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Yolanda Richardson
Operator's Signature

10/6/03
Date

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

HCR 3074

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10/10/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HCR 3074

House Industry, Business and Labor Committee

Conference Committee

Hearing Date February 26, 2003

Tape Number	Side A	Side B	Meter #
1		x	27.5-36.4

Committee Clerk Signature *Judith Hammar*

Minutes: **Chairman Keiser** opened the hearing on HCR 3074.

Rep. Warner, District 4, appeared to introduce HCR 3074. (*See attached*) The intent is to study the current statutory framework of commercial entities, including possible inconsistent treatment of similarly situated entities. He stated that he will bow to the wisdom of the committee and would not be offended if this were hog housed and sent back for original intent or, if it were given it a do not pass and let die on the floor.

Al Jaeger, Secretary of State of North Dakota, appeared to offer oral testimony. The Commission on Uniform State Laws had intended to introduce legislation on partnerships. He urged them not to do so. Each business entity has its own chapter, an attorney can refer to each chapter pertaining to its business. The Secretary of State's Office is committed to a study regarding Uniform State Laws that Rep. Klemm and the Bar Association will bring back next session. He urged a Do Not Pass.

Rep. Nottestad moved a Do Not Pass to be Placed on the Consent Calendar.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number HCR 3074

Hearing Date February 26, 2002

Rep. Klein seconded the motion.

Results of the roll call vote were **12-0-2**.

Rep. Thorpe will carry this on the floor.

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Salvatore Riccardi
Operator's Signature

10/16/03
Date

Date: 2/26/03
Roll Call Vote #:

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3074

House Industry, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DNP Place on Consent Calendar

Motion Made By Nottestad Seconded By Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Rep.Boe	✓	
Rep. Severson, Vice-Chair	✓		Rep. Ekstrom	✓	
Rep. Dosch	✓		Rep. Thorpe	✓	
Rep. Froseth	✓		Rep. Zaiser		
Rep. Johnson	✓				
Rep. Kasper	✓				
Rep. Klein	✓				
Rep. Nottestad	✓				
Rep. Ruby	✓				
Rep. Tieman	✓				

Total (Yes) 12 No 0

Absent 2

Floor Assignment Thorpe

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

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Yolanda Richardson 10/16/03
Operator's Signature Date

REPORT OF STANDING COMMITTEE (410)
February 26, 2003 1:18 p.m.

Module No: HR-34-3517
Carrier: Thorpe
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE
HCR 3074: Industry, Business and Labor Committee (Rep. Kelsner, Chairman)
recommends **DO NOT PASS** and **BE PLACED ON THE CONSENT CALENDAR**
(12 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HCR 3074 was placed on the
Tenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-34-3517

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La Costa Richardson
Operator's Signature

10/16/03
Date

2003 TESTIMONY

HCR 3074

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Richard Costa
Operator's Signature

10/16/03
Date

LR

HOUSE CONCURRENT RESOLUTION 3074
HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE
Representative John Warner, District 4
26 FEBRUARY 2003

Mr. Chairman, Members of the Committee,

I need to explain the origins of this resolution. Last summer while serving on a committee that received a report on business structures I was surprised to learn the number of Limited Liability Partnerships and Limited Liability Limited Partnerships that have arisen since these two business structures were created. I thought that four years might have turned up some thoughts on how well they were working and that perhaps an interim committee could provide a suitable forum for the discussion.

When the resolution came down from the Legislative Council it was much more comprehensive than that. I spoke to Jennifer Clark, who had done the draft, and she thought that an interim committee should look into inconsistent treatment and definitions. I have attached her one page memo entitled COMMERCIAL ENTITIES-SUMMARY and a nine page summary of the definitions of "person" found in the commercial code.

Since introducing the resolution I have had discussions with the Secretary of State and I understand that there is an ongoing, systematic review of the commercial code by Claire Jerkins, Director of the Business Division of the Secretary of State's Office and Bill Guy III with the State Bar Association.

