CHAPTER 10-32
LIMITED LIABILITY COMPANY ACT

10-32-01. Citation.
This chapter may be cited as the "North Dakota Limited Liability Company Act".

10-32-02. 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, including a zip code, of the actual office location which may not be only a post-office box; and
   b. In all other cases, the mailing address, including a zip code.
3. "Articles" or "articles of organization" means:
   a. In the case of a limited liability company organized under this chapter, articles of organization, articles of amendment, 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, and articles of 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. "Authenticated electronic communication" means:
   a. That the electronic communication is delivered:
      (1) To the principal place of business of the limited liability company; or
      (2) To a manager or agent of the limited liability company authorized by the limited liability company to receive the electronic communication; and
   b. That the electronic communication sets forth information from which the limited liability company can reasonably conclude that the electronic communication was sent by the purported sender.
5. "Ballot" means a written ballot or a ballot transmitted by electronic communications.
6. "Board" or "board of governors" means the board of governors of a limited liability company.
7. "Board member" means:
   a. An individual serving on the board of governors in the case of a limited liability company; and
   b. An individual serving on the board of directors in the case of a corporation.
8. "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 10-32-68, by the board or the members.
9. "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.
10. "Closely held limited liability company" means a limited liability company that does not have more than thirty-five members.
11. "Constituent organization" means an organization that:
    a. In a merger, is either the surviving organization or an organization that is merged into the surviving organization; or
    b. In an exchange, is either the acquiring organization or an organization whose securities are acquired by the acquiring organization.

12. "Contribution" means any cash, property, services rendered, or a promissory note or other binding obligation to contribute cash or property or to perform services, which a member contributes to a limited liability company in the capacity of that member as a member.
13. "Contribution agreement" means an agreement between a person and a limited liability company under which:
    a. The person agrees to make a contribution in the future; and
    b. The limited liability company agrees that, at the time specified for the contribution in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.
14. "Contribution allowance agreement" means an agreement between a person and a limited liability company under which:
    a. The person has the right, but not the obligation, to make a contribution in the future; and
    b. The limited liability company agrees that, if the person makes the specified contribution at the time specified in the future, the limited liability company will accept the contribution and reflect the contribution in the required records.
15. "Converted organization" means the organization resulting from a conversion under sections 10-32-108.1 through 10-32-108.6.
16. "Converting organization" means the organization that effects a conversion under sections 10-32-108.1 through 10-32-108.6.
17. "Corporation" or "domestic corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under chapter 10-19.1.
18. "Dissolution" means that the limited liability company incurred an event under subsection 1 of section 10-32-109, subject only to sections 10-32-116 and 10-32-124, that obligates the limited liability company to wind up the limited liability company's affairs and to terminate the limited liability company's existence as a legal entity.
19. "Dissolution avoidance consent" means the consent of all remaining members:
    a. Given, as provided in subdivision e of subsection 1 of section 10-32-109, after the occurrence of any event that terminates the continued membership of a member in the limited liability company; and
    b. That the limited liability company must be continued as a legal entity without dissolution.
20. "Distribution" means a direct or indirect transfer of money or other property, other than its own membership interests, with or without consideration, or an incurrence or issuance of indebtedness, by a limited liability company to any of its members in respect of its membership interests and may be in the form of an interim distribution or a termination distribution, or as consideration for the purchase, redemption, or other acquisition of its membership interests, or otherwise.
21. "Domestic organization" means an organization created under the laws of this state.
22. "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
23. "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; and
    b. That may be directly reproduced in paper form by the recipient through an automated process.
24. "Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.
25. "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and signed or adopted by a person with the intent to sign the record.
26. "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 10-32-150, 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 filing; and
   (2) Record the record in the office of the secretary of state.

27. "Financial rights" means a member's rights:
   a. To share in profits and losses as provided in section 10-32-36;
   b. To share in distributions as provided in section 10-32-60;
   c. To receive interim distributions as provided in section 10-32-61; and
   d. To receive termination distributions as provided in subdivision c of subsection 1 of section 10-32-131.
28. "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.
29. "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.
30. "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.
31. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.
32. "Governance rights" means all of a member's rights as a member in the limited liability company other than financial rights and the right to assign financial rights.
33. "Governing body" means for an organization that is:
   a. A corporation, its board of directors;
   b. A limited liability company, its board of governors; 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.
34. "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.
35. "Governor" means an individual serving on the board.
36. "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. A person "intentionally" violates a statute:
   a. If the person 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.
37. "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.
38. "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.

