

# CORPORATIONS

## CHAPTER 109

### SENATE BILL NO. 2090

(Industry, Business and Labor Committee)  
(At the request of the Securities Commissioner)

### SECURITIES LAW REVISIONS

AN ACT to create and enact a new subsection to section 10-04-06 of the North Dakota Century Code, relating to exempt securities transactions; to amend and reenact section 10-04-04, subsections 5 and 8, paragraph 6 of subdivision b of subsection 9, and paragraph 3 of subdivision a of subsection 16 of section 10-04-06, subsection 1 of section 10-04-08.4, sections 10-04-10 and 10-04-10.1, subsection 1 of section 10-04-14, section 10-04-15, subsection 1 of section 10-04-16, and sections 10-04-16.1 and 10-04-18 of the North Dakota Century Code, relating to registration of securities, exempt transactions, federal covered securities, registration of dealers, agents, investment advisers, and investment adviser representatives, investment advisory activity, consent to service of process, fraudulent practices, the authority of the securities commissioner to conduct investigations and to issue orders, and statutes of limitation; to direct the securities commissioner to review policies and procedures regarding financing for North Dakota companies and to report to the legislative council; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 10-04-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-04-04. Registration of securities.** It is unlawful for any person to sell, or offer for sale, any security in this state unless it is registered under this chapter or the security or transaction is exempt under section 10-04-05 or 10-04-06 or it is a federal covered security.

**SECTION 2. AMENDMENT.** Subsection 5 of section 10-04-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. Any offer or sale of securities to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or similar benefit plan, or other financial institution, or qualified institutional buyer, or to a dealer, whether the purchaser is acting for itself or in a fiduciary capacity.

**SECTION 3. AMENDMENT.** Subsection 8 of section 10-04-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that:
  - a. Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics.
  - b. Such securities do not constitute an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer, its officers, or directors or by or through an underwriter.
  - c. A balance sheet of the issuer as of a date within eighteen months prior to the date of such sale and an income statement for either the fiscal year preceding that date or the most recent year of operations are contained in a securities manual.
  - d. Such securities are listed in ~~the standards~~ Standard and poor's standard corporation descriptions ~~Poor's,~~ Moody's Mergent's industrial manual, Moody's Mergent's bank and finance manual, Moody's Mergent's transportation manual, Moody's Mergent's public utility manual, or Fitch's individual stock bulletin.
  - ~~d.~~ e. Such securities are limited to issuers organized under the laws of any state, territory, or insular possession of the United States.
  - ~~e.~~ f. Provided, however, that even though the foregoing conditions might all be met, the exemption would not apply to the securities of open-end management companies, mutual funds, unit investment trusts, contractual plans, and face amount certificate companies.

**SECTION 4. AMENDMENT.** Paragraph 6 of subdivision b of subsection 9 of section 10-04-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (6) The gross proceeds of the offering may not exceed ~~one~~ five million dollars.

**SECTION 5. AMENDMENT.** Paragraph 3 of subdivision a of subsection 16 of section 10-04-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- (3) The issuer intends to register securities in this state or receive approval for an exemption under subsection 9 ~~and conduct its offering pursuant to either regulation A or rule 504, as promulgated by the securities and exchange commission.~~

**SECTION 6.** A new subsection to section 10-04-06 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

Any offer or sale of an agricultural-related cooperative security by or on behalf of an agricultural producer, as defined by section 32-44-01, to a

person for the purpose of producing and selling agricultural products, as defined by section 32-44-01, to the cooperative. Commissions or other remuneration may not be paid or given directly or indirectly for soliciting any prospective buyer in this state, except to a dealer or agent registered in this state, to an agent of a bank or a commercial trust department, to a licensed real estate agent, or to a licensed auctioneer if the sale is made at a bona fide public auction.

**SECTION 7. AMENDMENT.** Subsection 1 of section 10-04-08.4 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Any federal covered security that is subject to section 18(b)(2) of the Securities Act of 1933, as amended, may be offered and sold upon the filing of:
  - a. A copy of the issuer's registration statement or a notice of intent in writing or electronically for an indefinite or definite dollar amount for each security or class of security on a form prescribed by the commissioner ~~with a consent to service of process.~~
  - b. ~~If the notice filing is~~ A unit investment trust may file an initial notice filing for a definite dollar amount; ~~at or an indefinite dollar amount.~~ At the time of the initial notice filing for a definite dollar amount, the issuer shall pay a nonrefundable filing fee of one-tenth of one percent of the first seven hundred fifty thousand dollars and one-twentieth of one percent of any amount in excess of seven hundred fifty thousand dollars of the aggregate offering price of each security or class of security. In no event, however, may such filing fee be less than one hundred twenty-five dollars for each security or class of security.
  - c. ~~If the notice filing is for an indefinite dollar amount, at the time of the~~ An investment company or unit investment trust may file an initial notice filing ~~the issuer shall~~ for an indefinite dollar amount and pay a nonrefundable filing fee of ~~five~~ four hundred dollars for each security or class of security.
  - d. A notice filing for a definite dollar amount may be increased before the expiration ~~of one year from the date of~~ on the certificate of effectiveness at the same reduced fee, which must be calculated as provided in subdivision b as a separate fee for each additional amount.
  - e. A notice filing for a definite dollar amount may be renewed for additional periods of one year by filing, at least fifteen days prior to its expiration, a renewal and sales report notice with a fee of one hundred dollars to renew the unsold balance.
  - f. A notice filing for an indefinite dollar amount may be renewed by filing, within sixty days following the issuer's fiscal year, a renewal and sales report notice with a fee of ~~one-twentieth of one percent of the amount of securities sold in this state during the period of the notice filing being renewed~~ one hundred twenty-five dollars. ~~In no case may such fee be less than one hundred dollars nor more than two hundred fifty dollars.~~

- g. A notice filing may be terminated by the issuer upon providing the commissioner a notice of such termination.
- h. The provision for each security or class of security in this subsection is effective when the federal registration statement becomes effective with the securities and exchange commission or the date the notice of intent is received by the commissioner, whichever is later. A filing notice for a definite dollar amount is effective for a period of ~~one year~~ eighteen months from the date of effectiveness.
- i. A copy of any document filed with the securities and exchange commission as the commissioner may require.

**SECTION 8. AMENDMENT.** Section 10-04-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-04-10. Registration of dealers, agents, investment advisers, and investment adviser representatives - Notice filings by federal covered advisers.**

A dealer or agent may not offer for sale or sell any securities within or from this state, except in transactions exempt under section 10-04-06, unless registered as a dealer or agent pursuant to the provisions of this section.

1. Dealers. Application for registration as a dealer may be made by any person eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed in the office of the commissioner, and must contain ~~the following~~ information: the commissioner determines to be necessary concerning the applicant.
  - a. ~~The name of the applicant.~~
  - b. ~~The address of the principal place of business of the applicant and the addresses of all branch offices, if any, of the applicant in this state.~~
  - c. ~~The form of business organization and the date of organization of the applicant.~~
  - d. ~~The names and business addresses of all members, partners, officers, directors, trustees, or managers of the applicant; a statement of the limitations, if any, of the liability of any partner, member, manager, or trustee; and a statement setting forth in chronological order the occupational activities of each such partner, member, officer, director, trustee, or manager during the preceding ten years.~~
  - e. ~~A brief description of the general character of the business conducted or proposed to be conducted by the applicant.~~
  - f. ~~A list of any other states in which the applicant is registered as a dealer, and, if registration of the applicant as a dealer has ever been refused, canceled, suspended, or withdrawn in any state, full details with respect thereto.~~

- g. Whether the applicant is registered as a dealer under the Securities Exchange Act of 1934 or any act in amendment thereof and whether any such registration of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension by the securities and exchange commission.
- h. The names of all organizations of dealers or brokers of which the applicant is a member or before which any application for membership on the part of the applicant is then pending, and whether any such membership of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
- i. The names of any securities exchange of which the applicant or any of its partners, officers, directors, trustees, members, managers, or employees is a member, and whether any such membership has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
- j. A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant, or by a responsible officer or member of said applicant as the commissioner may require. A dealer that is registered under the Securities Exchange Act of 1934 may satisfy this requirement by filing with the commissioner the dealer's most recent financial statements prepared under such Act.
- k. Whether the applicant or any officer, director, partner, member, trustee, or manager of the applicant, has ever been convicted of a felony or any misdemeanor other than minor highway traffic offenses and, if so, all pertinent information with respect to any such conviction.
- l. Any other information which the commissioner may by rule or order require.

The commissioner may also require such additional information relating to the applicant and as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees as the commissioner deems necessary to establish whether or not the applicant should be registered as a dealer under the provisions of this law.

There must be filed with such application a written consent to the service of process upon the commissioner in actions against such dealer, conforming to the requirements of section 10-04-14, and payment of the prescribed registration fee, which must be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as a dealer unless the commissioner finds that the applicant is not of good business

reputation, or is not solvent, or ~~does~~ the applicant's designees do not appear qualified by training, examination or experience to act as on behalf of a dealer in securities.

Except as prohibited by the Securities Exchange Act of 1934, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the dealer and the dealer's agents with all the provisions of this law and for the faithful performance and payment of all obligations of the dealer and the dealer's agents.

The bond must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect purchasers. Any such bond must have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a dealer, the commissioner shall notify the applicant of such registration.

2. Agent. Application for registration as an agent may be made by any individual eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant and by the registered dealer or issuer employing or proposing to employ such applicant, duly verified by oath, must be filed in the office of the commissioner and must contain ~~the following~~ the following information: the commissioner determines to be necessary concerning the applicant.
  - a. ~~Name and residence and business address of the applicant.~~
  - b. ~~Name of the dealer or issuer employing or proposing to employ the applicant, unless the applicant is to be self-employed.~~
  - c. ~~Applicant's date of birth.~~
  - d. ~~All full and part-time work, self-employment, military service, unemployment and full-time education for the period of ten years immediately preceding the date of application. For all employment, include the nature of the employment and the names and addresses of employers of the applicant.~~
  - e. ~~A list of the states or other jurisdictions with which the applicant is registered as a dealer or agent of securities, and, if any such registration has ever been refused, canceled, limited, suspended, or revoked, full details with respect thereto.~~
  - f. ~~Whether the applicant has ever been convicted of or pled guilty or nolo contendere in a domestic, foreign, or military court to a felony or misdemeanor and all pertinent information with respect to any such conviction or plea.~~

The commissioner shall require as a condition of registration that the applicant, and, in the case of a corporation, limited liability company, or partnership, all officers, directors, managers, governors, or partners doing securities business in this state, pass a written examination as evidence of knowledge of the securities business; provided, that not more than two officers or managers of an issuer may be registered as

an agent for a particular original offering of the issuer's securities without being required to pass such written examination; and provided, further, that no such officer or manager may again register within three years as such agent for this or any other issuer without passing the written examination.

