

**2013 SENATE INDUSTRY, BUSINESS, AND LABOR**

**SB 2266**

# 2013 SENATE STANDING COMMITTEE MINUTES

Senate Industry, Business and Labor Committee  
Roosevelt Park Room, State Capitol

SB 2266  
January 28, 2013  
Job Number 17786

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to cooperative association of articles of incorporation and address of the principal office

## Minutes:

Attached Testimony

Chairman Klein: Opened the hearing.

Al Jaeger, Secretary of State: Written Testimony Attached and handout on filings per month (1&2).

Senator Murphy: Said what you're asking for is just for another spot on the application to be filled in, another box right?

Al Jaeger: Yes.

Chairman Klein: Said we need the address.

Al Jaeger: Yes of your principle business because you have to have already provided it for the registered agent. (8:00)

Senator Sinner: Asked when folks register a business online if they have to send a document in that they sign or do you use the verification based on the email address.

Al Jaeger: Said he couldn't accurately answer that at this point but whatever safeguards are needed Clara Jenkins would have found.

Questions continued (11:22)

Senator Laffen: Motioned for a do pass.

Senator Sinner: Seconded the motion

Roll Call: Yes - 7 No - 0

Senate Industry, Business and Labor Committee  
SB 2266  
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Absent: 0

Floor Assignment: Senator Sinner

**2013 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2266**

Senate Industry, Business, and Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Senator Laffen Seconded By Senator Sinner

Senators	Yes	No	Senator	Yes	No
Chariman Klein	x		Senator Murphy	x	
Vice Chairman Laffen	x		Senator Sinner	x	
Senator Andrist	x				
Senator Sorvaag	x				
Senator Unruh	x				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Senator Sinner

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2266: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2266 was placed on the Eleventh order on the calendar.**

**2013 HOUSE INDUSTRY, BUSINESS, AND LABOR**

**SB 2266**

# 2013 HOUSE STANDING COMMITTEE MINUTES

House Industry, Business and Labor Committee  
Peace Garden Room, State Capitol

SB 2266  
March 12, 2013  
Job 19757

Conference Committee

*Kristin Hetzler*

## Explanation or reason for introduction of bill/resolution:

Relating to cooperative association of articles of incorporation and address of the principal office

## Minutes:

Testimony 1

**Chairman Keiser:** Hearing opened.

**Al Jaeger, Secretary of State:** Provided written testimony, attachment 1. Explained graph within written testimony. Explained proposed amendment attached to testimony.

7:25 **Chairman Keiser:** What does a company do if they do not have that information at the time of filing?

7:40 **Secretary Jaeger:** It is a requirement of the filing documents as we move to the electronic system it can just be included.

8:10 **Chairman Keiser:** Currently they have make these decisions on whether corporate headquarters will be and who the primary officer is?

8:18 **Secretary Jaeger:** They most likely have a location already it is just that we do not ask for it.

8:35 **Chairman Keiser:** With technology today it is conceivable that people could form a corporation without having a physical space?

9:04 **Secretary Jaeger:** Yes

9:16 **Representative Beadle:** If someone is listed as a registered agent, does your office notify that person that they have been listed?

**Secretary Jaeger:** At one time, they had to sign off on it. I don't know if that is still the case. I think we have procedures in place to address that, it doesn't happen very often.

**Chairman Keiser:** Closed hearing

**Rep Vigesaa:** Moves amendment.

**Rep Kasper:** Seconds.

Voice vote carried.

**Rep Sukut:** Moves a Do Pass as Amended.

**Rep Gruchella:** Second.

14-0-1

Carried by: Rep. Louser

March 13, 2013

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PROPOSED AMENDMENTS TO SENATE BILL NO. 2266

Page 1, line 1, replace the first "section" with "sections 10-06.1-17 and"

Page 1, line 1, after the second comma insert "section 10-19.1-01,"

Page 1, line 2, replace the second "section" with "sections"

Page 1, line 2, after "10-19.1-17" insert "and 10-19.1-115, subsection 2 of section 10-19.1-146"

Page 1, line 3, remove "and"

Page 1, line 4, after "10-34-04" insert ", and subsection 2 of section 10-35-28"

Page 1, line 5, after "corporation" insert "definitions,"

Page 1, line 6, replace "and" with a comma

Page 1, line 6, after the comma insert "involuntary dissolution,"

Page 1, after line 10, insert:

**"SECTION 1. AMENDMENT.** Section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-17. Annual report - Contents - Filing requirements.**

Before April sixteenth of each year, every corporation engaged in farming or ranching after June 30, 1981, and every limited liability company engaged in farming or ranching shall file with the secretary of state an annual report signed as provided in subsection ~~53~~<sup>54</sup> of section 10-19.1-01 if a corporation and subsection 58 of section 10-32-02 if a limited liability company. If the corporation or limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or limited liability company by the receiver or trustee. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this section or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this section meets the filing date requirement. An annual report must include the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.
2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the corporation or limited liability company in this state.
3. With respect to each corporation:
  - a. A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

