Sixty-sixth Legislative Assembly of North Dakota
In Regular Session Commencing Thursday, January 3, 2019

SENATE BILL NO. 2326
(Senators Dwyer, Luick)
(Representatives Klemin, Lefor)

AN ACT to create and enact a new subsection to section 10-19.1-26, a new subsection to section 10-32.1-08, a new section to chapter 43-51 of the North Dakota Century Code, relating to general powers of a corporation and limited liability company and registration requirements; and to amend and reenact sections 10-06.1-17, subsection 4 of section 10-15-53.1, subsection 1 of section 10-19.1-47, subsection 3 of section 10-19.1-146, subsection 2 of section 10-31-02.2, subsections 5 and 6 of section 10-31-13, subsection 3 of section 10-32.1-89, subsection 3 of section 10-33-139, section 10-35-29, subsection 3 of section 10-36-07, section 43-54-05, subsection 3 of section 45-10.2-108, section 45-11-04.1, subsection 4 of section 45-22-03, and subsection 3 of section 45-22-21.1, and section 47-22-05 of the North Dakota Century Code, relating to registration and reports of corporations, limited liability companies, and partnerships.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

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

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

Before April sixteenth of each year, every corporation engaged in farming or ranching after June 30, 1981, and every limited liability company engaged in farming or ranching shall file with the secretary of state an annual report signed as provided in subsection 54 of section 10-19.1-01 if a corporation and subsection 47 of section 10-32.1-02 if a limited liability company. If the corporation or limited liability company is in the hands of a receiver or trustee, it must be signed on behalf of the corporation or limited liability company by the receiver or trustee. ~~An annual report in a sealed envelope postmarked by the United States postal service before the date provided in this section or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in this section meets the filing date requirement.~~ An annual report must include the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.

2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the corporation or limited liability company in this state.

3. With respect to each corporation:

   a. A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

   b. A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

4. With respect to each shareholder or member:

   a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;

b. The number of shares or membership interests or percentage of shares or membership interests owned by each;

c. The relationship of each;

d. A statement of whether each is a citizen or permanent resident alien of the United States; and

e. A statement of whether at least one is an individual residing on or operating the farm or ranch.

5. With respect to management:

a. If a corporation, then the names and addresses of the officers and members of the board of directors; or

b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.

6. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].

7. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years or for each year of existence if less than five years.

8. A statement of the percentage of gross income of the corporation or limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.

9. A corporation engaged in farming which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-19.1, except that the penalties must be calculated from the date of the report required by this section.

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

SECTION 2. AMENDMENT. Subsection 4 of section 10-15-53.1 of the North Dakota Century Code is amended and reenacted as follows:

4. The annual report must be delivered to the secretary of state with the fees provided in section 10-15-54 before April first of each year, except the first annual report of a cooperative or foreign cooperative must be delivered before April first of the year following the calendar year in which the certificate of incorporation or certificate of authority was issued by the secretary of state.

~~a. An annual report in a sealed envelope postmarked by the United States postal service before April first, an annual report in a sealed packet with a verified shipment date by any other carrier service before April first, or an annual report electronically transmitted to the secretary of state with a transmission time before April first is in compliance with this requirement. When a filing date falls on a Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment or transmission date on the next business day complies with this requirement.~~

~~b.~~ The secretary of state shall file the report if the report conforms to the requirements of subsections 1 and 2.

~~(1)~~a. If the report does not conform to those requirements, the report must be returned to the cooperative or foreign cooperative for any necessary corrections.

~~(2)~~b. If the report is filed before the deadlines provided in this section, any penalty for the failure to file a report within the time provided does not apply if the report is corrected to conform to the requirements of subsections 1 and 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for corrections.

SECTION 3. A new subsection to section 10-19.1-26 of the North Dakota Century Code is created and enacted as follows:

A corporation only may seek to obtain a license or permit required of the state after the articles of incorporation are filed with the secretary of state.