39. "Manager" means an individual who is eighteen years of age or more and who is:
    a. Elected, appointed, or otherwise designated as the president, the treasurer, or any other manager pursuant to section 10-32-88; or
    b. Deemed elected as a manager pursuant to section 10-32-92.
40. "Member" means a person, with or without voting rights, reflected in the required records of a limited liability company as the owner of a membership interest in the limited liability company.
41. "Membership interest" means one of the units, however designated, into which the proprietary interest of the members in a limited liability company is divided consisting of:
    a. The financial rights of a member;
    b. The right of a member to assign financial rights as provided in section 10-32-31;
    c. The governance rights of a member, if any; and
    d. The right of a member to assign any governance rights owned as provided in section 10-32-32.
42. "Nonprofit limited liability company" means a limited liability company organized under or governed by chapter 10-36.
43. "Notice":
    a. Is given by a member of a limited liability company to the limited liability company or a manager of a limited liability company:
        (1) When in writing and mailed or delivered to the limited liability company or the manager at the registered office or principal executive office of the limited liability company.
        (2) When given by a form of electronic communication consented to by the limited liability company or a manager to which the notice is given:
            (a) If by facsimile communication, when directed to a telephone number at which the limited liability company or a manager has consented to receive notice;
            (b) If by electronic mail, when directed to an electronic mail address at which the limited liability company or a manager has consented to receive notice;
            (c) If by posting on an electronic network on which the limited liability company or a manager has consented to receive notice, together with separate notice to the limited liability company or a manager of the specific posting, upon the later of:
                [1] The posting; or
                [2] The giving of the separate notice; or
            (d) If by any other form of electronic communication by which the limited liability company or a manager has consented to receive notice, when directed to the limited liability company or a manager.
    b. Is given, in all other cases:
        (1) When mailed to the person at an address designated by the person or at the last-known address of the person;
        (2) When deposited with a nationally recognized overnight delivery service for overnight delivery or, if overnight delivery to the person is not available, for delivery as promptly as practicable, to the person at an address designated by the person or at the last-known address of the person;
        (3) When handed to the person;
        (4) When left at the office of the person with a clerk or other person in charge of the office or:
            (a) If there is no one in charge, when left in a conspicuous place in the office; or

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

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

(a) If by facsimile communication, when directed to a telephone number at which the person has consented to receive notice.

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

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

[1] The posting; or

[2] The giving of the separate notice.

(d) If by any other form of electronic communication by which the person has consented to receive notice when directed to the person.

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

c. Is given by mail when deposited in the United States mail with sufficient postage affixed.

d. Is given by deposit for delivery when deposited for delivery as provided in paragraph 2 of subdivision b, after having made sufficient arrangements for payment by the sender.

e. Is deemed received when it is given.

44. "Organization":

a. Means, whether domestic or foreign, a limited liability company, corporation, 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.

45. "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.

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

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

a. A corporation, its shares;

b. A limited liability company, its membership interests;

c. A limited partnership, its partnership interests;

d. A general partnership, its partnership interests;

e. A limited liability partnership, its partnership interests;

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

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

48. "Parent" of a specified organization means an organization that directly or indirectly, through related organizations, owns more than fifty percent of the voting power of the ownership interests entitled to vote for governors, or other members of the governing body of the specified organization.

49. "Pertains" means a contribution "pertains":

a. To a particular series when the contribution is made in return for a membership interest in that particular series.
b. To a particular class when the class has no series and the contribution is made in return for a membership interest in the class.

A contribution that pertains to a series does not pertain to the class of which the series is a part.

50. "Principal executive office" means:
    a. If the limited liability company has an elected or appointed president, 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, the registered office of the limited liability company.
51. "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.
52. "Registered office" means the place in this state designated in a limited liability company's articles of organization or a foreign limited liability company's certificate of authority as the registered office.
53. "Related organization" means an organization that controls, is controlled by, or is under common control with another organization with control existing if an organization:
    a. Owns, directly or indirectly, at least fifty percent of the ownership interests of another organization;
    b. Has the right, directly or indirectly, to elect, appoint, or remove fifty percent or more of the voting members of the governing body of another organization; or
    c. Has the power, directly or indirectly, to direct or cause the direction of the management and policies of another organization, whether through the ownership of voting interests, by contract, or otherwise.
54. "Remote communication" means communication via electronic communication, conference telephone, videoconference, the internet, or such other means by which persons not physically present in the same location may communicate with each other on a substantially simultaneous basis.
55. "Required records" are those records required to be maintained under section 10-32-51.
56. "Security" has the meaning given in section 10-04-02.
57. "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.
58. "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 of organization, a member-control agreement, or the bylaws or a resolution approved by the governors as required by section 10-32-83 or the members as required by section 10-32-42; and
        (2) The signature and the record are communicated by a method or medium acceptable by the secretary of state.
59. "Subsidiary" of a specified organization means an organization having more than fifty percent of the voting power of its ownership interests entitled to vote for governors, or other members of the governing body of the organization owned directly, or indirectly, through related organizations, by the specified organization.