The commissioner may also require such additional information as to the applicant's previous business experience as the commissioner deems necessary to determine whether or not the applicant should be registered as an agent under the provisions of this law. If an agent proposes to be self-employed, the agent shall specifically state the particular security or securities the agent proposes to sell in this state in the application, and if said security or securities are exempt under section 10-04-05, or 10-04-06, or have been registered by description under section 10-04-07, or have been registered by announcement under section 10-04-07.1, or have been registered by qualification under section 10-04-08, then the commissioner ~~shall~~ may require that said self-employed agent file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed agent with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond must be in a form approved and in the amount required by the commissioner. ~~There must be filed with such application payment of the prescribed registration fee, which must be returned if registration is refused.~~

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an agent unless the commissioner finds that such applicant is not of good business reputation, or that the dealer named on the application is not a registered dealer. When the commissioner has registered an applicant as an agent, the commissioner shall immediately notify the dealer of such registration.

Every registered dealer or issuer shall promptly notify the commissioner of the termination of the employment by the dealer or issuer of a registered agent.

3. Investment advisers.
  - a. It is unlawful for any person to transact business in this state as an investment adviser unless:
    - (1) The person is registered under this chapter;
    - (2) The person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, federal covered advisers, dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner; or

- (3) Such person is registered either under the laws of the state where its principal place of business is located or with the securities and exchange commission, if the investment adviser has no place of business in this state and, during the preceding twelve-month period has had not more than six clients, other than those specified in paragraph 2, who are residents of this state.
- b. Application for registration as an investment adviser may be made by any person eighteen years of age or older. Such application for registration must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed in the office of the commissioner, and must contain the following information: the commissioner determines to be necessary concerning the applicant.
- (1) ~~Name, residence, and business address of the applicant.~~
  - (2) ~~If the applicant is a corporation, limited liability company, or association, give full information as to officers, partners, managers, and managing officers.~~
  - (3) ~~Information concerning the educational and business background and disciplinary history of all officers, directors, partners, control persons, and owners of five percent or more of the investment adviser.~~
  - (4) ~~The plan and character of business, and the proposed method of operation.~~
  - (5) ~~Such other information as may be required.~~
- e. ~~If the applicant is a foreign corporation, limited liability company, or association, it shall file with its application:~~
- (1) ~~A copy of its articles.~~
  - (2) ~~Certificate showing authorization to transact business.~~
- d. The commissioner may also require such additional information relating to the applicant and as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees, as the commissioner deems necessary to establish whether or not the applicant should be registered as an investment adviser under the provisions of this chapter.
- e. There must be filed with such application:
- (1) ~~A written consent to the service of process upon the commissioner in actions against the investment adviser conforming to the requirements of section 10-04-14.~~
  - (2) ~~Payment of the prescribed registration fee, which must be returned if registration is refused.~~

- ~~(3)~~ A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant or by a responsible officer or member of the applicant, as the commissioner may require. An investment adviser that maintains its principal place of business in a state other than this state and that is registered with and in compliance with such state's financial reporting requirements may satisfy this requirement by filing with the commissioner a copy of those financial statements, if any, that are filed by the investment adviser with the state in which it maintains its principal place of business.
- f. Except as prohibited by the Investment Advisers Act of 1940, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the investment adviser and the investment adviser's representatives with all the provisions of this law and for the faithful performance and payment of all obligations of the investment adviser and the investment adviser's representatives. The bond must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect persons in this state. Any such bond must have as surety thereon a surety company authorized to do business in this state.
- g. The commissioner may by rule or order provide for an examination to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make the person an investment adviser.
- h. When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an investment adviser unless the commissioner finds that the applicant is not of good business reputation or is not solvent.
- i. A registrant as investment adviser shall notify the commissioner of any change of address.
4. Federal covered adviser. Except with respect to a federal covered adviser whose clients are those described in paragraph 2 of subdivision a of subsection 3 or who meets the criteria of paragraph 3 of subdivision a of subsection 3, it shall be unlawful for a person to transact business in this state as a federal covered adviser unless such person has made a notice filing with the commissioner, in writing or electronically, consisting of a copy of those documents that have been filed with the securities and exchange commission as the commissioner may require by rule or otherwise and the prescribed notice filing fee.

A notice filing is effective from receipt until the following May first December thirty-first. It may be renewed by filing with the commissioner, prior to expiration, those documents filed with the securities and exchange commission as the commissioner may require by rule or otherwise, with the notice filing renewal fee.

If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the federal covered adviser shall file an amendment with the commissioner whenever such amendment is filed with the securities and exchange commission.

A notice filing may be terminated by a federal covered adviser by filing a notice of termination with the commissioner.

5. Investment adviser representatives. Application for registration as an investment adviser representative may be made by any person eighteen years of age or older. The application for registration must be submitted in writing or electronically in a form prescribed by the commissioner, be signed by the applicant and if applicable, by the investment adviser employing or proposing to employ the applicant, be duly verified by oath, be filed in the office of the commissioner, and contain ~~the following information: the commissioner determines to be necessary concerning the applicant.~~
  - a. ~~Name, residence, and business address of the applicant.~~
  - b. ~~Name of the investment adviser employing or proposing to employ the applicant, unless the applicant is to be self-employed.~~
  - c. ~~Applicant's date of birth.~~
  - d. ~~All full-time and part-time work, self-employment, military service, unemployment and full-time education for the period of ten years immediately preceding the date of application. For all employment, include the nature of the employment and the names and addresses of employers of the applicant.~~
  - e. ~~A list of the states or other jurisdictions with which the applicant is registered as an investment adviser representative, and, if any registration has ever been refused, canceled, limited, suspended, or revoked, full details with respect thereto.~~
  - f. ~~Whether the applicant has ever been convicted of or pled guilty or nolo contendere in a domestic, foreign, or military court to a felony or misdemeanor and all pertinent information with respect to any such conviction or plea.~~

~~There must be filed with the application payment of the prescribed registration fee, which must be returned if registration is refused.~~

When an applicant has fully complied with the provisions of this subsection, the commissioner may register the applicant as an investment adviser representative unless the commissioner finds that: the applicant is not of good business reputation; that the investment adviser named in the application is not a registered investment adviser; or the federal covered adviser named in the application has not made a notice filing with the commissioner. When the commissioner has registered an applicant as an investment adviser representative, the commissioner shall immediately notify the investment adviser or the federal covered adviser, as applicable, of such registration.

Every registered investment adviser shall promptly notify the commissioner of the termination of the employment by the adviser of a registered investment adviser representative. Every registered investment adviser representative employed by a federal covered adviser or the federal covered adviser shall promptly notify the commissioner of the termination of such employment. The registration of the investment adviser representative is automatically suspended from the time of termination of employment until such time as the representative is registered by the commissioner as a representative of another investment adviser or federal covered adviser.

The commissioner may by rule or order provide for an examination to be taken by the applicant.

6. Refusal of registration. If the commissioner has reason to believe there are grounds to refuse the approval of any application under this section, the commissioner may, by order, summarily postpone the approval of any application made under this section. If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-04-12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, the commissioner shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order must be mailed to the applicant at the applicant's business address, and if the application is for registration as an agent, to the registered dealer or issuer or if the application is for registration as an investment adviser representative to the investment adviser or federal covered adviser who proposed to employ such applicant. If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a dealer's, agent's, investment adviser's, or investment adviser representative's registration under section 10-04-11, such act or omission may constitute a sufficient ground for a finding by the commissioner that such applicant is not of good business reputation.
7. Record and renewal of registrations. The names and addresses of all persons who have been registered as dealers, agents, investment advisers, or investment adviser representatives, and all orders with respect thereto, and the names and addresses of all federal covered advisers who have made a notice filing must be recorded in a register of dealers, agents, investment advisers, federal covered advisers, and investment adviser representatives in the office of the commissioner. Every registration ~~and notice filing~~ under this section expires on May first of each year, except for the registration of an investment adviser and investment adviser representative which will expire on December thirty-first of each year, unless renewed. The commissioner may by ~~rule~~ order provide for expirations and renewals, including dates, forms, and procedures, adjust registration and notice filing fees to correspond with expiration dates, and do any other thing which may be necessary or convenient in order to participate in a central registration depository or any similar arrangement designed to promote uniformity, to ease regulatory burdens, or to encourage cooperation with other states, the securities and exchange commission, or any registered national securities association or exchange.

8. Fees. The fee, which must accompany the application, for registration, transfer, or notice filing, and for each annual renewal thereof is:
  - a. For each dealer \$200.00
  - b. For each agent \$60.00
  - c. For each investment adviser or federal covered adviser \$100.00
  - d. For each investment adviser representative \$50.00

An application to register as a dealer, agent, investment adviser, or investment adviser representative may, with the consent of the commissioner, be withdrawn upon written application, but in no event may any registration fees be returned.

**SECTION 9. AMENDMENT.** Section 10-04-10.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-04-10.1. Advisory activities.**

1. It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
  - a. To employ any device, scheme, or artifice to defraud the other person; or
  - b. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.
2. It is unlawful for any person, in the solicitation of a client for investment advisory services, to make any false or misleading statement of material fact, or to fail to disclose a material fact.
3. It is unlawful for any person who provides investment advisory services subject to the provisions of this chapter to knowingly sell any security to or purchase any security from a client while acting for the person's own account or as a broker for another client unless the person first makes a written disclosure to the client of the capacity in which the person is acting and obtains the client's written consent to the transaction.
4. It is unlawful for any person who provides investment advisory services subject to the provisions of this chapter to engage in dishonest or unethical practices as the commissioner may define by rule.
5. It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing that:
  - a. The investment adviser shall not be compensated on the basis of a share of capital gains, earnings, or capital appreciation of the funds or any portion of the funds of the client. This does not prohibit an investment advisory contract that provides for compensation based

on the total value of a fund determined as of a definite date or averaged as of definite dates or over a definite period.