SECTION 4. AMENDMENT. Subsection 1 of section 10-19.1-47 of the North Dakota Century Code is amended and reenacted as follows:

1. An action required or permitted to be taken at a board meeting may be taken by written action signed by all of the directors. If the articles so provide, any action, other than an action requiring shareholder approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of directors that would be required to take ~~written action, signed by all of the directors, if the articles so provide,~~ the same action at a meeting of the board at which all directors were present.

SECTION 5. AMENDMENT. Subsection 3 of section 10-19.1-146 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

SECTION 6. AMENDMENT. Subsection 2 of section 10-31-02.2 of the North Dakota Century Code is amended and reenacted as follows:

2. At the time the registration is filed with the secretary of state, the professional limited liability partnership or foreign limited liability partnership also shall file ~~a~~:

   a. A certificate from the regulating board of the profession involved that each of the partners who will practice the profession in this state is licensed to practice the profession in this state; or

b. If there is one or more minority owners, a certificate from the regulating board of the profession of the limited liability partnership certifying that each of the partners who will practice the profession in this state, if any, is licensed to practice the profession in this state and a certificate from the limited liability partnership identifying the minority owners and the express law authorizing minority ownership.

SECTION 7. AMENDMENT. Subsections 5 and 6 of section 10-31-13 of the North Dakota Century Code are amended and reenacted as follows:

5. In order to regulate organizations that have minority ownership, the secretary of state ~~shall~~may collect one thousand dollars for articles of incorporation for a corporation, articles of organization for a limited liability company, or articles of amendment related to an organization that has a minority owner. This fee is in addition to the fees provided for these filings under section 10-19.1-147 or 10-32.1-92. Fees collected by the secretary of state under this subsection must be deposited in the secretary of state's general services operating fund.

6. In order to regulate organizations that have ownership that renders more than one professional service, the secretary of state ~~shall~~may collect one thousand dollars for articles of incorporation for a corporation, articles of organization for a limited liability company, or articles of amendment related to an organization that has ownership that renders more than one professional service. This fee is in addition to the fees provided for these filings under section 10-19.1-147 or 10-32.1-92. Fees collected by the secretary of state under this subsection must be deposited in the secretary of state's general services operating fund.

SECTION 8. A new subsection to section 10-32.1-08 of the North Dakota Century Code is created and enacted as follows:

A limited liability company only may seek to obtain a license or permit required by the state after the articles of organization are filed with the secretary of state and the limited liability company has one or more members.

SECTION 9. AMENDMENT. Subsection 3 of section 10-32.1-89 of the North Dakota Century Code is amended and reenacted as follows:

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

~~a. An annual report in a sealed envelope postmarked by the United States postal service before November sixteenth, an annual report in a sealed packet with a verified shipment date by any other carrier service before November sixteenth, or an annual report electronically transmitted to the secretary of state with a transmission time before November sixteenth, is in compliance with this requirement.~~

~~b.~~ The secretary of state must file the report if the report conforms to the requirements of subsections 1 and 2.

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

~~(2)~~b. If the report is filed before the deadlines provided in this subsection, then penalties for the failure to file a report within the time provided do not apply if the report is corrected to conform to the requirements of subsections 1 and 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

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

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

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

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

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

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

SECTION 11. AMENDMENT. Section 10-35-29 of the North Dakota Century Code is amended and reenacted as follows:

10-35-29. Filing of annual report and payment of publicly traded corporation franchise fee.

1. Except for the first annual report and publicly traded corporation franchise fee, the annual report and publicly traded corporation franchise fee must be delivered to the secretary of state before December second of each year. The first annual report and payment of the publicly traded corporation franchise fee must be delivered before the date provided in the year following the calendar year in which the statement described in subdivision b of subsection 6 of section 10-35-02 takes effect.

