

Sixty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1045

Introduced by

Representative Toman

1 A BILL for an Act to create and enact subsection 16 to section 9-16-01, section 9-16-19, a new
2 section to chapter 10-19.1, and section 10-32.1-102 of the North Dakota Century Code, relating
3 to electronic transaction definitions, blockchain technology and smart contracts, number of
4 shareholders, and series limited liability companies; and to amend and reenact sections
5 9-16-02, 10-06.1-17, 10-19.1-01, and 10-19.1-01.2, subsection 6 of section 10-19.1-66,
6 subsection 1 of section 10-19.1-73.3, sections 10-19.1-76.3 and 10-19.1-81, subsections 1, 2,
7 and 11 of section 10-19.1-84, subsection 1 of section 10-19.1-110, subsection 2 of section
8 10-19.1-146, and subsection 2 of section 10-35-28 of the North Dakota Century Code, relating
9 to electronic transactions, filing of an annual report by corporations engaged in farming or
10 ranching, Business Corporation Act definitions, knowledge and notice, share certificates,
11 corporate voting list and voting trusts, acceptance of shareholder act by the corporation,
12 corporate records, corporate dissolution procedure, and the filing of an annual report by a
13 publicly traded corporation.

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

15 **SECTION 1.** Subsection 16 of section 9-16-01 of the North Dakota Century Code is created
16 and enacted as follows:

17 16. "Writing" or "written" includes blockchain technology as defined in section 9-16-19.

18 **SECTION 2. AMENDMENT.** Section 9-16-02 of the North Dakota Century Code is amended
19 and reenacted as follows:

20 **9-16-02. Scope.**

- 21 1. Except as otherwise provided in subsection 2 or 3, this chapter applies to electronic
22 records and electronic signatures relating to a transaction.
- 23 2. ~~This~~Except as provided in subsection 3, this chapter does not apply to a transaction to
24 the extent the transaction is governed by:

- 1 a. A law governing the creation and execution of wills, codicils, or testamentary
- 2 trusts;
- 3 b. The Uniform Commercial Code other than section 41-01-20 and chapters 41-02
- 4 and 41-02.1; and
- 5 c. Chapters 41-03, 41-04, 41-04.1, 41-05, 41-07, 41-08, or 41-09.
- 6 3. Section 9-16-19 applies only to title 10 and transactions governed by chapters 41-02,
- 7 41-02.1, and 41-07.
- 8 4. This chapter applies to an electronic record or electronic signature otherwise excluded
- 9 from the application of this chapter under subsection 2 or 3, to the extent it is governed
- 10 by a law other than those specified in subsection 2 or 3.
- 11 4.5. A transaction subject to this chapter is also subject to other applicable substantive law.

12 **SECTION 3.** Section 9-16-19 of the North Dakota Century Code is created and enacted as
13 follows:

14 **9-16-19. Signatures and records secured through blockchain technology - Smart**
15 **contracts - Ownership of information - Definitions.**

- 16 1. A signature secured through blockchain technology is considered to be in an electronic
- 17 form and to be an electronic signature.
- 18 2. A record or contract secured through blockchain technology is considered to be in an
- 19 electronic form and to be an electronic record.
- 20 3. Smart contracts may exist in commerce. A contract relating to a transaction may not
- 21 be denied legal effect, validity, or enforceability solely because the contract contains a
- 22 smart contract term.
- 23 4. Notwithstanding title 10 or chapters 41-02, 41-02.1, and 41-07, a person in or affecting
- 24 interstate or foreign commerce using blockchain technology to secure information the
- 25 person owns or has the right to use retains the same rights of ownership or use with
- 26 respect to that information as before the person secured the information using
- 27 blockchain technology. This subsection does not apply to the use of blockchain
- 28 technology to secure information in connection with a transaction to the extent the
- 29 terms of the transaction expressly provide for the transfer of rights of ownership or use
- 30 with respect to that information.
- 31 5. As used in this subsection:

- 1 a. "Blockchain technology" means distributed ledger technology that uses a
2 distributed, decentralized, shared, and replicated ledger, which may be public or
3 private, permissioned or permissionless, or driven by tokenized crypto economics
4 or tokenless and which is protected with cryptography, is immutable, and
5 auditable and provides an uncensored truth.
6 b. "Smart contract" means an event-driven program, with state, that runs on a
7 distributed, decentralized, shared, and replicated ledger and which can take
8 custody over and instruct transfer of assets on that ledger.

9 **SECTION 4. AMENDMENT.** Section 10-06.1-17 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **10-06.1-17. Annual report - Contents - Filing requirements.**

12 Before April sixteenth of each year, everya corporation engaged in farming or ranching after
13 June 30, 1981, and everya limited liability company engaged in farming or ranching shall file
14 with the secretary of state an annual report signed as provided in subsection 5458 of section
15 10-19.1-01 if a corporation and subsection 47 of section 10-32.1-02 if a limited liability company.
16 If the corporation or limited liability company is in the hands of a receiver or trustee, it must be
17 signed on behalf of the corporation or limited liability company by the receiver or trustee. An
18 annual report in a sealed envelope postmarked by the United States postal service before the
19 date provided in this section or an annual report in a sealed packet with a verified shipment date
20 by any other carrier service before the date provided in this section meets the filing date
21 requirement. An annual report must include the following information with respect to the
22 preceding calendar year:

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

- 1 b. A statement of the aggregate number of issued shares, itemized by classes, par
2 value of shares, shares without par value, and series, if any, within a class.
- 3 4. With respect to each shareholder or member:
 - 4 a. The name and address of each, including the names and addresses and
5 relationships of beneficiaries of trusts and estates which own shares or
6 membership interests;
 - 7 b. The number of shares or membership interests or percentage of shares or
8 membership interests owned by each;
 - 9 c. The relationship of each;
 - 10 d. A statement of whether each is a citizen or permanent resident alien of the United
11 States; and
 - 12 e. A statement of whether at least one is an individual residing on or operating the
13 farm or ranch.
- 14 5. With respect to management:
 - 15 a. If a corporation, then the names and addresses of the officers and members of
16 the board of directors; or
 - 17 b. If a limited liability company, then the names and addresses of the managers and
18 members of the board of governors.
- 19 6. A statement listing the acreage [hectarage] and location listed by section, township,
20 range, and county of all land in the state owned or leased by the corporation or limited
21 liability company and used for farming or ranching. The statement must also designate
22 which, if any, of the acreage [hectarage] is leased from or jointly owned with any
23 shareholder or member and list the name of the shareholder or member with that
24 acreage [hectarage].
- 25 7. A statement of the percentage of the annual average gross income of the corporation
26 or limited liability company which has been derived from farming or ranching
27 operations over the previous five years or for each year of existence if less than five
28 years.
- 29 8. A statement of the percentage of gross income of the corporation or limited liability
30 company derived from nonfarm rent, nonfarm royalties, dividends, interest, and
31 annuities during the period covered by the report.

- 1 9. A corporation engaged in farming which fails to file an annual report is subject to the
2 penalties for failure to file an annual report as provided in chapter 10-19.1, except that
3 the penalties must be calculated from the date of the report required by this section.
- 4 10. A limited liability company engaged in farming which fails to file an annual report is
5 subject to the penalties for failure to file an annual report as provided in chapter
6 10-32.1, except that the penalties must be calculated from the date of the report
7 required by this section.

8 **SECTION 5. AMENDMENT.** Section 10-19.1-01 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **10-19.1-01. Definitions.**

11 For purposes of this chapter, unless the context otherwise requires:

- 12 1. "Acquiring corporation" means the domestic or foreign corporation that acquires the
13 shares of a corporation in an exchange.
- 14 2. "Acquiring organization" means the foreign or domestic organization acquiring the
15 ownership interests of another foreign or domestic organization participating in an
16 exchange.
- 17 3. "Address" means:
- 18 a. In the case of a registered office or principal executive office, the mailing address,
19 including the zip code, of the actual office location, which may not be only a
20 post-office box; and
- 21 b. In any other case, the mailing address, including the zip code.
- 22 4. "Articles" means:
- 23 a. In the case of a corporation incorporated under or governed by this chapter,
24 articles of incorporation, articles of amendment, a resolution of election to
25 become governed by this chapter, a demand retaining the two-thirds majority for
26 shareholder approval of certain transactions, a statement of change of registered
27 office, registered agent, or name of registered agent, a statement establishing or
28 fixing the rights and preferences of a class or series of shares, a statement of
29 cancellation of authorized shares, articles of merger, articles of abandonment,
30 articles of conversion, and articles of dissolution.

- 1 b. In the case of a foreign corporation, the term includes all records serving a similar
2 function required to be filed with the secretary of state or other officer of the state
3 of incorporation of the foreign corporation.
- 4 5. "Authenticated electronic communication" means:
- 5 a. That the electronic communication is delivered:
- 6 (1) To the principal place of business of the corporation; or
7 (2) To an officer or agent of the corporation authorized by the corporation to
8 receive the electronic communication; and
- 9 b. That the electronic communication ~~sets forth~~provides information from which the
10 corporation can reasonably conclude that the electronic communication was sent
11 by the purported sender.
- 12 6. "Ballot" means a written ballot or a ballot transmitted by electronic communications.
- 13 7. "Board" or "board of directors" means the board of directors of a corporation.
- 14 8. "Board member" means:
- 15 a. An individual serving on the board of directors in the case of a corporation; and
16 b. An individual serving on the board of governors in the case of a limited liability
17 company.
- 18 9. "Bylaws" means the code adopted for the regulation or management of the internal
19 affairs of a corporation, regardless of how that code is designated.
- 20 10. "Class", when used with reference to ownership interests, means a category of
21 ownership interests that differs in designation or one or more rights or preferences
22 from another category of ownership interests of the organization.
- 23 11. "Closely held corporation" means a corporation that does not have more than
24 thirty-five shareholders.
- 25 12. "Constituent corporation" means a corporation or a foreign corporation that:
- 26 a. In a merger, is either the surviving corporation or a foreign or domestic
27 corporation that is merged into the surviving organization; or
28 b. In an exchange, is either the acquiring corporation or a foreign or domestic
29 corporation whose shares are acquired by the acquiring organization.
- 30 13. "Constituent organization" means an organization that:

- 1 a. In a merger, is either the surviving organization or an organization that is merged
2 into the surviving organization; or
- 3 b. In an exchange, is either the acquiring organization or an organization whose
4 securities are acquired by the acquiring organization.
- 5 14. "Converted organization" means the organization into which a converting organization
6 converts pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
- 7 15. "Converting organization" means an organization that converts into another
8 organization pursuant to sections 10-19.1-104.1 through 10-19.1-104.6.
- 9 16. "Corporation" or "domestic corporation" means a corporation, other than a foreign
10 corporation, organized for profit and incorporated under or governed by this chapter.
- 11 17. "Data address" means the string of alphanumeric characters on a distributed or other
12 electronic network or database which may be accessed only by knowledge or
13 possession of a private key to facilitate or record transactions on the distributed or
14 other electronic network or database.
- 15 18. "Director" means a member of the board.
- 16 ~~18-19.~~ "Distribution" means a direct or indirect transfer of money or other property, other than
17 its own shares, with or without consideration, or an incurrence or issuance of
18 indebtedness, by a corporation to any of its shareholders in respect of its shares, and
19 may be in the form of a dividend, an interim distribution, or a distribution in liquidation,
20 or as consideration for the purchase, redemption, or other acquisition of its shares, or
21 otherwise.
- 22 ~~19-20.~~ "Division" or "combination" means dividing or combining shares of a class or series,
23 whether issued or unissued, into a greater or lesser number of shares of the same
24 class or series.
- 25 ~~20-21.~~ "Domestic organization" means an organization created under the laws of this state.
- 26 ~~21-22.~~ "Electronic" means relating to technology having electrical, digital, magnetic, wireless,
27 optical, electromagnetic, or similar capabilities.
- 28 ~~22-23.~~ "Electronic communication" means any form of communication, not directly involving
29 the physical transmission of paper, including a process of communication which uses
30 a distributed or other electronic network or database, or that:

- 1 a. Creates a record that may be retained, retrieved, and reviewed by a recipient of
2 the communication; and
- 3 b. May be directly reproduced in paper form by the recipient through an automated
4 process.
- 5 ~~23-24.~~ "Electronic record" means a record created, generated, sent, communicated, received,
6 or stored by electronic means.
- 7 ~~24-25.~~ "Electronic signature" means an electronic sound, symbol, or process attached to or
8 logically associated with a record and signed or adopted by a person with the intent to
9 sign the record.
- 10 ~~25-26.~~ "Filed with the secretary of state" means, except as otherwise permitted by law or rule:
11 a. That a record meeting the applicable requirements of this chapter, together with
12 the fees provided in section 10-19.1-147, was delivered or communicated to the
13 secretary of state by a method or medium of communication acceptable by the
14 secretary of state and was determined by the secretary of state to conform to law.
- 15 b. That the secretary of state did then:
16 (1) Record the actual date on which the record was filed, and if different the
17 effective date of filing; and
18 (2) Record the record in the office of the secretary of state.
- 19 ~~26-27.~~ "Foreign corporation" means a corporation organized for profit which is incorporated
20 under laws other than the laws of this state for a purpose for which a corporation may
21 be incorporated under this chapter.
- 22 ~~27-28.~~ "Foreign limited liability company" means a limited liability company organized under
23 laws other than the laws of this state for a purpose for which a limited liability company
24 may be organized under chapter 10-32.1.
- 25 ~~28-29.~~ "Foreign organization" means an organization created under laws other than the laws
26 of this state for a purpose for which an organization may be created under the laws of
27 this state.
- 28 ~~29-30.~~ "Good faith" means honesty in fact in the conduct of an act or transaction.
- 29 ~~30-31.~~ "Governing body" means for an organization that is:
30 a. A corporation, its board of directors;
31 b. A limited liability company, its board of governors; or

- 1 c. Any other organization, the body selected by its owners that has the ultimate
2 power to determine the policies of the organization and to control its policies.
- 3 ~~31-32.~~ "Governing statute" of an organization means:
- 4 a. With respect to a domestic organization, the following chapters of this code which
5 govern the internal affairs of the organization:
- 6 (1) If a corporation, then this chapter;
- 7 (2) If a limited liability company, then chapter 10-32.1;
- 8 (3) If a general partnership, then chapters 45-13 through 45-21;
- 9 (4) If a limited partnership, then chapter 45-10.2;
- 10 (5) If a limited liability partnership, then chapter 45-22; and
- 11 (6) If a limited liability limited partnership, then chapter 45-23; and
- 12 b. With respect to a foreign organization, the laws of the jurisdiction under which the
13 organization is created and under which the internal affairs of the organization
14 are governed.
- 15 ~~32-33.~~ "Identity" means the name of a shareholder or the data address for which the
16 shareholder has knowledge or possession of the private key uniquely associated with
17 the data address.
- 18 34. "Intentionally" means that the person referred to has a purpose to do or fail to do the
19 act or cause the result specified or believes that the act or failure to act, if successful,
20 will cause that result. A person "intentionally" violates a statute:
- 21 a. If the person intentionally does the act or causes the result prohibited by the
22 statute; or
- 23 b. If the person intentionally fails to do the act or cause the result required by the
24 statute, even though the person may not know of the existence or
25 constitutionality of the statute or the scope or meaning of the terms used in the
26 statute.
- 27 ~~33-35.~~ "Legal representative" means a person empowered to act for another person,
28 including an agent, a manager, an officer, a partner, or an associate of an
29 organization; a trustee of a trust; a personal representative; a trustee in bankruptcy;
30 and a receiver, guardian, custodian, or conservator.

1 ~~34-36.~~ "Limited liability company" or "domestic limited liability company" means a limited
2 liability company, other than a foreign limited liability company, organized under or
3 governed by chapter 10-32.1.

4 ~~35-37.~~ "Network signature" means a string of alphanumeric characters which when
5 broadcasted by a shareholder to the data address's corresponding distributed or other
6 electronic network or database provides reasonable assurances to a corporation that
7 the shareholder has knowledge or possession of the private key uniquely associated
8 with the data address.

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

11 ~~36-39.~~ "Notice":

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

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

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

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

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

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

25 [1] The posting; or

26 [2] The giving of the separate notice.