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- b. 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.
4. With respect to each shareholder or member:
    - a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;
    - b. The number of shares or membership interests or percentage of shares or membership interests owned by each;
    - c. The relationship of each;
    - d. A statement of whether each is a citizen or permanent resident alien of the United States; and
    - e. A statement of whether at least one is an individual residing on or operating the farm or ranch.
  5. With respect to management:
    - a. If a corporation, then the names and addresses of the officers and members of the board of directors; or
    - b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.
  6. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].
  7. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years or for each year of existence if less than five years.
  8. A statement of the percentage of gross income of the corporation or limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.
  9. A corporation engaged in farming which fails to file an annual report is subject to the penalties provided in section 10-19.1-147 except that the penalties must be calculated from the date of the report required by this section.
  10. A limited liability company engaged in farming which fails to file an annual report is subject to the penalties provided in subsections 5 and 6 of section 10-32-149 except that the penalties must be calculated from the date of the report required by this section."

**"SECTION 4. AMENDMENT.** Section 10-19.1-01 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.

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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;
  - (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

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- (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;
- (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
- (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 the president, the treasurer, or any other officer pursuant to section 10-19.1-52; or
  - b. Deemed elected as an officer pursuant to section 10-19.1-56.
- 38. "Organization":
  - a. 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:
    - (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. "Publicly held corporation" means a corporation that has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act

of 1934 [15 U.S.C. 78L], or is subject to section 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(d)].

- 46. "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.
- 46-47. "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.
- 47-48. "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.
- 48-49. "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.
- 49-50. "Security" has the meaning given in section 10-04-02.
- 50-51. "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.
- 51-52. "Share" means one of the units, however designated, into which the shareholders' proprietary interests of the shareholder in a corporation are divided.
- 52-53. "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.
- 53-54. "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.

- ~~54-55.~~ "Subscriber" means a person that subscribes for shares in a corporation, whether before or after incorporation.
- ~~55-56.~~ "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.
- ~~56-57.~~ "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.
- ~~57-58.~~ "Surviving organization" means the organization resulting from a merger which:
  - a. May preexist the merger; or
  - b. May be created by the merger.
- ~~58-59.~~ "Vote" includes authorization by written action.
- ~~59-60.~~ "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."

Page 3, after line 28, insert:

**"SECTION 7. AMENDMENT.** Section 10-19.1-115 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-115. Involuntary dissolution.**

- 1. This section applies to corporations that are not publicly held corporations.

- 4.2. A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:
- a. In a supervised voluntary dissolution pursuant to section 10-19.1-114;
  - b. In an action by a shareholder when it is established that:
    - (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;
    - (2) The directors or those in control of the corporation have acted fraudulently or illegally toward one or more shareholders in their capacities as shareholders or directors of any corporation or as officers or employees of a closely held corporation;
    - (3) The directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation or as officers or employees of a closely held corporation;
    - (4) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
    - (5) The corporate assets are being misapplied or wasted; or
    - (6) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-19.1-124;
  - c. In an action by a creditor when:
    - (1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or
    - (2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or
  - d. In an action by the attorney general to dissolve the corporation in accordance with section 10-19.1-118 when it is established that a decree of dissolution is appropriate.
- 2.3. In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation has accumulated or current operating profits.
- 3.4. In an action under subdivision b of subsection 1 involving a corporation that is not a publicly held corporation at the time the action is commenced

and in which one or more of the circumstances described in that subdivision is established, the court, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, may order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under the circumstances of the case.

- a. The purchase price of any shares so sold must be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court. However, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms as set forth, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.
- b. Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under subsection 6 of section 10-19.1-88.
- c. If the parties are unable to agree on fair value within forty days of entry of the order, the court shall determine the fair value of the shares under the provisions of subsection 10 of section 10-19.1-88 and may allow interest or costs as provided in subsections 1 and 11 of section 10-19.1-88.
- d. The purchase price must be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within forty days of entry of the order, as ordered by the court. Upon entry of an order for the sale of shares under this subsection and provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus any additional costs, expenses, and fees as may be awarded, will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as may be awarded.

4.5. In determining whether to order equitable relief or dissolution, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other. For purposes of this section, any written agreement, including an employment agreement and a buy-sell agreement, between or among shareholders or between or among one or more shareholders and the corporation is presumed to reflect the parties' reasonable expectation concerning the matters dealt with in the agreement.

5.6. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of

equitable relief, a buyout, or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case when it would be appropriate under all the facts and circumstances of the case.