2. ~~An annual report and publicly traded corporation franchise fee in a sealed envelope postmarked by the United States postal service before the date provided in subsection 1, or an annual report in a sealed packet with a verified shipment date by any other carrier service before the date provided in subsection 1, is compliance with this requirement. When the filing date falls on Saturday, Sunday, or other holiday as defined in section 1-03-01, a postmark or verified shipment date on the next business day is compliance with this requirement.~~

~~3.~~ The secretary of state must file the annual report if the annual report conforms to the requirements of section 10-35-28 and the publicly traded corporation franchise fee has been paid.

   a. If the annual report does not conform or adequate payment has not been made, the secretary of state must notify the publicly traded corporation of any necessary corrections or payment.

   b. If the annual report is corrected and filed with the payment before the date provided in subsection 1, or within thirty days after the publicly traded corporation was notified of corrections or payment by the secretary of state, then the penalties provided in section 10-35-31 for failure to file an annual report within the time provided do not apply.

~~4.~~3. The secretary of state may extend the annual report filing date provided in subsection 1 for a period not to exceed eleven months after the filing date provided in subsection 1 if a written application for an extension is delivered before the date provided in subsection 1.

SECTION 12. AMENDMENT. Subsection 3 of section 10-36-07 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

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

SECTION 13. A new section to chapter 43-51 of the North Dakota Century Code is created and enacted as follows:

Definition - Registration - Obtaining a license or permit.

1. For purposes of this section "occupational or professional certificate, permit, or license" means a certificate, permit, or license issued by or on behalf of the state by any of the state's licensing authorities or occupational or professional boards.

2. A business entity that has a registration requirement with the secretary of state only may seek to obtain an occupational or professional certificate, permit, or license required of the state after the registration is filed with the secretary of state.

SECTION 14. AMENDMENT. Section 43-54-05 of the North Dakota Century Code is amended and reenacted as follows:

43-54-05. Renewal of registration.

A registration issued under this chapter expires June thirtieth of each calendar year and may be renewed upon submission of a renewal fee of fifty dollars and provision of proof of continuous insurance coverage as required for registration. The application for renewal must be ~~postmarked~~delivered to the secretary of state before July first of each year. The registrar shall cancel the registration of an individual who fails to file a timely application for the renewal of registration. The cancellation must be without notice or opportunity for hearing. An individual whose registration has been canceled and who desires to reregister must file an initial application, pay the initial application fee, and provide proof of current errors and omissions insurance. An individual registered under this chapter may not engage in any activity under this chapter after June thirtieth of any year unless that individual has a valid registration.

SECTION 15. AMENDMENT. Subsection 3 of section 45-10.2-108 of the North Dakota Century Code is amended and reenacted as follows:

3. The annual report of a limited partnership or foreign limited partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited partnership or foreign limited partnership must be delivered before April first of the year following the calendar year in which the certificate of limited partnership or certificate of authority was filed by the secretary of state.

   ~~a. An annual report in a sealed envelope postmarked by the United States postal service on or before April first or an annual report in a sealed packet with a verified shipment date by any other carrier service on or before April first, complies with the delivery requirement under this subsection.~~

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

   ~~(1)~~a. If the report does not conform, then the report must be returned to the limited partnership or foreign limited partnership for any necessary corrections.

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

SECTION 16. AMENDMENT. Section 45-11-04.1 of the North Dakota Century Code is amended and reenacted as follows:

45-11-04.1. Renewal.

A fictitious name certificate filed under this chapter must be renewed every five years from the date of the initial filing. The statement of renewal must be executed by the partnership on forms prescribed by the secretary of state ~~which are sent to the address of the principal place of business at least ninety days before the deadline for filing~~. The statement must include the fictitious name of the partnership, the state or country of organization, the address of the principal place of business, a brief description of the nature of business in which the partnership is engaged in this state, the names and addresses of all general partners, and a statement that the partnership is still in existence and continues to transact business in this state. If the secretary of state finds that the statement conforms to the requirements of this section, and the filing fee of twenty-five dollars has been paid, the secretary of state shall file the statement. If the secretary of state finds that it does not so conform, the secretary of state shall promptly return the statement to the partnership for any necessary corrections, in which event, the fictitious name certificate is subject to cancellation if the statement is not returned corrected within thirty days after the statement was returned for corrections. If the statement of renewal reflects a change of membership, the statement of renewal may not be filed until payment of the fees required for these changes are paid as required by section 45-11-05.1. The secretary of state shall provide notice sent to the address of the principal place of business at least ninety days before the deadline for filing the state of renewal. If a partnership fails to file the statement of renewal when due, the fictitious name certificate must be canceled by the secretary of state and notice of the cancellation must be mailed to the address of the principal place of business.

