corporation, its shares;

b. A limited liability company, its membership interests;

c. A limited partnership, its partnership interests;

d. A general partnership, its partnership interests;

e. A limited liability partnership, its partnership interests;

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

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

~~47.~~ 48. "Parent" of a specified organization means an organization that directly or indirectly, through related organizations, owns more than fifty percent of the voting power of the ownership interests entitled to vote for governors, or other members of the governing body of the specified organization.

~~48.~~ 49. "Pertains" means a contribution "pertains":

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

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

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

~~49.~~ 50. "Principal executive office" means:

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

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

~~50.~~ 51. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

~~51.~~ 52. "Registered office" means the place in this state designated in a limited liability company's articles of organization or a foreign limited liability company's certificate of authority as the registered office.

~~52.~~ 53. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:

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

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

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

~~53.~~ 54. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

~~54.~~ 55. "Required records" are those records required to be maintained under section 10-32-51.

~~55.~~ 56. "Security" has the meaning given in section 10-04-02.

~~56.~~ 57. "Series" means a category of membership interests, within a class of membership interests, that has some of the same rights and preferences as other membership interests within the same class, but that differ in one or more rights and preferences from another category of membership interests within that class.

~~57.~~ 58. "Signed" means:

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

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

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

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

~~58.~~ 59. "Subsidiary" of a specified organization means an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

~~59.~~ 60. "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under subsection 6 of section 10-32-119, continues the business of the dissolved and terminated limited liability company.

~~60.~~ 61. "Surviving organization" means the organization resulting from a merger which:

a. May preexist the merger; or

b. May be created by the merger.

~~61.~~ 62. "Termination" means the end of the existence of a limited liability company as a legal entity and occurs when a notice of termination is:

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

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

~~62.~~ 63. "Vote" includes authorization by written action.

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

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

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

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

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

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

SECTION 26. AMENDMENT. Section 10-32-04 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 27. AMENDMENT. Section 10-32-06 of the North Dakota Century Code is amended and reenacted as follows:

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

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

1. The limited liability company name:

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

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

c. May not contain ~~the~~:

(1) The word "corporation", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words; or

(2) The words "limited" or "company" without association to the words "limited liability company" or the abbreviations of these words as provided in subdivision b;

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

(1) Is organized for a purpose other than:

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

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

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

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

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

(a) Another limited liability company;

(b) A corporation;

(c) A limited partnership;

(d) A limited liability partnership; or

(e) A limited liability limited partnership;

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

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

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

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

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

1. The name of the limited liability company;

2. The amendment adopted;

3. The date of the adoption of the amendment by the members, or by the organizers or the board when no membership interests have been issued;

4. If the amendment ~~provides for but does not establish the manner for effecting an exchange, reclassification, division, combination, or cancellation of membership interests, a statement of the manner in which it will be effected~~ restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to the original articles; and

~~4.~~ 5. A statement that the amendment has been adopted pursuant to this chapter.

SECTION 30. AMENDMENT. Section 10-32-20 of the North Dakota Century Code is amended and reenacted as follows:

10-32-20. Filing of articles of amendment. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in section 10-32-150, then the articles of amendment must be recorded in the office of the secretary of state. A limited liability company that amends its name and which is the owner of a service mark, trademark, or trade name, is a general partner named

in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the limited liability company's name in each registration when the limited liability company files an amendment.

SECTION 31. AMENDMENT. Subsection 2 of section 10-32-43 of the North Dakota Century Code is amended and reenacted as follows:

2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required members, unless a different effective time is provided in the written action.

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

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

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

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

10-32-48. Proxies.

1. At or before the meeting at which the appointment is to be effective, a member may cast or authorize the casting of a vote:

   a. By filing with a manager authorized to tabulate votes a written appointment of a proxy which is signed by the member.

   b. By ~~telephonic transmission~~ remote communication or authenticated electronic communication to a manager authorized to tabulate votes, whether or not accompanied by written instructions of the member, of an appointment of a proxy.

      (1) The ~~telephonic transmission~~ remote communication or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the appointment is authorized by the member. If it is reasonably concluded that the ~~telephonic transmission~~ remote communication or authenticated electronic communication is valid, the inspectors of election or, if there are not inspectors, the other persons making that determination of validity shall specify the information upon which they relied to make that determination.

      (2) A proxy so appointed may vote on behalf of the member, or otherwise participate, in a meeting by remote communication according to section 10-32-43.2, to the extent the member appointing the proxy would have been entitled to participate by remote communication according to section 10-32-43.2 if the member did not appoint the proxy.

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

   d. An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or consented to by authenticated electronic communication

by any one of the members, unless the limited liability company receives from any one of those members written notice or an authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.

2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest in the membership interests of the limited liability company.

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

   a. Attending a meeting and voting in person; or ~~signing~~

   b. Signing and delivering to the manager or agent authorized to tabulate proxy votes either ~~a~~:

      (1) A writing stating that the appointment of the proxy is revoked; or ~~a later~~

      (2) A new appointment; or

   c. Remote communication or by authenticated electronic communication, whether or not accompanied by written instructions of the member, of:

      (1) A statement that the proxy is revoked; or

      (2) A new appointment.

4. Revocation in either manner provided in subdivision b or c of subsection 3 revokes all prior proxy appointments and is effective ~~when~~:

   a. When filed with a manager or with a duly authorized agent of the limited liability company; or

   b. When the remote communication or the authenticated electronic communication is received by a manager or by the duly authorized agent of the limited liability company.