- b. An assignment of the investment advisory contract may not be made by the investment adviser unless the investment adviser notifies the client of the intended assignment and obtains the prior written consent of the client.
  - c. The investment adviser shall provide written notice to the client within fifteen days of any change of ownership in excess of five percent.
  - d. The investment adviser shall provide written notice to the client within fifteen days of a change of controlling interest of the investment adviser. The client may terminate the investment advisory contract without penalty by providing a written notice to the investment adviser within thirty days after the client's receipt of the notice of change of controlling interest.
6. It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:
- a. ~~The commissioner by rule prohibits custody; or~~
  - b. ~~The investment adviser fails to notify the commissioner that unless the investment adviser has or may have custody acts as a fiduciary pursuant to duties as an executor, guardian, conservator, receiver, or trustee.~~
7. ~~No action may be brought under this section by the commissioner after six years from the date of the alleged violation.~~

**SECTION 10. AMENDMENT.** Subsection 1 of section 10-04-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Every applicant for registration under this chapter, every issuer which proposes to offer a security in this state through any person acting on an agency basis in the common-law sense, and every person making a notice filing under ~~this chapter~~ subsection 2 of section 10-04-08.4 shall file with the commissioner, in such form as the commissioner prescribes, an irrevocable consent appointing the commissioner or the commissioner's successor in office to be the applicant's attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. A person who has filed such a consent in connection with a previous registration or notice filing need not file another. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by the commissioner, forthwith sends notice of the service and a copy of the process by registered or certified mail to the defendant or respondent at the defendant's or respondent's last address on file with the commissioner, and the

plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

**SECTION 11. AMENDMENT.** Section 10-04-15 of the North Dakota Century Code is amended and reenacted as follows:

**10-04-15. Fraudulent practices.** It shall be a fraudulent practice and it shall be unlawful:

1. For any person knowingly to subscribe to, or make or cause to be made, any material false statement or representation in any application, financial statement, or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact in any such document or statement which is necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.
2. For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to employ any device, scheme, or artifice to defraud.
3. For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.
4. For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to engage in any act, practice, or course of business which operates or would operate as a fraud or deception upon purchasers or the public.
5. For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to effect a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase of the security.
6. ~~No action may be brought under this section by the commissioner after six years from the date of the alleged violation.~~

**SECTION 12. AMENDMENT.** Subsection 1 of section 10-04-16 of the North Dakota Century Code is amended and reenacted as follows:

1. Issue any order including cease and desist, rescission, stop, and suspension orders, which the commissioner deems necessary or appropriate in the public interest or for the protection of investors. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty against any person found in an administrative action to have violated any provision of this chapter, or any rule or order adopted or issued under this chapter, in an amount not to exceed ten thousand dollars for each violation. The commissioner may bring actions to recover penalties pursuant to this section in district court. A person aggrieved by an order issued pursuant to this subsection may request a hearing before the

commissioner if a written request is made within ten days after receipt of the order. Subsections 2, 3, and 4 of section 10-04-12 apply to any hearing conducted under this subsection. If, after a hearing, the commissioner sustains an order previously issued, the sustaining order is subject to appeal to the district court of Burleigh County by serving on the commissioner within twenty days after the date of entry of the sustaining order a written notice of appeal signed by the appellant stating:

- a. The order of the commissioner from which the appeal is taken.
- b. The grounds upon which a reversal or modification of the order is sought.
- c. A demand for a certified transcript of the record of the order.

<sup>50</sup> **SECTION 13. AMENDMENT.** Section 10-04-16.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-04-16.1. Investigations and subpoenas.**

1. The commissioner may:
  - a. Make such public or private investigations within or outside of this state as the commissioner deems necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. ~~Any investigation under this section may include an investigatory hearing held in accordance with section 28-32-08.~~ In the discretion of the commissioner, the expense reasonably attributed to an investigation under this section must be paid by the dealer, agent, investment adviser, or investment adviser representative whose affairs are investigated.
  - b. Require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated.
  - c. Publish information concerning any violation of this chapter or any rule or order hereunder, and may keep confidential the information or documents obtained or prepared in the course of any investigation conducted under this section but only during an active and ongoing investigation. If an investigation under this section extends beyond six months, the commissioner shall, upon a request by any party, state in writing that the need for confidentiality still exists, the general reason why the need exists, and the date, as can best be determined at the time, when the need for confidentiality will cease.

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<sup>50</sup> Section 10-04-16.1 was also amended by section 4 of House Bill No. 1030, chapter 293.

2. For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.
3. The commissioner may issue subpoenas in this state at the request of a securities agency or administrator of another state if the activities constituting an alleged violation for which information is sought would be a violation of this chapter if the activities had occurred in this state.
4. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court, upon application by the commissioner, may issue to the person an order requiring the person to appear before the commissioner, or the officer designated by the commissioner, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.
- ~~4.~~ 5. No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by the commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence, documentary or otherwise, required of the person may tend to incriminate the person or subject the person to a penalty or forfeiture. No testimony or evidence, documentary or otherwise, compelled from an individual after a valid claim of the privilege against self-incrimination has been made may be used against the individual in any criminal proceeding, or in any proceeding to subject the individual to a penalty or forfeiture, except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

**SECTION 14. AMENDMENT.** Section 10-04-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-04-18. Penalties.**

1. Any person who willfully violates any provision of this chapter, except section 10-04-08.4 or subsection 4 of section 10-04-10, or any rule or order of the commissioner made pursuant to the provisions of this chapter, or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful shall be guilty of a class B felony.
2. As used in this section, the term "willfully", except as it applies to subdivisions a and b of subsection 1 of section 10-04-10.1 and subsections 2 and 4 of section 10-04-15, means that the person acted intentionally in the sense that the person was aware of what the person was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required.

3. Each violative act or omission constitutes a separate offense, and a prosecution or conviction for any one offense shall not bar a prosecution or conviction for any other offense.
4. An information must be filed or an indictment must be found under this chapter within five years after the alleged violation.
5. No action may be brought under this chapter by the commissioner after five years from the date that the commissioner knew or reasonably should have known about the facts that are the basis for the alleged violation. This subsection does not apply to any action under sections 10-04-09, ~~10-04-10.1~~, and 10-04-11, and ~~10-04-15~~.

**SECTION 15. SECURITIES COMMISSIONER REVIEW OF POLICIES AND PROCEDURES.** During the 2001-02 interim, the securities commissioner shall conduct a review of policies and procedures relating to access to capital for North Dakota companies, with the goal of increasing North Dakota companies' access to capital investment. Before August 1, 2002, the securities commissioner shall report the commissioner's findings and any recommendations to the legislative council.

**SECTION 16. EMERGENCY.** Sections 6 and 8 of this Act are declared to be an emergency measure.

Approved April 17, 2001  
Filed April 17, 2001

## CHAPTER 110

### SENATE BILL NO. 2185

(Senators Tomac, Stenehjem, Wardner)  
(Representatives Drovdal, Nelson, Schmidt)

## PAYMENTS IN LIEU OF TAXES BY NONPROFIT ORGANIZATIONS

AN ACT to amend and reenact section 10-06.1-10 of the North Dakota Century Code, relating to payments in lieu of taxes on farmland or ranchland acquired by nonprofit organizations for conservation purposes; and to provide an effective date.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>51</sup> **SECTION 1. AMENDMENT.** Section 10-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**10-06.1-10. Acquisition of certain farmland or ranchland by certain nonprofit organizations.** A nonprofit organization may acquire farmland or ranchland only in accordance with the following:

1. Unless it is permitted to own farmland or ranchland under section 10-06.1-09, the nonprofit organization must have been either incorporated in this state or issued a certificate of authority to do business in this state before January 1, 1985, or, before January 1, 1987, have been incorporated in this state if the nonprofit organization was created or authorized under Public Law No. 99-294 [100 Stat. 418]. A nonprofit organization created or authorized under Public Law No. 99-294 [100 Stat. 418] may acquire no more than twelve thousand acres [4856.228 hectares] of land from interest derived from state, federal, and private sources held in its trust fund.
2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:
  - a. The land must be maintained and managed for the purpose of conserving natural area and habitat for biota.
  - b. Any agricultural use of the land is in accordance with the management of the land for conservation and agricultural use, and is by a sole proprietorship or partnership, or a corporation or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.
  - c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.

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<sup>51</sup> Section 10-06.1-10 was also amended by section 1 of House Bill No. 1053, chapter 111.

- d. The nonprofit organization must fully comply with all state laws relating to the control of noxious and other weeds and insects.
  - e. The nonprofit organization must make payments in lieu of property taxes on the property, calculated in the same manner as if the property was subject to full assessment and levy of property taxes.
3. Before any farmland or ranchland may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and recreation department, the state engineer, the commissioner of agriculture, the state forester, the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, and the manager of the Garrison Diversion Conservancy District for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within forty-five days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.
  4. Land acquired in accordance with this section may not be conveyed to the United States or any agency or instrumentality of the United States.
  5. On failure to qualify to continue ownership under subsection 2, the land must be disposed of within five years of that failure to qualify.

**SECTION 2. EFFECTIVE DATE.** This Act is effective for taxable years beginning after December 31, 2000.

Approved March 14, 2001  
Filed March 15, 2001

## CHAPTER 111

### HOUSE BILL NO. 1053 (Representative Boucher)

## PROPERTY ACQUISITION BY NONPROFIT ORGANIZATIONS

AN ACT to amend and reenact subsection 3 of section 10-06.1-10 of the North Dakota Century Code, relating to acquisition of farmland or ranchland by nonprofit organizations.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>52</sup> **SECTION 1. AMENDMENT.** Subsection 3 of section 10-06.1-10 of the North Dakota Century Code is amended and reenacted as follows:

3. Before ~~any~~ farmland or ranchland may be purchased by ~~any~~ a nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and recreation department, ~~the state engineer, the commissioner of agriculture commissioner,~~ the state forester, the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, and the ~~manager of the Garrison Diversion Conservancy District for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees~~ chairman of the county commission of any county affected by the acquisition. The advisory committee shall hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within forty-five days after receipt of the proposed acquisition plan. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

Approved March 14, 2001  
Filed March 15, 2001

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<sup>52</sup> Section 10-06.1-10 was also amended by section 1 of Senate Bill No. 2185, chapter 110.

