Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1136
(Judiciary Committee)
(At the request of the Commission on Uniform State Laws)

AN ACT to create and enact chapter 10-32.1 of the North Dakota Century Code, relating to the regulation of limited liability companies and foreign liability companies; to amend and reenact subsections 5 and 12 of section 10-01.1-02, sections 10-06.1-05, 10-06.1-12, 10-06.1-14, and 10-06.1-17, subsections 27, 31, and 34 of section 10-19.1-01, paragraph 2 of subdivision e of subsection 1 and subdivision c of subsection 6 of section 10-19.1-13, subsection 9 of section 10-19.1-100, subsection 3 of section 10-19.1-102, paragraph 2 of subdivision e of subsection 2 of section 10-19.1-104.1, subsection 1 of section 10-31-02.1, section 10-31-03.1, subdivision a and paragraph 3 of subdivision b of subsection 2 and subsections 5 and 6 of section 10-31-13, subdivisions a and b of subsection 7 of section 10-31-13.1, paragraph 2 of subdivision e of subsection 1 and subdivision c of subsection 6 of section 10-33-10, subsection 1 of section 10-33-72, sections 10-36-03, 38-08.1-03, and 43-07-19, subsection 23 of section 45-10.2-02, paragraph 2 of subdivision f of subsection 1 and subdivision c of subsection 6 of section 45-10.2-10, paragraph 2 of subdivision a of subsection 2 of section 45-10.2-94, paragraph 2 of subdivision e of subsection 1 and subdivision c of subsection 6 of section 45-13-04.1, subdivision b of subsection 1 and paragraph 2 of subdivision a of subsection 11 of section 45-21-01, paragraph 2 of subdivision e of subsection 1 and subdivision c of subsection 5 of section 45-22-04, paragraph 2 of subdivision a of subsection 13 of section 45-23-01, paragraph 2 of subdivision f of subsection 1 and subdivision c of subsection 5 of section 45-23-03, section 50-22-02.2, and subsection 3 of section 54-44.4-09 of the North Dakota Century Code, relating to limited liability companies; to repeal chapter 10-32 of the North Dakota Century Code, relating to limited liability companies; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 5 and 12 of section 10-01.1-02 of the North Dakota Century Code are amended and reenacted as follows:

5. "Domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter ~~10-32~~10-32.1.

12. "Foreign limited liability company" means a limited liability company:

    a. That is organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter ~~10-32~~10-32.1; and

    b. That is a qualified foreign entity.

SECTION 2. AMENDMENT. Section 10-06.1-05 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-05. Conversion of limited liability company.

A domestic business limited liability company organized under chapter ~~10-32~~10-32.1 may convert to a farming or ranching limited liability company by adopting an amendment to its articles of organization which specifies that the limited liability company elects to be subject to this chapter and by complying with all requirements of this chapter. The amendment must be filed with the secretary of state with the prescribed fee and with the initial report required by section 10-06.1-15. A farming or ranching limited liability company may convert to a domestic business limited liability company by adopting an amendment to its articles of organization. The amendment must be filed with the secretary of state with the prescribed fee. The amendment must be accompanied by a report outlining the information, as of

the date of the amendment, which is required under section 10-06.1-17 and the manner in which the limited liability company has divested itself of its owned or leased land holdings and its business of farming or ranching.

SECTION 3. AMENDMENT. Section 10-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-12. Corporation or limited liability company allowed to engage in the business of farming or ranching - Requirements.

This chapter does not prohibit a domestic corporation or a domestic limited liability company from owning real estate and engaging in the business of farming or ranching, if the corporation meets all the requirements of chapter 10-19.1 or the limited liability company meets all the requirements of chapter ~~10-32~~10-32.1 which are not inconsistent with this chapter. The following requirements also apply:

1. If a corporation, the corporation must not have more than fifteen shareholders. If a limited liability company, the limited liability company must not have more than fifteen members.

2. Each shareholder or member must be related to each of the other shareholders or members within one of the following degrees of kinship or affinity: parent, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or the spouse of a person so related.

3. Each shareholder or member must be an individual or one of the following:

   a. A trust for the benefit of an individual or a class of individuals who are related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.

   b. An estate of a decedent who was related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.

4. A trust or an estate may not be a shareholder or member if the beneficiaries of the trust or the estate together with the other shareholders or members are more than fifteen in number.

5. Each individual who is a shareholder or member must be a citizen of the United States or a permanent resident alien of the United States.

6. If a corporation, the officers and directors of the corporation must be shareholders who are actively engaged in operating the farm or ranch and at least one of the corporation's shareholders must be an individual residing on or operating the farm or ranch. If a limited liability company, the governors and managers of the limited liability company must be members who are actively engaged in operating the farm or ranch and at least one of its members must be an individual residing on or operating the farm or ranch.

7. An annual average of at least sixty-five percent of the gross income of the corporation or limited liability company over the previous five years, or for each year of its existence, if less than five years, must have been derived from farming or ranching operations.

8. The income of the corporation or limited liability company from nonfarm rent, nonfarm royalties, dividends, interest, and annuities cannot exceed twenty percent of the gross income of the corporation or limited liability company.

SECTION 4. AMENDMENT. Section 10-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-14. Applicability of North Dakota limited liability company laws.

Chapter ~~10-32~~10-32.1, except those sections which pertain to foreign limited liability companies, is applicable to farming or ranching limited liability companies, which have the powers and privileges and are subject to the duties, restrictions, and liabilities of other business limited liability companies, except when inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with the provisions of chapter ~~10-32~~10-32.1.

SECTION 5. 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 ~~58~~47 of section ~~10-32-02~~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 provided in section 10-19.1-147 except that the penalties must be calculated from the date of the report required by this section.

10. A limited liability company engaged in farming which fails to file an annual report is subject to the penalties provided in subsections 5 and 6 of section ~~10-32-149~~10-32.1-89 except that the penalties must be calculated from the date of the report required by this section.

SECTION 6. AMENDMENT. Subsections 27, 31, and 34 of section 10-19.1-01 of the North Dakota Century Code are amended and reenacted as follows:

27. "Foreign limited liability company" means a limited liability company organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter ~~10-32~~10-32.1.

31. "Governing statute" of an organization means:

    a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:

        (1) If a corporation, then this chapter;

        (2) If a limited liability company, then chapter ~~10-32~~10-32.1;

        (3) If a general partnership, then chapters 45-13 through 45-21;

        (4) If a limited partnership, then chapter 45-10.2;

        (5) If a limited liability partnership, then chapter 45-22; and

        (6) If a limited liability limited partnership, then chapter 45-23; and

    b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.

34. "Limited liability company" or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by chapter ~~10-32~~10-32.1.

SECTION 7. AMENDMENT. Paragraph 2 of subdivision e of subsection 1 of section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

(2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, ~~10-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

SECTION 8. AMENDMENT. Subdivision c of subsection 6 of section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

c. Holds a reserved name in the manner provided in section 10-19.1-14, ~~10-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

SECTION 9. AMENDMENT. Subsection 9 of section 10-19.1-100 of the North Dakota Century Code is amended and reenacted as follows:

9. If all of the ownership interests of one or more domestic subsidiaries that is a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent organizations, immediately before the merger, then the owners of each domestic subsidiary which is either a limited liability company or a corporation, have dissenter's rights under section 10-19.1-87 ~~or 10-32-54~~, without regard to subsection 3 of section 10-19.1-87 or ~~subsection 2 of section 10-32-54~~10-32.1-33, and under section 10-19.1-88 ~~or 10-32-55~~.

   a. If the parent is a constituent organization but is not the surviving organization in the merger, the articles of incorporation or articles of organization of the surviving organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87 or ~~under subdivision a of subsection 1 of section 10-32-54,~~section 10-32.1-33, and the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, then that owner of the parent has dissenter's rights as provided under section 10-19.1-87 or ~~10-32-54~~10-32.1-33.

   b. Except as provided in this subsection, ~~sections~~section 10-19.1-87 ~~and 10-32-54~~ ~~do~~does not apply to any merger affected under this section.

SECTION 10. AMENDMENT. Subsection 3 of section 10-19.1-102 of the North Dakota Century Code is amended and reenacted as follows:

3. When a merger or exchange becomes effective, the ownership interests to be converted or exchanged under the terms of the plan cease to exist in the case of a merger, or are deemed to be exchanged in the case of an exchange. The owners of those ownership interests are entitled only to the securities, money, or other property into which those ownership interests have been converted or for which those ownership interests have been exchanged in accordance with the plan, subject to any dissenter's rights under section 10-19.1-87 or ~~10-32-54~~10-32.1-33.

SECTION 11. AMENDMENT. Paragraph 2 of subdivision e of subsection 2 of section 10-19.1-104.1 of the North Dakota Century Code is amended and reenacted as follows:

(2) A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter ~~10-32~~10-32.1;

SECTION 12. AMENDMENT. Subsection 1 of section 10-31-02.1 of the North Dakota Century Code is amended and reenacted as follows:

1. One or more individuals may organize a professional organization in the form of a limited liability company for the practice of a profession by filing articles of organization with the

secretary of state. The articles of organization must meet the requirements of chapter ~~10-32~~10-32.1 and must contain the following:

a. The profession to be practiced through the professional limited liability company; and

b. The name and residence address of each original member of the professional limited liability company who will practice the profession in this state and of each original member of the professional limited liability company who is a minority owner.

SECTION 13. AMENDMENT. Section 10-31-03.1 of the North Dakota Century Code is amended and reenacted as follows:

10-31-03.1. Applicability of chapter ~~10-32~~10-32.1.

Chapter ~~10-32~~10-32.1 applies to a professional organization that is created in the form of a limited liability company and which enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other limited liability companies except when inconsistent with the letter and purpose of this chapter. This chapter takes precedence in the event of any conflict with chapter ~~10-32~~10-32.1.

SECTION 14. AMENDMENT. Subdivision a of subsection 2 of section 10-31-13 of the North Dakota Century Code is amended and reenacted as follows:

a. Each limited liability company organized under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter ~~10-32~~10-32.1 giving the name and residence address of all managers, governors, and members of the organization at the time of filing of the annual report.

SECTION 15. AMENDMENT. Paragraph 3 of subdivision b of subsection 2 of section 10-31-13 of the North Dakota Century Code is amended and reenacted as follows:

(3) Accompanied by the filing fee prescribed in section ~~10-32-180~~10-32.1-92.

SECTION 16. AMENDMENT. Subsection 5 of section 10-31-13 of the North Dakota Century Code is amended and reenacted as follows:

5. In order to regulate organizations that have minority ownership, the secretary of state shall 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 ~~10-32-150~~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 17. AMENDMENT. Subsection 6 of section 10-31-13 of the North Dakota Century Code is amended and reenacted as follows:

6. In order to regulate organizations that have ownership that renders more than one professional service, the secretary of state shall 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 ~~10-32-150~~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 18. AMENDMENT. Subdivisions a and b of subsection 7 of section 10-31-13.1 of the North Dakota Century Code are amended and reenacted as follows:

7. a. The provisions of chapter ~~10-32~~10-32.1 applicable to foreign limited liability companies apply to a foreign professional organization rendering professional services in this state in the form of a foreign limited liability company. Such a foreign professional organization

enjoys the powers and privileges and is subject to the duties, restrictions, and liabilities of other foreign limited liability companies doing business in this state, except when inconsistent with the letter and purpose of the provisions of this chapter applicable to foreign professional organizations.

b. A foreign professional organization rendering professional services in this state in the form of a foreign limited liability company shall include in its application for a certificate of authority under section ~~10-32-138~~10-32.1-75 or its annual report under section ~~10-32-149~~10-32.1-89 the following information:

SECTION 19. Chapter 10-32.1 of the North Dakota Century Code is created and enacted as follows:

10-32.1-01. Citation.

This chapter may be cited as the "North Dakota Uniform Limited Liability Company Act".

10-32.1-02. Definitions.

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

1. "Acquiring organization" means the domestic or foreign organization that acquires the ownership interests of another foreign or domestic organization in an exchange.

2. "Address" means:

   a. In the case of a registered office or principal executive office, the mailing address, which may not be only a post-office box, including a zip code, or the actual office location; and

   b. In all other cases, the mailing address, including a zip code.

3. "Filed documents" means:

   a. In the case of a limited liability company organized under this chapter, articles of organization, articles of amendment, a statement of correction, restated articles of organization, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of membership interests, articles of merger, articles of abandonment, articles of conversion, articles of domestication, statement of authority or a statement amending or canceling a statement of authority, and articles of dissolution and termination.

   b. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed with the secretary of state or other state office of the state of organization of the foreign limited liability company.

4. "Board" means the board of governors, however designated, of a board-managed limited liability company.

5. "Board-managed limited liability company" means a limited liability company that qualifies as such under subsection 1 of section 10-32.1-39.

6. "Bylaws" means any rule, resolution, or other provision, regardless how designated, that:

   a. Relates to the management of the business or the regulation of the affairs of the limited liability company; and

   b. Was expressly part of the bylaws by the action, taken from time to time under section 10-32.1-39 by the board or the members.

7. "Class", when used with reference to membership interests, means a category of membership interests which differs in one or more rights or preferences from another category of membership interests of the limited liability company.

8. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.

9. "Contribution" means any benefit provided by a person to a limited liability company:

   a. In order to become a member upon formation of the company and in accordance with an agreement between or among the persons that have agreed to become the initial members of the company;

   b. In order to become a member after formation of the company and in accordance with an agreement between the person and the company; or

   c. In the capacity of the person as a member and in accordance with the operating agreement or an agreement between the member and the company.

10. "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under chapter 10-19.1.

11. "Debtor in bankruptcy" means a person that is the subject of:

   a. An order for relief under United States Code, title 12, or a successor statute of general application; or

   b. A comparable order under federal, state, or foreign law governing insolvency.

12. "Dissolution" means that the limited liability company incurred an event under subsection 1 of section 10-32.1-50 that obligates the limited liability company to wind up the affairs of the limited liability company and to terminate the existence of the limited liability company as a legal entity.

13. "Distribution", except as otherwise provided in subsection 7 of section 10-32.1-31, means a transfer of money or other property from a limited liability company to another person on account of a transferable interest.

14. "Effective", with respect to a record required or permitted to be filed with the secretary of state under this chapter, means effective under subsection 3 of section 10-32.1-86.

15. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

16. "Electronic communication" means any form of communication, not directly involving the physical transmission of paper:

   a. That creates a record that may be retained, retrieved, and reviewed by a recipient of the communication; or

   b. That may be directly reproduced in paper form by the recipient through an automated process.

17. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

18. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

19. "Filed with the secretary of state" means except as otherwise permitted by law or rule:

    a. That a record meeting the applicable requirements of this chapter, together with the fees provided in section 10-32.1-92, has been delivered or communicated to the secretary of state by a method or medium of communication acceptable by the secretary of state, and has been determined by the secretary of state to conform to law.

    b. That the secretary of state did then:

        (1) Record the actual date on which the record was filed, and if different, the effective date of the filing which may not be later than ninety days after the date on which the record was accepted; and

        (2) Record the record in the office of the secretary of state.

20. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under chapter 10-19.1.

21. "Foreign limited liability company" means a limited liability company which is organized under or governed by laws other than the laws of this state for a purpose for which a limited liability company may be organized under this chapter.

22. "Foreign organization" means an organization created under laws other than the laws of this state for a purpose for which an organization may be created under the laws of this state.

23. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.

24. "Governing body" means for an organization that is:

    a. A corporation, its board of directors;

    b. A limited liability company that is:

        (1) Member-managed, its members;

        (2) Board-managed, its board of governors; or

        (3) Manager-managed, its managers; or

    c. Any other organization, the body selected by its owners that has the ultimate power to determine the policies of the organization and to control its policies.

25. "Governor" means a member of the board, however designated, of a board-managed limited liability company.

26. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result and as such a person "intentionally" violates a statute:

    a. If the personal intentionally does the act or causes the result prohibited by the statute; or

    b. If the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

27. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of an organization; a trustee of a trust; a personal representative; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator.

28. "Limited liability company", or "domestic limited liability company" means a limited liability company, other than a foreign limited liability company, organized under or governed by this chapter excluding a nonprofit limited liability company organized under or governed by chapter 10-36.

29. "Manager" means an individual who is eighteen years of age or more who under the operating agreement of a manager-managed limited liability company is responsible, alone or in concert with others, for performing the management functions stated in subsection 3 of section 10-32.1-39.

30. "Manager-managed limited liability company" means a limited liability company that qualifies as such under subsection 1 of section 10-32.1-39.

31. "Member" means a person that has become a member of a limited liability company under section 10-32.1-27 and has not dissociated under section 10-32.1-48.

32. "Membership interest" means one of the units, however designated, of which the proprietary interests of a member in a limited liability company is divided.

33. "Member-managed limited liability company" means a limited liability company that is not a manager-managed limited liability company or a board-managed limited liability company.

34. "Nonprofit limited liability company" means a limited liability company organized under or governed by chapter 10-36.

35. "Notice" has the meaning provided in section 10-32.1-04.

36. "Operating agreement" means the agreement, whether or not referred to as an operating agreement and whether oral, in a record, implied, or in any combination thereof, of all the members of a limited liability company, including a sole member, concerning the matters described in subsection 1 of section 10-32.1-13 and includes the operating agreement as amended or restated.

37. With respect to "oppressive":

    a. "Oppressive", with respect to an application brought by a member under paragraph 2 of subdivision 3 of subsection 1 of section 10-32.1-50, means conduct:

        (1) Engaged in by one or more:

            (a) Members in a member-managed limited liability company or who are otherwise in control of any limited liability company;

            (b) Managers in a manager-managed limited liability company; or

            (c) Governors of a board-managed limited liability company;

        (2) That occurs with respect to the capacity of the applicant member as:

            (a) A member, manager, or governor of a limited liability company; or

            (b) An employee of a limited liability company with thirty-five or fewer members; and

        (3) That is unfairly prejudicial to the applicant member in a capacity listed in subdivision b, because the conduct frustrated an expectation of the applicant member that:

            (a) Is reasonable in light of the reasonable expectations of the other members;

(b) Was material to the decision of the applicant to become a member of the limited liability company or for a substantial time has been material during the continuing membership of the member;

(c) Was known to other members or that the other members had reason to know; and

(d) Is not contrary to the operating agreement as applied consistently with the contractual obligation of good faith and fair dealing under subsection 4 of section 10-32.1-41.

b. For the purposes of subdivision a, conduct:

(1) Includes words, action, inaction, and any combination of words, action, or inaction; and

(2) Is not oppressive solely by reason of a good faith disagreement as to the content, interpretation, or application of the operating agreement of the company.

38. "Organization":

a. Means, whether domestic or foreign, a limited liability company, corporation, general partnership, limited partnership, limited liability partnership, limited liability limited partnership, or any other person having a governing statute; but

b. Excludes:

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

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

39. "Organizer" means a person that acts under section 10-32.1-20 to form a limited liability company.

40. "Originating records" means for an organization which is:

a. A corporation, its articles of incorporation;

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

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

d. A limited liability partnership, its registration; or

e. A limited liability limited partnership, its certificate of limited liability limited partnership.

41. "Owners" means the holders of ownership interests in an organization.

42. "Ownership interests" means for a domestic or foreign organization that is:

a. A corporation, its shares;

b. A limited liability company, its transferable interests;

c. A limited partnership, its partnership interests or transferable interests;

d. A general partnership, its partnership interests or transferable interests;

e. A limited liability partnership, its partnership interests or transferable interests;

f. A limited liability limited partnership, its partnership interests or transferable interests; or

g. Any other organization, its governance or transferable interests.

43. "Principal executive office" means:

a. If the limited liability company has an elected or appointed president, then an office where the elected or appointed president of the limited liability company has an office; or

b. If the limited liability company has no elected or appointed president, then the registered office of the limited liability company.

44. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

45. "Recorded in the real property records" means that a certified copy of a record meeting the applicable requirements of this chapter, including containing a legal description of the property affected by the record, as filed with the secretary of state, has been recorded in the office of the county recorder in the county in which the real property affected by the record is located.

46. "Registered office" means:

a. The office that a limited liability company is required to designate and maintain under section 10-32.1-16; or

b. The office that a foreign limited liability company is required to designate and maintain under section 10-32.1-78.

47. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.

48. "Series" means a category of membership interests, within a class of membership interests, that has some of the same rights and preferences as other membership interests within the same class, but that differ in one or more rights and preferences from another category of membership interests within that class.