   The remote communication or the authenticated electronic communication must set forth or be submitted with information from which it can be determined that the revocation or the new appointment was authorized by the member.

~~4.~~ 5. The death or incapacity of a person appointing a proxy does not revoke or affect the right of the limited liability company to accept the authority of the proxy, unless written notice of the death or incapacity is received by a manager authorized to tabulate votes before the proxy exercises the authority under that appointment.

~~5.~~ 6. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member:

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

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

~~6.~~ 7. Subject to section 10-32-48.1 and an express restriction, limitation, or specific reservation of authority of the proxy appearing in the appointment, the limited liability company may accept a vote or action by the proxy as the action of the member. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

~~7.~~ 8. If a proxy is given authority by a member to vote on less than all items of business considered at a meeting of members, the member is considered to be present and entitled to vote by the proxy for purposes of subsection 1 of section 10-32-42 only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a member who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

SECTION 33. AMENDMENT. Subsection 1 of section 10-32-80 of the North Dakota Century Code is amended and reenacted as follows:

1. Meetings of the board may be held from time to time as provided in the articles of organization, a member-control agreement, or the bylaws at any place within or without the state that the board may select or by any means described in subsection 2.

   a. If the articles, bylaws, or board fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles, a member-control agreement, or the bylaws provide otherwise.

   b. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.

   c. Participation in a meeting by ~~either of the~~ a means set forth in subsection 2 constitutes ~~personal~~ presence in person at the meeting.

SECTION 34. AMENDMENT. Subsection 1 of section 10-32-85 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 35. AMENDMENT. Subsection 2 of section 10-32-87 of the North Dakota Century Code is amended and reenacted as follows:

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

   a. The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the limited liability company at the time it was authorized, approved, or ratified;

   b. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the members, whether entitled to vote, and the contract or transaction is approved in good faith by:

      (1) The owners of two-thirds of the voting power of membership interests entitled to vote which are owned by persons other than the interested governor; or

(2) The unanimous affirmative vote of all members, whether entitled to vote;

c. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the ~~board~~ governors or committee members currently holding office, but the interested governor is not counted in determining the presence of a quorum and ~~may~~ shall not vote; or

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

SECTION 36. AMENDMENT. Subsection 1 of section 10-32-99 of the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:

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

b. "Official capacity" means:

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

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

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

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

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

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

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

SECTION 37. AMENDMENT. Subsection 4 of section 10-32-107 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

SECTION 38. AMENDMENT. Subsection 3 of section 10-32-108.4 of the North Dakota Century Code is amended and reenacted as follows:

3. A converting organization that is the owner of a service mark, trademark~~,~~ or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

SECTION 39. AMENDMENT. Subsection 1 of section 10-32-109 of the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company dissolves upon the occurrence of any of the following events:

   a. When the period, if any, fixed in the articles of organization for the duration of the limited liability company expires;

   b. By order of a court pursuant to sections 10-32-119 and 10-32-122;

   c. ~~By action of the organizers~~ Prior to accepting contributions pursuant to section 10-32-110;

   d. ~~By action of the members~~ After accepting contributions pursuant to section 10-32-111;

   e. For a limited liability company with articles of organization filed with the secretary of state:

      (1) Before July 1, 1999, except as otherwise provided in the articles of organization or a member-control agreement, upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member:

         (a) If there is at least one remaining member and the existence and business of the limited liability company is continued by the consent of all the

remaining members obtained no later than ninety days after the termination of the continued membership; or

(b) If the membership of the last or sole member terminates and the legal representative of that last or sole member causes the limited liability company to admit at least one member.

(2) After June 30, 1999, upon the occurrence of an event terminating the continued membership of a member in the limited liability company:

(a) If the articles of organization or a member-control agreement specifically provide that the termination causes dissolution and in that event only as provided in the articles or member-control agreement; or

(b) If the membership of the last or sole member terminates and the legal representative of that last or sole member does not cause the limited liability company to admit at least one member within one hundred eighty days after the termination;

f. A merger in which the limited liability company is not the surviving organization; or

g. When terminated by the secretary of state pursuant to section 10-32-149.

SECTION 40. AMENDMENT. Section 10-32-110 of the North Dakota Century Code is amended and reenacted as follows:

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

1. A majority of the organizers or governors shall sign articles of dissolution and termination containing:

   a. The name of the limited liability company;

   b. The date of organization;

   c. A statement that contributions have not been accepted; and

   d. A statement that no debts remain unpaid.

2. The articles of dissolution and termination must be filed with the secretary of state together with the fees provided in section 10-32-150.

3. When the articles of dissolution and termination have been filed with the secretary of state, the limited liability company is terminated.

4. The secretary of state shall issue to the terminated limited liability company or its legal representative a certificate of termination that contains:

   a. The name of the limited liability company;

   b. The date the articles of dissolution and termination were filed with the secretary of state; and

   c. A statement that the limited liability company is terminated.

SECTION 41. AMENDMENT. Section 10-32-111 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

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

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

SECTION 42. Subsection 4 to section 10-32-128 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 43. AMENDMENT. Subsection 3 of section 10-32-140 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 44. AMENDMENT. Subsection 3 of section 10-32-149 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

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

SECTION 45. AMENDMENT. Section 10-32-150 of the North Dakota Century Code is amended and reenacted as follows:

10-32-150. Secretary of state - Fees and charges. The secretary of state shall charge and collect for:

1. Filing articles of organization and issuing a certificate of organization, one hundred thirty-five dollars.

2. Filing articles of amendment, fifty dollars.

3. Filing articles of correction, fifty dollars.

4. Filing restated articles of organization, one hundred twenty-five dollars.

5. Filing articles of conversion of a limited liability company, fifty dollars and:

   a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or

   b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.