## CHAPTER 112

### SENATE BILL NO. 2142

(Industry, Business and Labor Committee)  
(At the request of the Secretary of State)

## CORPORATION AND LLC LAW REVISIONS

AN ACT to amend and reenact subsections 10 and 11 of section 10-19.1-01, subsection 6 of section 10-19.1-10, subsection 2 of section 10-19.1-19, subsections 1 and 3 of section 10-19.1-31, subsection 2 of section 10-19.1-51, subsection 4 of section 10-19.1-61.1, subsection 3 of section 10-19.1-64, subsections 1 and 2 of section 10-19.1-83, subsections 1 and 3 of section 10-19.1-87, subsection 7 of section 10-19.1-91, subsections 1 and 3 of section 10-19.1-98, section 10-19.1-100, subsection 2 of section 10-31-13, subsection 8 of section 10-31-13.1, subsections 9, 15, and 29 of section 10-32-02, subsection 2 of section 10-32-07, subsection 1 of section 10-32-23, subsection 4 of section 10-32-30, subsection 7 of section 10-32-32, subsection 2 of section 10-32-35, subsection 2 of section 10-32-42, subsection 1 of section 10-32-43, sections 10-32-44 and 10-32-50, subsection 1 of section 10-32-54, subsection 1 of section 10-32-59, section 10-32-62, subsection 1 of section 10-32-68, subsection 1 of section 10-32-69, section 10-32-70, subsection 1 of section 10-32-76, subsection 3 of section 10-32-78, subsection 4 of section 10-32-80, section 10-32-82, subsection 5 of section 10-32-86, subsection 2 of section 10-32-87, subsection 1 of section 10-32-89, subsection 7 of section 10-32-99, subsections 1, 2, and 3 of section 10-32-102, sections 10-32-104 and 10-32-109, subsections 2 and 3 of section 10-32-119, subsection 1 of section 10-32-131, and subdivision t of subsection 1 of section 10-32-150 of the North Dakota Century Code, relating to business corporations, professional corporations, and limited liability companies.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsections 10 and 11 of section 10-19.1-01 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

10. "Constituent corporation" means a ~~domestic or~~ corporation or a foreign corporation that is a party to a merger or an exchange:
  - a. In a merger, is either the surviving corporation or a corporation that is merged into the surviving organization; or
  - b. In an exchange, is either the acquiring corporation or a corporation whose shares are acquired by the acquiring organization.
  
11. "Constituent organization" means a corporation, foreign corporation, ~~or a domestic limited liability company,~~ or foreign limited liability company that is a party to a merger or an exchange:
  - 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.

**SECTION 2. AMENDMENT.** Subsection 6 of section 10-19.1-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

**SECTION 3. AMENDMENT.** Subsection 2 of section 10-19.1-19 of the North Dakota Century Code is amended and reenacted as follows:

2. A resolution approved by the affirmative vote of a majority of the directors present, or proposed by a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the shareholders of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the shareholders and voted upon at one meeting, but the same or substantially the same amendment proposed by a shareholder or shareholders need not be submitted to the shareholders or be voted upon at more than one meeting during a fifteen-month period, except that if a corporation is registered or reporting under the federal securities laws, the provisions of this sentence do not apply to the extent that these provisions are in conflict with the federal securities laws or rules adopted under those laws. The resolution may amend the articles in their entirety to restate and supersede the original articles and all amendments to them. ~~The provisions of this subsection regarding shareholder proposed amendments do not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules promulgated thereunder, in which case the federal securities laws or rules promulgated thereunder govern.~~

**SECTION 4. AMENDMENT.** Subsections 1 and 3 of section 10-19.1-31 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A corporation may, but need not, have bylaws. Bylaws may contain any provision relating to the management or the regulation of the affairs of the corporation not inconsistent with section 10-19.1-32 or any other provision of law or the articles.
3. Unless the articles or bylaws provide otherwise, a shareholder or shareholders holding five percent or more of the voting power of the shares entitled to vote may propose a resolution for action by the shareholders to adopt, amend, or repeal bylaws adopted, amended, or repealed by the board.
  - a. The resolution must set forth the provisions proposed for adoption, amendment, or repeal.

- b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2, 3, and 4 of section 10-19.1-19, for amendment of the articles.
- c. ~~The provisions of this subsection regarding shareholder proposed amendments shall not apply to a corporation registered or reporting under the federal securities laws, to the extent that those provisions are in conflict with the federal securities laws or rules in which case the federal securities laws or rules shall govern.~~
- d. The articles or bylaws may impose different or additional requirements for the shareholders to adopt, amend, or repeal the bylaws.

**SECTION 5. AMENDMENT.** Subsection 2 of section 10-19.1-51 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 2. The contract or transaction described in subsection 1 is not void or voidable if:
  - a. The contract or transaction was, and the person asserting the validity of the contract or transaction was, fair and reasonable as to the corporation at the time it was authorized, approved, or ratified;
  - b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the shareholders holders of all outstanding shares, whether or not entitled to vote, and the contract or transaction is approved in good faith by:
    - (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors; or
    - (2) The unanimous affirmative vote of the holder of all outstanding shares, whether or not entitled to vote;
  - c. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the board or committee, but the interested director or directors shall not be counted in determining the presence of a quorum and shall not vote; or
  - d. The contract or transaction is a distribution described in subsection 1 of section 10-19.1-92 or a merger or exchange described in subsection 1 or 2 of section 10-19.1-96.

**SECTION 6. AMENDMENT.** Subsection 4 of section 10-19.1-61.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 4. Subject to the restrictions provided in subsections 2 and 3 or any restrictions in the articles that states that this subsection does not apply,

a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 10-19.1-19 and 10-19.1-20. In effecting a division or combination under this subsection, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.

**SECTION 7. AMENDMENT.** Subsection 3 of section 10-19.1-64 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. A corporation may issue rights to purchase after the terms, provisions, and conditions of the rights to purchase to be issued, including the conversion basis or the price at which securities may be purchased or subscribed for, are fixed by the board or by an officer pursuant to board authorization, subject to any restrictions in the articles.

**SECTION 8. AMENDMENT.** Subsections 1 and 2 of section 10-19.1-83 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A written agreement ~~solely~~ among the shareholders of a corporation and the subscribers for shares to be issued, relating to the control of any phase of the business and affairs of the corporation, its liquidation and dissolution, or the relations among shareholders of or subscribers to shares of the corporation is valid and specifically enforceable as provided in subsections 2 and 3. The agreement may also include as parties persons who are neither shareholders or subscribers.
2. A written agreement ~~among persons~~ as described in subsection 1 which relates to the control of or the liquidation and dissolution of the corporation, the relations among ~~them~~ the shareholders and subscribers, or any phase of the business and affairs of the corporation, including the management of its business, the declaration and payment of distributions, the election of directors or officers, the employment of shareholders and others by the corporation, or the arbitration of disputes, is valid and specifically enforceable, if the agreement is signed by all persons who, on the date the agreement first became effective, are then the shareholders of the corporation, whether or not the shareholders all have voting shares, and the subscribers for shares, whether or not voting shares, to be issued. A written agreement as described in subsection 1 may provide for its amendment through nonunanimous means.

**SECTION 9. AMENDMENT.** Subsections 1 and 3 of section 10-19.1-87 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

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

- a. An amendment of the articles that materially and adversely affects the rights or preferences of the shares of a dissenting shareholder in that it:
    - (1) Alters or abolishes a preferential right of the shares;
    - (2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of shares;
    - (3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares; or
    - (4) Excludes or limits the right of a shareholder to vote on a matter, or to accumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights;
  - b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation, but not including a transaction permitted without shareholder approval in subsection 1 of section 10-19.1-104, or a disposition in dissolution described in subsection 2 of section 10-19.1-109 or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;
  - c. A plan of merger to which the corporation is a party, except as provided in subsection 3;
  - d. A plan of exchange, whether under this chapter or under chapter 10-32, to which the corporation is a ~~party~~ constituent organization as the corporation whose shares will be acquired by the acquiring corporation, ~~if the shares of the shareholder are entitled to vote on the plan~~ except as provided in subsection 3; or
  - e. Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.
3. Unless the articles, the bylaws, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the shareholders of ~~the~~:
- a. The surviving corporation in a merger if the shares of the shareholder are not entitled to be voted on the merger with respect to shares of the shareholders that are not entitled to be voted on the merger and are not canceled or exchanged in the merger; or
  - b. The corporation whose shares will be acquired by the acquiring corporation in a plan of exchange with respect to shares of the

shareholders that are not entitled to be voted on the plan of exchange and are not exchanged in the plan of exchange.

**SECTION 10. AMENDMENT.** Subsection 7 of section 10-19.1-91 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. All determinations whether indemnification of a person is required because the criteria provided in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 4 must be made:
  - a. By the board by a majority of a quorum, if the directors who are at the time parties to the proceeding are not counted for determining either a majority or the presence of a quorum;
  - b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board, consisting solely of two or more directors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board including directors who are parties;
  - c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board including directors who are parties;
  - d. If a determination is not made under subdivisions a, b, and c, by the shareholders affirmative vote of the shareholders required by section 10-19.1-74, other than the shareholders who are a party to the proceeding; or
  - e. If an adverse determination is made under subdivisions a through d, or under subsection 8, or if no determination is made under subdivisions a through d, or under subsection 8, within sixty days after:
    - (1) The later to occur of the termination of a proceeding or a written request for indemnification to the corporation; or
    - (2) A request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires.

The person seeking indemnification or payment or reimbursement of expenses pursuant to this subdivision has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

**SECTION 11. AMENDMENT.** Subsections 1 and 3 of section 10-19.1-98 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A resolution containing the plan of merger or exchange must be approved by the governing board as required by section 10-19.1-46 or 10-32-83 of each constituent organization and must then be submitted at a regular or special meeting to the owners of each constituent organization, in the case of a plan of merger or the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of a plan of exchange. The plan of merger or exchange may require that it be submitted to the shareholders whether or not the board determines at any time after the board's initial approval of the plan that the plan is no longer advisable and recommends that the shareholders reject it. If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange under this subsection, written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders in the case of a domestic corporation and in the manner provided in section 10-32-40 in the case of a limited liability company. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.
  
3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series solely because the plan of merger or exchange affects a cancellation or exchange of ownership interests of the class or series if the plan of merger or exchange affects a cancellation or exchange of all ownership interests of the constituent organization of all classes and series that are outstanding immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section 10-19.1-87 or 10-32-54 in the event of the merger or exchange.

**SECTION 12. AMENDMENT.** Section 10-19.1-100 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

1. A parent owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary directly, or indirectly through related corporations or limited liability companies may merge the subsidiary into the parent or into any other subsidiary at least ninety percent of the outstanding ownership interests of each class and series of which is owned by the parent directly, or indirectly through related corporations or limited liability companies, without a vote of the owners of the parent or any subsidiary; or may merge the parent, or the parent and one or more subsidiaries into one of the subsidiaries under this section.