49. "Sign" or "Signed" means:

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

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

(1) The record has been signed by a person authorized to do so by this chapter, the articles or organization, a member-control agreement, or the bylaws or a resolution approved by the governors as required by section 10-32.1-39 or the members as required by section 10-32.1-39; and

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

c. The initial articles of organization must be signed by at least one person acting as an organizer.

d. A record filed on behalf of a dissolved limited liability company that has no members must be signed:

(1) By the person winding up the activities of the company under subsection 3 of section 10-31.2-51; or

(2) By a person appointed under subsection 4 of section 10-32.1-51, to wind up those activities.

e. A statement of denial by a person under section 10-32.1-25 must be signed by that person.

f. Any other record filed under this chapter may be signed by an agent pursuant to chapters 3-01, 3-02, 3-03, and 3-04.

50. "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

51. "Termination" means the end of the existence of a limited liability company as a legal entity and occurs when:

a. Articles of dissolution and termination are filed with the secretary of state under section 10-32.1-51 together with the fees provided in section 10-32.1-92.

b. Articles of dissolution and termination are considered filed with the secretary of state under subsection 3 of section 10-32.1-59, together with the fees provided in section 10-32.1-92.

c. Notice of termination has been issued by the secretary of state as provided in section 10-32.1-90.

52. "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

53. "Transferable interest" or "membership interest" means the right, as originally associated with the capacity of a person as a member, to receive distributions from a limited liability company in accordance with the operating agreement, whether or not the person remains a member or continues to own any part of the right.

54. "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a member.

55. "Vote" includes authorization by written action.

56. "Winding up" means the period triggered by dissolution during which the limited liability company ceases to carry on business, except to the extent necessary for concluding affairs, and disposing of assets under section 10-32.1-51.

57. "Written action" means:

a. A written record signed by every person required to take the action described; and

b. The counterparts of a written record signed by any person taking the action described.

(1) Each counterpart constitutes the action of the persons signing it; and

(2) All the counterparts, taken together, constitute one written action by all of the persons signing them.

10-32.1-03. Legal recognition of electronic records and electronic signatures.

For purposes of this chapter:

1. A record or signature may not be denied legal effect or enforceability solely because it is in electronic form;

2. A contract may not be denied legal effect or enforceability solely because an electronic record was used in its formation;

3. If a provision requires a record to be in writing, then an electronic record satisfies the requirement; and

4. If a provision requires a signature, then an electronic signature satisfies the requirement.

10-32.1-04. Knowledge and notice.

1. A person knows a fact when the person:

   a. Has actual knowledge of it; or

   b. Is deemed to know it under subdivision a of subsection 4, or law other than this chapter.

2. A person has notice of a fact when the person:

   a. Has reason to know the fact from all of the facts known to the person at the time in question; or

   b. Is deemed to have notice of the fact under subdivision b of subsection 4.

3. A person notifies another of a fact by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person knows the fact.

4. A person that is not a member is deemed:

   a. To know of a limitation on authority to transfer real property as provided in subsection 7 of section 10-32.1-24; and

   b. To have notice of:

      (1) The dissolution of a limited liability company, ninety days after a notice of dissolution under paragraph 1 of subdivision b of subsection 2 of section 10-32.1-51, becomes effective;

      (2) The termination of a limited liability company, ninety days after the articles of dissolution and termination under paragraph 6 of subdivision b of subsection 2 of section 10-32.1-51, becomes effective; and

      (3) The merger, conversion, or domestication of a limited liability company, ninety days after the articles of merger, conversion, or domestication under sections 10-32.1-67 through 10-32.1-71 becomes effective.

10-32.1-05. Application to existing relationships.

1. On or after July 1, 2015, a limited liability company may not be formed under chapter 10-32.

2. Before January 1, 2016, this chapter governs only:

a. A limited liability company formed on or after July 1, 2015; and

b. Except as otherwise provided in subsection 3, a limited liability company formed before July 1, 2015, which elects, in the manner provided in its articles of organization, operating agreement or bylaws for amending the operating agreement, to be subject to this chapter.

3. Except as otherwise provided in subsection 4, on and after January 1, 2016, this chapter governs all limited liability companies.

4. For the purposes of applying this chapter to a limited liability company formed before July 1, 2015:

a. The articles of organization of the limited liability company under chapter 10-32 at the time the limited liability company becomes subject to this chapter are deemed to be the articles of organization of the limited liability company; and

b. For the purposes of applying subsection 35 of section 10-32.1-02, and subject to subsection 4 of section 10-32.1-15, the language in the articles of organization, and any bylaws, operating agreement, or member control agreement, or any combination of those documents of a limited liability company formed before July 1, 2015, that becomes subject to this chapter will operate as if that language were in the operating agreement of the limited liability company when it becomes subject to this chapter; and

c. Subject to the operating agreement of the limited liability company:

(1) The limited liability company shall keep the records specified in subdivision k of subsection 1 of section 10-32-51, at the principal executive office of the limited liability company, or at another place or places within the United States as determined under subsection 1 of section 10-32-51, before the limited liability company became subject to this chapter;

(2) For the purpose of applying paragraph 1, subsections 3 and 4 of section 10-32-56, continue to apply to the limited liability company as if those provisions had not been repealed;

(3) Subsection 1 of section 10-32.1-30, does not apply to the limited liability company;

(4) The profits and losses of the limited liability company are to be allocated among the members, and among classes and series of members, in proportion to the value of the contributions of the members reflected in the records required by paragraph 1;

(5) The voting power of each membership interest is in proportion to the value of the contributions of the members reflected in the records required by paragraph (1);

(6) Distributions of cash or other assets of the limited liability company, including distributions on the dissolution of the limited liability company, must be allocated in proportion to the value of the contributions of the members reflected in the records required by paragraph 1;

(7) Subdivision a of subsection 1 and subsections 2 and 3 of 10-32-54 and section 10-32-55 continue to apply to the limited liability company as if those provisions had not been repealed; and

(8) For the purpose of applying paragraph 7, subsection 1 of section 10-32-40.1 continues to apply to the limited liability company as if that provision had not been repealed.

10-32.1-06. Reservation of legislative right.

The legislative assembly reserves the right to amend or repeal the provisions of this chapter. A limited liability company organized under or governed by this chapter is subject to this reserved right.

10-32.1-07. Nature, purpose, and duration of a limited liability company.

1. A limited liability company is an entity distinct from its members.

2. Except for a nonprofit limited liability company subject to chapter 10-36, which must comply with that chapter, a limited liability company may have any lawful purpose.

3. A limited liability company has perpetual duration unless stated otherwise in articles of organization filed with the secretary of state prior to July 1, 2015.

10-32.1-08. Powers.

1. Except as provided in subsection 2, a limited liability company has the capacity to sue and be sued in its own name and the power to do all things necessary or convenient to carry on its activities. With respect to loans, guarantees, and suretyship:

   a. Without in any way limiting the generality of the power of a limited liability company to do all things necessary or convenient to carry on its activities, a limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist a person, if the transaction, or a class of transactions to which the transaction belongs, is approved pursuant to this chapter and the operating agreement of the limited liability company, and:

      (1) Is in the usual and regular course of business of the limited liability company;

      (2) Is with, or for the benefit of, a related organization, an organization in which the limited liability company has a financial interest, an organization with which the limited liability company has a business relationship, or an organization to which the limited liability company has the power to make donations, any of which relationships constitute consideration sufficient to make the loan, guarantee, suretyship, or other financial assistance so approved enforceable against the limited liability company;

      (3) Is with, or for the benefit of, a member who provides services to the limited liability company, or a manager or other employee of the limited liability company or a subsidiary, including a member, manager, or employee who is a governor of the limited liability company or a subsidiary, and may reasonably be expected, in the judgment of the board of governors, to benefit the limited liability company; or

      (4) Whether or not any separate consideration has been paid or promised to the limited liability company, has been approved by:

         (a) The owners of two-thirds of the voting power of persons other than the interested person or persons; or

         (b) The unanimous vote of all members, whether or not ordinarily entitled to vote.

   b. Any loan, guaranty, surety contract, or other financial assistance described in subdivision a may be with or without interest and may be unsecured or may be secured in any manner including, without limitation, a grant of a security interest in the transferable interest of a member in the limited liability company.

   c. This subsection does not grant any authority to act as a bank or to carry on the business of banking.

2. Until a limited liability company has or has had at least one member, the company lacks the capacity to do any act or carry on any activity except:

   a. Delivering to the secretary of state for filing:

      (1) A statement of change under section 10-32.1-17;

      (2) An amendment to the certificate under section 10-32.1-21;

      (3) A statement of correction under section 10-32.1-88;

      (4) An annual report under section 10-32.1-89;

      (5) A notice of termination under section 10-32.1-51; and

      (6) Articles of dissolution and termination under section 10-32.1-51;

   b. Admitting a member under section 10-32.1-27; and

   c. Dissolving under section 10-32.1-50.

3. A limited liability company that has or has had at least one member may ratify an act or activity that occurred when the company lacked capacity under subsection 2.

10-32.1-09. Governing law.

The law of this state governs:

1. The internal affairs of a limited liability company; and

2. The liability of a member as member, a manager as manager, and a governor as governor, for the debts, obligations, or other liabilities of a limited liability company.

10-32.1-10. Supplemental principles of law.

Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

10-32.1-11. Limited liability company name.

1. The limited liability company name:

   a. Must be expressed in letters or characters used in the English language as those letters or characters appear in the American standard code for information interchange table;

   b. Must contain the words "limited liability company", or must contain the abbreviation "L.L.C." or the abbreviation "LLC", either of which abbreviation may be used interchangeably for all purposes authorized by this chapter, including real estate matters, contracts, and filings with the secretary of state;

   c. May not contain:

      (1) The word "corporation", "incorporated", "limited partnership", "limited liability partnership", "limited liability limited partnership", or any abbreviation of these words; or

      (2) The words "limited" or "company" without association to the words "limited liability company" or the abbreviations of these words as provided in subsection b;

   d. May not contain a word or phrase that indicates or implies that the limited liability company:

(1) Is organized for a purpose other than:

(a) A lawful business purpose for which a limited liability company may be organized under this chapter; or

(b) For a purpose stated in its articles of organization; or

(2) May not be organized under this chapter; and

e. May not be the same as, or deceptively similar to:

(1) The name, whether foreign and authorized to do business in this state or domestic, unless there is filed with the articles a record which complies with subsection 3, of:

(a) Another limited liability company;

(b) A corporation;

(c) A limited partnership;

(d) A limited liability partnership; or

(e) A limited liability limited partnership;

(2) A name, the right of which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

(3) A fictitious name registered in the manner provided in chapter 45-11;

(4) A trade name registered in the manner provided in chapter 47-25; or

(5) A trademark or service mark registered in the manner provided in chapter 47-22.

2. The secretary of state shall determine whether a limited liability company name is deceptively similar to another name for purposes of this chapter.

3. If the secretary of state determines that a limited liability company name is deceptively similar to another name for purposes of this chapter, then the limited liability company name may not be used unless there is filed with the articles:

a. The written consent of the holder of the rights to the name to which the proposed name has been determined to be deceptively similar; or

b. A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

4. This section and section 10-32.1-12 do not:

a. Abrogate or limit:

(1) The law of unfair competition or unfair practices;

(2) Chapter 47-25;

(3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, and service marks; or

(4) Any other rights to the exclusive use of names or symbols.

b. Derogate the common law or the principles of equity.

5. A domestic or foreign limited liability company that is the surviving organization in a merger with one or more other organizations, or that acquires by sale, lease, or other disposition to or exchange with an organization all or substantially all of the assets of another organization including its name, may have the same name, subject to the requirements of subsection 1, as that used in this state by any of the other organizations, if the organization whose name is sought to be used:

   a. Was organized, incorporated, formed, or registered under the laws of this state;

   b. Is authorized to transact business or conduct activities in this state;

   c. Holds a reserved name in the manner provided in section 10-19.1-14, 10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

   d. Holds a fictitious name registered in the manner provided in chapter 45-11;

   e. Holds a trade name registered in the manner provided in chapter 47-25; or

   f. Holds a trademark or service mark registered in the manner provided in chapter 47-22.

6. The use of a name by a limited liability company in violation of this section does not affect or vitiate its limited liability company existence. However, a court in this state may, upon application of the state or of an interested or affected person, enjoin the limited liability company from doing business under a name assumed in violation of this section, although its articles of organization may have been filed with the secretary of state and a certificate of organization issued.

7. A limited liability company whose period of existence has expired or that is involuntarily terminated by the secretary of state pursuant to section 10-32.1-89 may reacquire the right to use that name by refiling articles of organization pursuant to section 10-32.1-20, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subsection 2. A limited liability company that cannot reacquire the use of its limited liability company name shall adopt a new limited liability company name which complies with the provisions of this section:

   a. By refiling the articles of organization pursuant to section 10-32.1-20;

   b. By amending pursuant to section 10-32.1-21; or

   c. By reinstating pursuant to section 10-32.1-91.

8. Subject to section 10-32.1-73, this section applies to any foreign limited liability company transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

9. An amendment that only changes the name of the limited liability company may be authorized by a resolution approved by the board and may, but need not, be submitted to and approved by the members as provided in subdivision b of subsection 1 of section 10-32.1-21.

10. A limited liability company that files its articles of organization with an effective date later than the date of filing as provided in subdivision b of subsection 2 of section 10-32.1-20 shall maintain the right to the name until the effective date.

10-32.1-12. Reserved name.

1. The exclusive right to the use of a limited liability company name otherwise permitted by section 10-32.1-11 may be reserved by any person.

2. The reservation is made by filing a request with the secretary of state that the name be reserved together with the fees provided in section 10-32.1-92.

   a. If the name is available for use by the applicant, then the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months.

   b. The reservation may be renewed for successive twelve-month periods.

3. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the transfer and specifying the name and address of the transferee together with the fees provided in section 10-32.1-92.

4. The right to the exclusive use of a limited liability company name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation together with the fees provided in section 10-32.1-92.

5. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

10-32.1-13. Operating agreement - Scope - Function - Limitations.

1. Except as otherwise provided in subsections 2 and 3, the operating agreement governs:

   a. Relations among the members as members and between the members and the limited liability company;

   b. The rights and duties under this chapter of a person in the capacity of manager or governor;

   c. The activities of the company and the conduct of those activities; and

   d. The means and conditions for amending the operating agreement.

2. To the extent the operating agreement does not otherwise provide for a matter described in subsection 1, this chapter governs the matter.

3. An operating agreement may not:

   a. Vary the capacity of a limited liability company under section 10-32.1-08 to sue and be sued in its own name;

   b. Vary the law applicable under section 10-32.1-09;

   c. Vary the power of the court under section 10-32.1-22;

   d. Subject to subsections 4 through 7, eliminate the duty of loyalty, the duty of care, or any other fiduciary duty;

   e. Subject to subsections 4 through 7, eliminate the contractual obligation of good faith and fair dealing under subsection 4 of section 10-32.1-41;

   f. Unreasonably restrict the duties and rights stated in section 10-32.1-42;

   g. Vary the power of a court to decree dissolution in the circumstances specified in subdivisions d and e of subsection 1 of section 10-32.1-50;

   h. Vary the requirement to wind up the business of a limited liability company as specified in subsection 1 and subdivision a of subsection 2 of section 10-32.1-51;

i. Unreasonably restrict the right of a member to maintain an action under sections 10-32.1-33 through 10-32.1-38;

j. Restrict the right to approve a merger, conversion, or domestication under section 10-32.1-71 to a member that will have personal liability with respect to a surviving, converted, or domesticated organization; or

k. Except as otherwise provided in subsection 2 of section 10-32.1-15, restrict the rights under this chapter of a person other than a member, manager, or governor.

4. If not manifestly unreasonable, and without limiting the terms that may be included in an operating agreement, the operating agreement may:

a. Restrict or eliminate the duty:

(1) As required in subdivision a of subsection 2 and in subsections 7 and 8 of section 10-32.1-41, to account to the limited liability company and to hold as trustee for it any property, profit, or benefit derived by the member in the conduct or winding up of the company's business, from a use by the member of the company's property, or from the appropriation of a limited liability company opportunity;

(2) As required in subdivision b of subsection 2 and in subsections 7 and 8 of section 10-32.1-41, to refrain from dealing with the company in the conduct or winding up of the company's business as or on behalf of a party having an interest adverse to the company; and

(3) As required by subdivision c of subsection 2 and in subsections 7 and 8 of section 10-32.1-41, to refrain from competing with the company in the conduct of the business of the company before the dissolution of the company;

b. Identify specific types or categories of activities that do not violate the duty of loyalty;

c. Alter the duty of care, except to authorize intentional misconduct or knowing violation of law;

d. Alter any other fiduciary duty, including eliminating particular aspects of that duty; and

e. Prescribe the standards by which to measure the performance of the contractual obligation of good faith and fair dealing under subsection 4 of section 10-32.1-41.

5. The operating agreement may specify the method by which a specific act or transaction that would otherwise violate the duty of loyalty may be authorized or ratified by one or more disinterested and independent persons after full disclosure of all material facts.

6. To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of a responsibility that the member would otherwise have under this chapter and imposes the responsibility on one or more other members, the operating agreement may, to the benefit of the member that the operating agreement relieves of the responsibility, also eliminate or limit any fiduciary duty that would have pertained to the responsibility.

7. The operating agreement may alter or eliminate the indemnification for a member, manager, or governor provided by subsection 2 of section 10-32.1-40, and may eliminate or limit the liability of a member, manager, or governor to the limited liability company and members for money damages, except for:

a. Breach of the duty of loyalty;

b. A financial benefit received by the member or manager to which the member or manager is not entitled;

c. A breach of a duty under section 10-32.1-32;

d. Intentional infliction of harm on the company or a member; or

e. An intentional violation of criminal law.

8. The court shall decide any claim under subsection 4 that a term of an operating agreement is manifestly unreasonable. The court:

a. Shall make its determination as of the time the challenged term became part of the operating agreement and by considering only circumstances existing at that time; and

b. May invalidate the term only if, in light of the purposes and activities of the limited liability company, it is readily apparent that:

(1) The objective of the term is unreasonable; or

(2) The term is an unreasonable means to achieve the objective of the provision.

10-32.1-14. Operating agreement effect on a limited liability company and persons becoming members - Preformation agreement.

1. A limited liability company is bound by and may enforce the operating agreement, whether or not the company has itself manifested assent to the operating agreement.

2. A person that becomes a member of a limited liability company is deemed to assent to the operating agreement.

3. Two or more persons intending to become the initial members of a limited liability company may make an agreement providing that upon the formation of the company the agreement will become the operating agreement. One person intending to become the initial member of a limited liability company may assent to terms providing that upon the formation of the company the terms will become the operating agreement.

10-32.1-15. Operating agreement - Effect on third parties and relationship to records effective on behalf of a limited liability company.

1. An operating agreement may specify that its amendment requires the approval of a person that is not a party to the operating agreement or the satisfaction of a condition. An amendment is ineffective if its adoption does not include the required approval or satisfy the specified condition.

2. The obligations of a limited liability company and its members to a person in the capacity of the person as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under subdivision b of subsection 2 of section 10-32.1-45, to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the capacity of the person as a transferee or dissociated member.

3. If a record that has been delivered by a limited liability company to the secretary of state for filing has become effective under this chapter and contains a provision that would be ineffective under subsection 3 of section 10-32.1-13, if contained in the operating agreement, then the provision is likewise ineffective in the record.

4. Subject to subsection 3, if a record that has been delivered by a limited liability company to the secretary of state for filing has become effective under this chapter and conflicts with a provision of the operating agreement, then:

   a. The operating agreement prevails as to members, dissociated members, transferees, managers, and governors; and

   b. The record prevails as to other persons to the extent they reasonably rely on the record.

10-32.1-16. Registered office and registered agent.

Every limited liability company shall have a registered office and a registered agent, in the manner prescribed by chapter 10-01.1.

10-32.1-17. Change of registered office or registered agent.

Every limited liability company may change its registered office or change its registered agent, and the agent may resign or change its business address or name, in the manner prescribed by chapter 10-01.1.

10-32.1-18. Resignation of registered agent.

The registered agent of every limited liability company may resign in the manner prescribed by chapter 10-01.1.

10-32.1-19. Service of process on a limited liability company, foreign limited liability company, and nonresident managers and governors.

1. A registered agent appointed by a limited liability company or foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served on the company.

2. If a limited liability company or foreign limited liability company does not maintain a registered agent in this state or if the registered agent with reasonable diligence cannot be found at the address of the registered agent, then the secretary of state is an agent of the company upon whom process, notice, or demand may be served.