6. Filing abandonment of conversion, fifty dollars.

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

8. Filing abandonment of merger or exchange, fifty dollars.

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

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

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

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

13. Filing a statement of change of address of registered office or change of registered agent or both, or a statement of change of address of registered office by registered agent, the fee provided in section 10-01.1-03.

14. Filing a resolution for the establishment of a class or series of membership interests, fifty dollars.

15. Filing a notice of dissolution, ten dollars.

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

17. Filing articles of dissolution and termination, twenty dollars.

18. Filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred thirty-five dollars.

19. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.

20. Filing a certificate of fact stating a merger of a foreign limited liability company holding a certificate of authority to transact business in this state, fifty dollars.

21. Filing a certified statement of conversion of a foreign limited liability company, fifty dollars.

22. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.

23. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars.

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

        (1) After the date provided in subsection 3 of section 10-32-149, fifty dollars; and

        (2) After the termination of the limited liability company, or the revocation of the certificate of authority of a foreign limited liability company, the reinstatement fee of one hundred twenty-five dollars.

    b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-32-149, or the annual report lacks sufficient payment as required by this subsection.

24. Filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.

25. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.

26. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.

27. Furnishing a copy of any record, or paper relating to a limited liability company or a foreign limited liability company:

    a. ~~One dollar for every four pages, or fraction thereof~~ <u>The fee provided in section 54-09-04 for copying a record</u>; and

    b. Five dollars for a search of records.

28. Furnishing a certificate of good standing, existence, or authorization:

    a. Fifteen dollars; and

b. Five dollars for a search of records.

~~29. Each page of any record or form sent by electronic transmission, one dollar.~~

SECTION 46. AMENDMENT. Subsection 5 of section 10-32-152 of the North Dakota Century Code is amended and reenacted as follows:

5. If the court order sought is one for reinstatement of a limited liability company that has been dissolved as provided in subsection 5 of section 10-32-149, or for reinstatement of the certificate of authority of a foreign limited liability company that has been revoked as provided in subsection 6 of section 10-32-149, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the limited liability company or foreign limited liability company to:

   a. File ~~all~~ the most recent past-due annual ~~reports~~ report;

   b. Pay the fees to the secretary of state for ~~each~~ all past-due annual ~~report~~ reports as provided in subsection 26 of section 10-32-150; and

   c. Pay the reinstatement fee to the secretary of state as provided in subsection 26 of section 10-32-150.

SECTION 47. AMENDMENT. Section 10-33-01 of the North Dakota Century Code is amended and reenacted as follows:

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

1. "Activity" or "activities" means, in a corporation organized under this chapter, the functional equivalent of "business" in a corporation organized under chapter 10-19.1.

2. "Address" means:

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

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

3. "Articles" means:

   a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a statement of change of registered office, registered agent, or name of registered agent, articles of merger, articles of consolidation, articles of abandonment, articles of dissolution, and any annual report in which a registered office or registered agent has been established or changed.

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

4. "Authenticated electronic communication" means:

   a. That the electronic communication is delivered:

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

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

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

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

6. "Board" means the board of directors of a corporation.

7. "Board member" means an individual serving on the board.

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

9. "Corporation" means a corporation, other than a foreign corporation, that is incorporated under or governed by this chapter.

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

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

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

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

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

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

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

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

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

    a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-33-140, was delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state and was determined by the secretary of state to conform to law; and

    b. That the secretary of state did then:

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

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

17. "Foreign corporation" means a corporation that is formed under laws other than the laws of this state for a purpose for which a corporation may be organized under this chapter.

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

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

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

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

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

21. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended from time to time, and successive federal revenue Acts.

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

23. "Member" means a person with membership rights in a corporation under its articles or bylaws, regardless of how the person is identified.

24. "Members with voting rights" means members or a class of members that has voting rights with respect to the purpose or matter involved.

25. "Nonprofit purpose" or "nonprofit activity" means a purpose or activity not involving pecuniary gain to any officer, director, or member, other than a member that is a nonprofit organization or subdivision, unit, or agency of the United States or a state or local government.

26. "Notice":

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

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

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

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

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

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

                [1] The posting; or

                [2] The giving of the separate notice.

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

b. Is given, in all other cases:

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

(2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last known address of the person;

(3) When handed to the person;

~~(3)~~ (4) When left at the office of the person with a clerk or other person in charge of the office or:

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

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

~~(4)~~ (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

~~(5)~~ (6) When the method is fair and reasonable when all of the circumstances are considered.

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

d. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision b, after having made sufficient arrangements for payment by the sender.

e. Is deemed received when it is given.

27. "Officer" means an individual who is more than eighteen years of age and who is:

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

b. Considered elected as an officer pursuant to section 10-33-52.