- 6-7. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorney's fees and disbursements, to any of the other parties.
- 7-8. Proceedings under this section must be brought in a court within the county in which the principal executive office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

**SECTION 8. AMENDMENT.** Subsection 2 of section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

- 2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection ~~5354~~ of section 10-19.1-01. 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."

Page 6, after line 19, insert:

**"SECTION 14. AMENDMENT.** Subsection 2 of section 10-35-28 of the North Dakota Century Code is amended and reenacted as follows:

- 2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection ~~5254~~ of section 10-19.1-01, the articles or the bylaws, or by a resolution approved by the affirmative vote of the required proportion or number of the directors. If the publicly traded corporation is in the hands of a receiver or trustee, it must be signed on behalf of the publicly traded 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."

Renumber accordingly

Date: 3/12-2013

Roll Call Vote #: 1

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2266**

**House Industry, Business, and Labor Committee**

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider  Consent Calendar

Motion Made By Vigesaa Seconded By Kasper

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser			Rep. Bill Amerman		
Vice Chairman Gary Sukut			Rep. Joshua Boschee		
Rep. Thomas Beadle			Rep. Edmund Gruchalla		
Rep. Rick Becker			Rep. Marvin Nelson		
Rep. Robert Frantsvog					
Rep. Nancy Johnson					
Rep. Jim Kasper					
Rep. Curtiss Kreun					
Rep. Scott Louser					
Rep. Dan Ruby					
Rep. Don Vigesaa					

Total Yes \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*proposed by Secretary Jaeger*

Date: 3-12-2013

Roll Call Vote #: 2

**2013 HOUSE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2266**

**House Industry, Business, and Labor Committee**

Legislative Council Amendment Number 13.8225.01002

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider  Consent Calendar

Motion Made By Sukut Seconded By Gruchalla

Representatives	Yes	No	Representatives	Yes	No
Chairman George Keiser	✓		Rep. Bill Amerman	✓	
Vice Chairman Gary Sukut	✓		Rep. Joshua Boschee	✓	
Rep. Thomas Beadle	✓		Rep. Edmund Gruchalla	✓	
Rep. Rick Becker		✓	Rep. Marvin Nelson	✓	
Rep. Robert Frantsvog	✓				
Rep. Nancy Johnson	✓				
Rep. Jim Kasper	✓				
Rep. Curtiss Kreun	✓				
Rep. Scott Louser	✓				
Rep. Dan Ruby	✓				
Rep. Don Vigesaa	✓				

Total Yes 14 No 0

Absent 1

Floor Assignment Louser

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**SB 2266: Industry, Business and Labor Committee (Rep. Keiser, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2266 was placed on the Sixth order on the calendar.

Page 1, line 1, replace the first "section" with "sections 10-06.1-17 and"

Page 1, line 1, after the second comma insert "section 10-19.1-01,"

Page 1, line 2, replace the second "section" with "sections"

Page 1, line 2, after "10-19.1-17" insert "and 10-19.1-115, subsection 2 of section 10-19.1-146"

Page 1, line 3, remove "and"

Page 1, line 4, after "10-34-04" insert ", and subsection 2 of section 10-35-28"

Page 1, line 5, after "corporation" insert "definitions,"

Page 1, line 6, replace "and" with a comma

Page 1, line 6, after the comma insert "involuntary dissolution,"

Page 1, after line 10, insert:

**"SECTION 1. AMENDMENT.** Section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-17. Annual report - Contents - Filing requirements.**

Before April sixteenth of each year, every corporation engaged in farming or ranching after June 30, 1981, and every limited liability company engaged in farming or ranching shall file with the secretary of state an annual report signed as provided in subsection ~~5354~~ of section 10-19.1-01 if a corporation and subsection 58 of section 10-32-02 if a limited liability company. If the corporation or limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or limited liability company by the receiver or trustee. An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this section or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this section meets the filing date requirement. An annual report must include the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.
2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the corporation or limited liability company in this state.
3. With respect to each corporation:
  - a. A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
  - b. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

4. With respect to each shareholder or member:
  - a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;
  - b. The number of shares or membership interests or percentage of shares or membership interests owned by each;
  - c. The relationship of each;
  - d. A statement of whether each is a citizen or permanent resident alien of the United States; and
  - e. A statement of whether at least one is an individual residing on or operating the farm or ranch.
5. With respect to management:
  - a. If a corporation, then the names and addresses of the officers and members of the board of directors; or
  - b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.
6. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].
7. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years or for each year of existence if less than five years.
8. A statement of the percentage of gross income of the corporation or limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.
9. A corporation engaged in farming which fails to file an annual report is subject to the penalties provided in section 10-19.1-147 except that the penalties must be calculated from the date of the report required by this section.
10. A limited liability company engaged in farming which fails to file an annual report is subject to the penalties provided in subsections 5 and 6 of section 10-32-149 except that the penalties must be calculated from the date of the report required by this section."