3. Any process, notice, or demand required or permitted by law to be served on the limited liability company, the foreign limited liability company, a manager, a governor, or a member of a member-managed limited liability company may be served upon the secretary of state as provided in section 10-01.1-13.

4. This section does not affect the right to serve process, notice, or demand in any other manner provided by law.

10-32.1-20. Formation of a limited liability company - Articles of organization.

1. One or more individuals of the age of eighteen years or more or other persons may act as organizers to form a limited liability company by signing and filing with the secretary of state articles of organization together with the fees provided in section 10-32.1-92.

2. The articles of organization:

   a. Must state:

      (1) The name of the limited liability company, which must comply with section 10-32.1-11;

      (2) With respect to the registered agent:

(a) The name of the commercial registered agent of the limited liability company as provided in chapter 10-01.1; or

(b) The name and address of a noncommercial registered agent in this state as provided in chapter 10-01.1;

(c) The address of the principal executive office;

(d) The name and address of each organizer; and

b. May state an effective date of organization, which must not be later than ninety days from the date of filing with the secretary of state.

3. Subject to subsection 3 of section 10-32.1-15, articles of organization may also contain statements as to matters other than those required by subsection 2. However, a statement in articles of organization is not effective as a statement of authority.

4. With respect to formation:

a. A limited liability company is formed when articles of organization have been filed with the secretary of state or at a later date as specified in the articles of organization.

b. If the secretary of state finds that the articles of organization conform to law and that all fees have been paid under section 10-32.1-92, then the secretary of state shall file the articles of organization and issue a certificate of organization to the organizers or their representative.

c. Except as against this state in a proceeding to terminate or revoke the certificate of organization or in a judicial proceeding pursuant to section 10-32.1-51, the filing of the articles of organization by the secretary of state is conclusive proof that the organizer satisfied all conditions to the formation of a limited liability company.

d. The formation of a limited liability company does not by itself cause any person to become a member. However, this chapter does not preclude an agreement, made before or after formation of a limited liability company, which provides that one or more persons will become members, or acknowledging that one or more persons became members, upon or otherwise in connection with the formation of the limited liability company.

10-32.1-21. Amendment or restatement of articles of organization.

1. Articles of organization may be amended or restated at any time.

a. Before any contribution is reflected in the required records of a limited liability company, the articles of organization may be amended by the organizers or by the board. The articles of organization may also be amended by the board to establish or fix the rights and preferences of a class or series of membership interests before any contribution pertaining to that class or series is reflected in the records of the limited liability company by filing articles of amendment with the secretary of state.

b. With respect to amendment after contribution:

(1) Except as otherwise provided in subdivision a, after any contribution has been reflected in the records of a limited liability company, the articles of organization may be amended in the manner set forth in this subdivision.

(2) A resolution approved by the affirmative vote of a majority of the governors present, or proposed by a member or members owning five percent or more of the voting power of the members entitled to vote, that sets forth the proposed amendment must be submitted to a vote at the next regular or special meeting of the members

of which notice has not yet been given but still can be timely given. Any number of amendments may be submitted to the members and voted upon at one meeting, but the same or substantially the same amendment proposed by a member or members need not be submitted to the members or be voted upon at more than one meeting during a fifteen-month period. The resolution may amend the articles of organization in their entirety to restate and supersede the original articles of organization and all amendments to them.

(3) Written notice of the meeting of the members setting forth the substance of the proposed amendment must be given to each member entitled to vote in the manner provided in subsection 5 of section 10-32.1-39 for the giving of notice of meetings of members.

(4) The proposed amendment is adopted:

(a) When approved by the affirmative vote of the members required by section 10-32.1-39; or

(b) If the articles of organization provide for a specified proportion equal to or larger than the majority necessary to transact a specified type of business at a meeting, or if it is proposed to amend the articles to provide for a specified proportion equal to or larger than the majority necessary to transact a specified type of business at a meeting, then the affirmative vote necessary to add the provision to, or to amend an existing provision in, the articles of organization is the larger of:

[1] The specified proportion or number or, in the absence of a specific provision, the affirmative vote necessary to transact the type of business described in the proposed amendment at a meeting immediately before the effectiveness of the proposed amendment; or

[2] The specified proportion or number that would, upon effectiveness of the proposed amendment, be necessary to transact the specified type of business at a meeting.

2. To amend its articles of organization, a limited liability company must file with the secretary of state an amendment stating:

a. The name of the company;

b. The changes the amendment makes to the articles of organization as most recently amended or restated; and

c. A statement that the amendment was adopted pursuant to this chapter.

3. If only a change of address of the principal executive office is required, then an amendment need not be filed. However, the change of address of the principal executive office must then 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.

4. To restate its articles of organization, a limited liability company must file with the secretary of state a restatement, designated as such in its heading, stating:

a. In the heading or an introductory paragraph, the present name of the company; and

b. The changes the restatement makes to the articles of organization as most recently amended or restated, except that the name and address of each organizer may be omitted.

5. Subject to subsection 3 of section 10-32.1-15 and subsection 3 of section 10-32.1-87, an amendment to or restatement of articles of organization is effective when filed with the secretary of state or at a later date as specified in the amendment to, or restatement of, the articles of organization.

6. The owners of the outstanding transferable interests of a class or series are entitled to vote as a class or series upon a proposed amendment to the articles of organization, whether or not entitled to vote on the amendment by the provisions of the articles of organization, if the amendment would:

   a. Effect an exchange, reclassification, or cancellation of all or part of the membership interests of the class or series, or effect a combination of outstanding membership interests of a class or series into a lesser number of membership interests of the class or series if each other class or series is not subject to a similar combination;

   b. Effect an exchange, or create a right of exchange, of all or any part of the membership interests of another class or series for the membership interests of the class or series;

   c. Change the rights or preferences of the membership interests of the class or series;

   d. Create a new class or series of membership interests having rights and preferences prior and superior to the membership interests of that class or series, or increase the rights and preferences or the number of membership interests, of a class or series having rights and preferences prior or superior to the membership interests of that class or series;

   e. Divide the membership interests of the class into series and determine the designation of each series and the variations in the relative rights and preferences between the membership interests of each series or authorize the board to do so;

   f. Limit or deny any existing preemptive rights of the membership interests of the class or series; or

   g. Cancel or otherwise affect distributions on the membership interests of the class or series.

7. With respect to the effect of the amendment:

   a. An amendment does not affect an existing cause of action in favor of or against the limited liability company, nor a pending suit to which the limited liability company is a party, nor the existing rights of persons other than members.

   b. If the limited liability company name is changed by the amendment, a suit brought by or against the limited liability company under its former name does not abate for that reason.

   c. An amendment restating the articles in their entirety supersedes the original articles and all amendments to the original articles.

8. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in section 10-32.1-92, then the articles of amendment must be recorded in the office of the secretary of state.

9. A limited liability company that amends its name and which is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the name of the limited liability company in each registration when the limited liability company files an amendment.

10. With respect to the amendment of articles of organization in court-supervised reorganization:

a. Whenever a plan of reorganization of a limited liability company has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of the limited liability company, pursuant to the provisions of any applicable statute of the United States relating to reorganization of limited liability companies, the articles may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and to put it into effect, so long as the articles as amended contain only provisions which might be lawfully contained in original articles of organization at the time of making the amendment. In particular, and without limitation upon any general power of amendment, the articles may be amended to:

(1) Change the limited liability company name, period of duration, or organizational purposes of the limited liability company.

(2) Repeal, alter, or amend the bylaws of the limited liability company.

(3) Change the preferences, limitations, relative rights in respect of all or any part of the membership interests of the limited liability company, and classify, reclassify, or cancel all or any part thereof.

(4) Authorize the issuance of bonds, debentures, or other obligations of the limited liability company, whether convertible into membership interests of any class or bearing warrants or other evidence of optional rights to purchase or subscribe for membership interests of any class, and fix the terms and conditions thereof.

(5) Constitute or reconstitute and classify or reclassify the board and appoint governors and managers in place of or in addition to all or any of the governors or managers then in office.

b. Amendments to the articles pursuant to subdivision a must be made in the following manner:

(1) Articles of amendment approved by decree or order of the court must be signed and verified in duplicate by the person or persons designated or appointed by the court for that purpose and must set forth the name of the limited liability company, the amendments of the articles approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the limited liability company pursuant to the provisions of an applicable statute of the United States.

(2) An original of the articles of amendment must be filed with the secretary of state. If the secretary of state finds that the articles of amendment conform to law, and that all fees have been paid as provided in section 10-32.1-92, then the articles of amendment must be recorded in the office of the secretary of state.

c. The articles of amendment become effective upon their acceptance by the secretary of state or at any other time within ninety days after their acceptance if the articles of amendment so provide.

d. The articles are deemed to be amended accordingly, without any action by the governors or members of the limited liability company and with the same effect as if the amendment had been adopted by the unanimous action provided for in section 10-32.1-39.

11. If a member-managed limited liability company, a manager of a manager-managed limited liability company, or a governor of a board-managed limited liability company, knows that any information in articles of organization filed with the secretary of state was inaccurate when the

articles were filed, or has become inaccurate owing to changed circumstances, the member, manager, or governor shall promptly:

a. Cause the articles to be amended; or

b. If appropriate, file with the secretary of state a change of registered agent or change of registered office in the manner prescribed by chapter 10-01.1.

10-32.1-22. Signing and filing pursuant to a judicial order.

1. If a person required by this chapter to sign a record or file a record with the secretary of state does not do so, then any other person that is aggrieved may petition the appropriate court to order:

   a. The person to sign the record;

   b. The person to file the record with the secretary of state for filing; or

   c. The secretary of state to file the record unsigned.

2. If a petitioner under subsection 1 is not the limited liability company or foreign limited liability company to which the record pertains, then the petitioner shall make the company a party to the action.

10-32.1-23. No agency power of a member as a member.

1. A member is not an agent of a limited liability company solely by reason of being a member.

2. The status of a person as a member does not prevent or restrict law other than this chapter from imposing liability on a limited liability company because of the conduct of the person.

10-32.1-24. Statement of authority.

1. A limited liability company may file with the secretary of state a statement of authority. The statement:

   a. Must include the name of the company and the address of its registered office;

   b. With respect to any position that exists in or with respect to the company, may state the authority, or limitations on the authority, of all persons holding the position to:

      (1) Execute an instrument transferring real property held in the name of the company; or

      (2) Enter into other transactions on behalf of, or otherwise act for or bind, the company; and

   c. May state the authority, or limitations on the authority, of a specific person to:

      (1) Execute an instrument transferring real property held in the name of the company; or

      (2) Enter into other transactions on behalf of, or otherwise act for or bind, the company.

2. To amend or cancel a statement of authority filed with the secretary of state under subsection 1 of section 10-32.1-86, a limited liability company must file with the secretary of state an amendment or cancellation stating:

   a. The name of the company;

b. The address of its registered office;

c. The caption of the statement being amended or canceled and the date the statement being affected became effective; and

d. The contents of the amendment or a declaration that the statement being affected is canceled.

3. A statement of authority affects only the power of a person to bind a limited liability company to persons that are not members.

4. Subject to subsection 4 of section 10-32.1-04 and to subsection 3, and except as otherwise provided in subsections 6, 7, and 8, a limitation on the authority of a person or a position contained in an effective statement of authority is not by itself evidence of knowledge or notice of the limitation by any person.

5. Subject to subsection 3, a grant of authority not pertaining to transfers of real property and contained in an effective statement of authority is conclusive in favor of a person that gives value in reliance on the grant, except to the extent that when the person gives value:

a. The person has knowledge to the contrary;

b. The statement has been canceled or restrictively amended under subsection 2; or

c. A limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective.

6. Subject to subsection 3, an effective statement of authority that grants authority to transfer real property held in the name of the limited liability company, whether or not a certified copy of the statement is recorded in the real property records, is conclusive in favor of a person that gives value in reliance on the grant without knowledge to the contrary, except to the extent that when the person gives value:

a. The statement has been canceled or restrictively amended under subsection 2 and a certified copy of the cancellation or restrictive amendment has been recorded in the real property records; or

b. A limitation on the grant is contained in another statement of authority that became effective after the statement containing the grant became effective and a certified copy of the later-effective statement is recorded in the real property records.

7. Subject to subsection 3, if a certified copy of an effective statement containing a limitation on the authority to transfer real property held in the name of a limited liability company is recorded in the real property records, then all persons are deemed to know of the limitation.

8. Subject to subsection 9, an effective notice of dissolution is a cancellation of any filed statement of authority for the purposes of subsection 6 and is a limitation on authority for the purposes of subsection 7.

9. After a notice of dissolution becomes effective, a limited liability company may file with the secretary of state and, if appropriate, may record in the real property records, a statement of authority that is designated as a postdissolution statement of authority. The statement operates as provided in subsections 6 and 7.

10. An effective statement of denial operates as a restrictive amendment under this section and may be recorded by certified copy in the real property records for the purposes of subdivision a of subsection 6.

10-32.1-25. Statement of denial.

A person named in a filed statement of authority granting that person authority may file with the secretary of state for filing a statement of denial that:

1. Provides the name of the limited liability company and the caption of the statement of authority to which the statement of denial pertains; and

2. Denies the grant of authority.

10-32.1-26. Liability of members, managers, and governors.

1. The debts, obligations, or other liabilities of a limited liability company, whether arising in contract, tort, or otherwise:

   a. Are solely the debts, obligations, or other liabilities of the company; and

   b. Do not become the debts, obligations, or other liabilities of a member, manager, or governor solely by reason of the member acting as a member, manager acting as a manager, or governor acting as a governor.

2. The failure of a limited liability company to observe formalities relating exclusively to the management of its internal affairs is not a ground for imposing liability on the members, managers, or governors for the debts, obligations, or other liabilities of the company.

3. Except as relates to the failure of a limited liability company to observe any formalities relating exclusively to the management of its internal affairs, the case law that states the conditions and circumstances under which the corporate veil of a corporation may be pierced under North Dakota law also applies to limited liability companies.

10-32.1-27. Becoming a member.

1. If a limited liability company is to have only one member upon formation, then the person becomes a member as agreed by that person and the organizer of the company. That person and the organizer may be, but need not be, different persons. If different, then the organizer acts on behalf of the initial member.

2. If a limited liability company is to have more than one member upon formation, then those persons become members as agreed by the persons before the formation of the company. The organizer acts on behalf of the persons in forming the company and may be, but need not be, one of the persons.

3. A shelf limited liability company shall not be allowed under this chapter.

4. After a limited liability company has or has had at least one member, a person becomes a member:

   a. As provided in the operating agreement;

   b. As the result of a transaction effective under sections 10-32.1-55 through 10-32.1-71;

   c. With the consent of all the members; or

   d. If, within ninety consecutive days after the company ceases to have any members:

      (1) The last person to have been a member, or the legal representative of that person, designates a person to become a member; and

      (2) The designated person consents to become a member.

5. A person may become a member without acquiring a transferable interest and without making or being obligated to make a contribution to the limited liability company.

10-32.1-28. Form of contribution.

A contribution may consist of tangible or intangible property or other benefit to a limited liability company, including money, services performed, promissory notes, other agreements to contribute money or property, and contracts for services to be performed.

10-32.1-29. Liability for contributions.

1. The obligation of a person to make a contribution to a limited liability company is not excused by the death, disability, or other inability of the person to perform personally. If a person does not make a required contribution, then the person or the estate of the person is obligated to contribute money equal to the value of the part of the contribution which has not been made, at the option of the company.

2. A creditor of a limited liability company which extends credit or otherwise acts in reliance on an obligation described in subsection 1 may enforce the obligation.

10-32.1-30. Sharing of and right to distributions before dissolution.

1. Subject to paragraphs 1 through 4 of subdivision c of subsection 4 of section 10-32.1-05, any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44 and any charging order in effect under section 10-32.1-45.

2. A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. The dissociation of a person does not entitle the person to a distribution.

3. A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in subsection 3 of section 10-32.1-54, a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the share of distributions of the person.

4. If a member or transferee becomes entitled to receive a distribution, then the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

10-32.1-31. Limitations on distribution.

1. A limited liability company may not make a distribution if after the distribution:

   a. The company would not be able to pay its debts as they become due in the ordinary course of the activities of the company; or

   b. The total assets of the company would be less than the sum of its total liabilities plus the amount that would be needed, if the company were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of members whose preferential rights are superior to those of persons receiving the distribution.

2. A limited liability company may base a determination that a distribution is not prohibited under subsection 1 on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable under the circumstances.

3. Except as otherwise provided in subsection 6, the effect of a distribution under subsection 1 is measured:

   a. In the case of a distribution by purchase, redemption, or other acquisition of a transferable interest in the company, as of the date money or other property is transferred or debt incurred by the company; and

   b. In all other cases, as of the date:

      (1) The distribution is authorized, if the payment occurs within one hundred twenty days after that date; or

      (2) The payment is made, if the payment occurs more than one hundred twenty days after the distribution is authorized.

4. The indebtedness of a limited liability company to a member incurred by reason of a distribution made according to this section is at parity with the indebtedness of the company to its general, unsecured creditors.

5. The indebtedness of a limited liability company, including indebtedness issued in connection with or as part of a distribution, is not a liability for purposes of subsection 1 if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could be made to members under this section.

6. If indebtedness is issued as a distribution, then each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made.

7. In subsection 1, "distribution" does not include amounts constituting reasonable compensation for present or past services or reasonable payments made in the ordinary course of business under a bona fide retirement plan or other benefits program.

10-32.1-32. Liability for improper distributions.

1. Except as otherwise provided in subsection 2, if a member of a member-managed limited liability company, manager of a manager-managed limited liability company, or governor of a board-managed limited liability company consents to a distribution made in violation of section 10-32.1-31 and in consenting to the distribution fails to comply with section 10-32.1-41, then the member, manager, or governor is personally liable to the company for the amount of the distribution that exceeds the amount that could have been distributed without the violation of section 10-32.1-31.

2. To the extent the operating agreement of a member-managed limited liability company expressly relieves a member of the authority and responsibility to consent to distributions and imposes that authority and responsibility on one or more other members, the liability stated in subsection 1 applies to the other members and not the member that the operating agreement relieves of authority and responsibility.

3. A person that receives a distribution knowing that the distribution to that person was made in violation of section 10-32.1-31 is personally liable to the limited liability company but only to the extent that the distribution received by the person exceeded the amount that could have been properly paid under section 10-32.1-31.

4. A person against which an action is commenced because the person is liable under subsection 1 may:

   a. Implead any other person that is subject to liability under subsection 1 and seek to compel pro rata contribution from the person in that action to the extent of the liability of the person as provided in subsection 1; and

b. Implead any person that received a distribution in violation of section 10-32.1-31 and seek to compel contribution from the person in the amount by which the distribution received by the person exceeded the amount that could have been properly paid under section 10-32.1-31.

5. An action under this section is barred if not commenced within two years after the distribution.

10-32.1-33. Direct action by a member.

1. Subject to subsection 2, a member may maintain a direct action against another member, a manager, a governor, or the limited liability company to enforce the rights of the member and otherwise protect the interests of the member, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

2. A member maintaining a direct action under this section must plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company.

10-32.1-34. Derivative action.

A member may maintain a derivative action to enforce a right of a limited liability company if:

1. The member first makes a demand on the other members in a member-managed or board-managed limited liability company, the managers of a manager-managed limited liability company, or the board of governors of a board-managed limited liability company requesting that they cause the company to bring an action to enforce the right, and the member, manager, or board does not bring the action within a reasonable time; or

2. A demand under subsection 1 would be futile.

10-32.1-35. Proper plaintiff.

1. Except as otherwise provided in subsection 2, a derivative action under section 10-32.1-34 may be maintained only by a person that is a member at the time the action is commenced and remains a member while the action continues.

2. If the sole plaintiff in a derivative action dies while the action is pending, then the court may permit another member of the limited liability company to be substituted as plaintiff.

10-32.1-36. Pleading.

In a derivative action under section 10-32.1-34, the complaint must state with particularity:

1. The date and content of the demand of the plaintiff and the response to the demand by the other members, managers, or board of governors; or

2. If a demand has not been made, the reasons a demand under subsection 1 of section 10-32.1-34, would be futile.

10-32.1-37. Special litigation committee.