60. "Successor organization" means an organization that, pursuant to a business continuation agreement or an order of the court under subsection 6 of section 10-32-119, continues the business of the dissolved and terminated limited liability company.
61. "Surviving organization" means the organization resulting from a merger which:
    a. May preexist the merger; or
    b. May be created by the merger.
62. "Termination" means the end of the existence of a limited liability company as a legal entity and occurs when a notice of termination is:
    a. Filed with the secretary of state under section 10-32-117 together with the fees provided in section 10-32-150; or
    b. Considered filed with the secretary of state under subdivision c of subsection 2 of section 10-32-106 together with the fees provided in section 10-32-150.
63. "Vote" includes authorization by written action.
64. "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 10-32-131.
65. "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.

10-32-02.1. 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, an electronic record satisfies the requirement; and
4. If a provision requires a signature, an electronic signature satisfies the requirement.

10-32-02.2. Knowledge and notice.

1. A person knows or has knowledge of a fact if the person has actual knowledge of it. A person does not know or have knowledge of a fact merely because the person has reason to know or have knowledge of the fact.
2. A person has notice of a fact if the person:
    a. Knows of the fact;
    b. Has received notice of the fact as provided in subsection 42 of section 10-32-02;
    c. Has reason to know the fact exists from all of the facts known to the person at the time in question; or
    d. Has notice of it under subsection 3.
3. Subject to subsection 8, a person has notice of:
    a. The intention of a limited liability company to dissolve, ninety days after the effective date of the filed notice of dissolution;
    b. The dissolution of a limited liability company, ninety days after the effective date of the filed articles of dissolution;
    c. The conversion of a limited liability company, ninety days after the effective date of the filed articles of conversion; or
    d. The merger of the limited liability company, ninety days after the effective date of the filed articles of merger.

4. A person notifies or gives a notification to another person by taking the steps provided in subsection 42 of section 10-32-03, whether or not the other person learns of it.
5. A person receives a notification as provided in subsection 42 of section 10-32-02.
6. Except as otherwise provided in subsection 7 and except as otherwise provided in subsection 42 of section 10-32-02, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the attention of the individual if the person had exercised reasonable diligence.
   a. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines.
   b. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the regular duties of the individual or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.
7. Knowledge, notice, or receipt of a notification of a fact relating to the limited liability company by a manager or governor is effective immediately as knowledge of, notice to, or receipt of a notification by the limited liability company, except in the case of a fraud on the limited liability company committed by or with the consent of the manager or governor. Knowledge, notice, or receipt of a notification of a fact relating to the limited liability company by a member who is not a manager or governor is not effective as knowledge by, notice to, or receipt of a notification by the limited liability company.
8. Notice otherwise effective under subsection 3 does not affect the power of a person to transfer real property held in the name of a limited liability company unless at the time of transfer a certified copy of the relevant statement, amendment, or articles, 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 statement, amendment, or articles is located.
9. With respect to notice given by a form of electronic communication:
   a. Consent by a manager or governor to notice given by electronic communication may be given in writing or by authenticated electronic communication. The limited liability company is entitled to rely on any consent so given until revoked by the manager or governor. However, no revocation affects the validity of any notice given before receipt by the limited liability company of revocation of the consent.
   b. An affidavit of a manager or governor or authorized agent of the limited liability company that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

10-32-03. Reservation of legislative power.

Repealed by S.L. 1995, ch. 55, § 30.

10-32-03.1. 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.

10-32-04. Purposes.

A limited liability company may be organized under this chapter for any lawful purpose, unless some other statute of this state requires organization for any of those purposes under a different law. Unless otherwise provided in its articles of organization, a limited liability company has general business purposes.

10-32-05. Organizers.

One or more individuals of the age of eighteen years or more may act as organizers of a limited liability company by filing with the secretary of state articles of organization for the limited liability company.

10-32-06. Number of members required.

Subject to section 10-32-67 and subsection 1 of section 10-32-109, a limited liability company must have one or more members.

10-32-07. Articles of organization.