Page 3, after line 3, insert:

**"SECTION 4. 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;
  - (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;
  - (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
- (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 the president, the treasurer, or any other officer pursuant to section 10-19.1-52; or
  - b. Deemed elected as an officer pursuant to section 10-19.1-56.
38. "Organization":
- a. 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:
    - (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. "Publicly held corporation" means a corporation that has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78L], or is subject to section 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78o(d)].
46. "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.
- ~~46-47.~~ "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.
- ~~47-48.~~ "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.
- ~~48-49.~~ "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.
- ~~49-50.~~ "Security" has the meaning given in section 10-04-02.
- ~~50-51.~~ "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.
- ~~51-52.~~ "Share" means one of the units, however designated, into which the shareholders' proprietary interests of the shareholder in a corporation are divided.
- ~~52-53.~~ "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.
- ~~53-54.~~ "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.
- ~~54-55.~~ "Subscriber" means a person that subscribes for shares in a corporation, whether before or after incorporation.
- ~~55-56.~~ "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.
- ~~56-57.~~ "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~~.58. "Surviving organization" means the organization resulting from a merger which:
- a. May preexist the merger; or
  - b. May be created by the merger.
- ~~58~~.59. "Vote" includes authorization by written action.
- ~~59~~.60. "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."

Page 3, after line 28, insert:

**"SECTION 7. AMENDMENT.** Section 10-19.1-115 of the North Dakota Century Code is amended and reenacted as follows:

**10-19.1-115. Involuntary dissolution.**

- 1. This section applies to corporations that are not publicly held corporations.
- ~~4~~.2. A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:
  - a. In a supervised voluntary dissolution pursuant to section 10-19.1-114;
  - b. In an action by a shareholder when it is established that:
    - (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;
    - (2) The directors or those in control of the corporation have acted fraudulently or illegally toward one or more shareholders in their capacities as shareholders or directors of any corporation or as officers or employees of a closely held corporation;
    - (3) The directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of

a corporation that is not a publicly held corporation or as officers or employees of a closely held corporation;

- (4) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
- (5) The corporate assets are being misapplied or wasted; or
- (6) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-19.1-124;

c. In an action by a creditor when:

- (1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or
- (2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or

d. In an action by the attorney general to dissolve the corporation in accordance with section 10-19.1-118 when it is established that a decree of dissolution is appropriate.

2-3. In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation has accumulated or current operating profits.

3-4. In an action under subdivision b of subsection 1 involving a corporation that is not a publicly held corporation at the time the action is commenced and in which one or more of the circumstances described in that subdivision is established, the court, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, may order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under the circumstances of the case.

- a. The purchase price of any shares so sold must be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court. However, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms as set forth, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.
- b. Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under subsection 6 of section 10-19.1-88.

- c. If the parties are unable to agree on fair value within forty days of entry of the order, the court shall determine the fair value of the shares under the provisions of subsection 10 of section 10-19.1-88 and may allow interest or costs as provided in subsections 1 and 11 of section 10-19.1-88.
  - d. The purchase price must be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within forty days of entry of the order, as ordered by the court. Upon entry of an order for the sale of shares under this subsection and provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus any additional costs, expenses, and fees as may be awarded, will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as may be awarded.
- 4-5. In determining whether to order equitable relief or dissolution, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other. For purposes of this section, any written agreement, including an employment agreement and a buy-sell agreement, between or among shareholders or between or among one or more shareholders and the corporation is presumed to reflect the parties' reasonable expectation concerning the matters dealt with in the agreement.
- 5-6. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buyout, or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case when it would be appropriate under all the facts and circumstances of the case.
- 6-7. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorney's fees and disbursements, to any of the other parties.
- 7-8. Proceedings under this section must be brought in a court within the county in which the principal executive office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

**SECTION 8. AMENDMENT.** Subsection 2 of section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

- 2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection ~~5354~~ of section 10-19.1-01. 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."

Page 6, after line 19, insert:

**"SECTION 14. AMENDMENT.** Subsection 2 of section 10-35-28 of the North Dakota Century Code is amended and reenacted as follows:

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection ~~5254~~ of section 10-19.1-01, the articles or the bylaws, or by a resolution approved by the affirmative vote of the required proportion or number of the directors. If the publicly traded corporation is in the hands of a receiver or trustee, it must be signed on behalf of the publicly traded 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."

Renumber accordingly

**2013 TESTIMONY**

**SB 2266**

(1)

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SECRETARY OF STATE  
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**SECRETARY OF STATE**  
STATE OF NORTH DAKOTA  
600 EAST BOULEVARD AVENUE DEPT 108  
BISMARCK ND 58505-0500

January 28, 2013

TO: Sen. Klein, Chairman, and Members of the Senate Industry, Business and Labor Committee  
FR: Al Jaeger, Secretary of State  
RE: SB 2266 – Cooperatives, Corporations, Limited Liability Companies, and Real Estate Investment Trusts

I appreciate and thank Senator Hogue for introducing SB 2266 at the request of the Secretary of State.