1. If a limited liability company is named as or made a party in a derivative proceeding, then the company may appoint a special litigation committee to investigate the claims asserted in the proceeding and determine whether pursuing the action is in the best interests of the company. If the company appoints a special litigation committee, then on motion by the committee made in the name of the company, except for good cause shown, the court shall stay discovery for the time reasonably necessary to permit the committee to make its investigation. This subsection does not prevent the court from enforcing the right of a person to information under

section 10-32.1-42 or, for good cause shown, granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

2. A special litigation committee may be composed of one or more disinterested and independent individuals, who may be members.

3. A special litigation committee may be appointed:

   a. In a member-managed limited liability company:

      (1) By the consent of a majority of the members not named as defendants or plaintiffs in the proceeding; and

      (2) If all members are named as defendants or plaintiffs in the proceeding, then by a majority of the members named as defendants;

   b. In a manager-managed limited liability company:

      (1) By a majority of the managers not named as defendants or plaintiffs in the proceeding; and

      (2) If all managers are named as defendants or plaintiffs in the proceeding, then by a majority of the managers named as defendants; and

   c. In a board-managed limited liability company:

      (1) By a majority of governors not named as defendants or plaintiffs in the proceeding; and

      (2) If all governors are named as defendants or plaintiffs in the proceeding, then by a majority of the governors named as defendants.

4. After appropriate investigation, a special litigation committee may determine that it is in the best interests of the limited liability company that the proceeding:

   a. Continue under the control of the plaintiff;

   b. Continue under the control of the committee;

   c. Be settled on terms approved by the committee; or

   d. Be dismissed.

5. After making a determination under subsection 4, a special litigation committee shall file with the court a statement of its determination and its report supporting its determination, giving notice to the plaintiff. The court shall determine whether the members of the committee were disinterested and independent and whether the committee conducted its investigation and made its recommendation in good faith, independently, and with reasonable care, with the committee having the burden of proof. If the court finds that the members of the committee were disinterested and independent and that the committee acted in good faith, independently, and with reasonable care, then the court shall enforce the determination of the committee. Otherwise, the court shall dissolve the stay of discovery entered under subsection 1 and allow the action to proceed under the direction of the plaintiff.

10-32.1-38. Proceeds and expenses.

1. Except as otherwise provided in subsection 2:

a. Any proceeds or other benefits of a derivative action under section 10-32.1-34, whether by judgment, compromise, or settlement, belong to the limited liability company and not to the plaintiff; and

b. If the plaintiff receives any proceeds, then the plaintiff shall remit them immediately to the company.

2. If a derivative action under section 10-32.1-34 is successful in whole or in part, then the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company.

10-32.1-39. Management of a limited liability company.

1. A limited liability company is a member-managed limited liability company unless the operating agreement:

a. Expressly provides that:

(1) The company is or will be "manager-managed" or "board-managed";

(2) The company is or will be "managed by managers" or "managed by a board"; or

(3) Management of the company is or will be "vested in managers" or "vested in a board"; or

b. Includes words of similar import.

2. In a member-managed limited liability company, the following rules apply:

a. The management and conduct of the company are vested in the members.

b. Each member has equal rights in the management and conduct of the activities of the company.

c. A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.

d. An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.

e. The operating agreement may be amended only with the consent of all members.

3. In a manager-managed limited liability company, the following rules apply:

a. Except as otherwise expressly provided in this chapter, any matter relating to the activities of the company is decided exclusively by the managers.

b. Each manager has equal rights in the management and conduct of the activities of the company.

c. A difference arising among managers as to a matter in the ordinary course of the activities of the company may be decided by a majority of the managers.

d. The consent of all members is required to:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the property of the company, with or without the good will, outside the ordinary course of the activities of the company;

(2) Approve a merger, conversion, or domestication under sections 10-32.1-55 through 10-32.1-71;

(3) Undertake any other act outside the ordinary course of the activities of the company; or

(4) Amend the operating agreement.

e. A manager may be chosen at any time by the consent of a majority of the members and remains a manager until a successor has been chosen, unless the manager at an earlier time resigns, is removed, or dies, or, in the case of a manager that is not an individual, terminates. A manager may be removed at any time by the consent of a majority of the members without notice or cause.

f. A person need not be a member to be a manager, but the dissociation of a member that is also a manager removes the person as a manager. If a person that is both a manager and a member ceases to be a manager, that cessation does not by itself dissociate the person as a member.

g. The ceasing of a person to be a manager does not discharge any debt, obligation, or other liability to the limited liability company or members which the person incurred while a manager.

4. In a board-managed limited liability company, the following rules apply:

a. The activities and affairs of a limited liability company are to be managed by and under the direction of a board of governors, which shall consist of one or more governors as determined by members holding a majority of the voting power of the members. Except as specifically stated in this subsection and in subsection 11 of section 10-32.1-21 and subject to section 10-32.1-24:

(1) The board acts only through an act of the board;

(2) No individual governor has any right or power to act for the limited liability company; and

(3) Only officers, managers, or other agents designated by the board or through a process approved by the board have the right to act for the limited liability company, and that right extends only to the extent consistent with the terms of the designation.

b. A governor must be an individual. An individual need not be a member to be a governor, but the dissociation of a member who is an individual and who also a governor disqualifies the individual as a governor. If an individual who is both a governor and a member ceases to be a governor, that cessation does not by itself dissociate the individual as a member. The ceasing of an individual to be a governor does not discharge any debt, obligation, or other liability to the limited liability company or members which the individual incurred while a governor.

c. The method of election and any additional qualifications for governors will be as determined by members holding a majority of the voting power of the members. Governors are elected by a plurality of the voting power present and entitled to vote on the election of governors at a duly called or held meeting at which a quorum is present.

d. A member may waive notice of a meeting for the election of governors. The waiver of notice by a member under this subdivision is effective whether given before, at, or after the meeting, and whether given in a record, orally, or by attendance. Attendance by a member at a meeting for election of governors is a waiver of notice of that meeting,

except where the member objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

e. Once elected, a governor holds office for the term for which the governor was elected and until a successor is elected, or until the earlier death, resignation, disqualification, or removal of the governor. A governor may resign at any time. A governor may be removed at any time, without cause and without advance notice, by a majority of the voting power of all of the members. The existence of vacancies does not affect the power of the board to function if at least one governor remains in office.

f. When a vacancy occurs, the limited liability company shall immediately notify all members in a record of the vacancy, stating the cause of the vacancy and the date the notice is sent. Within thirty days of that date, the members may fill the vacancy in the same method the members may elect governors under subdivision c. If the vacancy is not filled by the members under this subdivision, then the vacancy may be filled by the affirmative vote of a majority of the remaining governors, even though less than a quorum.

g. The board shall meet from time to time as determined by members holding a majority of the voting power of the members, at a place decided by the board. If the day or date, time, and place of a board of governors meeting have been provided in a board resolution, or announced at a previous meeting of the board of governors, then no notice is required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken. If notice is required for a meeting, then notice shall be made in the manner stated in subdivision h.

h. A governor may call a board meeting by giving at least ten days' notice in a record to all governors of the date, time, and place of the meeting. The notice need not state the purpose of the meeting. As to each governor, the notice is effective when given.

i. "Notice" shall be determined as provided in subsection 35 of section 10-32.1-02.

j. A governor may waive notice of a meeting of the board of governors. A waiver of notice by a governor entitled to notice is effective whether given before, at, or after the meeting, and whether given in a record, orally, or by attendance. Attendance by a governor at a meeting is a waiver of notice of that meeting, except where the governor objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened and does not participate in the meeting after the objection.

k. A majority of the governors currently holding office is a quorum for the transaction of business. When a quorum is present at a duly called or held meeting of the board, the vote of a majority of the directors present constitutes an act of the board. If a quorum is present when a duly called or held meeting is convened, then the governors present may continue to transact business until adjournment, even though the withdrawal of a number of governors originally present leaves less than the proportion or number otherwise required for a quorum.

l. Any meeting among governors may be conducted solely by one or more means of remote communication through which all of the governors may participate with each other during the meeting, if the number of governors participating in the meeting would be sufficient to constitute a quorum. Participation in a meeting through remote communication constitutes presence in person at the meeting.

m. A governor may participate in a board of governors meeting by means of remote communication, through which the governor, other governors so participating, and all governors physically present at the meeting may participate with each other during the

meeting. Participation in a meeting through remote communication constitutes presence in person at the meeting.

n. An action required or permitted to be taken at a board meeting may be taken by written action signed by the number of governors that would be required to take the same action at a meeting of the board of governors at which all governors were present. The written action is effective when signed by the required number of governors, unless a different effective time is provided in the written action. When written action is permitted to be taken by less than all governors, then all governors must be notified immediately of its text and effective date. Failure to provide the notice does not invalidate the written action. A governor who does not sign or consent to the written action has no liability for the action or actions taken by the written action.

o. If the board designates a person as "chief manager", "president", "chief executive officer", or another title of similar import, then that person shall:

(1) Serve as an agent of the limited liability company at the will of the board, without prejudice to any rights the person may have under a contract with the limited liability company;

(2) Have general active management of the business of the limited liability company, subject to the supervision and control of the board;

(3) See that all orders and resolutions of the board of governors are carried into effect;

(4) Sign and deliver in the name of the limited liability company any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the limited liability company, except in cases in which the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the board of governors to some other officer or agent of the limited liability company;

(5) Maintain records of and, whenever necessary, certify all proceedings of the board of governors and the members; and

(6) Perform other duties prescribed by the board of governors.

p. If the board designates a person as "treasurer", "chief financial officer", or another title of similar import, then that person shall:

(1) Serve as an agent of the limited liability company at the will of the board, without prejudice to any rights the person may have under a contract with the limited liability company;

(2) Keep accurate financial records for the limited liability company;

(3) Deposit all money, drafts, and checks in the name of and to the credit of the limited liability company in the banks and depositories designated by the board of governors;

(4) Endorse for deposit all notes, checks, and drafts received by the limited liability company as ordered by the board of governors, making proper vouchers for them;

(5) Disburse limited liability company funds and issue checks and drafts in the name of the limited liability company, as ordered by the board of governors;

(6) Give to the chief executive officer and the board of governors, whenever requested, an account of all transactions by the chief financial officer and of the financial condition of the limited liability company; and

(7) Perform other duties prescribed by the board of governors or by the chief executive officer.

q. The consent of all members is required to:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the property of the company, with or without the good will, outside the ordinary course of the activities of the company;

(2) Approve a merger, conversion, or domestication under sections 10-32.1-55 through 10-32.1-71; and

(3) Amend the operating agreement.

r. Subject to subsection 4 of section 10-32.1-05, for purposes of this subsection, each member possesses voting power in proportion to the interest of the member in distributions of the limited liability company before dissolution and a majority of the voting power of the members is a quorum at a meeting of the members.

5. Any member may demand a meeting of the members to take action requiring consent of members under this chapter upon not less than twenty days' notice to each member in a record of the date and time of the meeting. Any meeting held upon member notice shall be held at the principal executive office of the limited liability company if located within this state, and at the registered office if the principal executive office is not located within the state. Any action requiring the consent of members under this chapter may be taken or approved without a meeting by the written consent of the members holding the voting power required to take such action at a duly called meeting at which all members were present. A member may appoint a proxy or other agent to consent or otherwise act for the member by signing an appointing record, personally or by the agent of the member.

6. The dissolution of a limited liability company does not affect the applicability of this section. However, a person that wrongfully causes dissolution of the company loses the right to participate in management in any capacity.

7. This chapter does not entitle a member to remuneration for services performed for a member-managed limited liability company, except for reasonable compensation for services rendered in winding up the activities of the company.

10-32.1-40. Indemnification and insurance.

1. For purposes of this section, unless the context otherwise requires:

a. "Limited liability company" includes a domestic or foreign limited liability company that was the predecessor of the limited liability company referred to in this section in a merger or other transaction in which the existence of the predecessor ceased upon consummation of the transaction.

b. "Official capacity" means:

(1) With respect to a member of a member-managed company, a manager of a manager-managed company, or a governor of a board-managed company, actions taken in that capacity;

(2) With respect to a person other than a member of a member-managed company, a manager of a manager-managed company, or a governor of a board-managed company:

(a) The elective or appointive office or position held by a manager or officer, member of a committee of the board of governors;

(b) The employment relationship undertaken by an employee of the limited liability company; or

(c) The scope of the services provided by members of the limited liability company who provide services to the limited liability company; and

(3) With respect to a governor, manager, member, or employee of the limited liability company who, while a member, governor, manager, or employee of the limited liability company, is or was serving at the request of the limited liability company or whose duties in that position involve or involved service as a governor, director, manager, officer, member, partner, trustee, employee, or agent of another organization or employee benefit plan, the position of that person as a governor, director, manager, officer, member, partner, trustee, employee, or agent, as the case may be, of the other organization or employee benefit plan.

c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the limited liability company.

d. "Special legal counsel" means counsel who has not in the preceding five years:

(1) Represented the limited liability company or a related organization in a capacity other than special legal counsel; or

(2) Represented a member, governor, manager, member of a committee of the board of governors, or employee, or other person whose indemnification is in issue.

2. With respect to indemnification:

a. Subject to the provisions of subsection 4, a limited liability company shall indemnify a person made or threatened to be made a party to a proceeding by reason of the former or present official capacity of the person against judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding, if, with respect to the acts or omissions of the person complained of in the proceeding, the person:

(1) Has not been indemnified by another organization or employee benefit plan for the same judgments, penalties, fines, including, without limitation, excise taxes assessed against the person with respect to an employee benefit plan, settlements, and reasonable expenses, including attorney's fees and disbursements, incurred by the person in connection with the proceeding with respect to the same acts or omissions;

(2) Acted in good faith;

(3) Received no improper personal benefit and complied with the duties stated in sections 10-32.1-31 and 10-32.1-41, if applicable;

(4) In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and

(5) In the case of acts or omissions occurring in the official capacity described in paragraph 1 or 2 of subdivision b of subsection 1, reasonably believed that the conduct was in the best interests of the limited liability company, or in the case of acts or omissions occurring in the official capacity described in paragraph 3 of subdivision b of subsection 1, reasonably believed that the conduct was not opposed to the best interests of the limited liability company. If the acts or omissions

of the person complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, then the conduct is not considered to be opposed to the best interests of the limited liability company if the person reasonably believed that the conduct was in the best interests of the participants or beneficiaries of the employee benefit plan.

b. The termination of a proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent does not, of itself, establish that the person did not meet the criteria set forth in this subsection.

3. Subject to the provisions of subsection 4, if a person is made or threatened to be made a party to a proceeding, then the person is entitled, upon written request to the limited liability company, to payment or reimbursement by the limited liability company of reasonable expenses, including attorney's fees and disbursements, incurred by the person in advance of the final disposition of the proceeding:

a. Upon receipt by the limited liability company of a written affirmation by the person of a good faith belief that the criteria for indemnification in subsection 2 have been satisfied and a written undertaking by the person to repay all amounts so paid or reimbursed by the limited liability company, if it is ultimately determined that the criteria for indemnification have not been satisfied; and

b. After a determination that the facts then known to those making the determination would not preclude indemnification under this section.

c. The written undertaking required by subdivision a is an unlimited general obligation of the person making it, but need not be secured and shall be accepted without reference to financial ability to make the repayment.

4. The articles of organization or the operating agreement either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2 and 3, including, without limitation, monetary limits on indemnification or advances of expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring before the effective date of a provision in the articles of organization, a member control agreement, or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.

5. This section does not require, or limit the ability of, a limited liability company to reimburse expenses, including attorney fees and disbursements, incurred by a person in connection with an appearance as a witness in a proceeding at a time when the person has not been made or threatened to be made a party to a proceeding.

6. With respect to the determination of eligibility:

a. All determinations whether indemnification of a person is required because the criteria in subsection 2 have been satisfied and whether a person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 3 must be made:

(1) In a board-managed limited liability company:

(a) By the board of governors by a majority of a quorum, provided that governors who are, at the time, parties to the proceeding shall not be counted for determining either a majority or the presence of a quorum;

(b) If a quorum under subparagraph a cannot be obtained, then by a majority of a committee of the board of governors, consisting solely of two or more governors not at the time parties to the proceeding, duly designated to act in the matter by a majority of the full board of governors including governors who are parties; and

(c) If a determination is not made under subparagraph a or b, then by special legal counsel, selected either by a majority of the board of governors or a committee by vote pursuant to subparagraph a or b or, if the requisite quorum of the full board of governors cannot be obtained and the committee cannot be established, then by a majority of the full board of governors including governors who are parties;

(2) In all other cases, then by the affirmative vote of the members, subject to subsection 4 of section 10-32.1-05 with each member having voting power in proportion to the interest of the member in distributions of the limited liability company before dissolution, but the membership interests held by parties to the proceeding must not be counted in determining the presence of a quorum and are not considered to be present and entitled to vote on the determination; or

(3) If an adverse determination is made under subparagraphs a or b, or if no determination is made under subparagraphs a or b then within sixty days after:

(a) The later to occur of the termination of a proceeding or a written request for indemnification to the limited liability company; or

(b) A written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the liability of the person took place, upon application of the person and any notice which the court requires. The person seeking indemnification or payment or reimbursement of expenses pursuant to this subdivision has the burden of establishing that the person is entitled to indemnification or payment or reimbursement of expenses.

b. With respect to a person who is not, and was not at the time of the acts or omissions complained of in the proceedings, a member, governor, manager, or person possessing, directly or indirectly, the power to direct or cause the direction of the management or policies of the limited liability company, the determination whether indemnification of this person is required because the criteria set forth in subsection 2 have been satisfied and whether this person is entitled to payment or reimbursement of expenses in advance of the final disposition of a proceeding as provided in subsection 3 may be made:

(1) In a board-managed limited liability company, by an annually appointed committee of the board of governors, having at least one member who is a governor, which committee shall report at least annually to the board of governors concerning its actions; and

(2) In all other cases by a committee appointed annually by the members, having at least one committee member who is a member of the limited liability company, which committee shall report at least annually to the board of governors concerning its actions.

7. A limited liability company may purchase and maintain insurance on behalf of a member, manager, or governor of the company against liability asserted against or incurred by the member, manager, or governor in that capacity or arising from that status even if, under subsection 7 of section 10-32.1-13, the operating agreement could not eliminate or limit the liability of a person to the company for the conduct giving rise to the liability and whether or not

the limited liability company would have been required to indemnify the person against the liability under this section.

8. A limited liability company that indemnifies or advances expenses to a person according to this section in connection with a proceeding by or on behalf of the limited liability company shall report to the members in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid not later than the next meeting of members.

9. Nothing in this section must be construed to limit the power of the limited liability company to indemnify persons other than a governor, manager, member, employee, or member of a committee of the board of the limited liability company, by contract or otherwise.

10-32.1-41. Standards of conduct for members, managers, and governors.

1. A member of a member-managed limited liability company owes to the company and, subject to subsection 2 of section 10-32.1-33, the other members the fiduciary duties of loyalty and care stated in subsections 2 and 3.

2. The duty of loyalty of a member in a member-managed limited liability company includes the duties:

   a. To account to the company and to hold as trustee for it any property, profit, or benefit derived by the member:

      (1) In the conduct or winding up of the activities of the company;

      (2) From a use by the member of the property of the company; or

      (3) From the appropriation of a limited liability company opportunity;

   b. To refrain from dealing with the company in the conduct or winding up of the activities of the company as or on behalf of a person having an interest adverse to the company; and

   c. To refrain from competing with the company in the conduct of the activities of the company before the dissolution of the company.

3. Subject to the business judgment rule, the duty of care of a member of a member-managed limited liability company in the conduct and winding up of the activities of the company is to act with the care that a person in a like position would reasonably exercise under similar circumstances and in a manner the member reasonably believes to be in the best interests of the company. In discharging this duty, a member may rely in good faith on opinions, reports, statements, or other information provided by another person that the member reasonably believes is a competent and reliable source for the information.

4. A member in a limited liability company shall discharge the duties of the member and exercise any rights under this chapter or under the operating agreement consistently with the contractual obligation of good faith and fair dealing, including acting in a manner, in light of the operating agreement, that is honest, fair, and reasonable.

5. It is a defense to a claim under subdivision b of subsection 2, and any comparable claim in equity or at common law that the transaction was fair to the limited liability company.

6. All of the members of a member-managed limited liability company or a manager-managed limited liability company may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty.