2. A resolution approved by the present directors of the parent as required by section 10-19.1-46 or of the present governors of the parent required by section 10-32-83 must set forth a plan of merger that contains:
  - a. The name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving constituent organization;
  - b. The manner and basis of converting the ownership interests of the subsidiary or subsidiaries or the parent into securities of the parent, subsidiary, or of another organization; or, in whole or in part, into money or other property;
  - c. If the parent is a constituent organization but is not the surviving constituent organization in the merger, a provision for the pro rata issuance of ownership interests of the surviving constituent organization to the owners of ownership interests of the parent on surrender of any ownership interests of the parent; and
  - d. If the surviving constituent organization is a subsidiary, a statement of any amendments to the articles of the surviving constituent organization that will be part of the merger.
3. If the parent is a constituent organization and is the surviving organization in the merger, it may change its corporate name, without a vote of its owners, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of a majority of the board members of the parent present. Upon the effective date of the merger, the name of the parent must be changed.
4. If the parent is a constituent organization but is not the surviving constituent organization in a merger, the resolution is not effective unless the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98 if the parent is a domestic corporation, section 10-32-102 if the parent is a limited liability company, or in accordance with the laws of the jurisdiction under which the parent is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.
4. 5. A copy of the plan of merger must be mailed to each owner, other than the parent and any subsidiary, of each subsidiary that is a constituent organization in the merger.
- ~~5.~~ 6. Articles of merger must be prepared which contain:
  - a. The plan of merger;
  - b. The number of outstanding ownership interests of each class and series of the subsidiary that is a constituent organization in the merger and the number of ownership interests of each class and series owned by the parent directly, or indirectly through related constituent organizations;

- c. The date a copy of the plan of merger was mailed to owners, other than the parent or a subsidiary, of each subsidiary that is a constituent organization in the merger; and
  - d. A statement that the plan of merger is approved by the parent under this section.
- ~~6.~~ 7. Within thirty days after a copy of the plan of merger is mailed to owners of each subsidiary that is a constituent organization to the merger or upon waiver of the mailing by the owners of all outstanding ownership interests of each subsidiary that is a constituent organization to the merger, the articles of merger must be signed on behalf of the parent and filed with the secretary of state, with the fees provided in section 10-19.1-147.
- ~~7.~~ 8. The secretary of state shall issue a certificate of merger to the surviving constituent organization or the surviving constituent organization's legal representative. The certificate must contain the effective date of the merger.
- ~~8.~~ 9. If all of the ownership interests of one or more domestic subsidiaries that is a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent organizations, immediately before the merger, the owners of each domestic subsidiary have dissenter's rights under section 10-19.1-87 or 10-32-54, without regard to subsection 3 of section 10-19.1-87 or subsection 2 of section 10-32-54, and under section 10-19.1-88 or 10-32-55. If the parent is a constituent organization but is not the surviving organization in the merger, the articles of incorporation or articles of organization of the surviving organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54, and the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, that owner of the parent has dissenter's rights as provided under section 10-19.1-87 or 10-32-54. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this section.
- ~~9.~~ 10. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-19.1-97 through 10-19.1-99 instead of this section, in which case this section does not apply.

**SECTION 13. AMENDMENT.** Subsection 2 of section 10-31-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 2. With respect to a professional organization in the form of a limited liability company:
  - a. Each limited liability company organized under this chapter shall file with the secretary of state an annual report at the time specified

for the filing of the report by chapter 10-32 giving the name and residence address of all managers, governors, and members of the organization ~~as of the thirtieth day of June next preceding~~ at the time of filing of the annual report.

- b. The report must include a statement that all governors and members holding voting membership interests who practice in this state are licensed to render the same specific professional services as those for which the limited liability company was organized. This report must be:
  - (1) Made on a form as prescribed and furnished by the secretary of state;
  - (2) Signed by the president or vice president of the limited liability company; and
  - (3) Accompanied by the filing fee prescribed in section 10-32-180.
- c. A copy of the report must be filed at the same time with the regulatory board that licenses the members described in the report. No filing fee may be charged by the regulatory board.
- d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulatory board.

**SECTION 14. AMENDMENT.** Subsection 8 of section 10-31-13.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. a. The provisions of chapter 45-22 applicable to foreign limited liability partnerships apply to a foreign professional organization rendering professional services in this state in the form of a foreign limited liability partnership. Such a foreign professional organization enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other foreign limited liability partnerships doing business in this state, except where inconsistent with the letter and purpose of the provisions of this chapter applicable to foreign professional organizations.
- b. A foreign professional organization rendering professional services in this state in the form of a foreign limited liability partnership shall include in its registration ~~or renewal registration~~ under section 45-22-03 the following information:
  - (1) The profession to be practiced by the foreign limited liability partnership;
  - (2) The names and residence addresses of all partners of the limited liability partnership who practice the profession in this state; and

- (3) In a registration, a certificate from the regulating board of the profession involved that all partners who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability partnership was formed; ~~and in a renewal registration, a statement that all partners who practice the profession in this state are licensed in this state to render the same professional service as those for which the limited liability partnership was formed.~~

**SECTION 15. AMENDMENT.** Subsections 9, 15, and 29 of section 10-32-02 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

9. "Constituent organization" means a limited liability company or a domestic or foreign corporation that ~~is a party to a merger or an exchange;~~
- 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.
15. "Domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by chapter 10-19.1.
29. "Member" means a person, with or without voting rights, reflected in the required records of a limited liability company as the owner of a membership interest in the limited liability company.

**SECTION 16. AMENDMENT.** Subsection 2 of section 10-32-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The following provisions govern a limited liability company unless modified in the articles of organization or a member-control agreement under section 10-32-50:
- a. A limited liability company has general business purposes as provided in section 10-32-04;
  - b. A limited liability company has certain powers as provided in section 10-32-23;
  - c. The power to adopt, amend, or repeal the bylaws is vested in the board of governors as provided in section 10-32-68;
  - d. A limited liability company must allow cumulative voting for governors as provided in section 10-32-76;
  - e. The affirmative vote of the greater of a majority of governors present or a majority of the minimum number of governors

constituting a quorum is required for an action of the board of governors as provided in section 10-32-83;

- f. A written action by the board of governors taken without a meeting must be signed by all governors as provided in section 10-32-84;
- g. The board may accept contributions, make contribution agreements, and make contribution allowance agreements as provided in subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59;
- h. All membership interests are ordinary membership interests entitled to vote and are of one class with no series as provided in subdivisions a and b of subsection 5 of section 10-32-56;
- i. All membership interests have equal rights and preferences in all matters not otherwise provided for by the board of governors as provided in subdivision b of subsection 5 of section 10-32-56;
- j. The value of previous contributions must be restated when a new contribution is accepted as provided in subsections 3 and 4 of section 10-32-57;
- k. A member has certain preemptive rights, unless otherwise provided by the board of governors as provided in section 10-32-37;
- l. The affirmative vote of the greater of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting or a majority of the voting power of the membership interests with voting rights constituting the minimum voting power needed for a quorum for the transaction of business is required for an action of the members, except if this chapter requires the affirmative vote of a majority of the voting power of all membership interests entitled, to vote as provided in subsection 1 of section 10-32-42;
- m. The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members as provided in section 10-32-40.1;
- n. Members share in distributions in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-60;
- o. Members share profits and losses in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-36;
- p. A written action by the members taken without a meeting must be signed by all members as provided in section 10-32-43;
- q. Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind as provided in section 10-32-62;

- r. A member is not subject to expulsion as provided in subsection 2 of section 10-32-30;
- s. Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32;
- t. ~~Unanimous~~ For a limited liability company whose existence begins before July 1, 1999, unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109;
- u. The termination of a person's membership interest has specified consequences as provided in section 10-32-30; and
- v. Restrictions apply to the assignment of governance rights as provided in section 10-32-32.

**SECTION 17. AMENDMENT.** Subsection 1 of section 10-32-23 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 1. A limited liability company has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles of organization. The articles may not limit the powers stated in subsection 3. A member-control agreement may limit the powers stated in subsections 4 through 24.

**SECTION 18. AMENDMENT.** Subsection 4 of section 10-32-30 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 4. If for any reason the continued membership of a member is terminated ~~and~~, then subject to the articles of organization and any member-control agreement:
  - a. If the termination does not result in the dissolution of the limited liability company, ~~subject to the articles of organization and any member-control agreement~~, the member whose membership has terminated loses all governance rights and will be considered merely an assignee of the financial rights owned before the termination of membership; or
  - b. If the termination does result in the dissolution of the limited liability company, ~~subject to the articles of organization and any member-control agreement~~, the member whose continued membership has terminated retains all governance rights and financial rights owned before the termination of the membership and may exercise those rights through the winding up and termination of the limited liability company.

**SECTION 19. AMENDMENT.** Subsection 7 of section 10-32-32 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. Subject to subsection 6, a member may grant a security interest in a complete membership interest or governance rights without obtaining the consent required by ~~this~~ subsection 2. However, a secured party may not take or assign ownership of governance rights without first obtaining the consent required by ~~this~~ subsection 2. If a secured party has a security interest in a member's financial rights and governance rights, including a security interest in a complete membership interest, this subsection's requirement that the secured party obtain ~~consent~~ the consents required by subsection 2 applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights.

**SECTION 20. AMENDMENT.** Subsection 2 of section 10-32-35 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If an event referred to in subsection 1 causes the termination of a member's membership interest and the termination does not result in dissolution, then subject to the articles of organization and any member-control agreement:
  - a. As provided in subsection 3 of section 10-32-30, the terminated member's interest will be considered to be merely that of an assignee of the financial rights owned before the termination of membership; and
  - b. The rights to be exercised by the legal representative of the terminated member will be limited accordingly.

**SECTION 21. AMENDMENT.** Subsection 2 of section 10-32-42 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. In any case where a class or series of membership interests is entitled by this chapter, the articles of organization, a member-control agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests as is required pursuant to subsection 1, unless the articles of organization or a member-control agreement requires a larger proportion. Unless otherwise stated in the articles, a member-control agreement or the bylaws in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 10-32-44.