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

29 b. Is given by a publicly held corporation to a shareholder if:

30 (1) If the notice is addressed to the shareholder or group of shareholders in a
31 manner permitted by the rules and regulations under the Securities

1 Exchange Act of 1934, as amended, provided that the corporation has first
2 received any affirmative written consent or implied consent required under
3 those rules and regulations;

4 (2) When an electronic transmission has been made to a data address provided
5 by the shareholder; or

6 (3) When electronically transmitted to the shareholder in a manner by which the
7 shareholder has consented, when directed to the shareholder.

8 c. Is given, in all other cases:

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

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

15 (3) When handed to the person;

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

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

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

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

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

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

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

1 [1] The posting; or

2 [2] The giving of the separate notice.

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

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

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

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

12 f. Is deemed received when it is given.

13 ~~37-40.~~ "Officer" means an individual who is eighteen years of age or more who is:

14 a. Elected, appointed, or otherwise designated as the president, the treasurer, or
15 any other officer pursuant to section 10-19.1-52; or

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

17 ~~38-41.~~ "Organization":

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

21 b. Excludes:

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

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

28 ~~39-42.~~ "Originating records" means for an organization that is:

29 a. A corporation, its articles of incorporation;

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

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

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- 1 d. A limited liability partnership, its registration; or
- 2 e. A limited liability limited partnership, its certificate of limited liability limited
- 3 partnership.
- 4 ~~40.43.~~ "Outstanding shares" means all shares duly issued and not reacquired by a
- 5 corporation.
- 6 ~~41.44.~~ "Owners" means the holders of ownership interests in an organization.
- 7 ~~42.45.~~ "Ownership interests" means for a domestic or foreign organization that is:
- 8 a. A corporation, its shares;
- 9 b. A limited liability company, its membership interests;
- 10 c. A limited partnership, its partnership interests;
- 11 d. A general partnership, its partnership interests;
- 12 e. A limited liability partnership, its partnership interests;
- 13 f. A limited liability limited partnership, its partnership interests; or
- 14 g. Any other organization, its governance or transferable interests.
- 15 ~~43.46.~~ "Parent" of a specified organization means an organization that directly, or indirectly
- 16 through related organizations, owns more than fifty percent of the voting power of the
- 17 ownership interests entitled to vote for directors or other members of the governing
- 18 body of the specified organization.
- 19 ~~44.47.~~ "Principal executive office" means:
- 20 a. If the corporation has an elected or appointed president, then an office where the
- 21 elected or appointed president of a corporation has an office; or
- 22 b. If the corporation has no elected or appointed president, then the registered office
- 23 of the corporation.
- 24 ~~45.48.~~ "Publicly held corporation" means a corporation that has a class of equity securities
- 25 registered pursuant to section 12 of the Securities Exchange Act of 1934 [15 U.S.C.
- 26 78L], or is subject to section 15(d) of the Securities Exchange Act of 1934 [15 U.S.C.
- 27 78o(d)].
- 28 ~~46.49.~~ "Record" means information that is inscribed on a tangible medium or that is stored in
- 29 an electronic or other medium and is retrievable in perceivable form.
- 30 ~~47.50.~~ "Record of shareholders" means a record administered by or on behalf of a
- 31 corporation and which records the identity of all the corporation's shareholders and the

1 number and class of shares held by each shareholder in accordance with section
2 10-19.1-84. The term includes a record of all issuances and transfers of shares of a
3 corporation at the discretion of the corporation;

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

7 ~~48-52.~~ "Related organization" means an organization that controls, is controlled by, or is
8 under common control with another organization with control existing if an
9 organization:

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

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

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

17 ~~49-53.~~ "Remote communication" means communication via electronic communication,
18 conference telephone, videoconference, the internet, or such other means by which
19 persons not physically present in the same location may communicate with each other
20 on a substantially simultaneous basis.

21 ~~50-54.~~ "Security" has the meaning given in section 10-04-02.

22 ~~51-55.~~ "Series" means a category of shares, within a class of shares authorized or issued by
23 a corporation by or pursuant to a corporation's articles, that have some of the same
24 rights and preferences as other shares within the same class, but that differ in
25 designation or one or more rights and preferences from another category of shares
26 within that class.

27 ~~52-56.~~ "Share" means one of the units, however designated, into which the shareholders'
28 proprietary interests of the shareholder in a corporation are divided.

29 ~~53-57.~~ "Shareholder" means a person registered on the books or records of a corporation or
30 the corporation's transfer agent or registrar as the owner of whole or fractional shares

1 of the corporation or the owner of a private key uniquely associated with a data
2 address that facilitates or records the sending and receiving of shares.

3 54-58. "Signed" means:

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

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

11 (1) The record is signed by a person authorized to do so by this chapter, the
12 articles or bylaws, or a resolution approved by the directors as required
13 under section 10-19.1-46 or the shareholders as required under section
14 10-19.1-74; and

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

17 55-59. "Subscriber" means a person that subscribes for shares in a corporation, whether
18 before or after incorporation.

19 56-60. "Subsidiary" of a specified organization means an organization having more than fifty
20 percent of the voting power of its ownership interests entitled to vote for directors,
21 governors, or other members of the governing body of the organization owned directly,
22 or indirectly, through related organizations, by the specified organization.

23 57-61. "Surviving corporation" means the domestic or foreign corporation resulting from a
24 merger which:

- 25 a. May pre-exist the merger; or
26 b. May be created by the merger.

27 58-62. "Surviving organization" means the organization resulting from a merger which:

- 28 a. May pre-exist the merger; or
29 b. May be created by the merger.

30 59-63. "Vote" includes authorization by written action.