1. The articles of organization must contain:
   a. The name of the limited liability company;
   b. The name of the registered agent of the limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of such noncommercial registered agent in this state;
   c. The address of the principal executive office;
   d. The name and address of each organizer;
   e. The effective date of organization:
      (1) If a later date than that on which the certificate of organization is issued by the secretary of state; and
      (2) Which may not be later than ninety days after the date on which the certificate of organization is issued; and
   f. If the articles of organization are filed with the secretary of state:
      (1) Before July 1, 1999, a statement stating in years that the period of existence for the limited liability company must be a period of thirty years from the date the articles of organization are filed with the secretary of state, unless the articles of organization expressly authorize a shorter or longer period of duration, which may be perpetual.
      (2) After June 30, 1999, a statement stating in years the period of existence of the limited liability company, if other than perpetual.
2. The following provisions govern a limited liability company unless modified in the articles of organization or a member-control agreement under section 10-32-50:
   a. A limited liability company has general business purposes as provided in section 10-32-04;
   b. A limited liability company has certain powers as provided in section 10-32-23;
   c. The termination of a person's membership interest has specified consequences as provided in section 10-32-30;
   d. A member may only be expelled as provided in subsection 3 of section 10-32-30;
   e. Restrictions apply to the assignment of governance rights as provided in section 10-32-32;
   f. Unanimous consent is required for the transfer of governance rights to a person not already a member as provided in subsection 2 of section 10-32-32;
   g. Members share profits and losses in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-36;
   h. Unless otherwise provided, a member has certain preemptive rights as provided in section 10-32-37;
   i. The voting power of each membership interest is in proportion to the value reflected in the required records of the contributions of the members as provided in section 10-32-40.1;
   j. The affirmative vote of the greater of the owners of a majority of the voting power of the membership interests present and entitled to vote at a duly held meeting or a majority of the voting power of the membership interests with voting rights constituting the minimum voting power needed for a quorum for the transaction of business is required for an action of the members, except when this chapter requires the affirmative vote of:

(1) A plurality of the votes cast as provided in subsection 1 of section 10-32-76; or
(2) A majority of the voting power of all membership interests entitled, to vote as provided in subsection 1 of section 10-32-42;

k. A written action by the members may be taken without a meeting as provided in section 10-32-43;
l. The board may accept contributions, make contribution agreements, and make contribution allowance agreements as provided in subsection 1 of section 10-32-56 and sections 10-32-58 and 10-32-59;
m. All membership interests are ordinary membership interests entitled to vote and are of one class with no series as provided in subdivisions a and b of subsection 5 of section 10-32-56;
n. All membership interests have equal rights and preferences in all matters as provided in subdivision b of subsection 5 of section 10-32-56;
o. The value of previous contributions must be restated when a new contribution is accepted as provided in subsections 3 and 4 of section 10-32-57;
p. Members share in distributions in proportion to the value reflected in the required records of the contributions of members as provided in section 10-32-60;
q. Members have no right to receive distributions in kind and the limited liability company has only limited rights to make distributions in kind as provided in section 10-32-62;
r. The power to adopt, amend, or repeal the bylaws is vested in the board as provided in subsection 2 of section 10-32-68;
s. A limited liability company must allow cumulative voting for governors as provided in section 10-32-76;
t. The affirmative vote of the greater of a majority of governors present or a majority of the minimum number of governors constituting a quorum is required for an action of the board as provided in section 10-32-83;
u. A written action by the board may be taken without a meeting as provided in section 10-32-84; and
v. For a limited liability company whose existence begins before July 1, 1999, unanimous consent is required to avoid dissolution as provided in subdivision e of subsection 1 of section 10-32-109.

3. The following provisions govern a limited liability company unless modified in the articles of organization, a member-control agreement under section 10-32-50, or in the bylaws:
a. Regular meetings of members need not be held, unless demanded by a member under certain conditions as provided in section 10-32-38;
b. In all instances when a specific minimum notice period has not otherwise been fixed by law, not less than ten days' notice is required for a meeting of members as provided in subsection 3 of section 10-32-40;
c. The board may fix a date up to fifty days before the date of a members' meeting as the date for the determination of the members entitled to notice of and entitled to vote at the meeting as provided in section 10-32-40.1;
d. A quorum at a members' meeting requires a majority of the voting power of the membership interests entitled to vote at the meeting as provided in section 10-32-44;
e. Members have no right to interim distributions except as provided through the bylaws or an act of the board as provided in section 10-32-61;
f. The board may authorize, and the limited liability company may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-32-64;
g. Governors serve for an indefinite term that expires at the next regular meeting of members as provided in section 10-32-72;
h. The compensation of governors is fixed by the board as provided in section 10-32-74;