**SECTION 22. AMENDMENT.** Subsection 1 of section 10-32-43 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed by all of the members entitled to vote on that action. If provided by the articles or a member-control agreement ~~so provides~~, any action may be taken by written action signed by the members who own voting power equal to

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

**SECTION 23. AMENDMENT.** Section 10-32-44 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-44. Quorum of members.**

1. A quorum for a meeting of members is the owners of a majority of the voting power of the membership interests entitled to vote at the meeting, unless a different proportion is provided in the articles of organization, a member-control agreement, or the bylaws.
2. Except as provided in subdivision b, a quorum is necessary for the transaction of business at a meeting of members.
  - a. If a quorum is not present, a meeting may be adjourned from time to time for that reason.
  - b. If a quorum has been present at a meeting and members have withdrawn from the meeting so that less than a quorum remains, the members still present may continue to transact business until adjournment.

**SECTION 24. AMENDMENT.** Section 10-32-50 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-50. Member-control agreements.**

1. A member-control agreement relating to any phase or aspect of the business and affairs of a limited liability company is valid as provided in subsection 2 and enforceable as provided in subsection 3.
  - a. A member-control agreement valid under subsection 2 may relate to, without limitation, the:
    - (1) Management of the limited liability company's business;
    - (2) Declaration and payment of distributions;
    - (3) Sharing of profits and losses;
    - (4) Election of governors or managers;
    - (5) Employment of members and others by the limited liability company;
    - (6) Relations among members and persons who have signed contribution agreements, including the termination of continued membership;
    - (7) Dissolution, termination, and liquidation of the limited liability company, including the continuation of the limited liability company's business through a successor organization or individual; and

- (8) Arbitration of disputes.
  - b. If this chapter provides that a particular result may or must be obtained through a provision in the articles of organization, other than a provision required by subsection 1 of section 10-32-07 to be contained in the articles; in the bylaws; or by an act of the board, the same result may be accomplished through a member-control agreement valid under this section or through a procedure established by a member-control agreement valid under this section.
  - c. A member-control agreement may:
    - (1) Allocate to the members authority ordinarily exercised by the board of governors;
    - (2) Allocate to the board of governors authority ordinarily exercised by the members; or
    - (3) Structure the governance of the limited liability company in any agreed fashion and may waive, in whole or in part, a member's dissenting rights under sections 10-32-54 and 10-32-55.
2. With respect to the validity of a member-control agreement:
    - a. A member-control agreement described in subsection 1 is valid if the agreement is in writing and is signed by the persons who, on the date the agreement first becomes effective, comprise:
      - (1) All members of the limited liability company, regardless of voting power; and
      - (2) All persons who are parties to contribution agreements that on that date have not yet been fully performed, regardless of whether those parties will, when members, have voting power.
    - b. A member-control agreement may also include as parties persons who are neither members nor parties to a contribution agreement.
    - c. A member-control agreement may provide for amendment of the member-control agreement through nonunanimous means.
  3. A member-control agreement valid under subsections 1 and 2 is enforceable by and against persons who are parties to the member-control agreement and is also binding upon and enforceable against persons who acquire an interest in a membership interest or in a contribution agreement having knowledge of the existence of the member-control agreement.
    - a. A signed original of the member-control agreement must be filed with the limited liability company.
    - ~~a.~~ b. The limited liability company shall note in the limited liability company's required records that the members' interests are

governed by a member-control agreement entered into under this section.

- ~~b.~~ c. A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member-control agreement from the limited liability company at the company's expense.
- 4. A member-control agreement valid under subsections 1 and 2 is specifically enforceable.
- 5. ~~A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member-control agreement from the limited liability company at the company's expense.~~
- ~~6.~~ If a member-control agreement authorized under this section takes away from any person any of the authority and responsibility that the person would otherwise possess under this chapter, the effect of the member-control agreement is also to relieve that person of liability imposed by law for acts and omissions in the possession or exercise of that authority and responsibility and to impose that liability on the person or persons possessing the authority and responsibility under the agreement.
- ~~7.~~ 6. This section does not apply to, limit, or restrict agreements otherwise valid, and the procedure set forth in this section is not the exclusive method of agreement among members or between the members and the limited liability company with respect to any of the matters described.

**SECTION 25. AMENDMENT.** Subsection 1 of section 10-32-54 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Subject to a member-control agreement under section 10-32-50, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:
  - a. An amendment of the articles of organization, but not an amendment to a member-control agreement, which materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:
    - (1) Alters or abolishes a preferential right of the membership interests;
    - (2) Creates, alters, or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests;
    - (3) Alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;
    - (4) Excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the

making of contribution agreements pertaining to membership interests with similar or different voting rights;

- (5) Changes a member's right to resign or retire; or
  - (6) Establishes or changes the conditions for or consequences of expulsion;
- b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company, but not including a transaction permitted without member approval under section 10-32-108, a disposition in dissolution described in subsection 4 of section 10-32-113, a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with ~~their~~ the member's respective membership interests within one year after the date of disposition;
  - c. A plan of merger to which the limited liability company is a ~~party~~ constituent organization;
  - d. A plan of exchange to which the limited liability company is a ~~party~~ constituent organization as the organization whose ownership interests will be acquired by the acquiring organization, if the membership interests being acquired are entitled to be voted on the plan; or
  - e. Any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, a member-control agreement, the bylaws, or a resolution approved by the board of governors directs that dissenting members may obtain payment for the dissenting members' membership interests.

**SECTION 26. AMENDMENT.** Subsection 1 of section 10-32-59 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 1. Subject to any restrictions in the articles of organization or a member-control agreement, a limited liability company may enter into contribution allowance agreements under the terms, provisions, and conditions fixed by the board of governors or by a manager pursuant to board authorization.

**SECTION 27. AMENDMENT.** Section 10-32-62 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-62. Distribution in kind.** Except as provided in the articles of organization or a member-control agreement, ~~a~~:

- 1. A member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash. ~~Except as provided in the articles of organization, a~~
- 2. A member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent the percentage of the

asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

**SECTION 28. AMENDMENT.** Subsection 1 of section 10-32-68 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. A limited liability company may have bylaws, which may be known as an operating agreement. The bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the limited liability company not inconsistent with section 10-32-69 or any other provision of law or the articles of organization. An act of the board under subsection 2 and of the members under subsection 3 will be considered part of the bylaws only if the act expressly states that it is intended to constitute or revise the bylaws.

**SECTION 29. AMENDMENT.** Subsection 1 of section 10-32-69 of the North Dakota Century Code is amended and reenacted as follows:

1. The business and affairs of a limited liability company are to be managed by or under the direction of a board of governors, subject to the provisions of subsection 2 and section 10-32-50. The first board of governors may be named in the articles of organization or in a member-control agreement or may be elected by the organizers pursuant to section 10-32-67 or by the members.

**SECTION 30. AMENDMENT.** Section 10-32-70 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-70. Number.** The board of governors consists of one or more governors. The number of governors must be fixed by or in the manner provided in the articles of organization, a member-control agreement, or the bylaws. The number of governors may be increased or, subject to section 10-32-78, decreased at any time by amendment to or in the manner provided in the articles, a member-control agreement, or the bylaws.

**SECTION 31. AMENDMENT.** Subsection 1 of section 10-32-76 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Unless the articles of organization or a member-control agreement provides that there is no cumulative voting, each member entitled to vote for governors has the right to cumulate voting power in the election of governors by giving written notice of intent to cumulate voting power to any manager of the limited liability company before the meeting, or to the presiding manager at the meeting at which the election is to occur at any time before the election of governors at the meeting, in which case:
  - a. The presiding manager at the meeting shall announce, before the election of governors, that members shall cumulate their voting power; and
  - b. Each member shall cumulate that member's voting power either by casting for one candidate the amount of voting power equal to the number of governors to be elected multiplied by the voting power

represented by the membership interests owned by that member, or by distributing all of that voting power on the same principle among any number of candidates.

**SECTION 32. AMENDMENT.** Subsection 3 of section 10-32-78 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. Any one or all of the governors may be removed at any time, with or without cause, by the affirmative vote of the owners of ~~the proportion a~~ majority of the voting power of ~~the all~~ membership interests of ~~the classes or series the governor represents sufficient to elect them~~ entitled to vote at an election of governors.
  - a. If less than the entire board of governors is to be removed, no one of the governors may be removed if the votes cast against the governor's removal which, if then cumulatively voted at the election of the entire board of governors, or if there be classes of governors at an election of the class of governors of which the governor is a part, would be sufficient to elect the governor. ~~Whenever the members of any class are entitled to elect one or more governors by the provisions of the articles of the organization, the provisions of this section apply, in respect to the removal of a governor or governors so elected, to the vote of the members of that class and not to the vote of the members as a whole.~~
  - b. If a governor has been elected solely by the holders of a class or series of membership interests as stated in the articles, any member-control agreement, or the bylaws, then that governor may be removed only by the affirmative vote of the holders of a majority of the voting power of all membership interests of that class or series entitled to vote at an election of that governor.

**SECTION 33. AMENDMENT.** Subsection 4 of section 10-32-80 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. If the date, time, and place of a board of governors meeting are provided in the articles, a member-control agreement, or the bylaws, or announced at a previous meeting of the board of governors, notice is not required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.

**SECTION 34. AMENDMENT.** Section 10-32-82 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-82. Quorum of governors.** A majority, or a larger or smaller proportion or number provided in the articles of organization, a member-control agreement, or the bylaws, of the governors currently holding office is a quorum for the transaction of business. In the absence of a quorum, a majority of the governors present may adjourn a meeting from time to time until a quorum is present. If a quorum is present when a duly called or held meeting is convened, the governors present may continue to transact business until adjournment, even though the withdrawal of a number of governors originally present leaves less than the proportion or number otherwise required for a quorum.

**SECTION 35. AMENDMENT.** Subsection 5 of section 10-32-86 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. A governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles of organization or a member-control agreement. Neither the articles nor a member-control agreement may eliminate or limit the liability of a governor:
  - a. For any breach of the governor's duty of loyalty to the limited liability company or its members;
  - b. For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
  - c. Under section 10-32-66;
  - d. For any transaction from which the governor derived an improper personal benefit; or
  - e. For any act or omission occurring before the date when the provision in the articles of organization or a member-control agreement eliminating or limiting liability becomes effective.

**SECTION 36. AMENDMENT.** Subsection 2 of section 10-32-87 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

committee, but the interested governor is not counted in determining the presence of a quorum and may not vote; or

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

**SECTION 37. AMENDMENT.** Subsection 1 of section 10-32-89 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The president shall:
  - a. Have general active management for the business of the limited liability company;
  - b. When present, preside at all meetings of the board of governors and of the members;
  - c. See that all orders and resolutions of the board of governors are carried into effect;
  - d. Sign and deliver in the name of the limited liability company any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the limited liability company, except if the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles, a member-control agreement, the bylaws, or the board of governors to some other manager or agent of the limited liability company;
  - e. Maintain records of and, whenever necessary, certify all proceedings of the board of governors and members; and
  - f. Perform other duties prescribed by the board of governors.