28. "Organization" ~~means~~:

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

b. Excludes ~~any~~:

(1) Any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under this chapter or a foreign nonprofit corporation which is incorporated in another jurisdiction; or

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

29. "Principal executive office" means:

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

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

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

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

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

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

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

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

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

34. "Signed" means:

a. That the signature of a person, which may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, transmitted by facsimile telecommunication or electronically, or in any other manner reproduced on the record with the present intention to authenticate that record; and

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

(1) The record is signed by a person authorized to do so by this chapter, the articles, or bylaws, a resolution approved by the directors as required by

section 10-33-42, or the members with voting rights, if any, as required by section 10-33-72; and

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

35. "Subsidiary" of a specified organization means an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for directors, governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

36. "Surviving corporation" means the corporation or foreign corporation resulting from a merger which:

a. May preexist the merger; or

b. May be created by the merger.

37. "Vote" includes authorization by written action.

38. "Written action" means:

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

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

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

(2) All the counterparts are one written action by all of the persons signing them.

SECTION 48. AMENDMENT. Section 10-33-18 of the North Dakota Century Code is amended and reenacted as follows:

10-33-18. Filing articles of amendment. An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to the filing requirements of this chapter and that all fees have been paid as provided in section 10-33-140, then the articles of amendment must be recorded in the office of the secretary of state. A corporation that amends the corporate name and which is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the corporation's name in each registration when the corporation files an amendment.

SECTION 49. AMENDMENT. Subsection 1 of section 10-33-39 of the North Dakota Century Code is amended and reenacted as follows:

1. Meetings of the board may be held from time to time as provided in the articles or bylaws at any place within or without the state that the board may select or by any means described in subsection 2.

a. Unless the articles or bylaws provide otherwise, a meeting of the board must be held at least once per year.

b. If the articles, bylaws, or board fails to select a place for a meeting, the meeting must be held at the principal executive office.

c. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.

d. Participation in a meeting by ~~either of the~~ a means set forth in subsection 2 constitutes presence in person at the meeting.

SECTION 50. AMENDMENT. Subsection 1 of section 10-33-44 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 51. AMENDMENT. Subsection 2 of section 10-33-46 of the North Dakota Century Code is amended and reenacted as follows:

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

   a. The contract or transaction was, and the person asserting the validity of the contract or transaction has the burden of establishing that the contract or transaction was, fair and reasonable as to the corporation when it was authorized, approved, or ratified;

   b. The material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the members and the contract or transaction is approved in good faith by two-thirds of the members entitled to vote, not counting any vote that the interested director might otherwise have, or the unanimous affirmative vote of all members, whether or not entitled to vote;

   c. The material facts as to the contract or transaction and as to the director's interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of ~~the board~~ directors or committee members currently holding office, not counting any vote that the interested director might otherwise have, and not counting the director in determining the presence of a quorum; or

   d. The contract or transaction is a merger or consolidation described in section 10-33-85.

SECTION 52. AMENDMENT. Subsection 1 of section 10-33-84 of the North Dakota Century Code is amended and reenacted as follows:

1. For purposes of this section:

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

   b. "Official capacity" means:

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

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

      (3) With respect to a director, officer, or employee of the corporation who, while a director, officer, or employee of the corporation, is or was serving at the request

of the corporation or whose duties in that position involve or involved service as a director, governor, officer, manager, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a director, governor, officer, manager, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

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

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

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

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

SECTION 53. Subsection 4 to section 10-33-115 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 54. AMENDMENT. Section 10-33-130 of the North Dakota Century Code is amended and reenacted as follows:

10-33-130. Foreign corporation - Amendments to the certificate of authority. If any statement in the application for a certificate of authority by a foreign corporation is false when made or any arrangements or other facts described change, making the application inaccurate in any respect, the foreign corporation shall promptly file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and, in the case of a change in the foreign corporation's name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. In the case of a dissolution or merger, a foreign corporation that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. A foreign nonprofit corporation that changes the foreign nonprofit corporation's name and applies for an amended certificate of authority and that is the owner of a service mark, trademark, or trade name, a general partner named in a fictitious name certificate, a general partner in a limited partnership or a limited liability limited partnership, or a managing partner in a limited liability partnership that is on file with the secretary of state shall change the foreign nonprofit corporation's name in each of the foregoing registrations that apply if the foreign nonprofit corporation files an application for an amended certificate of authority.

SECTION 55. AMENDMENT. Subsection 3 of section 10-33-139 of the North Dakota Century Code is amended and reenacted as follows:

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

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

postmark or verified shipment date on the next business day complies with this requirement.

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

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

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

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

SECTION 56. AMENDMENT. Subsection 2 of section 10-33-140 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state shall charge and collect:

a. For furnishing a certified copy of any record, instrument, or paper relating to a corporation, ~~one dollar for every four pages or fraction thereof~~ the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal to the certificate.

b. At the time of any service of process on the secretary of state as resident agent of a corporation, twenty-five dollars, which may be recovered as taxable costs by the party to the claim for relief causing the service to be made if that party prevails in the suit or action.

SECTION 57. AMENDMENT. Subsection 5 of section 10-33-141 of the North Dakota Century Code is amended and reenacted as follows:

5. If the court order sought is one for reinstatement of a corporation that has been dissolved as provided in subsection 5 of section 10-33-139, or for reinstatement of the certificate of authority of a foreign corporation that has been revoked as provided in subsection 6 of section 10-33-139, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the corporation or foreign corporation to:

a. File ~~all~~ the most recent past-due annual ~~reports~~ report;

b. Pay the fees to the secretary of state for ~~each~~ all past-due annual ~~report~~ reports as provided in subdivision s of subsection 1 of section 10-33-140; and

c. Pay the reinstatement fee to the secretary of state as provided in subdivision s of subsection 1 of section 10-33-140.