i. Certain methods must be used for removal of governors as provided in sections 10-32-78 and 10-32-78.1;
j. A certain method must be used for filling board vacancies as provided in section 10-32-79;
k. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-32-80;
l. The notice of a board meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-32-80;
m. A majority of the board is a quorum for a board meeting as provided in section 10-32-82;
n. The board may establish a special litigation committee as provided in subsection 1 of section 10-32-85;
o. A committee:
(1) Must consist of one or more individuals, who need not be governors, appointed by the board as provided in subsection 2 of section 10-32-85; and
(2) May create one or more subcommittees, each consisting of one or more members of the committees and may delegate to the subcommittee any or all of the authority of the committee as provided in subsection 7 of section 10-32-85;
p. The president and treasurer have specified duties, until the board determines otherwise as provided in section 10-32-89;
q. Managers may delegate some or all of their duties and powers, if not prohibited by the board from doing so, as provided in section 10-32-95; and
r. Indemnification of certain persons is required as provided in section 10-32-99.

4. The provisions in subdivisions d, e, g, m, and n may be included in the articles of organization or a member-control agreement under section 10-32-50. The provisions in subdivisions a, b, c, f, h through l, o, p, q, and r may be included in the articles of organization, in a member-control agreement under section 10-32-50, or, in the bylaws:
a. The date, time, and place of regular member meetings may be fixed as provided in subsection 3 of section 10-32-38;
b. Certain persons may be authorized to call special meetings of members as provided in subsection 1 of section 10-32-39;
c. Notices of member meetings may be required to contain certain information as provided in subsection 3 of section 10-32-40;
d. Voting rights may be granted to persons who are not members as provided in subsection 6 of section 10-32-40.1;
e. A larger than majority vote may be required for member action as provided in section 10-32-42;
f. Limited liability company actions giving rise to dissenters' rights may be designated as provided in subdivision d of subsection 1 of section 10-32-55;
g. The persons to serve as the first board may be named as provided in subsection 1 of section 10-32-69;
h. A manner for increasing or decreasing the number of governors may be specified as provided in section 10-32-70;
i. Additional qualifications for governors may be imposed as provided in section 10-32-71;
j. Governors may be classified as provided in section 10-32-75;
k. The date, time, and place of board meetings may be fixed as provided in subsection 1 of section 10-32-80;
l. Absent governors may be permitted to give written consent or opposition to a proposal as provided in section 10-32-81;
m. A larger than majority vote may be required for board action as provided in section 10-32-83;
n. The personal liability of a governor to the limited liability company or to the members of the limited liability company for monetary damages for breach of

fiduciary duty as a governor may be eliminated or limited in the articles as provided in subsection 5 of section 10-32-86;

o. Additional managers may be designated as provided in section 10-32-88;

p. Authority to sign and deliver certain records may be delegated to a manager or agent of the limited liability company as provided in section 10-32-89;

q. Additional powers, rights, duties, and responsibilities may be given to managers as provided in section 10-32-89; and

r. A method for filling vacant offices may be specified as provided in subsection 3 of section 10-32-94.

5. The articles of organization may contain other provisions not inconsistent with law relating to the management of the business or the regulation of the affairs of the limited liability company.

6. It is not necessary to set forth in the articles of organization any of the limited liability company powers granted by this chapter.

7. Subsection 4 does not limit the right of the board by resolution to take an action the bylaws may authorize under this subsection without including the authorization in the bylaws, unless the authorization is required to be included in the bylaws by another provision of this chapter.

8. Except for provisions included pursuant to subsection 1, any provision of the articles may:

   a. Be made dependent upon facts ascertainable outside the articles, but only if the manner in which the facts operate upon the provision is clearly and expressly set forth in the articles; and

   b. Incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the limited liability company, but only if the limited liability company retains at its principal executive office a copy of the agreements, contracts, or other arrangements or the portions incorporated by reference.

10-32-08. Filing of articles of organization.

An original of the articles of organization must be filed with the secretary of state. If the secretary of state finds that the articles of organization conform to law and that all fees have been paid under section 10-32-150, the secretary of state shall issue a certificate of organization to the organizers or their representative.

10-32-09. Effective date of organization.

The limited liability company existence begins upon the issuance of the certificate of organization or at a later date as specified in the articles of organization. A certificate of organization is conclusive evidence that all conditions precedent and required to be performed by the organizers have been performed and that the limited liability company has been organized under this chapter, except as against this state in a proceeding to cancel or revoke the certificate of organization or in a judicial intervention proceeding pursuant to section 10-32-119.