SECTION 17. AMENDMENT. Subsection 4 of section 45-22-03 of the North Dakota Century Code is amended and reenacted as follows:

4. An original of the registration must be filed with the secretary of state.

   a. If the secretary of state finds the registration conforms to law and the fees provided in section 45-22-22 are paid, the secretary of state shall endorse on the original the word

"filed" and the day, month, and year of the filing and shall file the original in the office of the secretary of state.

b. If any statement in the registration is false when made or becomes inaccurate after the registration is filed, making the registration false or inaccurate in any respect, the limited liability partnership shall file promptly with the secretary of state an amended or corrected registration ~~or reflect the changes on the limited liability partnership's next annual report~~. If only a change of address of the principal executive office is required, an amended or corrected registration need not be filed. However, the change of address of the principal executive office must be reported in the next annual report filed after the change or be submitted in writing to the secretary of state without a filing fee.

c. In the case of a change in a foreign limited liability partnership's name, a foreign limited liability partnership shall file promptly with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction of origin.

d. In the case of a termination or merger:

(1) A foreign limited liability partnership that is not the surviving organization need not file an amended registration but, within thirty days after the merger or termination becomes effective, shall file with the secretary of state a certificate to that effect authenticated by the proper officer of the foreign limited liability partnership's jurisdiction of origin.

(2) It is not necessary for any foreign limited liability partnership, which is the surviving organization in a merger, to procure a new or amended registration unless the name of the foreign limited liability partnership is changed or unless the foreign limited liability partnership desires to pursue in this state purposes other than those which the foreign limited liability partnership is authorized to transact in this state.

SECTION 18. AMENDMENT. Subsection 3 of section 45-22-21.1 of the North Dakota Century Code is amended and reenacted as follows:

3. The annual report of a limited liability partnership must be delivered to the secretary of state before April first of each year, except the first annual report of a limited liability partnership must be delivered before April first of the year following the calendar year in which the registration is filed by the secretary of state. A limited liability partnership in existence on July 1, 1999, shall file the first annual report before April first in the year of the expiration of the registration in effect on July 1, 1999.

~~a. An annual report in a sealed envelope postmarked by the United States postal service before April first, or an annual report in a sealed packet with a verified shipment date by any other carrier service before April first, complies with this requirement.~~

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

~~(1)~~a. If the annual report does not conform, the annual report must be returned to the limited liability partnership for any necessary corrections.

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

SECTION 19. AMENDMENT. Section 47-22-05 of the North Dakota Century Code is amended and reenacted as follows:

47-22-05. Duration and renewal.

Registration of a mark hereunder is effective for a term of ten years from the date of registration and, upon application filed prior to the expiration of such term, on a form to be furnished by the secretary of state, the registration may be renewed in the same manner as a new application for a like term. A renewal fee of thirty dollars for one class of goods or services and twenty dollars for each additional class, payable to the secretary of state, must accompany the application for renewal of the registration.

A registration may be renewed for successive periods of ten years in like manner.

The secretary of state shall notify registrants hereunder of the necessity of renewal ~~within~~at least ninety days ~~preceding~~before the expiration of the ~~ten years from the date of~~ registration by writing to the last-known address of the registrants.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Sixty-sixth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2326.

Senate Vote:	Yeas 45	Nays 0	Absent 2
House Vote:	Yeas 89	Nays 1	Absent 4

Secretary of the Senate

Received by the Governor at 9:12 AM. on March 18, 2019.

Approved at 1:33 PM. on March 21, 2019.

Governor

Filed in this office this 22nd day of March, 2019,

at 10:11 o'clock A. M.

Secretary of State