SECTION 58. Chapter 10-36 of the North Dakota Century Code is created and enacted as follows:

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

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

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

2. "Nonprofit limited liability company" means a nonprofit limited liability company, other than a foreign nonprofit limited liability company, that is organized under or governed by this chapter.

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

1. In any case not provided for in this chapter, chapter 10-33 governs.

2. In applying chapter 10-33 to a nonprofit limited liability company and unless the context otherwise requires, all references in chapter 10-33 to:

   a. "Board" refers to the board of governors.

   b. "Corporation" refers to a nonprofit limited liability company.

   c. "Director" refers to a governor.

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

   e. "Officer" refers to a manager.

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

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

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

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

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

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

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

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

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

   d. The names and respective addresses of the managers and governors of the nonprofit limited liability company or foreign nonprofit limited liability company or the name or names and respective address or addresses of the managing member or members of the nonprofit limited liability company or foreign nonprofit limited liability company.

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

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

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

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

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

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

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

4. After the date established under subsection 3, the secretary of state shall notify any nonprofit limited liability company or foreign nonprofit limited liability company failing to file its annual report that its certificate of organization or certificate of authority is not in good standing and that it may be dissolved or revoked pursuant to subsections 5 and 6. The secretary of state must mail the notice to the last registered agent at the last registered office. If the nonprofit limited liability company or foreign nonprofit limited liability company files its annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as provided in section 10-36-08, the secretary of state shall restore its certificate of organization or certificate of authority to good standing.

5. A nonprofit limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established in subsection 3 ceases to exist and is considered involuntarily dissolved by operation of law.

a. Thereafter, the secretary of state shall note the termination of the nonprofit limited liability company's certificate of organization on the records of the secretary of state and shall give notice of the action to the dissolved nonprofit limited liability company.

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

6. A foreign nonprofit limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within one year after the date established by subsection 3 forfeits its authority to conduct activities in this state.

   a. The secretary of state shall note the revocation of the foreign nonprofit limited liability company's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign nonprofit limited liability company.

   b. Notice by the secretary of state must be mailed to the foreign nonprofit limited liability company's last registered agent at the last registered office.

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

7. A nonprofit limited liability company that was dissolved for failure to file an annual report, or a foreign nonprofit limited liability company whose authority was forfeited by failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as provided in section 10-36-08. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the dissolution or revocation to the reinstatement.

8. The secretary of state may waive any penalties provided in this section when an annual report form could not be delivered to the nonprofit limited liability company.

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

1. The secretary of state shall charge and collect for:

   a. Filing articles of organization and issuing a certificate of organization, forty dollars.

   b. Filing articles of amendment, twenty dollars.

   c. Filing articles of correction, twenty dollars.

   d. Filing restated articles of organization, thirty dollars.

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

   f. Filing a notice of dissolution, ten dollars.

   g. Filing articles of dissolution and termination, twenty dollars.

   h. Filing a statement of change of address of registered office or change of registered agent, or both, the fee provided in section 10-01.1-03.

   i. Filing an application to reserve a name, ten dollars.

   j. Filing a notice of transfer of a reserved name, ten dollars.

   k. Filing a cancellation of reserved name, ten dollars.

   l. Filing a consent to use of a deceptively similar name, ten dollars.

   m. Filing an application of a foreign nonprofit limited liability company for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, forty dollars.

n. Filing an application of a foreign nonprofit limited liability company for an amended certificate of authority, forty dollars.

o. Filing a certified statement of merger of a foreign nonprofit limited liability company holding a certificate of authority to conduct activities in this state, fifty dollars.

p. Filing an application for withdrawal of a foreign nonprofit limited liability company and issuing a certificate of withdrawal, twenty dollars.

q. Filing an annual report of a domestic or foreign nonprofit limited liability company, ten dollars.

(1) The secretary of state shall charge and collect additional fees for late filing of the annual report:

(a) After the date provided in subsection 3 of section 10-36-07, five dollars; and

(b) After the dissolution of a nonprofit limited liability company, or the revocation of the certificate of authority of a foreign nonprofit limited liability company, the reinstatement fee of forty dollars.

(2) Fees paid to the secretary of state according to this subdivision are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-36-07, or the annual report lacks sufficient payment as required by this subdivision.

r. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this subsection for filing the record.

s. Filing any other statement of a domestic or foreign nonprofit limited liability company, ten dollars.

2. The secretary of state shall charge and collect:

a. For furnishing a certified copy of any record, instrument, or paper relating to a nonprofit limited liability company, the fee provided in section 54-09-04 for copying a record and fifteen dollars for the certificate and affixing the seal to the certificate.

b. At the time of any service of process on the secretary of state as resident agent of a nonprofit limited liability company, twenty-five dollars, which may be recovered as taxable costs by the party to the claim for relief causing the service to be made if that party prevails in the suit or action.

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

1. The secretary of state may administer this chapter.

2. The secretary of state may propound to any nonprofit limited liability company or foreign nonprofit limited liability company that is subject to this chapter and to any officer, director, or employee thereof any interrogatory as may be reasonably necessary and proper to ascertain whether the nonprofit limited liability company has complied with this chapter applicable to the nonprofit limited liability company.

a. The interrogatory must be answered within thirty days after mailing or within any additional time as must be fixed by the secretary of state. The answers to the interrogatory must be full and complete and must be made in writing and under oath.

b. If the interrogatory is directed:

(1) To an individual, it must be answered by that individual; or

(2) To a nonprofit limited liability company, it must be answered by the president, vice president, secretary, or assistant secretary of the nonprofit limited liability company.

c. The secretary of state need not file any record to which the interrogatory relates until the interrogatory has been answered, and not then if the answers disclose that the record is not in conformity with this chapter.