10-32-10. 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 (ASCII) 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 subdivision 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, 10-32-11, 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 10-32-11 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, 10-32-11, 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 dissolved by the secretary of state pursuant to section 10-32-149 may reacquire the right to use that name by refiling articles of organization pursuant to section 10-32-20, 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 10-32-07;
   b. By amending pursuant to section 10-32-18; or
   c. By reinstating pursuant to section 10-32-149.
8. Subject to section 10-32-136, 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 section 10-32-15.
10. A limited liability company that files its articles of organization with an effective date later than the date of filing as provided in section 10-32-09 shall maintain the right to the name until the effective date.

10-32-11. Reserved name.

1. The exclusive right to the use of a limited liability company name otherwise permitted by section 10-32-10 may be reserved by any person.
2. The reservation is made by filing with the secretary of state a request that the name be reserved together with the fees provided in section 10-32-150.
   a. If the name is available for use by the applicant, 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 10-32-150.
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 10-32-150.
5. The secretary of state may destroy all reserved name requests and index thereof one year after expiration.

10-32-12. Registered office and agent.

As provided by chapter 10-01.1, a limited liability company shall continuously maintain a registered agent in this state.

10-32-13. Change of registered office or agent.

As provided in chapter 10-01.1:

1. A limited liability company may change its registered office, change its registered agent, or state a change in the name of its registered agent; and
2. A registered agent of a limited liability company may resign.

10-32-14. Amendment of articles of organization.

The articles of organization of a limited liability company may be amended at any time to include or modify any provision that is required or permitted to appear in the articles or to omit any provision not required to be included in the articles, except that when articles are amended to restate them, the name and address of each organizer may be omitted. If only a change of address of the principal executive office is required, an amendment need not be filed; however, the change of address of the principal executive office must then be reported on the annual report filed after the change. Unless otherwise provided in this chapter, the articles may be amended or modified only in accordance with sections 10-32-14 through 10-32-18.

10-32-15. Procedure for amendment before contribution.

Before any contribution is reflected in the required records of a limited liability company, the articles of organization may be amended pursuant to section 10-32-67 by the organizers or by the board. The articles of organization may also be amended by the board to change or cancel a statement pursuant to subsection 6 of section 10-32-56 establishing or fixing 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 required records of the limited liability company by filing articles of amendment or a statement of cancellation, as appropriate, with the secretary of state.

10-32-16. Procedure for amendment after contribution.

1. Except as otherwise provided in section 10-32-15, after any contribution has been reflected in the required records of a limited liability company, the articles of organization may be amended in the manner set forth in this section.
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 members' meeting setting forth the substance of the proposed amendment must be given to each member entitled to vote in the manner provided in section 10-32-40 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 10-32-42; 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, 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.

10-32-17. Class or series voting on amendments.

The owners of the outstanding membership 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:

1. 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;
2. 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;
3. Change the rights or preferences of the membership interests of the class or series;
4. 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;
5. 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;
6. Limit or deny any existing preemptive rights of the membership interests of the class or series; or
7. Cancel or otherwise affect distributions on the membership interests of the class or series.

10-32-18. Articles of amendment.

When an amendment has been adopted, articles of amendment must be prepared that contain:

1. The name of the limited liability company;
2. The amendment adopted;
3. The date of the adoption of the amendment by the members, or by the organizers or the board when no membership interests have been issued;
4. If the amendment restates the articles in their entirety, a statement that the restated articles supersede the original articles and all amendments to the original articles; and
5. A statement that the amendment has been adopted pursuant to this chapter.

10-32-19. Effect of amendment.

1. 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.
2. 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.
3. When effective under section 10-32-21, an amendment restating the articles in their entirety supersedes the original articles and all amendments to the original articles.

10-32-20. Filing of articles of amendment.

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 10-32-150, then the articles of amendment must be recorded in the office of the secretary of state. 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 limited liability company's name in each registration when the limited liability company files an amendment.

10-32-21. Effective date of articles of amendment.

Articles of amendment are effective upon acceptance by the secretary of state or at another time within thirty days after acceptance if the articles of amendment so provide.

10-32-22. Amendment of articles of organization in court-supervised reorganization.

1. 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:
   a. Change the limited liability company name, period of duration, or organizational purposes of the limited liability company.
   b. Repeal, alter, or amend the bylaws of the limited liability company.
   c. 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.
   d. 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.
   e. 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.
2. Amendments to the articles pursuant to subsection 1 must be made in the following manner:
   a. 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.
   b. 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 10-32-150, then the articles of amendment must be recorded in the office of the secretary of state.
3. The articles of amendment become effective upon their acceptance by the secretary of state or at any other time within thirty days after their acceptance if the articles of amendment so provide.
4. 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 of the governors and members.

10-32-23. General powers.