7. In a manager-managed limited liability company, the following rules apply:

   a. Subsections 1, 2, 3, and 5 apply to the manager or managers and not the members.

b. The duty stated under subdivision c of subsection 2 continues until winding up is completed.

c. Subsection 4 applies to the members and managers.

d. Subsection 6 applies only to the members.

e. A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

8. In a board-managed limited liability company, the following rules apply:

a. Subsections 1, 2, 3, and 5 apply to the governors and not the members.

b. The duty stated under subdivision c of subsection 2 continues until winding up is completed.

c. Subsection 4 applies to the members and governors.

d. Subsection 6 applies only to the members.

e. A member does not have any fiduciary duty to the company or to any other member solely by reason of being a member.

10-32.1-42. Right of members, managers, governors, and dissociated members to information.

1. In a member-managed or board-managed limited liability company, the following rules apply:

a. On reasonable notice, a member may inspect and copy during regular business hours, at a reasonable location specified by the company, any record maintained by the company regarding the activities, financial condition, and other circumstances of the company, to the extent the information is material to the rights and duties of the member under the operating agreement or this chapter.

b. The company shall furnish to each member:

(1) Without demand, any information concerning the activities, financial condition, and other circumstances of the company which the company knows and is material to the proper exercise of the rights and duties of the member under the operating agreement or this chapter, except to the extent the company can establish that it reasonably believes the member already knows the information; and

(2) On demand, any other information concerning the activities, financial condition, and other circumstances of the company, except to the extent the demand or information demanded is unreasonable or otherwise improper under the circumstances.

c. The duty to furnish information under subdivision b also applies to each member to the extent the member knows any of the information described in subdivision b.

2. In a manager-managed limited liability company, the following rules apply:

a. The informational rights stated in subsection 1 and the duty stated in subdivision c of subsection 1, apply to the managers or governors and not the members.

b. During regular business hours and at a reasonable location specified by the company, a member may obtain from the company and inspect and copy full information regarding the activities, financial condition, and other circumstances of the company as is just and reasonable if:

(1) The member seeks the information for a purpose material to the interest of the member as a member;

(2) The member makes a demand in a record received by the company, describing with reasonable particularity the information sought and the purpose for seeking the information; and

(3) The information sought is directly connected to the purpose of the member.

c. Within ten days after receiving a demand pursuant to paragraph 3 of subdivision b, the company shall in a record inform the member that made the demand:

(1) Of the information that the company will provide in response to the demand and when and where the company will provide the information; and

(2) If the company declines to provide any demanded information, then the reasons of the company for declining.

d. Whenever this chapter or an operating agreement provides for a member to give or withhold consent to a matter, before the consent is given or withheld, the company shall, without demand, provide the member with all information that is known to the company and is material to the decision of the member.

3. On ten days' demand made in a record received by a limited liability company, a dissociated member may have access to information to which the person was entitled while a member if the information pertains to the period during which the person was a member, the person seeks the information in good faith, and the person satisfies the requirements imposed on a member by subdivision b of subsection 2. The company shall respond to a demand made pursuant to this subsection in the manner provided in subdivision c of subsection 2.

4. A limited liability company may charge a person that makes a demand under this section the reasonable costs of copying, limited to the costs of labor and material.

5. A member or dissociated member may exercise rights under this section through an agent or, in the case of an individual under legal disability, a legal representative. Any restriction or condition imposed by the operating agreement or under subsection 7 applies both to the agent or legal representative and the member or dissociated member.

6. The rights under this section do not extend to a person as transferee.

7. In addition to any restriction or condition stated in its operating agreement, a limited liability company, as a matter within the ordinary course of its activities, may impose reasonable restrictions and conditions on access to and use of information to be furnished under this section, including designating information confidential and imposing nondisclosure and safeguarding obligations on the recipient. In a dispute concerning the reasonableness of a restriction under this subsection, the company has the burden of proving reasonableness.

10-32.1-43. Nature of a transferable interest.

A transferable interest is personal property.

10-32.1-44. Transfer of a transferable interest.

1. A transfer, in whole or in part, of a transferable interest:

a. Is permissible;

b. Does not by itself cause the dissociation of a member or a dissolution and winding up of the activities of the limited liability company; and

c. Subject to section 10-32.1-46, does not entitle the transferee to:

(1) Participate in the management or conduct of the activities of the company; or

(2) Except as otherwise provided in subsection 3, have access to records or other information concerning the activities of the company.

2. A transferee has the right to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled.

3. In a dissolution and winding up of a limited liability company, a transferee is entitled to an account of the transactions of the company only from the date of dissolution.

4. A transferable interest may be evidenced by a certificate of the interest issued by the limited liability company in a record, and, subject to this section, the interest represented by the certificate may be transferred by a transfer of the certificate.

5. A limited liability company need not give effect to the rights of a transferee under this section until the company has notice of the transfer.

6. A transfer of a transferable interest in violation of a restriction on transfer contained in the operating agreement is ineffective as to a person having notice of the restriction at the time of transfer.

7. Except as otherwise provided in subdivision b of subsection 4 of section 10-32.1-48, when a member transfers a transferable interest, the transferor retains the rights of a member other than the interest in distributions transferred and retains all duties and obligations of a member.

8. When a member transfers a transferable interest to a person that becomes a member with respect to the transferred interest, the transferee is liable for the obligations of the member under section 10-32.1-29 and subsection 3 of section 10-32.1-32, known to the transferee when the transferee becomes a member.

10-32.1-45. Charging order.

1. On application by a judgment creditor of a member or transferee, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment. A charging order constitutes a lien on the transferable interest of a judgment debtor and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.

2. To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection 1, the court may:

a. Appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and

b. Make all other orders necessary to give effect to the charging order.

3. Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, then the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a member, and is subject to section 10-32.1-44.

4. At any time before foreclosure under subsection 3, the member or transferee whose transferable interest is subject to a charging order under subsection 1 may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.

5. At any time before foreclosure under subsection 3, a limited liability company or one or more members whose transferable interests are not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

6. This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the transferable interest of the member or transferee.

7. This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the transferable interest of the judgment debtor.

10-32.1-46. Power of the personal representative of a deceased member.

If a member dies, then the personal representative of the deceased member or other legal representative may exercise the rights of a transferee provided in subsection 3 of section 10-32.1-44, and, for the purposes of settling the estate, the rights of a current member under section 10-32.1-42.

10-32.1-47. Power of a member to dissociate - Wrongful dissociation.

1. A person has the power to dissociate as a member at any time, rightfully or wrongfully, by withdrawing as a member by express will under subsection 1 of section 10-32.1-48.

2. The dissociation of a person from a limited liability company is wrongful only if the dissociation:

   a. Is in breach of an express provision of the operating agreement; or

   b. Occurs before the termination of the company and:

      (1) The person withdraws as a member by express will;

      (2) The person is expelled as a member by judicial order under subsection 5 of section 10-32.1-48;

      (3) The person is dissociated under subdivision a of subsection 7 of section 10-32.1-48, by becoming a debtor in bankruptcy; or

      (4) In the case of a person that is not a trust other than a business trust, an estate, or an individual, the person is expelled or otherwise dissociated as a member because it willfully dissolved or terminated.

3. A person that wrongfully dissociates as a member is liable to the limited liability company and, subject to section 10-32.1-33, to the other members for damages caused by the dissociation. The liability is in addition to any other debt, obligation, or other liability of the member to the company or the other members.

10-32.1-48. Events causing dissociation.

A person is dissociated as a member from a limited liability company when:

1. The company has notice of the express will of the person to withdraw as a member, but, if the person specified a withdrawal date later than the date the company had notice, then on that later date;

2. An event stated in the operating agreement as causing the dissociation of the person occurs;

3. The person is expelled as a member pursuant to the operating agreement;

4. The person is expelled as a member by the unanimous consent of the other members if:

a. It is unlawful to carry on the activities of the company with the person as a member;

b. There has been a transfer of all of the transferable interest of the person in the company, other than:

(1) A transfer for security purposes; or

(2) A charging order in effect under section 10-32.1-45 which has not been foreclosed;

c. The person is a corporation and, within ninety days after the company notifies the person that it will be expelled as a member because:

(1) The person has filed articles of dissolution or the equivalent;

(2) Its charter has been revoked;

(3) Its right to conduct business has been suspended by the jurisdiction of its incorporation;

(4) The articles of dissolution have not been revoked; or

(5) Its charter or right to conduct business has not been reinstated; or

d. The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

5. On application by the company, the person is expelled as a member by judicial order because the person:

a. Has engaged, or is engaging, in wrongful conduct that has adversely and materially affected, or will adversely and materially affect, the activities of the company;

b. Has willfully or persistently committed, or is willfully and persistently committing, a material breach of the operating agreement or the duties or obligations of the person under section 10-32.1-41; or

c. Has engaged, or is engaging, in conduct relating to the activities of the company which makes it not reasonably practicable to carry on the activities with the person as a member;

6. In the case of a person who is an individual:

a. The individual dies; or

b. In a member-managed limited liability company:

(1) A guardian or general conservator for the individual is appointed; or

(2) There is a judicial order that the individual has otherwise become incapable of performing the duties of the individual as a member under this chapter or the operating agreement;

7. In a member-managed limited liability company, the person:

a. Becomes a debtor in bankruptcy;

b. Executes an assignment for the benefit of creditors; or

c. Seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the property of the person;

8. In the case of a person that is a trust or is acting as a member by virtue of being a trustee of a trust, the entire transferable interest of the trust in the company is distributed;

9. In the case of a person that is an estate or is acting as a member by virtue of being a personal representative of an estate, the entire transferable interest of the estate in the company is distributed;

10. In the case of a member that is not an individual, partnership, limited liability company, corporation, trust, or estate, the termination of the member;

11. The company participates in a merger under sections 10-32.1-55 through 10-32.1-71, if:

    a. The company is not the surviving entity; or

    b. Otherwise as a result of the merger, the person ceases to be a member;

12. The company participates in a conversion under sections 10-32.1-61 through 10-32.1-71;

13. The company participates in a domestication under sections 10-32.1-67 through 10-32.1-71, if, as a result of the domestication, the person ceases to be a member; or

14. The company terminates.

10-32.1-49. Effect of the dissociation of a person as member.

1. When a person is dissociated as a member of a limited liability company:

    a. The right of the person to participate as a member in the management and conduct of the activities of the company terminates;

    b. If the company is member-managed, then the fiduciary duties of the person as a member end with regard to matters arising and events occurring after the dissociation of the person; and

    c. Subject to sections 10-32.1-46 and 10-32.1-55 through 10-32.1-71, any transferable interest owned by the person immediately before dissociation in the capacity of the person as a member is owned by the person solely as a transferee.

2. The dissociation of a person as a member of a limited liability company does not of itself discharge the person from any debt, obligation, or other liability to the company or the other members that the person incurred while a member.

10-32.1-50. Events causing dissolution.

1. A limited liability company is dissolved, and its activities must be wound up, upon the occurrence of any of the following:

    a. An event or circumstance that the operating agreement states causes dissolution;

    b. The consent of all the members;

    c. Following the admission of the initial member or members, the passage of ninety consecutive days during which the company has no members;

    d. On application by a member, the entry by appropriate court of an order dissolving the company on the grounds that:

        (1) The conduct of all or substantially all of the activities of the company are unlawful; or

(2) It is not reasonably practicable to carry on the activities of the company in conformity with the articles of organization and the operating agreement;

e. On application by a member, the entry by appropriate court of an order dissolving the company on the grounds that the managers, governors, or those members in control of the company:

(1) Have acted, are acting, or will act in a manner that is illegal or fraudulent; or

(2) Have acted or are acting in a manner that is oppressive and was, is, or will be directly harmful to the applicant.

2. In a proceeding brought under subdivision e of subsection 1, the court may order a remedy other than dissolution, which may include the sale for fair value of all membership interests a member owns in a limited liability company to the limited liability company or one or more of the other members. A remedy other than dissolution may be ordered in any case where that remedy would be appropriate under all the facts and circumstances of the case.

3. A proceeding brought under subdivision e of subsection 1 must be brought in a court within the county in which the registered office of the limited liability company is located. It is not necessary to make members parties to the action or proceeding unless relief is sought against them personally.

10-32.1-51. Winding up.

1. A dissolved limited liability company shall wind up its activities, and the company continues after dissolution only for the purpose of winding up.

2. In winding up its activities, a limited liability company:

a. Shall discharge the debts, obligations, or other liabilities of the company, settle and close the activities of the company, and marshal and distribute the assets of the company; and

b. May:

(1) File with the secretary of state a notice of dissolution stating the name of the company and that the company is dissolved;

(2) Preserve the company activities and property as a going concern for a reasonable time;

(3) Prosecute and defend actions and proceedings, whether civil, criminal, or administrative;

(4) Transfer the property of the company;

(5) Settle disputes by mediation or arbitration;

(6) File with the secretary of state articles of dissolution and termination stating the name of the company and that the company is terminated; and

(7) Perform other acts necessary or appropriate to the winding up.

3. If a dissolved limited liability company has no members, then the legal representative of the last person to have been a member may wind up the activities of the company. If the person does so, then the person has the powers of a sole manager under subsection 3 of section 10-32.1-39, and is deemed to be a manager for the purposes of subdivision b of subsection 1 of section 10-32.1-26.

4. If the legal representative under subsection 3 declines or fails to wind up the activities of the company, then a person may be appointed to do so by the consent of transferees owning a majority of the rights to receive distributions as transferees at the time the consent is to be effective. A person appointed under this subsection:

   a. Has the powers of a sole manager under subsection 3 of section 10-32.1-39, and is deemed to be a manager for the purposes of subdivision b of subsection 1 of section 10-32.1-26; and

   b. Shall promptly file with the secretary of state an amendment to the articles of organization of the company to:

      (1) State that the company has no members;

      (2) State that the person has been appointed pursuant to this subsection to wind up the company; and

      (3) Provide the mailing address of the person.

5. The appropriate court may order judicial supervision of the winding up of a dissolved limited liability company, including the appointment of a person to wind up the activities of the company:

   a. On application of a member, if the applicant establishes good cause;

   b. On the application of a transferee, if:

      (1) The company does not have any members;

      (2) The legal representative of the last person to have been a member declines or fails to wind up the activities of the company; and

      (3) Within a reasonable time following the dissolution a person has not been appointed pursuant to subsection 4; or

   c. In connection with a proceeding under subdivision d or e of subsection 1 of section 10-32.1-50.

10-32.1-52. Known claims against a dissolved limited liability company.

1. Except as otherwise provided in subsection 4, a dissolved limited liability company may give notice of a known claim under subsection 2 that has the effect as provided in subsection 3.

2. A dissolved limited liability company may in a record notify its known claimants of the dissolution. The notice must:

   a. Specify the information required to be included in a claim;

   b. Provide a mailing address to which the claim is to be sent;

   c. State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant; and

   d. State that the claim will be barred if not received by the deadline.

3. A claim against a dissolved limited liability company is barred if the requirements of subsection 2 are met and:

   a. The claim is not received by the specified deadline; or

b. If the claim is timely received but rejected by the company:

(1) The company causes the claimant to receive a notice in a record stating that the claim is rejected and will be barred unless the claimant commences an action against the company to enforce the claim within ninety days after the claimant receives the notice of rejection; and

(2) The claimant does not commence the required action within the ninety days.

4. This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that on that date is contingent.

10-32.1-53. Other claims against a dissolved limited liability company.

1. A dissolved limited liability company may publish notice of its dissolution and request persons having claims against the company to present them according to the notice.

2. The notice authorized by subsection 1 must:

a. Be published at least once in a newspaper of general circulation in the county or counties in this state in which the principal executive office of the dissolved limited liability company is located or, if it has none in this state, then in the county or counties in which the registered office of the company is or was last located;

b. Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent; and

c. State that a claim against the company is barred unless an action to enforce the claim is commenced within five years after publication of the notice.

3. If a dissolved limited liability company publishes a notice according to subdivision b, unless the claimant commences an action to enforce the claim against the company within five years after the publication date of the notice, then the claim of each of the following claimants is barred:

a. A claimant that did not receive notice in a record under section 10-32.1-52;

b. A claimant whose claim was timely sent to the company but not acted on; and

c. A claimant whose claim is contingent at, or based on an event occurring after, the effective date of dissolution.

4. A claim not barred under this section may be enforced:

a. Against a dissolved limited liability company, to the extent of its undistributed assets; and

b. If assets of the company have been distributed after dissolution, then against a member or transferee to the extent of the proportionate share of the claim of that person or of the assets distributed to the member or transferee after dissolution, whichever is less, but the total liability of a person for all claims under this subdivision does not exceed the total amount of assets distributed to the person after dissolution.

10-32.1-54. Distribution of assets in winding up limited liability activities of the company.

1. In winding up its activities, a limited liability company must apply its assets to discharge its obligations to creditors, including members that are creditors.

2. After a limited liability company complies with subsection 1, any surplus must be distributed in the following order, subject to any charging order in effect under section 10-32.1-45:

a. To each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and

b. In equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44.

3. If a limited liability company does not have sufficient surplus to comply with subdivision a of subsection 2, then any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.

4. All distributions made under subsections 2 and 3 must be paid in money.

10-32.1-55. Merger, conversion, and domestication - Definitions.

For the purposes of sections 10-32.1-55 through 10-32.1-71, unless the context otherwise requires:

1. "Constituent limited liability company" means a constituent organization that is a limited liability company.

2. "Constituent organization" means an organization that is party to a merger or exchange.

3. "Converted organization" means the organization into which a converting organization converts pursuant to sections 10-32.1-61 through 10-32.1-66.

4. "Converting limited liability company" means a converting organization that is a limited liability company.

5. "Converting organization" means an organization that converts into another organization pursuant to section 10-32.1-61.

6. "Domesticated company" means the company that exists after a domesticating foreign limited liability company or limited liability company effects a domestication pursuant to sections 10-32.1-67 through 10-32.1-71.

7. "Domesticating company" means the company that effects a domestication pursuant to sections 10-32.1-67 through 10-32.1-71.

8. "Governing statute" of an organization means:

a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:

(1) If a corporation, then chapter 10-19.1;

(2) If a limited liability company, then this chapter;

(3) If a general partnership, then chapters 45-13 through 45-21;

(4) If a limited partnership, then chapter 45-10.2;

(5) If a limited liability partnership, then chapter 45-22; and

(6) If a limited liability limited partnership, then chapter 45-23; and

b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and which govern the internal affairs of the organization.

9. "Organization" has the meaning provided in subsection 38 of section 10-32.1-02.

10. "Organizational documents" means:

    a. For a domestic or foreign general partnership, its partnership agreement;

    b. For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

    c. For a domestic or foreign limited liability company, its certificate or articles of organization and operating agreement, or comparable records as provided in its governing statute;

    d. For a business trust, its agreement of trust and declaration of trust;

    e. For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders which are authorized by its governing statute, or comparable records as provided in its governing statute; and

    f. For any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

11. "Originating Records" has the meaning provided in subsection 39 of section 10-32.1-02.

12. "Personal liability" means liability for a debt, obligation, or other liability of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

    a. By the governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

    b. By the organizational documents of the organization under a provision of the governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, obligations, or other liabilities of the organization solely by reason of the person or persons co-owning, having an interest, or interests in, or being a member, or members of the organization.

13. "Surviving organization" means the organization resulting from a merger which:

    a. May preexist the merger; or

    b. May be created by the merger.

10-32.1-56. Merger and exchange.

1. A limited liability company may merge with one or more other constituent organizations pursuant to this section, sections 10-32.1-55 through 10-32.1-59 and 10-32.1-71, and a plan of merger if:

    a. The governing statute of each of the other organizations authorizes the merger;

    b. The merger is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and

    c. Each of the other organizations complies with its governing statute in effecting the merger.

2. A limited liability company may engage in an exchange with one or more other constituent organizations pursuant to this section by which one of the constituent organizations acquires all of the ownership interests of one or more classes or series of another constituent organization pursuant to this section, sections 10-32.1-55 through 10-32.1-58, 10-32.1-60, and 10-32.1-71, and a plan of exchange if:

a. The governing statute of each of the other constituent organizations authorizes the exchange;

b. The exchange is not prohibited by the law of a jurisdiction that enacted any of the governing statutes; and

c. Each of the other constituent organizations complies with its governing statute in effecting the exchange.

3. A plan of merger or exchange must be in a record and must include:

a. The name and form of each constituent organization and:

b. In the case of a merger:

(1) The name and form of the surviving organization and, if the surviving organization is to be created by the merger, then a statement to that effect;

(2) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration; and

(3) If the surviving organization is to be created by the merger, then the originating record of the surviving organization that is proposed to be in a record;

(4) If the surviving organization is not to be created by the merger, then any amendments to be made by the merger to the organizational documents of the surviving organization that are, or are proposed to be, in a record; and

(5) Any other provisions with respect to the proposed merger that are considered necessary or desirable.

c. In the case of an exchange:

(1) The name of the acquiring organization;

(2) The terms and conditions of the exchange, including the manner and basis of exchanging the ownership interests to be acquired for securities of, or other ownership interests in, the acquiring organization or any other organization or, in whole or part, for money or other property; and

(3) Any other provisions with respect to the proposed exchange that are considered necessary or desirable.