31 60-64. "Written action" means:

- 1 a. A written record signed by all of the persons required to take the action; or
- 2 b. The counterparts of a written record signed by any of the persons taking the
- 3 action described.
- 4 (1) Each counterpart constitutes the action of the person signing; and
- 5 (2) All the counterparts, taken together, constitute one written action by all of
- 6 the persons signing the counterparts.

7 **SECTION 6. AMENDMENT.** Section 10-19.1-01.2 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **10-19.1-01.2. Knowledge and notice.**

- 10 1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A
11 person does not know or have knowledge of a fact merely because the person has
12 reason to know or have knowledge of the fact.
- 13 2. A person has notice of a fact if the person:
 - 14 a. Knows of the fact;
 - 15 b. Has received notice of the fact as provided in subsection 3639 of section
16 10-19.1-01;
 - 17 c. Has reason to know the fact exists from all of the facts known to the person at the
18 time in question; or
 - 19 d. Has notice of it under subsection 3.
- 20 3. Subject to subsection 8, a person has notice of:
 - 21 a. The intention of a corporation to dissolve, ninety days after the effective date of
22 the filed notice of intent to dissolve;
 - 23 b. The dissolution of a corporation, ninety days after the effective date of the filed
24 articles of dissolution;
 - 25 c. The conversion of a corporation, ninety days after the effective date of the filed
26 articles of conversion; or
 - 27 d. The merger of a corporation, ninety days after the effective date of the filed
28 articles of merger.
- 29 4. A person notifies or gives a notification to another person by taking the steps provided
30 in subsection 3639 of section 10-19.1-01, whether or not the other person learns of it.
- 31 5. A person receives a notification as provided in subsection 3639 of section 10-19.1-01.

- 1 6. Except as otherwise provided in subsection 7 and except as otherwise provided in
2 subsection ~~3639~~ of section 10-19.1-01, a person other than an individual knows, has
3 notice, or receives a notification of a fact for purposes of a particular transaction when
4 the individual conducting the transaction for the person knows, has notice, or receives
5 a notification of the fact, or in any event when the fact would have been brought to the
6 attention of the individual if the person had exercised reasonable diligence.
 - 7 a. A person other than an individual exercises reasonable diligence if it maintains
8 reasonable routines for communicating significant information to the individual
9 conducting the transaction for the person and there is reasonable compliance
10 with the routines.
 - 11 b. Reasonable diligence does not require an individual acting for the person to
12 communicate information unless the communication is part of the regular duties
13 of the individual or the individual has reason to know of the transaction and that
14 the transaction would be materially affected by the information.
- 15 7. Knowledge, notice, or receipt of a notification of a fact relating to the corporation by an
16 officer or director is effective immediately as knowledge of, notice to, or receipt of a
17 notification by the corporation, except in the case of a fraud on the corporation
18 committed by or with the consent of the officer or director. Knowledge, notice, or
19 receipt of a notification of a fact relating to the corporation by a shareholder who is not
20 an officer or director, is not effective as knowledge by, notice to, or receipt of a
21 notification by the corporation.
- 22 8. Notice otherwise effective under subsection 3 does not affect the power of a person to
23 transfer real property held in the name of a corporation unless at the time of transfer a
24 certified copy of the relevant statement, amendment, or articles, as filed with the
25 secretary of state, has been recorded in the office of the county recorder in the county
26 in which the real property affected by the statement, amendment, or articles is located.
- 27 9. With respect to notice given by a form of electronic communication:
 - 28 a. Consent by an officer or director to notice given by electronic communication may
29 be given in writing or by authenticated electronic communication. The corporation
30 is entitled to rely on any consent so given until revoked by the officer or director.

1 However, no revocation affects the validity of any notice given before receipt by
2 the corporation of revocation of the consent.

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

6 **SECTION 7. AMENDMENT.** Subsection 6 of section 10-19.1-66 of the North Dakota
7 Century Code is amended and reenacted as follows:

8 6. Unless uncertificated shares are prohibited by the articles or bylaws, a corporation
9 may provide that some or all of any or all classes and series of the corporation's
10 shares will be uncertificated shares.

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

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

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

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

25 **SECTION 8. AMENDMENT.** Subsection 1 of section 10-19.1-73.3 of the North Dakota
26 Century Code is amended and reenacted as follows:

27 1. After fixing a record date for notice of and voting at a meeting, a corporation shall
28 prepare an alphabetical or numerical list of the ~~names~~identities of all its shareholders
29 entitled to notice and to vote. The list must show ~~the address and~~;

30 a. The number of shares each shareholder is entitled to vote at the meeting;

- 1 b. Each shareholder's physical mailing address, if the identity of a shareholder on
2 the list consists of the shareholder's name; and
3 c. Each shareholder's authorized means of receipt for electronic transmissions, if
4 the identity of a shareholder on the list consists of the shareholder's data
5 address.

6 **SECTION 9.** A new section to chapter 10-19.1 of the North Dakota Century Code is created
7 and enacted as follows:

8 **Number of shareholders.**

- 9 1. The following identified as a shareholder in a corporation's current record of
10 shareholders constitutes one shareholder:
11 a. Three or fewer co-owners;
12 b. A corporation, partnership, trust, estate, or other entity;
13 c. The trustees, guardians, custodians, or other fiduciaries of a single trust, estate,
14 or account; or
15 d. One data address.
16 2. Shareholdings registered in substantially similar names constitute one shareholder if it
17 is reasonable to believe the names represent the same person.