When an entity is created, the entity must provide the name of a registered agent. This bill adds an additional requirement for the information that is provided on the original documents that are filed with the Secretary of State to create a domestic cooperative association, a domestic corporation, a domestic limited liability company, or a real estate investment trust filed.

It will require these domestic created organizations to include as well the address of their principal executive office in the initial documents filed with the Secretary of State. Under current law, this address information is first obtained when the entity files its first annual report. Depending on the timing, the entities first annual report may not be filed for almost two years.

The address of the entities principal executive office is information is already required for all foreign business entities and all types of domestic and foreign partnerships when their initial documents are filed.

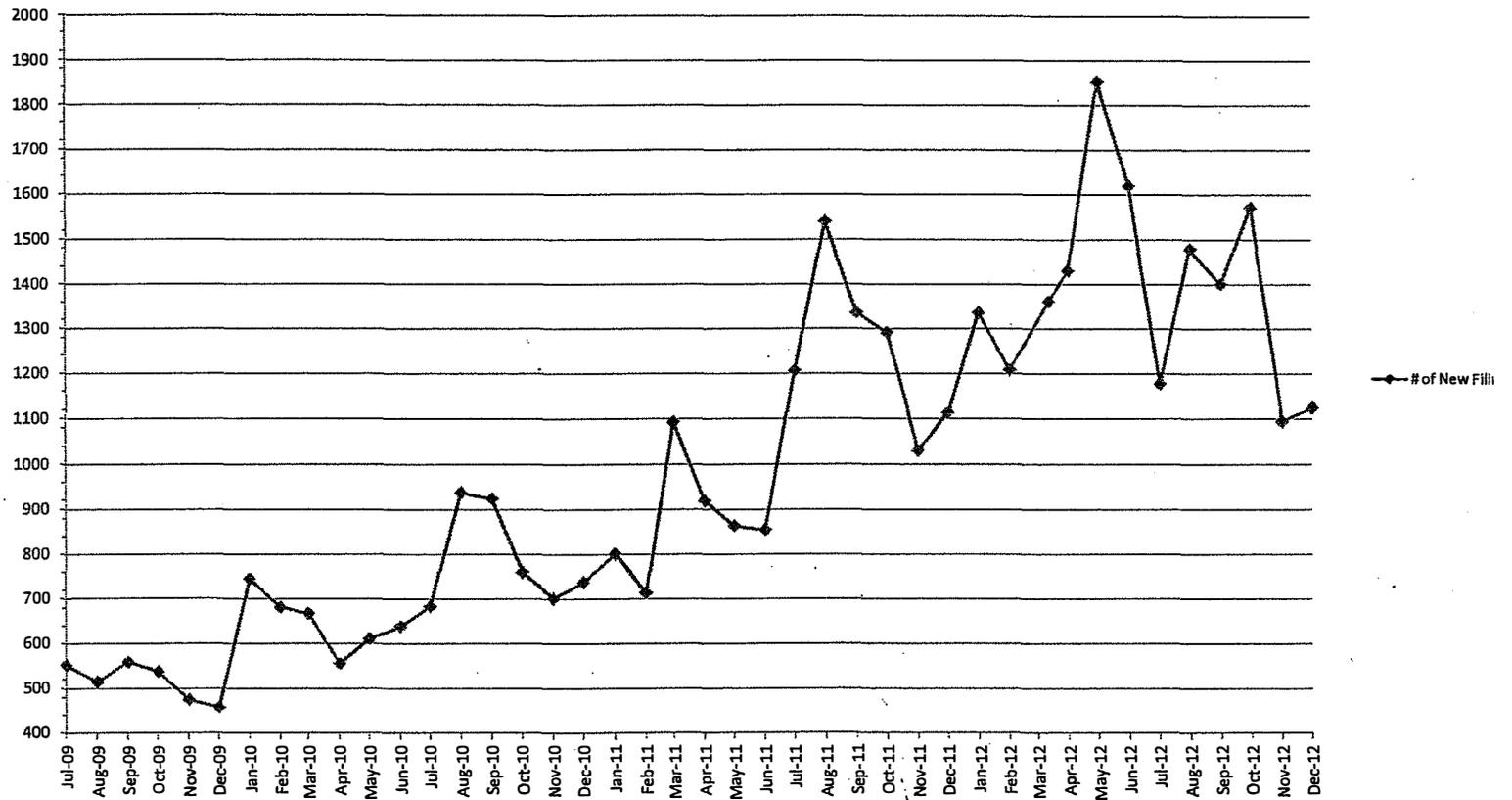
Because of the delay in obtaining the address of a domestic entity, it has become challenging. This is especially true because of the significant increase in the creation of new business organizations. When they are created, the entity's name is immediately posted on the Secretary of State's website. Then, when someone conducts a search for a newly created business entity, the website may list up to two years that the address of the principal executive office has not been reported.