1. A limited liability company has the powers set forth in this section, subject to any limitations provided in any other statute of this state or in its articles of organization. The articles may not limit the powers stated in subsection 3. A member-control agreement may limit the powers stated in subsections 4 through 24.
2. A limited liability company with articles of organization filed with the secretary of state:
   a. Before July 1, 1999, has a duration of thirty years from the date the articles of organization are filed with the secretary of state, unless the articles of organization state a shorter or longer duration, which may be perpetual.
   b. After June 30, 1999, has perpetual duration.
3. A limited liability company may sue and be sued, and complain, defend, and participate as a party or otherwise in any legal, administrative, or arbitration proceeding in its limited liability company name.
4. A limited liability company may purchase, lease, or otherwise acquire, own, hold, improve, use, and otherwise deal in and with real or personal property, or any interest in property, wherever situated.
5. A limited liability company may sell, convey, mortgage, create a security interest in, encumber, assign, lease, exchange, transfer, or otherwise dispose of all or any part of its real or personal property, or any interest in this property, wherever situated.
6. A limited liability company may purchase, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, exchange, mortgage, lend, create a security interest in, or otherwise dispose of, use and deal in and with, securities or other interests in, or obligations of, a person or direct or indirect obligations of any domestic or foreign government or instrumentality.
7. A limited liability company may make contracts and incur liabilities, borrow money, and secure any of its obligations by mortgage of or creation of a security interest in or other encumbrance or assignment of all or any of its property, franchises, and income.
8. A limited liability company may invest and reinvest its funds.
9. A limited liability company may take and hold real and personal property, whether or not of a kind sold or otherwise dealt in by the limited liability company, as security for the payment of money loaned, advanced, or invested.
10. A limited liability company may conduct its business, carry on its operations, have offices, and exercise the powers granted by this chapter anywhere in the universe.
11. Except as otherwise prohibited by law, a limited liability company may make donations, irrespective of limited liability company benefit, for:
    a. The public welfare;
    b. Social, community, charitable, religious, educational, scientific, civic, literary, and testing for public safety purposes and for similar or related purposes;
    c. The purpose of fostering national or international amateur sports competition; and
    d. The prevention of cruelty to children and animals.
12. A limited liability company may pay pensions, retirement allowances, and compensation for past services and establish employee or incentive benefit plans, trusts, and provisions for the benefit of its and its related organizations' officers, managers, directors, governors, employees, and agents and, in the case of a related organization that is a limited liability company, members who provide services to the limited liability company, and the families, dependents, and beneficiaries of any of them. It may indemnify and purchase and maintain insurance for a fiduciary of any of these employee benefit and incentive plans, trusts, and provisions.
13. A limited liability company may participate in any capacity in the promotion, organization, ownership, management, and operation of any organization or in any transaction, undertaking, or arrangement that the participating limited liability company would have power to conduct by itself, whether or not the participation involves sharing or delegation of control.

14. A limited liability company may provide for its benefit life insurance and other insurance with respect to the services of its members, managers, governors, employees, and agents, or on the life of a member for the purpose of acquiring at the death of the member any or all membership interests in the limited liability company owned by the member.
15. A limited liability company may have, alter at its pleasure, and use a limited liability company seal as provided in section 10-32-24.
16. A limited liability company may adopt, amend, and repeal the bylaws relating to the management of the business or the regulation of the affairs of the limited liability company as provided in section 10-32-68.
17. A limited liability company may establish committees of the board, elect or appoint persons to the committees, and define their duties as provided in section 10-32-85 and fix their compensation.
18. A limited liability company may elect or appoint managers, employees, and agents of the limited liability company and define their duties and fix their compensation.
19. A limited liability company may accept contributions under section 10-32-56 and may enter into contribution agreements under section 10-32-58 and contribution allowance agreements under section 10-32-59.
20. A limited liability company may lend money to, guarantee an obligation of, become a surety for, or otherwise financially assist persons as provided in section 10-32-97.
21. A limited liability company may make advances as provided in section 10-32-98.
22. A limited liability company shall indemnify those persons against certain expenses and liabilities only as provided in section 10-32-99.
23. A limited liability company may conduct all or part of its business under one or more trade names.
24. A limited liability company may acquire an ownership interest in another organization.
25. A limited liability company may have and exercise all other powers necessary or convenient to effect any or all of the business purposes for which the limited liability company is organized.

10-32-24. Limited liability company seal.

A limited liability company may have a limited liability company seal. The use or nonuse of a limited liability company seal does not affect the validity, recordability, or enforceability of a record or act. If a limited liability company has a limited liability company seal, the use of the seal by the limited liability company on a record is not necessary.