18 **SECTION 10. AMENDMENT.** Section 10-19.1-76.3 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **10-19.1-76.3. Acceptance of shareholder act by the corporation.**

- 21 1. If the name or network signature signed on a vote, consent, waiver, or proxy
22 appointment corresponds to the record name or data address of a shareholder, the
23 corporation if acting in good faith may accept the vote, consent, waiver, or proxy
24 appointment and give it effect as the act of the shareholder.
25 2. Unless the articles or bylaws provide otherwise, if the name or network signature
26 signed on a vote, consent, waiver, or proxy appointment does not correspond to the
27 record name or data address of a shareholder, the corporation if acting in good faith
28 may accept the vote, consent waiver, or proxy appointment and give it effect as the act
29 of the shareholder if:
30 a. The shareholder is an organization and the name or network signature signed
31 purports to be that of an officer, manager, or agent of the organization;

- 1 b. The name or network signature signed purports to be that of an administrator,
2 guardian, or conservator representing the shareholder and, if the corporation
3 requests, evidence of fiduciary status acceptable to the corporation has been
4 presented with respect to the vote, consent, waiver, or proxy appointment;
- 5 c. The name or network signature signed purports to be that of a receiver or trustee
6 in bankruptcy of the shareholder, and, if the corporation requests, evidence of
7 this status acceptable to the corporation has been presented with respect to the
8 vote, consent, waiver, or proxy appointment;
- 9 d. The name or network signature signed purports to be that of a pledgee, beneficial
10 owner, or attorney in fact of the shareholder, and if, the corporation requests,
11 evidence acceptable to the corporation of the signatory's authority to sign for the
12 shareholder has been presented with respect to the vote, consent, waiver, or
13 proxy appointment; or
- 14 e. Two or more persons hold the shares as cotenants or fiduciaries and the name or
15 network signature signed purports to be the name or data address of at least one
16 of the coholders and the person signing appears to be acting on behalf of all the
17 coholders.
- 18 3. The corporation may reject a vote, consent, waiver, or proxy appointment if the officer
19 or agent authorized to tabulate votes, acting in good faith, has reasonable basis to
20 doubt the validity of the signature on it or the authority of the signatory to sign for the
21 shareholder.
- 22 4. The corporation or its officer or agent who accepts or rejects a vote, consent, waiver,
23 or proxy appointment in good faith and in accordance with the standards of this
24 section is not liable in damages to the shareholder for the consequences of the
25 acceptance or rejection.
- 26 5. Corporate action based on the acceptance or rejection of a vote, consent, waiver, or
27 proxy appointment under this section is valid unless a court of competent jurisdiction
28 determines otherwise.

29 **SECTION 11. AMENDMENT.** Section 10-19.1-81 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **10-19.1-81. Voting trusts.**

2 1. Shares in a corporation may be transferred to a trustee pursuant to written agreement,
3 for the purpose of conferring on the trustee the right to vote and otherwise represent
4 the beneficial owner of those shares for a period not exceeding ten years, except that
5 if the agreement is made in connection with an indebtedness of the corporation, the
6 voting trust may extend until the indebtedness is discharged. Unless otherwise
7 specified in the agreement, the voting trust may be terminated at any time by the
8 beneficial owners of a majority of the voting power of the shares held by the trustee. A
9 signed original of the agreement must be filed with the corporation.

10 2. When a voting trust agreement is signed, the trustee shall prepare a list of the
11 identities of all owners of beneficial interests in the trust, together with the number and
12 class of shares each transferred to the trust. The list must include each shareholder's:
13 a. Physical mailing address, if the identity of a shareholder on the list consists of the
14 shareholder's name; or
15 b. Authorized means of receipt for electronic transmissions, if the identity of a
16 shareholder on the list consists of the shareholder's data address.

17 3. Unless otherwise provided in the trust agreement, if there are two or more trustees,
18 the manner of voting is determined as provided in subsection 5 of section
19 10-19.1-73.2.

20 **SECTION 12. AMENDMENT.** Subsection 1 of section 10-19.1-84 of the North Dakota
21 Century Code is amended and reenacted as follows:

22 1. A corporation shall keep, at the corporation's principal executive office or at another
23 place or places within the United States determined by the board, a share register not
24 more than one year old, containing the ~~name and address~~identities of each
25 shareholder ~~and, in alphabetical or numerical order by class of shares showing the~~
26 number and classes of shares held by each shareholder.

27 a. The list must include each shareholder's:
28 (1) Physical mailing address, if the identity of a shareholder on the list consists
29 of the shareholder's name; or
30 (2) Authorized means of receipt for electronic transmissions, if the identity of a
31 shareholder on the list consists of the shareholder's data address.

1 11. The records maintained by a corporation, including its share register, financial records,
2 and minute books, may ~~utilize any information storage technique~~ be retained on, or by
3 means of, or be in the form of any information storage device or method, including, ~~for~~
4 ~~example~~, punched holes, printed ~~or~~, magnetized spots, ~~or~~ microimages, ~~even though~~
5 ~~that makes them illegible visually~~, if or any one or more distributed or other electronic
6 networks or databases provided the records are retained in written form or in another
7 form that can be converted ~~accurately and~~ into written form within a reasonable time,
8 ~~into a form that~~ is legible visually and whose contents are assembled by related
9 subject matter to permit convenient use by people in the normal course of business. A
10 corporation shall convert ~~any of~~ the records referred to in subsection 4 upon the
11 request of a person entitled to inspect them, and the expense of the conversion shall
12 be borne by the person who bears the expense of copying pursuant to subsection 10.
13 A copy of the conversion is admissible in evidence, and must be accepted for all other
14 purposes, to the same extent as the existing or original records would be if they were
15 legible visually.