**SECTION 38. AMENDMENT.** Subsection 7 of section 10-32-99 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

7. All indemnification determinations must be made:
  - a. By the board of governors by a majority of a quorum. Governors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum;
  - b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board of governors, consisting solely of two or more governors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board of governors including governors who are parties;
  - c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board of governors or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board of governors cannot be

obtained and the committee cannot be established, by a majority of the full board of governors including governors who are parties;

- d. If a determination is not made under subdivisions a through c, by the affirmative vote of the members required by section 10-32-42, other than the members who are a party to the proceeding; or
- e. If an adverse determination is made under subdivisions a through d or under subsection 8, or if no determination is made under subdivisions a through d or under subsection 8 within sixty days after the later to occur of the termination of a proceeding; or a written request for indemnification to the limited liability company; or a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any notice the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this clause has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

**SECTION 39. AMENDMENT.** Subsections 1, 2, and 3 of section 10-32-102 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A resolution containing the plan of merger or exchange must be approved by the governing board as required by section 10-19.1-46 or 10-32-83 of each constituent organization and must then be submitted at a regular or special meeting to the owners of each constituent organization in the case of a plan of merger; and the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of an exchange. The plan of merger or exchange may require that it be submitted to the owners whether or not the governing board determines at any time after the governing board's initial approval of the plan that the plan is no longer advisable and recommends that the owners reject it. If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange pursuant to this subsection, written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders in the case of a domestic corporation and in the manner provided in section 10-32-40 for notice of meetings of members in the case of a limited liability company. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.
2. At the meeting a vote of the owners must be taken on the proposed plan. The plan of merger is adopted when approved by the affirmative vote of the owners as required by section 10-19.1-74 or 10-32-42. Except as provided in subsection 3 or a member-control agreement, a class or series of ownership interests of the constituent organization is entitled to vote as a class or series if any provision of the plan would, if

contained in a proposed amendment to the articles of organization or a member-control agreement, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.

3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series solely because the plan of merger or exchange effects a cancellation or exchange of the ownership interests of the class or series if the plan of merger or exchange effects a cancellation or exchange of all ownership interests of the constituent organization of all classes and series that are existing immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair value of their ownership interests under section 10-19.1-87 or 10-32-55, as the case may be, in the event of the merger or exchange.

**SECTION 40. AMENDMENT.** Section 10-32-104 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-104. Merger of subsidiary into parent.**

1. A parent owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary directly, or indirectly through related corporations or limited liability companies:
  - a. May merge the subsidiary into the parent; or may merge the subsidiary into any other subsidiary at least ninety percent of the outstanding ownership interest of each class and series of which is owned by the parent directly, or indirectly through related corporations or limited liability companies, without a vote of the owners of the parent or any subsidiary; or
  - b. May merge the parent, or the parent and one or more subsidiaries, into one of the subsidiaries under this section.
2. A resolution approved by the directors of the parent as required by section 10-19.1-46 or by the governors of the parent present as required by section 10-32-83 must set forth a plan of merger which contains:
  - a. The name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving constituent organization;
  - b. The manner and basis of converting the ownership interests of the subsidiary into ownership interests of the parent or of another organization or, in whole or in part, into money or other property;
  - c. If the parent is a constituent organization but is not the surviving constituent organization in the merger, a provision for the pro rata issuance of ownership interests of the surviving constituent organization to the owners of ownership interests of the parent on surrender of any ownership interests of the parent; and
  - d. If the surviving constituent organization is a subsidiary, a statement of any amendments to the articles of the surviving constituent organization that will be part of the merger.

3. If the parent is a constituent organization and is the surviving organization in the merger, it may change its limited liability company name, without a vote of its owners, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of the board members of the parent present. Upon the effective date of the merger, the name of the parent must be changed.
4. If the parent is a constituent organization but is not the surviving constituent organization in a merger, the resolution is not effective unless the resolution is also approved by the affirmative vote of the holders of a majority of the voting power of all ownership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98 if the parent is a corporation, section 10-32-102 if the parent is a limited liability company, or in accordance with the laws of the jurisdiction under which the parent is incorporated or organized if the parent is a foreign corporation or foreign limited liability company.
4. 5. A copy of the plan of merger must be mailed to each owner, other than the parent, of each subsidiary that is a constituent organization to the merger.
- ~~5.~~ 6. Articles of merger must be prepared which contain:
  - a. The plan of merger;
  - b. The number of outstanding ownership interests of each class and series of the subsidiary that is a constituent organization and the number of ownership interests of each class and series owned by the parent directly or indirectly, through related constituent organizations;
  - c. The date a copy of the plan of merger was mailed to the owners, other than the parent, of each subsidiary that is a constituent organization in the merger; and
  - d. A statement that the plan of merger has been approved by the parent under this section.
- ~~6.~~ 7. Within thirty days after a copy of the plan of merger is mailed to the owners of each subsidiary that is a constituent organization to the merger, or upon waiver of the mailing by the owners of all outstanding ownership interests of each subsidiary that is a constituent organization to the merger, the articles of merger must be signed on behalf of the parent and filed with the secretary of state, together with the fees provided in section 10-32-150.
- ~~7.~~ 8. The secretary of state shall issue a certificate of merger to the surviving constituent organization in the merger or the surviving constituent organization's legal representative. The certificate must contain the effective date of merger.
- ~~8.~~ 9. If all of the ownership interests of one or more domestic subsidiaries that are a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent

organizations, immediately before the merger, the owners of each domestic subsidiary have dissenter's rights under section 10-19.1-87 or under section 10-32-54, without regard to subsection 3 of section 10-19.1-88 or to subsection 2 of section 10-32-54, and under section 10-19.1-88 or 10-32-55. If the parent is a constituent organization but is not the surviving constituent organization in the merger, and the articles of incorporation or articles of organization of the surviving constituent organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenter's rights under subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54 if the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, that owner of the parent has dissenter's rights as provided under section 10-19.1-87 or under section 10-32-54. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this section.

9. 10. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-32-101 through 10-32-103 instead of this section, in which case this section does not apply.

**SECTION 41. AMENDMENT.** Section 10-32-109 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**10-32-109. Methods of dissolution.**

1. A limited liability company dissolves upon the occurrence of any of the following events:
  - a. When the period, if any, fixed in the articles of organization for the duration of the limited liability company expires;
  - b. By order of a court pursuant to sections 10-32-119 and 10-32-122;
  - c. By action of the organizers pursuant to section 10-32-110;
  - d. By action of the members pursuant to section 10-32-111;
  - e. For a limited liability company with articles of organization filed with the secretary of state:
    - (1) Before July 1, 1999, ~~except as provided in subsection 2 and~~ except as otherwise provided in the articles of organization or a member-control agreement, upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, including but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member:
      - (a) ~~Death of any~~ If there is at least one remaining member and the existence and business of the limited liability company is continued by the consent of all the

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

- (b) Retirement of any If the membership of the last or sole member;
  - (c) Resignation of any member;
  - (d) Redemption of a member's complete membership interest;
  - (e) Assignment of a member's governance rights under section 10-32-32 which leaves the assignor with no governance rights;
  - (f) A buyout of a member's membership interest under section 10-32-119 which leaves that member with no governance rights;
  - (g) Expulsion of any member;
  - (h) Bankruptcy of any member;
  - (i) Dissolution of any member; or
  - (j) The occurrence of any other event that terminates the continued membership of a member in the limited liability company; or terminates and the legal representative of that last or sole member causes the limited liability company to admit at least one member.
- (2) After June 30, 1999, upon the occurrence of an event terminating the continued membership of a member in the limited liability company:
- (a) If the articles of organization or a member-control agreement specifically provide that the termination causes dissolution and in that event only as provided in the articles or member-control agreement; or
  - (b) If the membership of the last or sole member terminates and the legal representative of that last or sole member does not cause the limited liability company to admit at least one member within one hundred eighty days after the termination;
- f. A merger in which the limited liability company is not the surviving organization; or
- g. When terminated by the secretary of state pursuant to section 10-32-149.
2. For a limited liability company with articles of organization filed with the secretary of state before July 1, 1999, the limited liability company is not

dissolved and is not required to be wound up by reason of any event terminating the continued membership of a member:

- a. If there is at least one remaining member and the existence and business of the limited liability company is continued by the consent of every remaining member obtained no later than ninety days after the termination of the continued membership, or under a separate right to continue stated in the articles of organization or a member-control agreement; or
  - b. If the membership of the last or sole member terminates and the legal representative of that last or sole member causes the limited liability company to admit at least one member within one hundred eighty days after the termination.
3. A limited liability company dissolved by one of the dissolution events specified in subsection 1 must be wound up and terminated under the following dissolution provisions:
- a. When a limited liability company is dissolved under subdivision a of subsection 1 by reason of the expiration of the limited liability company's limited period of duration, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131;
  - b. When a limited liability company is dissolved under subdivision b of subsection 1 by reason of a court order, the limited liability company must be wound up and terminated under sections 10-32-119 through 10-32-126;
  - c. When a limited liability company is dissolved under subdivision c of subsection 1 by its organizers, the limited liability company must be wound up and terminated under section 10-32-110 and sections 10-32-112 through 10-32-118;
  - d. When a limited liability company is dissolved under subdivision d of subsection 1 by its members, the limited liability company must be wound up and terminated under sections 10-32-111 through 10-32-118 and section 10-32-131; and
  - e. When a limited liability company is dissolved under subdivision e of subsection 1 by reason of a termination of the continued membership of a member, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131.
4. 3. Notwithstanding any provision of law, articles of organization, member-control agreement, bylaws, other agreement, resolution, or action to the contrary, a limited liability company is not dissolved and is not required to be wound up upon the granting of a security interest in a member's membership interest, governance rights, or financial rights, or upon the foreclosure or other enforcement of a security interest in a member's financial rights or upon the secured party's assignment, acceptance, or retention of a member's financial rights in accordance with title 41.