Consequently, some businesses and lenders have refused to establish accounts with these businesses until that information has been provided to the Secretary of State's office. As a result, this has created an extra frustrating step for the new business and extra work for this office.

Your favorable consideration is requested.

Months	# of New Filings
Jul-09	551
Aug-09	514
Sep-09	559
Oct-09	537
Nov-09	474
Dec-09	457
Jan-10	744
Feb-10	681
Mar-10	667
Apr-10	555
May-10	610
Jun-10	638
Jul-10	683
Aug-10	937
Sep-10	923
Oct-10	759
Nov-10	701
Dec-10	736
Jan-11	801
Feb-11	713
Mar-11	1092
Apr-11	919
May-11	862
Jun-11	853
Jul-11	1206
Aug-11	1539
Sep-11	1336
Oct-11	1291
Nov-11	1030
Dec-11	1113
Jan-12	1336
Feb-12	1208
Mar-12	1361
Apr-12	1431
May-12	1851
Jun-12	1619
Jul-12	1177
Aug-12	1479
Sep-12	1401
Oct-12	1571
Nov-12	1094
Dec-12	1124

Secretary of State - # of New Filings per Month



ALVIN A. JAEGER  
SECRETARY OF STATE

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SECRETARY OF STATE  
STATE OF NORTH DAKOTA  
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BISMARCK ND 58505-0500

March 12, 2013

TO: Rep. Keiser, Chairman, and Members of the House Industry, Business and Labor Committee

FR: Al Jaeger, Secretary of State

RE: SB 2266 – Cooperatives, Corporations, Limited Liability Companies, and  
Real Estate Investment Trusts

When a business entity is created, the entity must provide the name and address of a registered agent. This bill adds an additional requirement for the information that is provided on the original documents that are filed with the Secretary of State. That is, the documents filed to create a domestic cooperative association, a domestic corporation, a domestic limited liability company, or a real estate investment trust.

The bill requires these newly created domestic organizations to include, in addition to the name and address of a registered agent, the address of their principal executive office in the initial documents filed with the Secretary of State. Under current law, the address of the principal executive office is first obtained when the new business entity files its first annual report. Depending on the timing of the registration that is filed, the entity's first annual report may not be filed for almost two years.

The address of the business entity's principal executive office is information now required for all foreign business entities and all types of domestic and foreign partnerships when their initial documents are filed.

Because of the delay in obtaining the address of the principal executive office of these domestic entities, it has created challenges. This is especially true because of the significant increase in the creation of new business organizations. When they are created, the entity's name is immediately posted on the Secretary of State's website. However, when the Secretary of State's office does not have the address of the principal executive office, it cannot be listed and the website has a notation that it has not yet been provided. That note of "no listed executive office" could exist on the website up to two years.

Consequently, because it is missing from the website, some businesses and lenders have refused to establish accounts with these new businesses until that information has been provided to the Secretary of State's office. By requiring the information up front, it will eliminate an extra frustrating step for the new businesses and provide full address disclosure on the Secretary of State's business search website.

We are also offering an amendment. After the bill was heard by the Senate IBL Committee, it was learned that the North Dakota's Business Corporation Act, Chapter 10-19.1, inadvertently still contained a provision that made it unlikely that individuals would create a publicly traded corporation under this Act. This amendment reconciles the Century Code with Measure # 1 approved by the voters in the June 8, 2004, election by a 58% to 32% margin, which amended section 6 and 9 of Article XII of the state's constitution.

Although many pages long, the amendment only makes two changes. On page 5, it adds subsection 45 to N.D.C.C. § 10-19.1-01, which is the Definitions section. Then, on page 7, it adds text, which states that the following provisions in that section do not apply to a publicly held corporation that was just defined in the new subsection 45. Together, they reconcile N.D.C.C. § 10-19.1-115 with the state's constitutional change and with the Federal Securities Exchange Act of 1934, that regulates publicly traded corporations.

When adopted, it will provide an option for publically traded corporations to become chartered in North Dakota under either the Business Corporation Act, Chapter 10-19.1, or the Publicly Traded Corporations Act, Chapter 10-35, rather than seeking incorporation under the laws on another state, notably Delaware.