16 **SECTION 15. AMENDMENT.** Subsection 1 of section 10-19.1-110 of the North Dakota
17 Century Code is amended and reenacted as follows:

- 18 1. If notice to creditors and claimants is given, it must be given by:
 - 19 a. Publishing the notice once each week for four successive weeks in an official
20 newspaper, as defined in chapter 46-06, in the county or counties where the
21 registered office and the principal executive office of the corporation are located;
22 and
 - 23 b. Giving written notice to known creditors and claimants pursuant to
24 subsection ~~3639~~ of section 10-19.1-01.

25 **SECTION 16. AMENDMENT.** Subsection 2 of section 10-19.1-146 of the North Dakota
26 Century Code is amended and reenacted as follows:

- 27 2. The annual report must be submitted on forms prescribed by the secretary of state.
28 The information provided must be given as of the date of the execution of the report.
29 The annual report must be signed as provided in subsection ~~5458~~ of section
30 10-19.1-01. If the corporation or foreign corporation is in the hands of a receiver or
31 trustee, it must be signed on behalf of the corporation or foreign corporation by the

1 receiver or trustee. The secretary of state may destroy all annual reports provided for
2 in this section after they have been on file for six years.

3 **SECTION 17.** Section 10-32.1-102 of the North Dakota Century Code is created and
4 enacted as follows:

5 **10-32.1-102. Series of members, managers, transferable interests or assets - General**
6 **powers of series - Governing authority - Distributions - Termination of series.**

7 1. An operating agreement may establish or provide for the establishment of a
8 designated series of members, managers, transferable interests, or assets that:

9 a. Has separate rights, powers, or duties with respect to specified property or
10 obligations of the limited liability company or profits and losses associated with
11 specified property or obligations; or

12 b. Has a separate business purpose or investment objective.

13 2. A series established in accordance with subsection 1 may carry on any business,
14 purpose, or activity, whether or not for profit, which is not prohibited by this chapter.

15 3. Subject to subsection 4, if an operating agreement establishes or provides for the
16 establishment of a particular series:

17 a. The debts, obligations, or other liabilities of the particular series, whether arising
18 in contract, tort, or otherwise, are enforceable against the assets of the series
19 only and not against:

20 (1) The assets of the limited liability company generally or any other series
21 thereof; or

22 (2) A member of the limited liability company.

23 b. The debts, obligations, or other liabilities of the limited liability company generally
24 or any other series thereof, whether arising in contract, tort, or otherwise, are not
25 enforceable against the assets of the particular series.

26 4. The limitations on liabilities in subsection 3 apply if:

27 a. The records for the particular series accounting for the assets of the series are
28 separately maintained from the records accounting for the assets of the limited
29 liability company or any other series thereof. Records that reasonably identify the
30 assets of a particular series, including by specific listing, category, type, quantity,
31 computational or allocational formula or procedure such as a percentage or share

- 1 of assets, or by any other method in which the identity of the assets is objectively
2 determinable, is deemed to account for the assets of the particular series
3 separately from the assets of the limited liability company or any other series
4 thereof;
- 5 b. The operating agreement specifically provides for the limitations on liabilities; or
6 c. Notice of the limitations on liabilities of the particular series is included in the
7 articles of organization. Notice is sufficient whether or not the limited liability
8 company has established or referenced any particular series in the notice.
- 9 5. This section, an operating agreement, or articles of organization may not restrict:
- 10 a. A series or limited liability company on behalf of a series from agreeing in the
11 operating agreement or otherwise that any debt, obligation, or other liability of the
12 limited liability company generally or any other series thereof is enforceable
13 against the assets of the series;
- 14 b. A limited liability company from agreeing in the operating agreement or otherwise
15 that any debt, obligation, or other liability of a series is enforceable against the
16 assets of the limited liability company generally; or
- 17 c. Notwithstanding section 10-32.1-26, a member or manager from agreeing in the
18 operating agreement or otherwise to be personally liable for any debt, obligation,
19 or other liability of a series.
- 20 6. A series established under this section may, in its own name, contract, hold title to
21 assets including real, personal and intangible property, grant liens and security
22 interests, and sue or be sued. A series may:
- 23 a. Have separate rights, powers, or duties with respect to specified property or
24 obligation of the limited liability company or profit and loss associated with any
25 specified property or obligation;
- 26 b. Carry on a lawful purpose regardless of whether for profit, except for the purpose
27 of acting as a financial institution or acting as an insurer; or
- 28 c. Hold assets directly or indirectly, including in the name of the series or the name
29 of the limited liability company.
- 30 7. An operating agreement that establishes or provides for the establishment of a series
31 may:

- 1 a. Provide for classes or groups of members or managers of the series having the
2 relative rights, powers, and duties specified in the operating agreement;
- 3 b. Provide for and specify the future creation of additional classes or groups of
4 members or managers of the series having the relative rights, powers, and duties
5 as may be established, including rights, powers, and duties senior to existing
6 classes and groups of members or managers of the series;
- 7 c. Provide for the taking of an action, including the amendment of the operating
8 agreement, without the vote or approval of a member, manager, class, or group
9 of members or managers of the series;
- 10 d. Provide that a member, class, or group of members of a series do not have
11 voting rights; and
- 12 e. Grant to all or certain identified members, managers, class, or group of members
13 or managers of the series the right to vote on a matter separately or with all or
14 any class or group of members or managers of the series. Voting by members or
15 managers may be on a per capita, number, financial interest, class, group, or
16 other basis.
- 17 8. The management of a series is vested as follows:
- 18 a. In the members of the series pursuant to subsection 2 of section 10-32.1-39. A
19 member shall cease to be a member of a series upon the divestment of all the
20 member's transferable interests of the series. The fact a person ceases to be a
21 member of a particular series must not by itself cause the person to cease to be
22 a member of the limited liability company or any other series thereof or cause the
23 termination of the series, regardless of whether the person was the last
24 remaining member of the series; or
- 25 b. If the operating agreement provides for the management of the series in whole or
26 in part by a manager, the management must be vested in one or more managers
27 who must be chosen as provided in the operating agreement and who must hold
28 the offices and have the responsibilities as specified in the agreement. A
29 manager ceases to be a manager of a series as provided in an operating
30 agreement and subject to subdivision e of subsection 3 of section 10-32.1-39.
31 The fact a person ceases to be a manager of a particular series must not by itself

1 cause the person to cease to be a manager of the limited liability company or any
2 other series thereof.