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

e. Each governor, manager, or employee of a nonprofit limited liability company or foreign nonprofit limited liability company who fails or refuses within the time provided by subdivision a to answer truthfully and fully an interrogatory propounded to that person by the secretary of state is guilty of an infraction.

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

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

a. Within thirty days after the service of the notice of denial, the nonprofit limited liability company or foreign nonprofit limited liability company, as the case may be, may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of the court a petition setting forth a copy of the record sought to be filed and a copy of the written rejection of the record by the secretary of state.

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

4. If the secretary of state dissolves a nonprofit limited liability company or revokes the certificate of authority to conduct activities in this state of any foreign nonprofit limited liability company, pursuant to section 10-36-07, the nonprofit limited liability company or foreign nonprofit limited liability company may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of the court a petition, including:

a. A copy of the nonprofit limited liability company's articles of organization and a copy of the notice of dissolution given by the secretary of state; or

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

5. If the court order sought is one for reinstatement of a nonprofit limited liability company that has been dissolved as provided in subsection 5 of section 10-36-07, or for reinstatement of the certificate of authority of a foreign nonprofit limited liability company that has been

revoked as provided in subsection 6 of section 10-36-07, then together with any other actions the court deems proper, any such order which reverses the decision of the secretary of state shall require the nonprofit limited liability company or foreign nonprofit limited liability company to:

a. File the most recent past-due annual report;

b. Pay the fees to the secretary of state for all past-due annual reports as provided in subdivision q of subsection 1 of section 10-36-08; and

c. Pay the reinstatement fee to the secretary of state as provided in subdivision q of subsection 1 of section 10-36-08.

SECTION 59. AMENDMENT. Section 38-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 60. AMENDMENT. Subsections 27 and 28 of section 45-10.2-02 of the North Dakota Century Code are amended and reenacted as follows:

27. "Notice":

a. Is given to a limited partnership:

(1) When in writing and mailed or delivered to a general partner at the registered office or principal executive office of the limited partnership; or

(2) When given by a form of electronic communication consented to by a general partner of the limited partnership to which the notice is given if by:

(a) Facsimile communication, when directed to a telephone number at which a general partner of the limited partnership has consented to receive notice;

(b) Electronic mail, when directed to an electronic mail address at which a general partner of the limited partnership has consented to receive notice;

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

[1] The posting; or

[2] The giving of the separate notice; or

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

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

(1) When in writing and mailed or delivered to the partner at the registered office or principal executive office of the limited partnership; or

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

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

c. Is given in all other cases:

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

(2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last known address of the person;

(3) When handed to the person;

~~(3)~~ (4) When left at the office of the person with a clerk or other person in charge of the office, or:

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

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

~~(4)~~ (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

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

~~(5)~~ (6) When the method is fair and reasonable when all circumstances are considered.

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

e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.

f. Is deemed received when it is given.

28. "Organization" ~~means~~:

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

b. Excludes ~~any~~:

(1) Any nonprofit corporation, whether a domestic nonprofit corporation which is incorporated under chapter 10-33 or a foreign nonprofit corporation which is incorporated under the laws of another jurisdiction; or

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

SECTION 61. AMENDMENT. Section 45-10.2-21 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

(2) A proxy so appointed may vote on behalf of the partner, or otherwise participate, in a meeting by remote communication according to section 45-10.2-20 to the extent the partner appointing the proxy would have been

entitled to participate by remote communication according to section 45-10.2-20 if the partner did not appoint the proxy.

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

d. An appointment of a proxy for partnership interests held jointly by two or more partners is valid if signed or consented to by authenticated electronic communication by any one of the partners, unless the limited partnership receives from any of those partners written notice or authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.

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

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

a. Attending a meeting and voting in person; or

b. Signing and delivering to the partner or to a duly authorized agent ~~authorized to tabulate proxy votes either~~ of the partnership:

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

(2) A ~~later~~ new appointment; or

c. Remote communication or by authenticated electronic communication, whether or not accompanied by written instructions of the partner, of:

(1) A statement that the proxy is revoked; or

(2) A new appointment.

4. Revocation in either manner provided in subdivisions b and c of subsection 3 revokes all earlier proxy appointments and is effective ~~when~~:

a. When filed with a general partner or duly authorized agent of the limited partnership; or

b. When the remote communication or the authenticated electronic communication is received by a partner or by the duly authorized agent of the partnership.

The remote communication or the authenticated electronic communication must set forth or be submitted with information from which it can be determined that the revocation or the new appointment was authorized by the partner.

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

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

   a. Then any one of them may vote the partnership interests on each item of business in accordance with specific instructions contained in the appointment; or

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

7. Subject to section 45-10.2-22 and an express restriction, limitation, or specific reservation of authority of the proxy appearing on the appointment, the limited partnership may accept a vote or action by the proxy as the action of the partner. The vote of a proxy is final, binding, and not subject to challenge. However, the proxy is liable to the partner or beneficial owner for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.