① SB 2266  
3-12-13

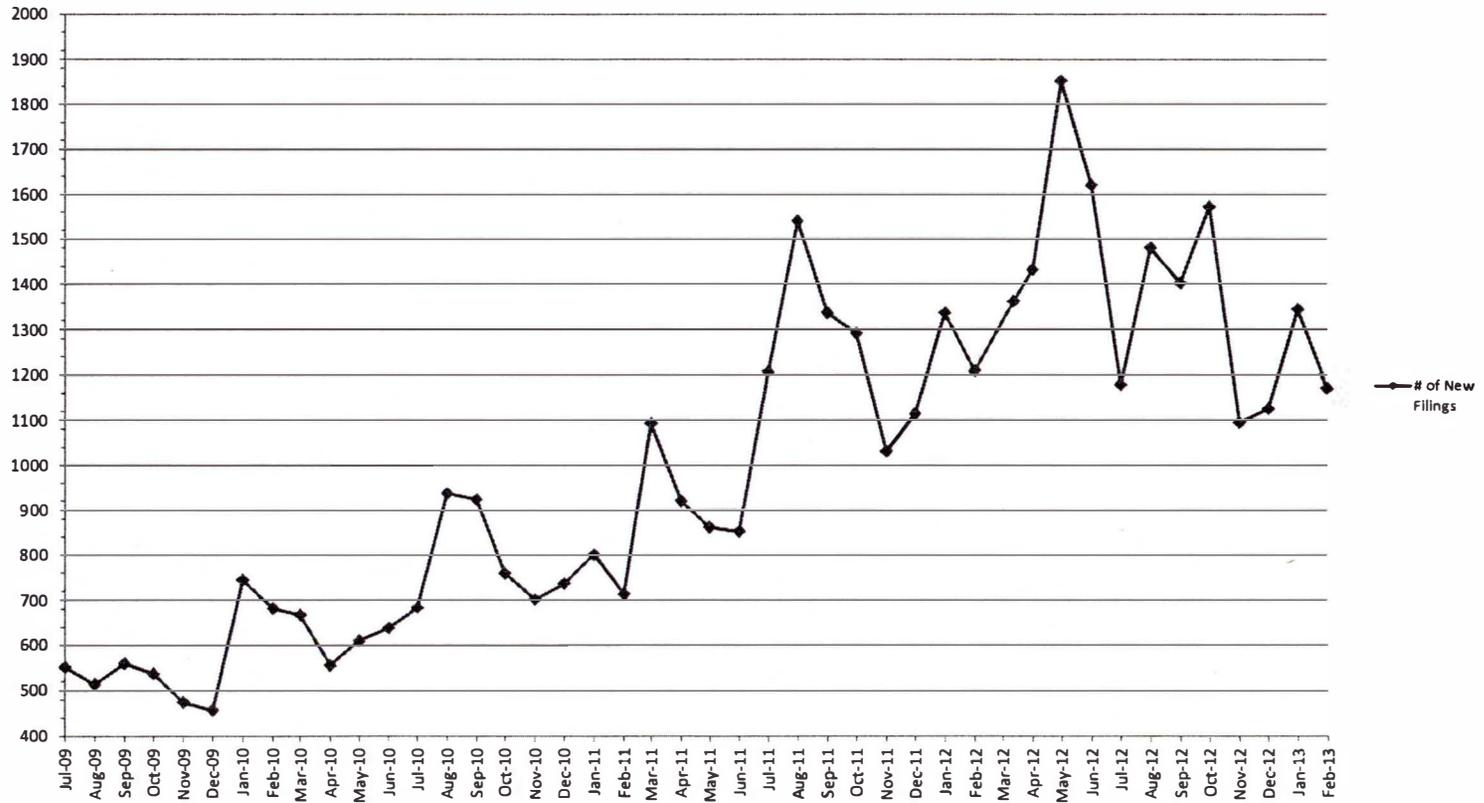
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Dec-10	736
Jan-11	801
Feb-11	713
Mar-11	1092
Apr-11	919
May-11	862
Jun-11	853
Jul-11	1206
Aug-11	1539
Sep-11	1336
Oct-11	1291
Nov-11	1030
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Jul-12	1177
Aug-12	1479
Sep-12	1401
Oct-12	1571
Nov-12	1094
Dec-12	1124
Jan-13	1343
Feb-13	1170

Secretary of State - # of New Filings per Month



PROPOSED AMENDMENTS TO SENATE BILL NO. 2266

Page 1, line 1, after "10-15-12," insert "section 10-19.1-01,"

Page 1, line 2, after "10-19.1-17," insert "section 10-19.1-115"

Page 1, line 5, after "business corporation", insert "definitions,"

Page 1, line 6, replace "and" with a comma and after the second "incorporation," insert " and involuntary dissolution,"

Page 3, after line 3, insert:

**"SECTION 3. 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;
  - (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;
  - (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
    - (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 the president, the treasurer, or any other officer pursuant to section 10-19.1-52; or
  - b. Deemed elected as an officer pursuant to section 10-19.1-56.