4. If an organization is not the surviving organization but is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state, then it must change or amend the name of the organization to its name in each registration when filing the articles of merger.

10-32.1-57. Action on a plan of merger or exchange by a constituent limited liability company.

1. Subject to section 10-32.1-71, a plan of merger or exchange must be consented to by all the members of a constituent limited liability company.

2. Subject to section 10-32.1-71 and any contractual rights, after a merger or exchange is approved, and at any time before the merger or exchange becomes effective according to this

chapter, a constituent limited liability company may amend the plan or abandon the merger or exchange:

a. As provided in the plan; or

b. Except as otherwise prohibited in the plan, with the same consent as was required to approve the plan.

10-32.1-58. Filings required for a merger or exchange - Effective date.

1. After each constituent organization has approved a plan of merger or exchange, articles of merger or exchange must be signed on behalf of:

   a. Each constituent limited liability company, as provided in subsection 47 of section 10-32.1-02; and

   b. Each other constituent organization, as provided in its governing statute.

2. Articles of merger under this section must include:

   a. The name and form of each constituent organization and the jurisdiction of its governing statute;

   b. The name and form of the surviving organization, the jurisdiction of its governing statute, and, if the surviving organization is created by the merger, then a statement to that effect;

   c. The date the merger is effective under the governing statute of the surviving organization;

   d. If the surviving organization is to be created by the merger:

      (1) If it will be a limited liability company, then the articles of organization of the company; or

      (2) If it will be an organization other than a limited liability company, then the organizational document that creates the organization that is in a public record;

   e. If the surviving organization preexists the merger, then any amendments provided for in the plan of merger for the organizational document that created the organization that are in a public record;

   f. A statement as to each constituent organization that the merger was approved as required by the governing statute of the organization;

   g. If the surviving organization is a foreign organization not authorized to transact business in this state, then the address of an office that the secretary of state may use for the purposes of subsection 2 of section 10-32.1-59; and

   h. Any additional information required by the governing statute of any constituent organization.

3. Articles of exchange under this section must include:

   a. The name and form of each constituent organization and the jurisdiction of its governing statute;

   b. The manner and basis of exchanging the ownership interests to be acquired for securities of, or other ownership interests in, the acquiring organization or any other organization or, in whole or part, for money or other property;

c. The date the exchange is effective under the governing statute of the acquiring organization;

d. A statement as to each constituent organization that the exchange was approved as required by the governing statute of the organization; and

e. Any additional information required by the governing statute of any constituent organization.

4. The articles of merger or exchange, together with the fees provided in section 10-32.1-92, shall be filed with the secretary of state.

5. With respect to the effective date of merger or exchange:

a. A merger becomes effective under sections 10-32.1-55 through 10-32.1-59 and 10-32.1-71:

(1) If the surviving organization is a limited liability company, then upon the later of:

(a) Compliance with subsection 4; or

(b) Subject to subsection 3 of section 10-32.1-86, the effective date specified in the articles of merger; or

(2) If the surviving organization is not a limited liability company, then as provided by the governing statute of the surviving organization.

b. An exchange becomes effective under sections 10-32.1-55 through 10-32.1-58, 10-32.1-60, and 10-32.1-71 upon the later of:

(1) Compliance with subsection 4; or

(2) Subject to subsection 3 of section 10-32.1-86, the effective date specified in the articles of exchange.

10-32.1-59. Effect of a merger.

1. When a merger becomes effective:

a. The surviving organization continues or comes into existence;

b. Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

c. All property owned by each constituent organization that ceases to exist vests in the surviving organization upon compliance with the transfer requirements of applicable law;

d. All debts, obligations, or other liabilities of each constituent organization that ceases to exist continue as debts, obligations, or other liabilities of the surviving organization;

e. An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

f. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

g. Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

h. Except as otherwise agreed, if a constituent limited liability company ceases to exist, then the merger does not dissolve the limited liability company for the purposes of sections 10-32.1-50 through 10-32.1-54;

i. If the surviving organization is created by the merger:

(1) If it is a limited liability company, then the articles of organization become effective; or

(2) If it is an organization other than a limited liability company, then the originating record that creates the organization becomes effective; and

j. If the surviving organization preexisted the merger, then any amendments provided for in the articles of merger or the originating record that created the organization become effective.

2. A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by a constituent organization if before the merger the constituent organization was subject to suit in this state on the debt, obligation, or other liability. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for the purposes of enforcing a debt, obligation, or other liability under this subsection. Service of process on the secretary of state under this subsection must be made in the same manner and has the same consequences as in section 10-32.1-19.

3. As to any limited liability company that was a constituent organization and is not the surviving constituent organization, the articles of merger serve as the articles of dissolution and termination and, unless previously filed, the notice of dissolution.

10-32.1-60. Effect of an exchange.

When an exchange becomes effective, the membership interests in a limited liability company to be exchanged under the terms of the plan are considered to be exchanged. The members owning those membership interests are entitled only to the ownership interests, securities, money, or other property into which those membership interests have been converted or for which those membership interests have been exchanged according to the plan.

10-32.1-61. Conversion.

1. An organization other than a limited liability company may convert to a limited liability company, and a limited liability company may convert to another organization other than a general partnership as provided in this section and sections 10-32.1-62 through 10-32.1-66 and 10-32.1-71 and a plan of conversion, if:

a. The governing statute of the other organization authorizes the conversion;

b. The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and

c. The other organization complies with its governing statute in effecting the conversion.

2. For the purposes of sections 10-32.1-61 through 10-32.1-66 and 10-32.1-71, unless the context otherwise requires:

a. "Act of the board" means action by the board as provided in section 10-32.1-39 whether:

(1) At a meeting of the board; or

(2) By a written action of the board.

b. "Act of the members" means action by the members as provided in section 10-32.1-39 whether:

(1) At a meeting of the members; or

(2) By a written action of the members.

c. "Certificate of creation" means:

(1) A certificate of incorporation, if the converted organization is a corporation deemed to be incorporated under chapter 10-19.1;

(2) A certificate of organization, if the converted organization is a limited liability company deemed to be organized under this chapter;

(3) A certificate of limited partnership, if the converted organization is a limited partnership deemed to be formed under chapter 45-10.2;

(4) The filed registration of a limited liability partnership, if the converted organization is a limited liability partnership deemed to be established under chapter 45-22; or

(5) A certificate of limited liability limited partnership, if the converted organization is a limited liability limited partnership deemed to be formed under chapter 45-23.

d. "Date of origin" means the date on which:

(1) A corporation which is:

(a) The converting organization was incorporated; or

(b) The converted organization is deemed to be incorporated;

(2) A limited liability company which is:

(a) The converting organization was organized; or

(b) The converted organization is deemed to be organized;

(3) A general partnership that is the converting organization was formed;

(4) A limited partnership which is:

(a) The converting organization was formed; or

(b) The converted organization is deemed to be formed;

(5) A limited liability partnership which is:

(a) The converting organization was formed; or

(b) The converted organization is deemed to be formed; and

(6) A limited liability limited partnership which is:

(a) The converting organization was formed; or

(b) The converted organization is deemed to be formed.

e. "Filed registration" means the registration of a limited liability partnership which has been filed with the secretary of state.

f. "General partnership" means an organization formed by two or more persons under chapters 45-13 through 45-21.

g. "Organizational records" means for an organization that is:

(1) A corporation, its articles of incorporation and bylaws;

(2) A limited liability company, its articles of organization, operating agreement or bylaws, and any member-control agreement;

(3) A limited partnership, its partnership agreement;

(4) A limited liability partnership, its partnership agreement; or

(5) A limited liability limited partnership, its partnership agreement.

h. "Originating records" has the meaning provided in subsection 39 of section 10-32.1-02.

10-32.1-62. Plan of conversion.

A plan of conversion must be in a record and must contain:

1. The name and form of the converting organization before conversion;

2. The name and form of the converted organization after conversion;

3. The terms and conditions of the proposed conversion;

4. The manner and basis of converting each ownership interest in the converting organization into ownership interests in the converted organization or, in whole or in part, into money or other property;

5. The organizational records of the converted organization; and

6. Any other provisions with respect to the proposed conversion that are deemed necessary or desirable.

10-32.1-63. Plan approval and amendment.

1. If the converting organization is a limited liability company, then:

a. A resolution containing or amending the plan of conversion must be approved by an act of the board of the converting limited liability company and must then be approved by an act of its members.

(1) In the action by the members, a class or series of membership interests is entitled to vote as a class or series on the approval or amendment of the plan.

(2) Any amendment of the plan is subject to any contractual rights.

b. If the resolution containing or amending the plan of conversion is approved by the members:

(1) At a member meeting, then:

(a) Written notice must be given to every member of the converting limited liability company, whether or not entitled to vote at the meeting, not less than fourteen days nor more than fifty days before the meeting, in the manner provided in subsection 34 of section 10-32.1-02.

(b) The written notice must state that a purpose of the meeting is to consider the proposed plan of conversion or an amendment to it.

(c) A copy or short description of the plan of conversion or the amendment to it must be included in or enclosed with the notice.

(2) By a written action of the members, then a copy or short description of the plan of conversion or the amendment to it must be included in or attached to the written action.

2. If the converting organization is not a limited liability company, then the approval and amendment of the plan of conversion must comply with its governing statute in effecting the conversion.

10-32.1-64. Articles of conversion.

1. Upon receiving the approval required by section 10-32.1-63, articles of conversion must be prepared in a record that must contain:

a. A statement that the converting organization is being converted into another organization, including:

(1) The name of the converting organization immediately before the filing of the articles of conversion;

(2) The name to which the name of the converting organization is to be changed, which must be a name that satisfies the laws applicable to the converted organization;

(3) The form of organization that the converted organization will be; and

(4) The jurisdiction of the governing statute of the converted organization;

b. A statement that the plan of conversion has been approved by the converting organization as provided in section 10-32.1-63;

c. A statement that the plan of conversion has been approved as required by the governing statute of the converted organization;

d. The plan of conversion without organizational records;

e. A copy of the originating record of the converted organization;

f. If the converted organization is a foreign organization not authorized to transact business or conduct activities in this state, then the street and mailing address of an office which the secretary of state may use for the purposes of subsection 4 of section 10-32.1-66; and

g. If the converting organization is a general partnership, then the date of origin of the general partnership.

2. The articles of conversion must be signed on behalf of the converting organization and filed with the secretary of state.

a. If the converted organization is a domestic organization:

(1) Then the filing of the articles of conversion must also include the filing with the secretary of state of the originating record of the converted organization.

(2) Upon both the articles of conversion and the originating record of the converted organization being filed with the secretary of state together with the fees provided in

section 10-32.1-92, the secretary of state shall issue a certificate of conversion and the appropriate certificate of creation to the converted organization or its legal representative.

b. If the converted organization is a foreign organization:

(1) That is transacting business or conducting activities in this state, then:

(a) The filing of the articles of conversion must include the filing with the secretary of state of an application for a certificate of authority by the converted organization.

(b) Upon both the articles of conversion and the application for a certificate of authority by the converted organization being filed with the secretary of state together with the fees provided in section 10-32.1-92, the secretary of state shall issue a certificate of conversion and the appropriate certificate of authority to the converted organization or the legal representative.

(2) That is not transacting business or conducting activities in this state, then, upon the articles of conversion being filed with the secretary of state together with the fees provided in section 10-32.1-92, the secretary of state shall issue a certificate of conversion to the converted organization or its legal representative.

3. A converting organization that is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or a limited liability limited partnership, or is a managing partner of a limited liability partnership that is on file with the secretary of state must change or amend the name of the converting organization to the name of the converted organization in each registration when filing the articles of conversion.

10-32.1-65. Abandonment of a conversion.

1. If the articles of conversion have not been filed with the secretary of state, and:

a. If the converting organization is a limited liability company, then:

(1) Before a plan of conversion has been approved by the converting limited liability company as provided in section 10-32.1-63, it may be abandoned by an act of its board.

(2) After a plan of conversion has been approved by the converting limited liability company as provided in section 10-32.1-63, and before the effective date of the plan, it may be abandoned:

(a) If the members of the converting limited liability company entitled to vote on the approval of the plan as provided in section 10-32.1-63 have approved the abandonment by an act of the members; or

(b) If the plan provides for abandonment and if all conditions for abandonment set forth in the plan are met.

b. If the converting organization is not a limited liability company, then the abandonment of the plan of conversion must comply with its governing statute.

2. If articles of conversion have been filed with the secretary of state, but have not yet become effective, then the converting organization shall file with the secretary of state articles of abandonment that contain:

a. The name of the converting organization;

b. The provision of this section under which the plan is abandoned; and

c. If the plan is abandoned:

(1) By an act of the board under paragraph 1 of subdivision a of subsection 1, or by an act of the members under subparagraph a of paragraph 2 of subdivision a of subsection 1, then the text of the resolution abandoning the plan; or

(2) As provided in the plan under subparagraph b of paragraph of subdivision a of subsection 1, then a statement that the plan provides for abandonment and that all conditions for abandonment set forth in the plan are met.

10-32.1-66. Effective date of conversion - Effect.

1. A conversion is effective when the filing requirements of subsection 2 of section 10-32.1-64 have been fulfilled or on a later date specified in the articles of conversion.

2. With respect to the effect of conversion on the converting organization and on the converted organization:

a. An organization that has been converted as provided in sections 10-32.1-61 through 10-32.1-66 is for all purposes the same entity that existed before the conversion.

b. Upon a conversion becoming effective:

(1) If the converted organization:

(a) Is a limited liability company, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities, of a limited liability company organized under this chapter; or

(b) Is not a limited liability company, then the converted organization has all the rights, privileges, immunities, and powers, and is subject to the duties and liabilities as provided in its governing statute;

(2) All property owned by the converting organization remains vested in the converted organization;

(3) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(4) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(5) Except as otherwise provided by other law, all rights, privileges, immunities, and powers of the converting organization remain vested in the converted organization; and

(6) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect.

3. When a conversion becomes effective, each ownership interest in the converting organization is deemed to be converted into ownership interests in the converted organization or, in whole or in part, into money or other property to be received under the plan, subject to any rights of a dissenter under section 10-32.1-33.

4. A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited liability company, if before

the conversion the converting limited liability company was subject to suit in this state on the obligation.

5. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection as provided in section 10-01.1-13.

10-32.1-67. Domestication.

1. A foreign limited liability company may become a limited liability company pursuant to this section, sections 10-32.1-67 through 10-32.1-71, and a plan of domestication if:

   a. The governing statute of the foreign limited liability company authorizes the domestication;

   b. The domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

   c. The foreign limited liability company complies with its governing statute in effecting the domestication.

2. A limited liability company may become a foreign limited liability company pursuant to this section, sections 10-32.1-67 through 10-32.1-71, and a plan of domestication if:

   a. The governing statute of the foreign limited liability company authorizes the domestication;

   b. The domestication is not prohibited by the law of the jurisdiction that enacted the governing statute; and

   c. The foreign limited liability company complies with its governing statute in effecting the domestication.

3. A plan of domestication must be in a record and must include:

   a. The name of the domesticating company before domestication and the jurisdiction of its governing statute;

   b. The name of the domesticated company after domestication and the jurisdiction of its governing statute;

   c. The terms and conditions of the domestication, including the manner and basis for converting interests in the domesticating company into any combination of money, interests in the domesticated company, and other consideration; and

   d. The originating record of the domesticated company.

10-32.1-68. Action on a plan of domestication by a domesticating limited liability company.

1. A plan of domestication must be consented to:

   a. By all the members, subject to section 10-32.1-71, if the domesticating company is a limited liability company; and

   b. As provided in the governing statute of the domesticating company if the company is a foreign limited liability company.

2. Subject to any contractual rights, after a domestication is approved, and at any time before articles of domestication are filed with the secretary of state under section 10-32.1-69, a domesticating limited liability company may amend the plan or abandon the domestication:

a. As provided in the plan; or

b. Except as otherwise prohibited in the plan, by the same consent as was required to approve the plan.

10-32.1-69. Filings required for domestication - Effective date.

1. After a plan of domestication is approved, a domesticating company shall file with the secretary of state articles of domestication, together with the fees provided under section 10-32.1-92, which articles of domestication must include:

   a. A statement, as the case may be, that the company has been domesticated from or into another jurisdiction;

   b. The name of the domesticating company and the jurisdiction of its governing statute;

   c. The name of the domesticated company and the jurisdiction of its governing statute;

   d. The date the domestication is effective under the governing statute of the domesticated company;

   e. If the domesticating company was a limited liability company, then a statement that the domestication was approved as required by this chapter;

   f. If the domesticating company was a foreign limited liability company, then a statement that the domestication was approved as required by the governing statute of the other jurisdiction; and

   g. If the domesticated company was a foreign limited liability company not authorized to transact business in this state, then the address of an office that the secretary of state may use for the purposes of subsection 2 of section 10-32.1-70.

2. A domestication becomes effective:

   a. When the articles of organization takes effect, if the domesticated company is a limited liability company; and

   b. According to the governing statute of the domesticated company, if the domesticated organization is a foreign limited liability company.

10-32.1-70. Effect of domestication.

1. When a domestication takes effect:

   a. The domesticated company is for all purposes the company that existed before the domestication;

   b. All property owned by the domesticating company remains vested in the domesticated company;

   c. All debts, obligations, or other liabilities of the domesticating company continue as debts, obligations, or other liabilities of the domesticated company;

   d. An action or proceeding pending by or against a domesticating company may be continued as if the domestication had not occurred;

   e. Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the domesticating company remain vested in the domesticated company;

f. Except as otherwise provided in the plan of domestication, the terms and conditions of the plan of domestication take effect; and

g. Except as otherwise agreed, the domestication does not dissolve a domesticating limited liability company for the purposes of sections 10-32.1-50 through 10-32.1-54.

2. A domesticated company that is a foreign limited liability company consents to the jurisdiction of the courts of this state to enforce any debt, obligation, or other liability owed by the domesticating company if, before the domestication, the domesticating company was subject to suit in this state on the debt, obligation, or other liability. A domesticated company that is a foreign limited liability company and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing a debt, obligation, or other liability under this subsection. Service on the secretary of state under this subsection must be made in the same manner and has the same consequences as in section 10-32.1-19.

3. If a limited liability company has adopted and approved a plan of domestication under section 10-32.1-68 providing for the company to be domesticated in a foreign jurisdiction, then a statement surrendering the articles of organization of the company must be filed with the secretary of state setting forth:

a. The name of the company;

b. A statement that the articles of organization are being surrendered in connection with the domestication of the company in a foreign jurisdiction;

c. A statement that the domestication was approved as required by this chapter; and

d. The jurisdiction of formation of the domesticated foreign limited liability company.

10-32.1-71. Restrictions on approval of mergers, exchanges, conversions, and domestications.

1. If a member of a constituent, converting, or domesticating limited liability company will have personal liability with respect to a surviving, constituent, converted, or domesticated organization, then approval or amendment of a plan of merger, exchange, conversion, or domestication is ineffective without the consent of the member, unless:

a. The operating agreement of the company provides for approval of a merger, exchange, conversion, or domestication with the consent of fewer than all the members; and

b. The member has consented to the provision of the operating agreement.

2. A member does not give the consent required by subsection 1 merely by consenting to a provision of the operating agreement that permits the operating agreement to be amended with the consent of fewer than all the members.

10-32.1-72. Foreign limited liability company - Governing law.

1. The law of the state or other jurisdiction under which a foreign limited liability company is formed governs:

a. The internal affairs of the company; and

b. The liability of a member as member, a manager as manager, and a governor as governor for the debts, obligations, or other liabilities of the company.

2. A foreign limited liability company may not be denied a certificate of authority by reason of any difference between the law of the jurisdiction under which the company is formed and the law of this state.

3. A foreign limited liability company holding a valid certificate of authority in this state has no greater rights and privileges than a domestic limited liability company. A certificate of authority does not authorize a foreign limited liability company to engage in any business or exercise any power that a limited liability company may not engage in or exercise in this state.

10-32.1-73. Foreign limited liability company - Name.