I have been convinced that this issue is being adequately addressed and that it would not be in the best public interest to have it reviewed by a legislative interim committee at this time. I will leave it to the best wisdom of the committee if this should be advanced or given a unanimous DNA and quietly killed on the consent calendar.

La Costa Rickford
Operator's Signature

10/16/03
Date

COMMERCIAL ENTITIES - SUMMARY

This memorandum briefly summarizes some of the North Dakota legislative activity that created types of commercial entities, how business entities are referred to in the North Dakota Century Code (NDCC), and how commercial entities are treated in the North Dakota Century Code.

LEGISLATION

North Dakota law provides for a number of different types of commercial entities. A partial list of the different types of commercial entities allowed in North Dakota is included in 2003 House Concurrent Resolution No. 3074, a copy of which is attached as Appendix A. Some of these entities have existed since statehood, whereas others are recent creations. The creation of a type of commercial entity typically occurs through legislation. Over the past 10 years, significant legislation has been enacted which creates new or modifies existing types of commercial entities. For example:

- Chapter 10-32, Limited Liability Act, was created and enacted in 1993 by Senate Bill No. 2222, which is 107 pages of the 1993 Session Laws.
- Chapter 45-22, Limited Liability Partnerships, was created and enacted in 1995 by Senate Bill No. 2344, which is 36 pages of the 1995 Session Laws.
- Chapters 45-05, 45-06, 45-07, 45-08, and 45-09, Uniform Partnership Act, were repealed and replaced by NDCC Chapters 45-13, 45-14, 45-15, 45-16, 45-17, 45-18, 45-19, 45-20, and 45-21 by 1995 House Bill No. 1110, which is 30 pages of the 1995 Session Laws.
- Chapters 10-24, 10-25, 10-26, 10-27, and 10-28, North Dakota Nonprofit Corporation Act, were repealed and replaced with NDCC Chapter 10-33, by 1997 Senate Bill No. 2210, which is 87 pages of the 1997 Session Laws.
- Chapter 45-23, Limited Liability Limited Partnerships, was created and enacted in 1999 by Senate Bill No. 2271, which is 201 pages of the 1999 Session Laws.
- Numerous amendments relating to business corporations, professional corporations, and limited liability companies were made by 2001 Senate Bill No. 2142, which is 30 pages of the 2001 Session Laws.
- Numerous amendments relating to business corporations, limited liability companies, nonprofit corporations, limited partnerships, partnerships, limited liability partnerships, and limited liability limited partnerships are being

proposed in 2003 Engrossed House Bill No. 1362, which is a 182-page bill.

INCONSISTENT TREATMENT

A business entity may be treated inconsistently from similarly situated commercial entities in a variety of ways and for a variety of reasons. A business entity may be treated inconsistently from similarly situated commercial entities as a result of the broad range of types of business entities, which have been created at different times by different legislative measures introduced by different legislators and agencies with a variety of interests. Some of this differing treatment may be intentional and some may be unintentional.

For example, a business entity may be treated inconsistently from similarly situated commercial entities as a result of inconsistent statutory references to commercial entities. Generally, under NDCC Section 1-01-49, as used throughout the North Dakota Century Code, the term "person" means an individual, organization, government, political subdivision, or government agency or instrumentality. This section also defines an "organization" as including a foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, or any legal or commercial entity. However, the North Dakota Century Code contains at least 99 definitions of "person." A list of these definitions is attached as Appendix B. Some of these definitions may purposely vary from the general definition; however, it is likely that most of these definitions are not intended to differ from the general definition.

In addition, there are numerous portions of the North Dakota Century Code that specifically reference a particular type of commercial entity. Although some legislative measures affirmatively seek to address these portions of the North Dakota Century Code, it is possible that similarly situated commercial entities have been unintentionally omitted from these references.

SUMMARY

There is a broad range of types of commercial entities that have been created over a long period of time. Some of the legislative measures creating types of commercial entities are quite voluminous. Although some of these legislative measures appear to update statutory references to business entities, other measures may not.

ATTACH: 2