38. "Organization":
- a. 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:
    - (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. "Publicly held corporation" means a corporation that has a class of equity securities registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C. 78I], or is subject to the Securities Exchange Act of 1934, section 15(d), [15 U.S.C. 78o(d)].
46. "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.
- ~~46-47.~~ "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.
- ~~47-48.~~ "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.
- ~~48-49.~~ "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.
- ~~49-50.~~ "Security" has the meaning given in section 10-04-02.
- ~~50-51.~~ "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.
- ~~51-52.~~ "Share" means one of the units, however designated, into which the shareholders' proprietary interests of the shareholder in a corporation are divided.
- ~~52-53.~~ "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.
- ~~53-54.~~ "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.
- ~~54-55.~~ "Subscriber" means a person that subscribes for shares in a corporation, whether before or after incorporation.
- ~~55-56.~~ "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.
- ~~56-57.~~ "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.
- ~~57-58.~~ "Surviving organization" means the organization resulting from a merger which:
- a. May preexist the merger; or
  - b. May be created by the merger.
- ~~58-59.~~ "Vote" includes authorization by written action.
- ~~59-60.~~ "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."

Page 3, line 4, replace "SECTION 3" with "SECTION 4"

Page 3, line 17, replace "SECTION 4" with "SECTION 5"

Page 3, after line 28, insert:

**"SECTION 6. AMENDMENT.** Section 10-19.1-115 of the North Dakota Century code is amended and reenacted as follows:

**10-19.1-115. Involuntary dissolution.** With respect to a corporation which is not a publicly held corporation:

1. A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:
  - a. In a supervised voluntary dissolution pursuant to section 10-19.1-114;
  - b. In an action by a shareholder when it is established that:
    - (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and the corporation or the parties have not provided for a procedure to resolve the dispute;
    - (2) The directors or those in control of the corporation have acted fraudulently or illegally toward one or more shareholders in their capacities as shareholders or directors of any corporation or as officers or employees of a closely held corporation;
    - (3) The directors or those in control of the corporation have acted in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders or directors of a corporation that is not a publicly held corporation or as officers or employees of a closely held corporation;
    - (4) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
    - (5) The corporate assets are being misapplied or wasted; or
    - (6) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-19.1-124;
  - c. In an action by a creditor when:
    - (1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or
    - (2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or
  - d. In an action by the attorney general to dissolve the corporation in accordance with section 10-19.1-118 when it is established that a decree of dissolution is appropriate.
2. In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation has accumulated or current operating profits.
3. In an action under subdivision b of subsection 1 involving a corporation that is not a publicly held corporation at the time the action is commenced and in which one or more of the circumstances described in that subdivision is established, the court, upon motion of a corporation or a shareholder or beneficial owner of shares of the corporation, may order the sale by a plaintiff or a defendant of all shares of the corporation held by the plaintiff or

defendant to either the corporation or the moving shareholders, whichever is specified in the motion, if the court determines in its discretion that an order would be fair and equitable to all parties under the circumstances of the case.

- a. The purchase price of any shares so sold must be the fair value of the shares as of the date of the commencement of the action or as of another date found equitable by the court. However, if the shares in question are then subject to sale and purchase pursuant to the bylaws of the corporation, a shareholder control agreement, the terms of the shares, or otherwise, the court shall order the sale for the price and on the terms as set forth, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.
  - b. Within five days after the entry of the order, the corporation shall provide each selling shareholder or beneficial owner with the information it is required to provide under subsection 6 of section 10-19.1-88.
  - c. If the parties are unable to agree on fair value within forty days of entry of the order, the court shall determine the fair value of the shares under the provisions of subsection 10 of section 10-19.1-88 and may allow interest or costs as provided in subsections 1 and 11 of section 10-19.1-88.
  - d. The purchase price must be paid in one or more installments as agreed on by the parties, or, if no agreement can be reached within forty days of entry of the order, as ordered by the court. Upon entry of an order for the sale of shares under this subsection and provided that the corporation or the moving shareholders post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that the full purchase price of the shares, plus any additional costs, expenses, and fees as may be awarded, will be paid when due and payable, the selling shareholders shall no longer have any rights or status as shareholders, officers, or directors, except the right to receive the fair value of their shares plus such other amounts as may be awarded.
4. In determining whether to order equitable relief or dissolution, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other. For purposes of this section, any written agreement, including an employment agreement and a buy-sell agreement, between or among shareholders or between or among one or more shareholders and the corporation is presumed to reflect the parties' reasonable expectation concerning the matters dealt with in the agreement.
  5. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buyout, or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case when it would be appropriate under all the facts and circumstances of the case.
  6. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorney's fees and disbursements, to any of the other parties.
  7. Proceedings under this section must be brought in a court within the county in which the principal executive office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally

Renumber accordingly.