A foreign limited liability company may apply for a certificate of authority under any name that would be available to a domestic limited liability company, whether or not the name is the name under which it is authorized in its jurisdiction of organization. A trade name must be registered as provided in chapter 47-25 when applying for the certificate of authority under a name other than the name as authorized in the jurisdiction of origin.

10-32.1-74. Foreign limited liability company - Admission of foreign limited liability company - Transacting business - Obtaining licenses and permits.

A foreign limited liability company may not:

1. Transact business in this state or obtain any license or permit required by this state until it has procured a certificate of authority from the secretary of state.

2. Transact in this state any business that is prohibited to a domestic limited liability company organized under this chapter.

3. Be denied a certificate of authority because the laws of the state or country where the limited liability company is organized differ from the laws of this state.

10-32.1-75. Foreign limited liability company - Application for a certificate of authority.

1. An applicant for the certificate shall file with the secretary of state a certificate of status from the filing office in the jurisdiction in which the foreign limited liability company is organized and an application executed by an authorized person and setting forth:

   a. The name of the foreign limited liability company and, if different, the name under which it proposes to transact business in this state;

   b. The jurisdiction of its organization;

   c. With respect to a registered agent:

      (1) The name of the commercial registered agent as required by chapter 10-01.1; or

      (2) If a noncommercial registered agent, then the name and address in this state of the noncommercial registered agent;

   d. The date, if any, on which the foreign limited liability company expires in the jurisdiction of its organization;

   e. The purpose the foreign limited liability company proposes to pursue in transacting its business in this state;

   f. The names and addresses of the governors and managers of the foreign limited liability company; and

g. Any additional information deemed appropriate by the secretary of state to determine whether the foreign limited liability company is entitled to a certificate of authority to transact business in this state.

2. The application must be accompanied by payment of the fees provided in section 10-32.1-92 together with a certificate of good standing or a certificate of existence duly authenticated by the organizing officer of the state or country where the foreign limited liability company is organized.

10-32.1-76. Foreign limited liability company - Issuance of a certificate of authority.

If the secretary of state finds that an application for a certificate of authority conforms to law and all fees provided in section 10-32.1-92 have been paid, then the secretary of state shall:

1. Endorse on the application the word "filed" and the date of the filing;

2. File the application and the certificate of good standing or certificate of existence; and

3. Issue to the foreign limited liability company or its representative a certificate of authority to transact business in this state.

10-32.1-77. Foreign limited liability company - Amendments to a certificate of authority.

1. If any statement in the application for a certificate of authority by a foreign limited liability company is false when made or if the foreign limited liability company changes the name of the foreign limited liability company or purposes sought in this state, then the foreign limited liability company promptly shall file with the secretary of state an application for an amended certificate of authority executed by an authorized person correcting the statement and in the case of a change in the name of the foreign limited liability company, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized.

2. In the case of a termination or merger, a foreign limited liability company that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized.

3. A foreign limited liability company that changes the name of the foreign limited liability company and applies for an amended certificate of authority and that is the owner of a service mark, trademark, or trade name, a general partner named in a fictitious name certificate, a general partner in a limited partnership or a limited liability limited partnership, or a managing partner in a limited liability partnership that is on file with the secretary of state shall change the name of the foreign limited liability company in each of the foregoing registrations which is applicable when the foreign limited liability company files an application for an amended certificate of authority.

10-32.1-78. Foreign limited liability company - Registered agent - Registered office.

A foreign limited liability company authorized to transact business in this state shall continuously maintain a registered agent and registered office in this state as provided in chapter 10-01.1.

10-32.1-79. Foreign limited liability company - Merger of a foreign limited liability company authorized to transact business in this state.

If a foreign limited liability company authorized to transact business in this state is a party to a statutory merger permitted by the laws of the state or country under which the foreign limited liability company is organized, and the limited liability company is not the surviving organization, then the surviving organization shall, within thirty days after the merger becomes effective, file with the secretary

of state a certified statement of merger duly authenticated by the proper officer of the state or country where the statutory merger was effected. Any foreign organization, which is the surviving organization in a merger and which will continue to transact business in this state, shall procure a certificate of authority if not previously authorized to transact business in this state.

10-32.1-80. Foreign limited liability company - Conversion of a foreign limited liability authorized to transact business in this state.

If a foreign limited liability company authorized to transact business in this state converts to another organization permitted by its governing statute, then within thirty days after the conversion becomes effective, the newly created organization resulting from the conversion shall file with the secretary of state a certified statement of conversion duly authenticated by the proper officer of the jurisdiction in which the statutory conversion was effected. Any foreign organization that is the converted organization in a conversion and which will continue to transact business in this state shall obtain a certificate of authority or applicable registration in accordance with the North Dakota governing statute applicable to the converted organization.

10-32.1-81. Foreign limited liability company - Certificate of withdrawal.

1. A foreign limited liability company authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign limited liability company shall file with the secretary of state an application for withdrawal, together with the fees provided in section 10-32.1-92, which must set forth:

   a. The name of the foreign limited liability company and the state or country under the laws of which it is organized;

   b. That the foreign limited liability company is not transacting business in this state;

   c. That the foreign limited liability company surrenders its authority to transact business in this state;

   d. That service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the foreign limited liability company was authorized to transact business in this state may thereafter be made on such foreign limited liability company as provided in section 10-01.1-13; and

   e. A mailing address to which a person may mail a copy of any process against the foreign limited liability company.

2. The filing with the secretary of state of articles of dissolution and termination, or a certificate of merger if the foreign limited liability company is not the surviving organization, from the proper officer of the state or country under the laws of which the foreign limited liability company is organized constitutes a valid application of withdrawal and the authority of the foreign limited liability company to transact business in this state shall cease upon filing of the certificate.

10-32.1-82. Foreign limited liability company - Transactions not constituting transacting business.

1. A foreign limited liability company shall not be considered to be transacting business in this state for the purposes of this chapter solely by reason of carrying on in this state any one or more of the following, including:

   a. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;

   b. Holding meetings of its managers, governors, or members or carrying on other activities concerning its internal affairs;

c. Maintaining bank accounts;

d. Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositories with relation to its securities;

e. Holding title to and managing real or personal property, or any interest therein, situated in this state, as executor of the will or administrator of the estate of any decedent, as trustee of any trust, or as guardian of any person or conservator of the estate of any person;

f. Making, participating in, or investing in loans or creating, as borrower or lender, or otherwise acquiring indebtedness or mortgages or other security interests in real or personal property;

g. Securing or collecting its debts or enforcing any rights in property securing its debts; or

h. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

2. For purposes of sections 10-32.1-72 through 10-32.1-85, the ownership in this state of income-producing real property or tangible personal property, other than property excluded under subsection 1, constitutes transacting business in this state.

3. This section does not apply in determining the contacts or activities that may subject a foreign limited liability company to service of process, taxation, or regulation under law of this state other than this chapter.

10-32.1-83. Foreign limited liability company - Service of process on a foreign limited liability company.

Service of process on a foreign limited liability company must be as provided in section 10-01.1-13.

10-32.1-84. Foreign limited liability company - Effect of failure to have a certificate of authority.

1. A foreign limited liability company transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

2. The failure of a foreign limited liability company to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the company or prevent the company from defending an action or proceeding in this state.

3. A member, manager, or governor of a foreign limited liability company is not liable for the debts, obligations, or other liabilities of the company solely because the company transacted business in this state without a certificate of authority.

4. If a foreign limited liability company transacts business in this state without a certificate of authority or cancels its certificate of authority, then it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state.

5. A foreign limited liability company that transacts business in this state without a valid certificate of authority is subject to a civil penalty, payable to the state, not to exceed five thousand dollars. Each governor or, in the absence of governors, each member or agent who authorizes, directs, or participates in the transaction of business in this state on behalf of a foreign limited liability company that does not have a certificate is subject to a civil penalty, payable to the state, not to exceed one thousand dollars.

6. The civil penalties set forth in subsection 5 may be recovered in an action brought within the district court of Burleigh County by the attorney general. Upon a finding by the court that a foreign limited liability company or any of its members, governors, or agents have transacted business in this state in violation of this chapter, the court shall issue, in addition to the imposition of a civil penalty, an injunction restraining the further transaction of the business of the foreign limited liability company and the further exercise of the rights and privileges of the foreign limited liability company in this state. The foreign limited liability company must be enjoined from transacting business in this state until all civil penalties plus any interest and court costs that the court may assess have been paid and until the foreign limited liability company has otherwise complied with the provisions of this chapter.

10-32.1-85. Secretary of state - Powers - Enforcement.

1. The secretary of state has the power and authority reasonably necessary to efficiently administer this chapter and to perform the duties imposed thereby.

2. Subject to the provisions of this chapter, the secretary of state may propound to any limited liability company, domestic or foreign, and to any manager, governor, or member thereof, such interrogatories as may be reasonably necessary and proper to ascertain whether the limited liability company has complied with all provisions of this chapter which are applicable to the limited liability company, the manager, the governor, or the member.

   a. The interrogatories must be answered within thirty days after mailing or within any additional time as may be fixed by the secretary of state. The answers to such interrogatories must be full and complete and must be made in writing and under oath.

   b. If the interrogatories are directed:

      (1) To an individual, then they must be answered by that individual; or

      (2) To a limited liability company, then they must be answered by the persons whom the management and conduct of the activities of the company are vested pursuant to section 10-32.1-39.

   c. The secretary of state need not file any record to which such interrogatories relate until such interrogatories have been answered, and not then if the answers disclose that such record is not in conformity with the provisions of this chapter.

   d. The secretary of state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto, which disclose a violation of any of the provisions of this chapter.

   e. Each person who fails or refuses within the time provided by subdivision a of subsection 2 to answer truthfully and fully all interrogatories propounded to that person by the secretary of state is guilty of an infraction.

   f. Interrogatories propounded by the secretary of state and the answers thereto are not open to public inspection. The secretary of state may not disclose any facts or information obtained from the interrogatories or answers except insofar as may be permitted by law or insofar as is required for evidence in any criminal proceedings or other action by this state.

10-32.1-86. Secretary of state - Filing of records with secretary of state - Effective date.

1. A record authorized or required to be filed with the secretary of state under this chapter must be captioned to describe the purpose of the record, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. If the filing fees required by section 10-32.1-92 have been paid, then, unless the secretary of state determines that a record does not

comply with the filing requirements of this chapter, the secretary of state shall file the record and for all records, except annual reports, send an image of the filed record to the person who filed the record.

2. Upon request and payment of the fee provided in section 10-32.1-92, the secretary of state shall send to the requester a certified copy of a requested record.

3. Except as otherwise provided in this chapter, a record filed with the secretary of state under this chapter may specify a delayed effective date which must be no later than ninety days from the date of filing. Subject to section 10-32.1-18, subdivision a of subsection 4 of section 10-32.1-20, and section 10-32.1-87, if the record does not specify a delayed effective date, then a record filed with the secretary of state is effective on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.

10-32.1-87. Secretary of state - Liability for inaccurate information in a filed record.

1. If a record filed with the secretary of state under this chapter contains inaccurate information, then a person that suffers a loss by reliance on the information may recover damages for the loss from:

   a. A person that signed the record, or caused another to sign it on behalf of the person, and knew the information to be inaccurate at the time the record was signed; and

   b. Subject to subsection 2, a member of a member-managed limited liability company or the manager of a manager-managed limited liability company, if:

      (1) The record was filed with the secretary of state on behalf of the company; and

      (2) The member or manager had notice of the inaccuracy for a reasonably sufficient time before the information was relied upon so that, before the reliance, the member or manager reasonably could have:

         (a) Effected an amendment under section 10-32.1-21;

         (b) Filed a petition under section 10-32.1-22; or

         (c) Filed a statement of correction under section 10-32.1-88.

2. To the extent that the operating agreement of a member-managed limited liability company expressly relieves a member of responsibility for maintaining the accuracy of information contained in records filed with the secretary of state under this chapter and imposes that responsibility on one or more other members, the liability stated in subdivision b of subsection 1, applies to those other members and not to the member that the operating agreement relieves of the responsibility.

3. An individual who signs a record authorized or required to be filed under this chapter affirms under penalty of perjury that the information stated in the record is accurate.

10-32.1-88. Secretary of state - Correcting a filed record.

1. Whenever a record authorized by this chapter to be filed with the secretary of state has been filed and inaccurately records the action referred to in the record, contains an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged, or verified, then the record may be corrected by filing a statement of correction.

2. A statement of correction:

   a. Must:

(1) Be signed by:

(a) The person that signed the original record; or

(b) By a person authorized to sign on behalf of that person;

(2) Set forth the name of the limited liability company that filed the record;

(3) Identify the record to be corrected by description and by the date of its filing with the secretary of state;

(4) Identify the inaccuracy, error, or defect to be corrected; and

(5) Set forth a statement in corrected form of the portion of the record to be corrected.

b. May not revoke or nullify the filed record.

3. The statement of correction must be filed with the secretary of state.

4. With respect to the effective date of correction:

a. A certificate issued by the secretary of state before a record is corrected, with respect to the effect of filing the original record, is considered to be applicable to the record as corrected as of the date the record as corrected is considered to have been filed under this subsection.

b. After a statement of correction has been filed with the secretary of state, the original record as corrected is considered to have been filed:

(1) On the date the statement of correction was filed:

(a) As to persons adversely affected by the correction; and

(b) For the purposes of subsection 3 of section 10-32.1-04; and

(2) On the date the original record was filed as to all other persons and for all other purposes.

10-32.1-89. Secretary of state - Annual report to the secretary of state.

1. Each limited liability company, and each foreign limited liability company authorized to transact business in this state, shall file, within the time provided by subsection 3, an annual report setting forth:

a. The name of the limited liability company or foreign limited liability company and the state or country under the laws of which it is organized.

b. The address of the registered office of the limited liability company or foreign limited liability company in this state, the name of its registered agent in this state at that address, and the address of its principal executive office.

c. A brief statement of the character of the business in which the limited liability company or foreign limited liability company is actually engaged in this state.

d. The names and respective addresses of the managers and governors of the limited liability company or foreign limited liability company or the name or names and respective address or addresses of the managing member or members of the limited liability company or foreign limited liability company.

2. The annual report must be submitted on forms prescribed by the secretary of state. The information provided must be given as of the date of the execution of the report. The annual report must be signed as provided in subsection 49 of section 10-32.1-02, the articles, the bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the governors or members entitled to vote. If the limited liability company or foreign limited liability company is in the hands of a receiver or trustee, then the annual report must be signed on behalf of the limited liability company or foreign limited liability company by the receiver or trustee. The secretary of state may destroy any annual report provided for in this section after the annual report is on file for six years.

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) 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) 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.

4. After the date established under subsection 3, the secretary of state shall notify any limited liability company or foreign limited liability company failing to file its annual report that its certificate of organization or certificate of authority is not in good standing and that it may be terminated or revoked pursuant to section 10-32.1-90.

5. A limited liability company that was terminated for failure to file an annual report, or a foreign limited liability company whose authority was forfeited by failure to file an annual report, may be reinstated pursuant to section 10-32.1-91.

10-32.1-90. Secretary of state - Involuntary termination - Revocation of certificate of authority.

1. With respect to the involuntary termination of a limited liability company by the secretary of state:

   a. A limited liability company may be involuntarily terminated by the secretary of state if:

      (1) The limited liability company has failed to:

         (a) File with the secretary of state its annual report or any other record required to be filed with the secretary of state under this chapter together with the fees provided in section 10-32.1-92;

(b) Appoint and maintain a registered agent and registered office as provided in chapter 10-01.1.

(2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the limited liability company pursuant to this chapter.

b. A limited liability company that fails to file its annual report, together with the fees provided in section 10-32.1-92, within six months after the date established in subsection 3 of section 10-32.1-89 ceases to exist and is considered involuntarily terminated by operation of law.

(1) The secretary of state shall note the termination of the certificate of organization of the limited liability company on the records of the secretary of state and shall give notice of the action to the terminated limited liability company.

(2) Notice by the secretary of state must be mailed to the last registered agent of the limited liability company at the last registered office in this state or, if the limited liability company fails to appoint and maintain a registered agent in this state, then mailed to the principal executive office.

(3) The decision of the secretary of state that the limited liability company has been involuntarily terminated under this subsection is final.

(4) A limited liability company that was terminated for failure to file an annual report may be reinstated as provided in subsection 1 of section 10-32.1-91 and may appeal as provided in subsection 2 of section 10-32.1-91.

c. Except for termination of a limited liability company for failure to file the annual report as provided in section 10-32.1-89, no limited liability company may be terminated by the secretary of state unless:

(1) The secretary of state has given the limited liability company not less that sixty days notice by mail addressed to the registered agent at the registered office in this state or, if the limited liability company fails to appoint and maintain a registered agent in this state, then addressed to its principal executive office; and

(2) During the sixty-day period, the limited liability company has failed to:

(a) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;

(b) File any other required record; or

(c) Correct the misrepresentation.

d. Upon the expiration of sixty days after the mailing of the notice, the existence of the limited liability company is terminated. The secretary of state shall issue a notice of termination and shall mail the notice to the registered agent at the registered office in this state, or, if the limited liability company failed to appoint and maintain a registered agent or a registered office in this state, then addressed to the principal executive office of the limited liability company.

2. With respect to the revocation of a certificate of authority of a foreign limited liability company by the secretary of state:

a. The certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the secretary of state if:

(1) The foreign limited liability company has failed to:

(a) File with the secretary of state its annual report or any other record required to be filed with the secretary of state under this chapter together with the fees provided in section 10-32.1-77;

(b) Appoint and maintain a registered agent and registered office as provided in chapter 10-01.1;

(c) File with the secretary of state any amendment to its application for a certificate of authority as provided in section 10-32.1-77;

(d) File with the secretary of state any merger as provided in section 10-32.1-79; or

(e) File with the secretary of state an application for certificate of withdrawal of its authority as provided in section 10-32.1-81 when the existence of the limited liability company has expired or the limited liability company has been dissolved or terminated in the jurisdiction of the organization; or

(2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign limited liability company pursuant to this chapter.

b. A foreign limited liability company that fails to file its annual report together with the fees provided in section 10-32.1-92, within six months after the date established by subsection 3 of section 10-32.1-89, forfeits the authority to transact business in this state and its certificate of authority is considered revoked by operation of law.

(1) The secretary of state shall note the revocation of the certificate of authority of the foreign limited liability company on the records of the secretary of state and shall give notice of the action to the foreign limited liability company.

(2) Notice by the secretary of state must be mailed to the last registered agent of the foreign limited liability company at its last registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, then mailed to its principal executive office.

(3) The decision of the secretary of state that a certificate of authority must be revoked under this subsection is final.

(4) A foreign limited liability company whose authority was forfeited by, and whose certificate of authority was revoked by the secretary of state for, failure to file an annual report may be reinstated as provided in subsection 1 of section 10-32.1-91 and may appeal as provided in subsection 2 of section 10-32.1-91.

c. Except for revocation of the certificate of authority for failure to file the annual report as provided in section 10-32.1-89, no certificate of authority of a foreign limited liability company may be revoked by the secretary of state unless:

(1) The secretary of state has given the foreign limited liability company not less than sixty days notice by mail addressed to its registered agent at the registered office in this state or, if the foreign limited liability company fails to appoint and maintain a registered agent in this state, then addressed to the principal office; and

(2) During the sixty-day period, the foreign limited liability company has failed to:

(a) File the report of change as provided in chapter 10-01.1 regarding the registered office or registered agent;

(b) File any merger;

(c) File an application for withdrawal;

(d) File any other required record; or

(e) Correct the misrepresentation.

d. Upon the expiration of sixty days after the mailing of the notice, the authority of the foreign limited liability company to transact business in this state ceases. The secretary of state shall issue a notice of revocation and shall mail the notice to the registered agent at the registered office in this state, or, if the foreign limited liability company failed to appoint and maintain a registered agent or a registered office in this state, then addressed to the principal executive office of the foreign limited liability company.

10-32.1-91. Secretary of state - Reinstatement following an involuntary termination or revocation of authority - Appeals.