**SECTION 42. AMENDMENT.** Subsections 2 and 3 of section 10-32-119 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the financial condition of the limited liability company but may not refuse to order any particular form of relief solely on the grounds that the limited liability company has accumulated or current operating profits. In an action under subdivision b of subsection 1 in which one or more of the circumstances described in that subdivision is established, a court, upon motion of a limited liability company or a member, may order the sale by a plaintiff or a defendant of all membership interests of the limited liability company held by the plaintiff or defendant to the limited liability company or the moving members, whichever is specified in the motion, if the court determines in the court's discretion that an order is fair and equitable to all parties under all of the circumstances of the case.
  - a. The purchase price of any membership interest sold under this subsection is the fair value of the membership interest as of the date of the commencement of the action or as of another date found equitable by the court. If the articles of organization, a member-control agreement, or another agreement state a price for the redemption or buyout of membership interests, the court shall order the sale for the price and on the terms 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 entry of the order, the limited liability company shall provide each selling member with the information the limited liability company is required to provide under subsection 6 of section 10-32-55.
  - 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 membership interests under the provisions of subsection 9 of section 10-32-55, may allow interest or costs as provided in subsections 1 and 10 of section 10-32-55, and may allocate payment among the member whose membership interest is being sold and any assignees of the financial rights of that member.
  - 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 a membership interest under this subsection and provided the limited liability company or the moving members post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that any full purchase price of the membership interest, plus the additional costs, expenses, and fees awarded by the court, will be paid when due and payable, the selling member no longer has any rights or status as a member, manager, or governor, except the right to receive the fair value of the membership interest plus other amounts as might be awarded.

3. In an action under subdivision b of subsection 4 in which one or more of the circumstances described in that subdivision is established, a court, upon motion of a limited liability company or a member, may order the sale by a plaintiff or a defendant of all membership interests of the limited liability company held by the plaintiff or defendant to the limited liability company or the moving members, whichever is specified in the motion, if the court determines in the court's discretion that an order is fair and equitable to all parties under all of the circumstances of the case:
  - a. The purchase price of any membership interest sold under this subsection is the fair value of the membership interest as of the date of the commencement of the action or as of another date found equitable by the court. If the articles of organization, a member-control agreement, or another agreement state a price for the redemption or buyout of membership interests, the court shall order the sale for the price and on the terms 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 entry of the order, the limited liability company shall provide each selling member with the information the limited liability company is required to provide under subsection 6 of section 10-32-55.
  - 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 membership interests under the provisions of subsection 9 of section 10-32-55, may allow interest or costs as provided in subsections 4 and 10 of section 10-32-55, and may allocate payment among the member whose membership interest is being sold and any assignees of the financial rights of that member.
  - 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 a membership interest under this subsection and provided the limited liability company or the moving members post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that any full purchase price of the membership interest, plus the additional costs, expenses, and fees awarded by the court, will be paid when due and payable, the selling member no longer has any rights or status as a member, manager, or governor, except the right to receive the fair value of the membership interest plus other amounts as might be awarded. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the financial condition of the limited liability company but may not refuse to order any particular form of relief solely on the grounds that the limited liability company has accumulated or current operating profits.

**SECTION 43. AMENDMENT.** Subsection 1 of section 10-32-131 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Subject to subsection 2, except when the dissolved limited liability company is being wound up and terminated under subsection 3 of section 10-32-112, the assets of the dissolved limited liability company must be disposed of to satisfy liabilities according to the following priorities:
  - a. To creditors, including members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for interim distributions to members under section 10-32-61 or termination distributions under section 10-32-60;
  - b. Unless otherwise provided in the articles of organization or a member-control agreement, to members and former members of the limited liability company in satisfaction of liabilities for distributions under section 10-32-60 or 10-32-61; and
  - c. Unless otherwise provided in the articles of organization or a member-control agreement, to members first for a return of their contributions, as restated from time to time under section 10-32-57, and secondly respecting the member's membership interests in the proportions in which the members share in distributions.

**SECTION 44. AMENDMENT.** Subdivision t of subsection 1 of section 10-32-150 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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

Approved April 9, 2001  
Filed April 10, 2001

## CHAPTER 113

### HOUSE BILL NO. 1042 (Legislative Council) (Commerce and Labor Committee)

## VENTURE CAPITAL CORPORATION INCORPORATION

AN ACT to amend and reenact section 10-30.1-04 of the North Dakota Century Code, relating to venture capital corporation incorporation.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 10-30.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### **10-30.1-04. Venture capital corporation - Incorporation.**

1. To carry out the purposes of this chapter, a venture capital organization may be formed under chapter 10-19.1 if a corporation or under chapter 10-32 if a limited liability company. The articles of incorporation or articles of organization of a venture capital organization must comply with subsections 2 through 9.
2. The purpose of a venture capital corporation or limited liability company must be solely to raise funds to be used to make investments in, and provide financing to, qualified entities in a manner that will encourage capital investment in the state, encourage the establishment or expansion of business and industry, provide additional jobs within the state, and encourage research and development activities in the state.
3. Each director of a venture capital corporation or each governor of a venture capital limited liability company must be a North Dakota resident, and must have a minimum investment in the venture capital corporation or limited liability company of one thousand dollars.
4. A venture capital corporation or limited liability company shall provide financing to qualified entities to be used solely for the purpose of enhancing the production capacity of the qualified entity or the ability of the qualified entity to do business in this state. The venture capital corporation or limited liability company may establish and regulate terms and conditions, consistent with this chapter, with respect to the financing. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing, but no more than ~~twenty~~ twenty-five percent of the stated capital of a venture capital corporation or limited liability company may be invested in any one qualified entity. For purposes of this chapter, "one qualified entity" means a single entity or a group of affiliated entities that are engaged in a unitary business.
5. Business may not be transacted or indebtedness incurred by the venture capital corporation or limited liability company, except such as is incidental to the venture capital corporation's or limited liability company's organization or to obtaining subscriptions to or payment for

the venture capital corporation's or limited liability company's shares or membership interests, until the venture capital corporation or limited liability company receives consideration for such shares or membership interests equal to at least ~~five~~ two hundred fifty thousand dollars, which amount is the initial stated capital of the venture capital corporation or limited liability company.

6. All consideration received from the sale of shares or membership interests must be placed in an interest-bearing escrow account in the Bank of North Dakota, except up to ten percent of the proceeds may be withheld for use in activities incidental to the venture capital corporation's or limited liability company's organization or to obtaining subscriptions to or payment for the venture capital corporation's or limited liability company's shares or membership interests.
7. If at any time within one year of the issuance of the certificate of incorporation of the venture capital corporation or certificate of organization of the limited liability company, the venture capital corporation's or limited liability company's stated capital equals at least ~~five~~ two hundred fifty thousand dollars, or such greater amount established by the articles of incorporation, the articles of organization, or bylaws, the funds held in escrow pursuant to subsection 6 must be released to the venture capital corporation or limited liability company for use and disposition according to the venture capital corporation's or limited liability company's articles of incorporation, articles of organization, or the bylaws.
8. If within one year of the issuance of the certificate of incorporation of the venture capital corporation or the certificate of organization of the venture capital limited liability company, the venture capital corporation's or limited liability company's stated capital has not at any time equaled at least ~~five~~ two hundred fifty thousand dollars, or such greater amount established by the articles of incorporation, the articles of organization, or the bylaws, the venture capital corporation's or limited liability company's certificate of incorporation or certificate of organization must be dissolved or terminated, and all funds held in escrow pursuant to subsection 6, and all other remaining funds, must be returned to the investors in proportion to the investor's investments.
9. Before any investment in a venture capital corporation or limited liability company, the venture capital corporation or limited liability company shall make written disclosure of the provisions contained in subsections 5 through 8 to the potential investor.
10. If a venture capital corporation or limited liability company does not invest or provide financing with eighty percent of the funds received from investors within two years of receiving the funds, the venture capital corporation or limited liability company must be dissolved or terminated and all funds held by the corporation or limited liability company must be returned to the investors in proportion to the investor's investments.

## CHAPTER 114

### SENATE BILL NO. 2379

(Senators Bowman, G. Nelson, Wanzek)  
(Representatives Belter, Pietsch)

## VALUE-ADDED AGRICULTURE PROMOTION PROGRAM

AN ACT to create and enact a new subsection to section 10-30.5-01 of the North Dakota Century Code, relating to North Dakota development fund definitions; and to provide for a value-added agriculture promotion program.

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

### **SECTION 1. Value-added agriculture promotion program.**

1. The value-added agriculture promotion board is established. The board consists of eight members as follows: the director of the department of economic development and finance or the director's representative; the agriculture commissioner or the commissioner's representative; a representative of the state board of agricultural research and education, appointed by the governor; a representative of the North Dakota state university extension service, appointed by the governor; a representative of the Bank of North Dakota, appointed by the governor; two representatives of the private sector, appointed by the governor; and a representative of the farm credit system, appointed by the governor.
2. The board shall administer the value-added agriculture promotion program and shall review business plans for value-added agriculture projects. The board shall adopt procedures and guidelines for administering the program. The board shall meet on a regular schedule to review project proposals and prioritize projects based on the projects' likelihood for success. The board shall promote the formation, development, and growth of these projects and take steps to improve the projects' chances for success.
3. If a project is selected for promotion by the board, the board shall appoint a financing advisory group for the project. The financing advisory group may include representatives of the private sector, a representative of the Bank of North Dakota, and an individual experienced in capital formation. The financing advisory group, with active assistance provided by any of the state's institutions of higher education and the local or regional economic development organization, shall assist the project in completing a feasibility study and a business plan for the project and in seeking early stage money. The financing advisory group shall assist the project in pursuing equity investors, establishing an initial board of directors, locating professional services for completion of the business plan, and in approaching lenders to fund the project development.

4. The value-added agriculture promotion program is located in the department of economic development and finance. The department shall provide any necessary administrative assistance. Members of the value-added agriculture promotion board and members of a financing advisory group are entitled to reimbursement for mileage and travel as specified in section 54-06-09 and expenses as specified in section 44-08-04 for performing their duties.
5. The board may impose a fee of not more than one thousand dollars per project for review and assistance provided for the project. Fees collected under this section must be deposited in the operating fund of the department of economic development and finance and may be expended for expenses of members of the board and the financing advisory group for review and assistance provided for the project.

**SECTION 2.** A new subsection to section 10-30.5-01 of the North Dakota Century Code is created and enacted as follows:

"Production agriculture" means the production of crops and livestock on or near a farm as part of the regular farm enterprise directed by a farm operator and the farm operator's partners. The term does not include an investor-owned livestock feeding or milking operation located apart from a farm headquarters which is managed by employees.

Approved April 19, 2001  
Filed April 19, 2001