8. If a proxy is given authority by a partner to vote on less than all items of business considered at a meeting of partners, then the partner is considered to be present and entitled to vote by the proxy, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a partner who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

SECTION 62. AMENDMENT. Subsection 8 of section 45-10.2-24 of the North Dakota Century Code is amended and reenacted as follows:

8. A limited partnership that files an amendment to change its name and which is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in another limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state shall change the name of the limited partnership in each of the foregoing registrations that is applicable when the limited partnership files an amendment to the certificate of limited partnership.

SECTION 63. AMENDMENT. Subsection 3 of section 45-10.2-41 of the North Dakota Century Code is amended and reenacted as follows:

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

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

   b. The limited partnership is a debtor in bankruptcy;

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

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

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

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

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

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

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

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

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

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

   b. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.

~~2.~~ c. A charging order constitutes a lien on the transferable interest of the judgment debtor. ~~The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.~~

~~3. At any time before foreclosure, an interest charged may be redeemed:~~

   ~~a. By the judgment debtor;~~

   ~~b. With property other than limited partnership property, by one or more of the other partners; or~~

   ~~c. With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.~~

~~4.~~ 2. This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the transferable interest of the partner or transferee.

~~5.~~ 3. This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment ~~out of~~ with request to the transferable interest of the judgment debtor.

SECTION 65. AMENDMENT. Subsection 2 of section 45-10.2-81 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 66. AMENDMENT. Subsection 3 of section 45-10.2-97 of the North Dakota Century Code is amended and reenacted as follows:

3. A converting organization that is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, or is a general partner in a limited partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

SECTION 67. AMENDMENT. Subsection 26 of section 45-10.2-109 of the North Dakota Century Code is amended and reenacted as follows:

26. Furnishing a certified copy of any record, or paper relating to a limited partnership or foreign limited partnership:

    a. ~~One dollar for every four pages or fraction~~ The fee provided in section 54-09-04 for copying a record;

    b. Fifteen dollars for the certificate and affixing the seal thereto; and

    c. Five dollars for a search of records.

SECTION 68. AMENDMENT. Subsection 5 of section 45-10.2-111 of the North Dakota Century Code is amended and reenacted as follows:

5. If the court order sought is one for reinstatement of a limited partnership that has been dissolved as provided in subsection 5 of section 45-10.2-108, or for reinstatement of the certificate of authority of a foreign limited partnership that has been revoked as provided in subsection 6 of section 45-10.2-108, then, together with any other actions the court deems proper, any such order which orders the reinstatement of the limited partnership or the reinstatement of the certificate of authority of a foreign limited partnership shall require the limited partnership or foreign limited partnership to:

    a. File ~~all~~ the most recent past-due annual ~~reports~~ report;

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

    c. Pay the reinstatement fee to the secretary of state as provided in subsection 25 of section 45-10.2-109.

SECTION 69. A new subsection to section 45-11-08.2 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 70. AMENDMENT. Subsections 17 and 18 of section 45-13-01 of the North Dakota Century Code are amended and reenacted as follows:

17. "Notice":

    a. Is given to a partnership:

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

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice.

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

b. Is given to a partner of the partnership:

(1) When in writing and mailed or delivered to the partner at the principal executive office address of the partnership; or

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

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

c. Is given in all other cases:

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

(2) When deposited with a nationally recognized overnight delivery service for overnight delivery, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last known address of the person;

(3) When handed to the person;

~~(3)~~ (4) When left at the office of the person with a clerk or other person in charge of the office or:

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

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

~~(4)~~ (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

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

~~(5)~~ (6) When the method is fair and reasonable when all circumstances are considered.

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

e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.

f. Is deemed received when given.

18. "Organization" ~~means~~:

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

b. Excludes ~~any~~:

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

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

SECTION 71. AMENDMENT. Subsections 15 and 16 of section 45-22-01 of the North Dakota Century Code are amended and reenacted as follows:

15. "Notice":

a. Is given to a limited liability partnership:

(1) When in writing and mailed or delivered to a managing partner at the registered office or principal executive office of the limited liability partnership; or

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

(a) Facsimile communication, when directed to a telephone number at which a managing partner of the limited liability partnership or the partner has consented to receive notice.

(b) Electronic mail, when directed to an electronic mail address at which a managing partner of the limited liability partnership has consented to receive notice.

(c) Posting on an electronic network on which a managing partner of the limited liability partnership has consented to receive notice, together with separate notice to the limited liability partnership if the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice.

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

b. Is given to a partner of the limited liability partnership:

(1) When in writing and mailed or delivered to the partner at the registered office or at the principal executive office of the limited liability partnership; or

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

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

c. Is given in all other cases:

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

(2) <u>When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last known address of the person;</u>

<u>(3)</u> When handed to the person;

~~(3)~~ <u>(4)</u> When left at the office of the person with a clerk or other person in charge of the office or:

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

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

~~(4)~~ (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

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

~~(5)~~ (6) When the method is fair and reasonable when all circumstances are considered.

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

e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender.

f. Is deemed received when it is given.

16. "Organization" ~~means~~:

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

b. Excludes ~~any~~:

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

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

SECTION 72. AMENDMENT. Subsection 3 of section 45-22-03 of the North Dakota Century Code is amended and reenacted as follows:

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

a. With respect to a domestic limited liability partnership:

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

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

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

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

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

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

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

(8) A deferred effective date, if any.

b. With respect to a foreign limited liability partnership:

(1) The name of the foreign limited liability partnership and, if different, the name under which the foreign limited liability partnership proposes to transact business in this state.