1. With respect to reinstatement following involuntary termination or revocation of authority:

a. A limited liability company that was terminated for failure to file an annual report, or a foreign limited liability company whose authority was revoked for failure to file an annual report, may be reinstated by filing a past-due report, together with the statutory filing and penalty fees for an annual report and a reinstatement fee as provided in section 10-32.1-92. The fees must be paid and the report filed within one year following the involuntary termination or revocation.

b. With respect to a reinstatement which is more than one year after involuntary termination or revocation:

(1) If the secretary of state terminates a limited liability company or revokes the certificate of authority to transact business in this state of any foreign limited liability company, pursuant to the provisions of section 10-32.1-90, then the limited liability company or foreign limited liability company may appeal to district court in the judicial district serving Burleigh County for reinstatement by filing with the clerk of such court a petition, including:

(a) A copy of the articles of organization of the limited liability company and a copy of the notice of termination given by the secretary of state; or

(b) A copy of the certificate of authority of the foreign limited liability company to transact business in this state and a copy of the notice of revocation given by the secretary of state. The matter must be tried de novo by the court. The court shall either sustain the action of the secretary of state or direct the secretary of state to take such action as the court may deem proper.

(2) If the court order sought is one for reinstatement of a limited liability company that has been terminated as provided in subsection 1 of section 10-32.1-90, or for reinstatement of the certificate of authority of a foreign limited liability company that has been revoked as provided in subsection 2 of section 10-32.1-90, then, together with any other actions the court deems proper, any order which reverses the decision of the secretary of state shall require the limited liability company or foreign limited liability company to:

(a) File the most recent past-due annual report;

(b) Pay the fees to the secretary of state for all past-due annual reports as provided in subsection 24 of section 10-32.1-92; and

(c) Pay the reinstatement fee to the secretary of state as provided in subsection 24 of section 10-32.1-92.

(3) Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

c. Reinstatement returns the limited liability company to active status:

(1) As of the date of the reinstatement:

(a) In the office of the secretary of state;

(b) As to persons adversely affected by the reinstatement; and

(c) For purposes of subsection 3 of section 10-32.1-04; and

(2) As of the date of the involuntary termination or revocation:

(a) Validates contracts or other acts within the authority of the articles, and the limited liability company is liable for those contracts or acts; and

(b) Restores to the limited liability company all assets and rights of the limited liability company and its members to the extent they were held by the limited liability company and its members before the involuntary dissolution or revocation occurred, except to the extent that assets or rights were affected by acts occurring after the involuntary dissolution or revocation, sold, or otherwise distributed after that time.

d. Reapplication for any license or permit by a reinstated limited liability company shall be pursuant to the North Dakota statute governing the issuance of the license or permit.

e. Appeals from all final orders and judgments by the district court under this subsection may be taken as in other civil actions.

2. With respect to appeals of the rejection by the secretary of state of any record required to be approved by the secretary of state before the record may be filed:

a. The secretary of state shall give written notice of the rejection to the person that delivered the record, specifying the reasons for rejection.

b. Within thirty days after the service of the notice of denial, the limited liability company or foreign limited liability company, as the case may be, may appeal to the district court in the judicial district serving Burleigh County by filing with the clerk of court a petition setting forth a copy of the record sought to be filed and a copy of the written rejection of the record of the secretary of state.

c. The matter must be tried de novo by the court.

d. The court shall either sustain the action of the secretary of state or direct the secretary of state to take such action as the court may deem proper.

e. Appeals from all final orders and judgments by the district court under this subsection may be taken as in other civil actions.

10-32.1-92. Secretary of state - Fees and charges.

The secretary of state shall charge and collect for:

1. Filing articles of organization and issuing a certificate of organization, one hundred thirty-five dollars.

2. Filing articles of amendment, fifty dollars.

3. Filing statement of correction, fifty dollars.

4. Filing restated articles of organization, one hundred twenty-five dollars.

5. Filing a statement of authority or a statement amending or canceling the statement of authority of a limited liability company, twenty dollars.

6. Filing articles of conversion of a limited liability company, fifty dollars and:

   a. If the organization resulting from the conversion will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the conversion; or

   b. If the organization resulting from the conversion will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the conversion.

7. Filing abandonment of conversion, fifty dollars.

8. Articles of domestication, fifty dollars and:

   a. If the organization resulting from the domestication will be a domestic organization governed by the laws of this state, then the fees provided by the governing laws to establish or register a new organization like the organization resulting from the domestication; or

   b. If the organization resulting from the domestication will be a foreign organization that will transact business in this state, then the fees provided by the governing laws to obtain a certificate of authority or register an organization like the organization resulting from the domestication.

9. Filing articles of merger or exchange and issuing a certificate of merger or exchange, fifty dollars.

10. Filing abandonment of merger or exchange, fifty dollars.

11. Filing an application to reserve a name, ten dollars.

12. Filing a notice of transfer of a reserved name, ten dollars.

13. Filing a cancellation of reserved name, ten dollars.

14. Filing a consent to use of name, ten dollars.

15. Filing a statement of change of address of registered office or change of registered agent or both, or a statement of change of address of registered office by registered agent, the fee provided in section 10-01.1-03.

16. Filing a resolution for the establishment of a class or series of membership interests, fifty dollars.

17. Filing a notice of dissolution, ten dollars.

18. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.

19. Filing articles of dissolution and termination, twenty dollars.

20. Filing an application of a foreign limited liability company for a certificate of authority to transact business in this state and issuing a certificate of authority, one hundred thirty-five dollars.

21. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.

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

23. Filing a certified statement of conversion of a foreign limited liability company, fifty dollars.

24. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.

25. Filing an annual report of a limited liability company or foreign limited liability company, fifty dollars.

    a. The secretary of state shall charge and collect additional fees for late filing of the annual report as follows:

        (1) After the date provided in subsection 3 of section 10-32.1-89, fifty dollars; and

        (2) After the termination of the limited liability company, or the revocation of the certificate of authority of a foreign limited liability company, the reinstatement fee of one hundred thirty-five dollars.

    b. Fees paid to the secretary of state according to this subsection are not refundable if an annual report submitted to the secretary of state cannot be filed because it lacks information required by section 10-32.1-89, or the annual report lacks sufficient payment as required by this subsection.

26. Filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.

27. Submitting any record for approval before the actual time of submission for filing, one-half of the fee provided in this section for filing the record.

28. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.

29. Furnishing a copy of any record, or paper relating to a limited liability company or a foreign limited liability company:

    a. The fee provided in section 54-09-04 for copying a record; and

    b. Five dollars for a search of records.

30. Furnishing a certificate of good standing, existence, or authorization:

    a. Fifteen dollars; and

    b. Five dollars for a search of records.

10-32.1-93. Secretary of state - Certificate of existence and authorization.

1. The secretary of state, upon request, compliance with subsection 2 and payment of the fee required by section 10-32.1-92, shall furnish to any person a certificate of existence for:

a. A limited liability company that exists; or

b. A foreign limited liability company that has an active certificate of authority.

2. The limited liability company or foreign limited liability company for which a certificate of existence is requested must have:

a. Filed all annual reports; and

b. Paid all fees due to the secretary of state.

3. Any certificate furnished by the secretary of state under this section may be created and furnished as an electronic record with the same force and effect as if produced in a paper form.

10-32.1-94. Secretary of state - Certificates and certified copies to be received in evidence.

1. All certificates issued by the secretary of state and all copies of records filed in accordance with this chapter, when certified by the secretary of state, may be taken and received in all courts, public offices, and official bodies as evidence of the facts therein stated.

2. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to limited liability companies which would not appear from a certified copy of any of the foregoing records or certificates, may be taken and received in all courts, public offices, and official bodies as evidence of the existence or nonexistence of the facts stated therein.

3. Any certificate or certified copy issued by the secretary of state under this section may be created and disseminated as an electronic record with the same force and effect as if produced in a paper form.

10-32.1-95. Secretary of state - Confidential records.

Any social security number or federal tax identification number disclosed or contained in any record filed with the secretary of state under this chapter is confidential. The secretary of state shall delete or obscure any social security number or federal tax identification number before a copy of any record is released to the public.

10-32.1-96. Secretary of state - Forms.

All annual reports required by this chapter to be filed in the office of the secretary of state must be made on forms prescribed by the secretary of state. Forms for all other records to be filed in the office of the secretary of state may be furnished by the secretary of state upon request. However, the use of such forms, unless otherwise specifically required by law, is not mandatory.

10-32.1-97. Attorney general - State interested in a proceeding.

If it appears at any stage of a proceeding in a court in this state that the state is, or is likely to be, interested in the proceeding or that it is a matter of general public interest, then the court shall order that a copy of the complaint or petition be served upon the attorney general in the same manner prescribed for serving a summons in a civil action. The attorney general shall intervene in a proceeding when the attorney general determines that the public interest requires it, whether or not the attorney general has been served.

10-32.1-98. Attorney general - Action by the attorney general.

1. A limited liability company may be involuntarily dissolved, wound up, and terminated by a decree of a court in this state in an action filed by the attorney general when it is established that:

a. The articles of organization were procured through fraud;

b. The limited liability company was organized for a purpose not permitted by this chapter;

c. The limited liability company failed to comply with the requirements essential to organization under this chapter;

d. The limited liability company has flagrantly violated a provision of this chapter, has violated a provision of this chapter more than once, or has violated more than one provision of this chapter; or

e. The limited liability company has acted, or failed to act, in a manner that constitutes surrender or abandonment of the limited liability company privileges or enterprise.

2. The attorney general may bring an action to enjoin a foreign limited liability company from transacting business in this state in violation of this chapter.

3. An action must not be commenced under this section until thirty days after notice to the limited liability company by the attorney general of the reason for the filing of the action. If the reason for filing the action is an act that the limited liability company has done, or omitted to do, and the act or omission may be corrected by an amendment of the articles of organization, a member control agreement, or the bylaws or by performance of or abstention from the act, then the attorney general shall give the limited liability company thirty additional days in which to effect the correction before filing the action.

10-32.1-99. Uniformity of application and construction.

In applying and construing this uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

10-32.1-100. Relation to electronic signatures in global and national commerce act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, United States Code, title 15, section 7001 et seq., but does not modify, limit, or supersede section 101(c) of that Act, United States Code, title 15, section 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that Act, United States Code, title 15, section 7003(b).

10-32.1-101. Savings clause.

This chapter does not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect.

SECTION 20. AMENDMENT. Paragraph 2 of subdivision e of subsection 1 of section 10-33-10 of the North Dakota Century Code is amended and reenacted as follows:

(2) A name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14, ~~10-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

SECTION 21. AMENDMENT. Subdivision c of subsection 6 of section 10-33-10 of the North Dakota Century Code is amended and reenacted as follows:

c. Holds a reserved name in the manner provided in section 10-19.1-14, ~~10-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

SECTION 22. AMENDMENT. Subsection 1 of section 10-33-72 of the North Dakota Century Code is amended and reenacted as follows:

1. Unless this chapter or the articles or bylaws require a greater vote or voting by class and except for the election of directors which is governed by section ~~10-32-34~~10-32.1-45, the members shall take action by the affirmative vote of the greater of:

   a. A majority of the members with voting rights present and entitled to vote on that item of business; or

   b. A majority of the voting power of the minimum number of members with voting rights that would constitute a quorum for the transaction of business at the meeting.

   If the articles or bylaws require a larger proportion or number than is required by this chapter for a particular action, then the articles or bylaws control.

SECTION 23. AMENDMENT. Section 10-36-03 of the North Dakota Century Code is amended and reenacted as follows:

10-36-03. Applicability of chapters ~~10-32~~10-32.1 and 10-33.

1. In any case not provided for in this chapter, chapter 10-33 governs.

2. In applying chapter 10-33 to a nonprofit limited liability company and unless the context otherwise requires, all references in chapter 10-33 to:

   a. "Board" refers to the board of governors.

   b. "Corporation" refers to a nonprofit limited liability company.

   c. "Director" refers to a governor.

   d. "Foreign corporation" refers to a foreign nonprofit limited liability company.

   e. "Officer" refers to a manager.

3. Section ~~10-32-10~~10-32.1-11applies to the name of a nonprofit limited liability company as if it were a limited liability company governed under chapter ~~10-32~~10-32.1.

SECTION 24. AMENDMENT. Section 38-08.1-03 of the North Dakota Century Code is amended and reenacted as follows:

38-08.1-03. Deemed doing business within state - Resident agent.

A person must be deemed doing business within this state when engaged in geophysical exploration within the boundaries of this state, and shall, if not already qualified to do business within the state under chapter 10-19.1, ~~10-32~~10-32.1, 45-10.2, 45-22, or 45-23 prior to such exploration, file with the secretary of state an authorization provided under the governing statute of the organization.

SECTION 25. AMENDMENT. Section 43-07-19 of the North Dakota Century Code is amended and reenacted as follows:

43-07-19. Nonresident contractors - Agent for service of process.

Every applicant for a contractor's license who is not a resident of the state of North Dakota, by signing and filing the application, appoints the secretary of state as the applicant's true and lawful agent upon whom may be served all lawful process in any action or proceeding against such nonresident contractor. Such appointment in writing is evidence of the contractor's consent that any such process against the contractor which is so served upon the secretary of state shall be of the same legal force and effect as if served upon the contractor personally within this state. Registered foreign corporations entitled to do business in this state according to chapter 10-19.1, registered foreign limited liability companies entitled to do business in the state according to chapter ~~10-32~~10-32.1, foreign limited liability partnerships entitled to do business in the state according to chapter 45-22, and foreign limited

partnerships entitled to do business in the state according to chapter 45-10.2 and having a current registered agent and registered address on file in the secretary of state's office need not appoint the secretary of state as agent for service of process under this section. Within ten days after service of the summons upon the secretary of state, notice of such service with the summons and complaint in the action shall be sent to the defendant contractor at the defendant contractor's last-known address by registered or certified mail with return receipt requested and proof of such mailing shall be attached to the summons. The secretary of state shall keep a record of all process served upon the secretary of state under this section, showing the day and hour of service. Whenever service of process was made under this section, the court, before entering a default judgment, or at any stage of the proceeding, may order such continuance as may be necessary to afford the defendant contractor reasonable opportunity to defend any action pending against the defendant contractor.

SECTION 26. AMENDMENT. Subsection 23 of section 45-10.2-02 of the North Dakota Century Code is amended and reenacted as follows:

23. "Governing statute" means:

    a. With respect to a domestic organization, the following chapters of this code which govern the internal affairs of the organization:

        (1) If a corporation, chapter 10-19.1;

        (2) If a limited liability company, chapter ~~10-32~~10-32.1;

        (3) If a general partnership, chapters 45-12 through 45-21;

        (4) If a limited partnership, this chapter;

        (5) If a limited liability partnership, chapter 45-22; and

        (6) If a limited liability limited partnership, chapter 45-23; and

    b. With respect to a foreign organization, the laws of the jurisdiction under which the organization is created and under which the internal affairs of the organization are governed.

SECTION 27. AMENDMENT. Paragraph 2 of subdivision f of subsection 1 of section 45-10.2-10 of the North Dakota Century Code is amended and reenacted as follows:

(2) A name the right to which is, at the time of the filing of the certificate of limited partnership, reserved in the manner provided in section 10-19.1-14, ~~10-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

SECTION 28. AMENDMENT. Subdivision c of subsection 6 of section 45-10.2-10 of the North Dakota Century Code is amended and reenacted as follows:

c. Holds a reserved name in the manner provided in section 10-19.1-14, ~~10-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

SECTION 29. AMENDMENT. Paragraph 2 of subdivision a of subsection 2 of section 45-10.2-94 of the North Dakota Century Code is amended and reenacted as follows:

(2) A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter ~~10-32~~10-32.1;

SECTION 30. AMENDMENT. Paragraph 2 of subdivision e of subsection 1 of section 45-13-04.1 of the North Dakota Century Code is amended and reenacted as follows:

(2) A name, the right of which is, at the time of filing, reserved in the manner provided in section 10-19.1-14, ~~10-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

SECTION 31. AMENDMENT. Subdivision c of subsection 6 of section 45-13-04.1 of the North Dakota Century Code is amended and reenacted as follows:

c. Holds a reserved name in the manner provided in section 10-19.1-14, ~~10-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

SECTION 32. AMENDMENT. Subdivision b of subsection 1 of section 45-21-01 of the North Dakota Century Code is amended and reenacted as follows:

b. A certificate of organization, if the converted organization is a limited liability company deemed to be organized under chapter ~~10-32~~10-32.1;

SECTION 33. AMENDMENT. Paragraph 2 of subdivision a of subsection 11 of section 45-21-01 of the North Dakota Century Code is amended and reenacted as follows:

(2) If a limited liability company, then chapter ~~10-32~~10-32.1;

SECTION 34. AMENDMENT. Paragraph 2 of subdivision e of subsection 1 of section 45-22-04 of the North Dakota Century Code is amended and reenacted as follows:

(2) A name, the right to which is at the time of registration reserved in the manner provided in section 10-19.1-14, ~~10-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

SECTION 35. AMENDMENT. Subdivision c of subsection 5 of section 45-22-04 of the North Dakota Century Code is amended and reenacted as follows:

c. Holds a reserved name in the manner provided in section 10-19.1-14, ~~10-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

SECTION 36. AMENDMENT. Paragraph 2 of subdivision a of subsection 13 of section 45-23-01 of the North Dakota Century Code is amended and reenacted as follows:

(2) If a limited liability company, then chapter ~~10-32~~10-32.1;

SECTION 37. AMENDMENT. Paragraph 2 of subdivision f of subsection 1 of section 45-23-03 of the North Dakota Century Code is amended and reenacted as follows:

(2) A name the right to which is, at the time of organization, reserved in the manner provided in section 10-19.1-14, ~~10-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

SECTION 38. AMENDMENT. Subdivision c of subsection 5 of section 45-23-03 of the North Dakota Century Code is amended and reenacted as follows:

c. Holds a reserved name in the manner provided in section 10-19.1-14, ~~10-32-11~~10-32.1-12, 10-33-11, 45-10.2-11, 45-13-04.2, or 45-22-05;

SECTION 39. AMENDMENT. Section 50-22-02.2 of the North Dakota Century Code is amended and reenacted as follows:

50-22-02.2. Registrant name registration or certificate of authority required.

The secretary of state may not issue or renew a registration provided for in this chapter if the name of the registrant is an entity whose name is not in some manner registered with the secretary of state as a corporation, limited liability company, trade name, fictitious name of a partnership, limited partnership,

or limited liability partnership. For a registrant that is a foreign entity, a registration under this chapter means the same as a license or permit under section 10-19.1-134, ~~10-32-137~~10-32.1-74, 10-33-127, or 45-22-19, or other substantially equivalent statute for the purpose of procuring a certificate of authority or similar authorization to act in this state.

SECTION 40. AMENDMENT. Subsection 3 of section 54-44.4-09 of the North Dakota Century Code is amended and reenacted as follows:

3. At the time of filing the application to become an approved vendor, the applicant, if organized as a corporation, limited liability company, limited liability partnership, or limited partnership, must be properly and currently registered with the secretary of state according to its type of business organization as a corporation under chapter 10-19.1, a limited liability company under chapter ~~10-32~~10-32.1, a limited liability partnership under chapter 45-22, or a limited partnership under chapter 45-10.2. Any exemptions to registration under the above chapters that would otherwise apply to those entities organized as such do not apply to this section and registration must be made for the applicant to become an approved vendor. Applicants for approved vendor status using a trade name or a fictitious partnership name must be in full compliance with chapter 47-25 or 45-11 at the time of making the application. Whenever any registration required by this section is canceled, revoked, or not renewed, the vendor ceases to be an approved vendor.

   By signing and filing the application, the vendor applicant appoints the secretary of state as its true and lawful agent for service of process in this state upon whom may be served all lawful process in any action or proceeding against the vendor if the vendor or its registered agent cannot be found for service of process in this state. The signed application is written evidence of the applicant's consent that any process served against the applicant that is so served upon the secretary of state is of the same legal force and effect as if served upon the applicant personally within this state. Within ten days after service of the summons upon the secretary of state pursuant to this subsection, notice of the service with the summons and complaint in the action must be sent to the defendant vendor at the vendor's last-known address by certified mail with return receipt requested and proof of mailing must be attached to the summons. The secretary of state shall keep a record of all process served upon the secretary of state under this section showing the day and hour of service. When service of process is made as provided in this subsection, the court, before entering a default judgment, or at any stage of the proceeding, may order a continuance as may be necessary to afford the defendant vendor reasonable opportunity to defend any action pending against the vendor.

SECTION 41. REPEAL. Chapter 10-32 of the North Dakota Century Code is repealed.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1136.

House Vote:	Yeas 90	Nays 1	Absent 3
Senate Vote:	Yeas 47	Nays 0	Absent 0

Chief Clerk of the House

Received by the Governor at 12:27 P.M. on April 14, 2015.

Approved at 10:22 A.M. on April 15, 2015.

Governor

Filed in this office this 15th day of April, 2015,

at 2:49 o'clock P M.

Secretary of State