3 9. Notwithstanding section 10-32.1-30 and subject to subsections 10 and 12, if a member
4 of a series becomes entitled to receive a distribution, the member has the status of,
5 and is entitled to all remedies available to, a creditor of the series with respect to the
6 distribution. An operating agreement may provide for the establishment of a record
7 date for allocations and distributions associated with a series.

8 10. Notwithstanding subsection 1 of section 10-32.1-31, a limited liability company may
9 make a distribution with respect to a series established under this section unless the
10 total assets of the series after the distribution would be less than the sum of its total
11 liabilities plus the amount that would be needed, if the series were to be dissolved,
12 wound up, and terminated at the time of the distribution, to satisfy the preferential
13 rights upon winding up and termination of members whose preferential rights are
14 superior to those of the persons receiving the distribution. A member that receives a
15 distribution knowing the distribution was made in violation of this subsection is
16 personally liable to the series for the amount of the distribution.

17 a. This subsection does not affect an obligation or liability of a member under an
18 agreement or other applicable law for the amount of a distribution, except an
19 action under this subsection must be subject to subsection 5 of section
20 10-32.1-32.

21 b. For purposes of this subsection, "distribution" does not include amounts
22 constituting reasonable compensation for present or past services or reasonable
23 payments made in the ordinary course of business under a bona fide retirement
24 plan or other benefits program.

25 11. Subject to section 10-32.1-51, a series established under this section may be
26 terminated and its affairs wound up without causing the dissolution of the limited
27 liability company. The termination of the series does not affect the limitations on
28 liabilities of the series as provided in subsection 3. A series is terminated and its affairs
29 must be wound up upon the occurrence of any of the following:

30 a. The dissolution of the limited liability company under section 10-32.1-51;

31 b. The time or happening of events specified in the operating agreement;

- 1 c. The vote or consent of members of the series who own more than two-thirds of
2 the interests in the profits of the series; or
- 3 d. On application by a member or manager of the series, the entry of a court order
4 terminating the series on the grounds the series is not reasonably practicable to
5 carry on the purposes of the series in conformity with the operating agreement.
- 6 12. A person winding up the affairs of a series may, in the name of the limited liability
7 company and for and on behalf of the limited liability company and the series, take any
8 action with respect to the series as authorized by section 10-32.1-51. The person shall
9 provide for the claims and obligations of the series and distribute the assets of the
10 series as provided in section 10-32.1-54. Any action taken in accordance with this
11 subsection does not affect the liability of members and does not impose liability on a
12 liquidating trustee appointed in accordance with this subsection. Notwithstanding
13 section 10-32.1-51, the following persons may wind up the affairs of a series:
- 14 a. A manager of the series who has not wrongfully terminated the series;
15 b. If the series has no manager who qualifies under subdivision a, the members of
16 the series or a person approved by the members;
- 17 c. The members who own more than fifty percent of the interests in the profits of the
18 series; or
- 19 d. On application of a member or manager of the series or a personal
20 representative or assignee of the member or manager, and upon cause shown, a
21 court or a liquidating trustee appointed by the court.
- 22 13. A foreign limited liability company doing business in this state and governed by an
23 operating agreement that establishes or provides for the establishment of a
24 designated series of members, managers, transferable interests, or assets shall state
25 the following on its certificate of authority:
- 26 a. That the operating agreement of the foreign limited liability company establishes
27 or provides for the establishment of series having separate rights, powers, or
28 duties with respect to specified property or obligations of the foreign limited
29 liability company or profits and losses associated with specified property or
30 obligations;

1 b. If any debt, obligation, or other liability of any particular series, whether arising in
2 contract, tort, or otherwise, is enforceable against the assets of the particular
3 series only and not against the assets of the foreign limited liability company
4 generally or any other series thereof; and

5 c. If any debt, obligation, or other liability of the foreign limited liability company
6 generally or any other series thereof, whether arising in contract, tort, or
7 otherwise, is enforceable against the assets of the particular series.

8 14. The secretary of state may adopt rules reasonable and/or necessary to address
9 requirements related to the secretary of state for registration and continuing existence
10 of the series limited liability companies established under this section.

11 **SECTION 18. AMENDMENT.** Subsection 2 of section 10-35-28 of the North Dakota
12 Century Code is amended and reenacted as follows:

13 2. The annual report must be submitted on forms prescribed by the secretary of state.
14 The information provided must be given as of the date of the execution of the report.
15 The annual report must be signed as provided in subsection 5458 of section
16 10-19.1-01, the articles or the bylaws, or by a resolution approved by the affirmative
17 vote of the required proportion or number of the directors. If the publicly traded
18 corporation is in the hands of a receiver or trustee, it must be signed on behalf of the
19 publicly traded corporation by the receiver or trustee. The secretary of state may
20 destroy all annual reports provided for in this section after they have been on file for
21 six years.