(2) The jurisdiction of origin.

(3) The date on which the foreign limited liability partnership expires in the jurisdiction of origin.

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

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

(6) The address of the principal executive office of the foreign limited liability partnership.

(7) The name of the registered agent of the foreign limited liability partnership as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of that registered agent in this state.

(8) The name and address of each managing partner <u>and, if the foreign limited liability partnership will be engaged in farming or ranching in this state or owning or leasing land in this state which is used for farming or ranching, then the names and addresses of all partners</u>.

(9) An acknowledgment that the status of the foreign limited liability partnership in this state will automatically expire unless the foreign limited liability partnership continuously maintains limited liability partnership status in the jurisdiction of origin.

c. The registration must be accompanied by payment of the fees provided in section 45-22-22 together with a certificate of good standing or certificate of existence authenticated by the registering officer of the state or country where the foreign limited liability partnership is originally registered and the consent of the designated registered agent for service of process to serve in that capacity.

SECTION 73. AMENDMENT. Subsection 2 of section 45-22-22 of the North Dakota Century Code is amended and reenacted as follows:

2. The secretary of state shall charge and collect for:

   a. Furnishing a copy of any record or paper relating to a domestic limited liability partnership or foreign limited liability partnership, ~~one dollar for every four pages, or fraction of pages~~ the fee provided in section 54-09-04 for copying a record.

   b. A certificate certifying a copy or reciting facts related to a domestic limited liability partnership or foreign limited liability partnership, fifteen dollars.

   ~~c. Each page of any record or form sent by electronic transmission, one dollar.~~

SECTION 74. AMENDMENT. Subsection 5 of section 45-22-23 of the North Dakota Century Code is amended and reenacted as follows:

5. If the court order sought is one for reinstatement of a domestic limited liability partnership registration that has been revoked as provided in subsection 5 of section 45-22-22.1, or for reinstatement of the registration of a foreign limited liability partnership that has been revoked as provided in subsection 6 of section 45-22-21.1, then, together with any other action the court deems proper, any such order which orders the reinstatement of the registration of a domestic or foreign limited liability partnership registration shall require the domestic or foreign limited liability partnership to:

   a. File ~~all~~ the most recent past-due annual ~~reports~~ report;

   b. Pay the fees to the secretary of state for ~~each~~ all past-due annual ~~report~~ reports as provided in subsection 1 of section 45-22-22; and

   c. Pay the reinstatement fee to the secretary of state as provided in subsection 1 of section 45-22-22.

SECTION 75. AMENDMENT. Subsections 18 and 19 of section 45-23-01 of the North Dakota Century Code are amended and reenacted as follows:

18. "Notice":

   a. Is given to a limited liability limited partnership:

      (1) When in writing and mailed or delivered to a general partner at the registered office or principal executive office of the limited liability limited partnership; or

      (2) When given by a form of electronic communication consented to by a general partner of the limited liability limited partnership to which the notice is given if by:

         (a) Facsimile communication, when directed to a telephone number at which a general partner of the limited liability limited partnership has consented to receive notice;

(b) Electronic mail, when directed to an electronic mail address at which a general partner of the limited liability limited partnership has consented to receive notice;

(c) Posting on an electronic network on which a general partner of the limited liability limited partnership has consented to receive notice, together with separate notice to the limited liability limited partnership of the specific posting, upon the later of:

[1] The posting; or

[2] The giving of the separate notice; or

(d) Any other form of electronic communication by which a general partner of the limited liability limited partnership has consented to receive notice, when directed to the limited liability limited partnership;

b. Is given to a partner of the limited liability limited partnership:

(1) When in writing and mailed or delivered to the partner at the registered office or principal executive office of the limited liability limited partnership; or

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

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

(d) Any other form of electronic communication by which the partner has consented to receive notice when directed to the partner;

c. Is given in all other cases:

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

(2) <u>When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last known address of the person;</u>

<u>(3)</u> When handed to the person;

~~(3)~~ <u>(4)</u> When left at the office of the person with a clerk or other person in charge of the office or:

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

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

~~(4)~~ (5) When given by a form of electronic communication consented to by the person to whom the notice is given if by:

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

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

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

[1] The posting; or

[2] The giving of the separate notice; or

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

~~(5)~~ (6) When the method is fair and reasonable when all circumstances are considered;

d. Is given when deposited in the United States mail with sufficient postage affixed; ~~and~~

e. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision c, after having made sufficient arrangements for payment by the sender; and

f. Is deemed received when given.

19. "Organization" ~~means~~:

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

b. Excludes ~~any~~:

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

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

SECTION 76. AMENDMENT. Subsection 26 of section 45-23-08 of the North Dakota Century Code is amended and reenacted as follows:

26. Furnishing a certified copy of any record or paper relating to a limited partnership or foreign limited partnership:

a. ~~One dollar for every four pages or fraction~~ The fee provided in section 54-09-04 for copying a record;

b. Fifteen dollars for the certificate and affixing the seal thereto; and

c. Five dollars for a search of records.

_____	_____
Speaker of the House	President of the Senate
_____	_____
Chief Clerk of the House	Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-first Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1298.

House Vote:	Yeas	89	Nays	0	Absent	5
Senate Vote:	Yeas	45	Nays	0	Absent	3

_____
Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2009.

Approved at _____ M. on _____, 2009.

_____
Governor

Filed in this office this _____ day of _____, 2009,

at _____ o'clock _____ M.

_____
Secretary of State