10-32-25. Defense of ultra vires.

No act of a limited liability company and no conveyance or transfer of real or personal property to or by a limited liability company is invalid by reason of the fact that the limited liability company was without capacity or power to do such act or to make or receive such conveyance or transfer but such lack of capacity or power may be asserted:

1. In a proceeding by a member against the limited liability company to enjoin the doing of any act or acts or the transfer of real or personal property by or to the limited liability company. If the unauthorized acts or transfers sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the limited liability company is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the limited liability company or to other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract. However, anticipated profits to be derived from the performance of the contract may not be awarded by the court as a loss or damage sustained.
2. In a proceeding by the limited liability company, whether acting directly or through a receiver, trustee or other legal representative, or through members in a representative

suit, against the incumbent or former managers or governors of the limited liability company.
3. In a proceeding by the attorney general, as provided in this chapter to dissolve the limited liability company or to enjoin the limited liability company from the transaction of unauthorized business.

10-32-26. Unauthorized assumption of limited liability company powers - Liability.

All persons who assume to act as a limited liability company without authority are jointly and severally liable for all debts and liabilities incurred or arising as a result.

10-32-27. Transaction of business outside North Dakota.

By enacting this chapter the legislative assembly recognizes the limited liability company as an important and constructive form of business organization. The legislative assembly understands that:

1. Businesses organized under or governed by this chapter will often transact business in other states;
2. For businesses organized under or governed by this chapter to function effectively and for this chapter to be a useful enactment, this chapter must be accorded the same comity and full faith and credit that states typically accord to each other's corporate laws; and
3. Specifically, it is essential that other states recognize both the legal existence of limited liability companies organized under or governed by this chapter and the legal status of all members of these limited liability companies.

The legislative assembly therefore specifically seeks that, subject to any reasonable registration requirements, other states extend to this chapter the same full faith and credit under section 1 of article IV of the Constitution of the United States, and the same comity, that North Dakota extends to statutes that other states enact to provide for the establishment and operation of business organizations.

10-32-28. Nature of a membership interest and statement of interest owned.

1. A membership interest is personal property. A member has no interest in specific limited liability company property. All property of the limited liability company is property of the limited liability company itself.
2. At the request of any member, the limited liability company shall state in writing the particular membership interest owned by that member as of the moment the limited liability company makes the statement. The statement must describe the member's right to vote, if any, to share in profits and losses, and to share in distributions, restrictions on assignments of financial rights under subsection 3 of section 10-32-31, or governance rights under subsection 6 of section 10-32-32, then in effect, as well as any assignment of the member's rights then in effect other than a security interest.
3. For the purpose of any law relating to security interests, a membership interest, governance rights, and financial rights are each to be characterized as provided in subsection 3 of section 41-08-03.

10-32-29. Personal liability.

1. Subject to subsection 3, a member, governor, manager, or other agent of a limited liability company is not, merely on account of this status, personally liable for the acts, debts, liabilities, or obligations of the limited liability company.
2. However, all persons who assume to act as a limited liability company without authority are jointly and severally liable for all debts and liabilities incurred or arising as a result.
3. 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.

4. The limited liability described in subsections 1 and 3 continues in full force regardless of any dissolution, winding up, and termination of a limited liability company.

10-32-30. Termination of a membership interest.

1. The continued membership of a member in a limited liability company is terminated by:
   a. The member's death;
   b. The member's retirement;
   c. The member's resignation;
   d. The redemption of the member's complete membership interest;
   e. An assignment of the member's governance rights under section 10-32-32 which leaves the assignor with no governance rights;
   f. A buyout of a member's membership interest under section 10-32-119 which leaves that member with no governance rights;
   g. The member's expulsion;
   h. The member's bankruptcy;
   i. The dissolution of a member that is an organization; or
   j. The occurrence of any other event terminating the continued membership of a member in the limited liability company.
2. A member always has the power, though not necessarily the right, to terminate the member's membership by resigning or retiring at any time.
3. Unless otherwise provided in the articles of organization or in a member-control agreement, a member may not be expelled.
4. If for any reason the continued membership of a member is terminated, then subject to the articles of organization and any member-control agreement:
   a. If the termination does not result in the dissolution of the limited liability company, the member whose membership has terminated loses all governance rights and will be considered merely an assignee of the financial rights owned before the termination of membership; or
   b. If the termination does result in the dissolution of the limited liability company, the member whose continued membership has terminated retains all governance rights and financial rights owned before the termination of the membership and may exercise those rights through the winding up and termination of the limited liability company.
5. If a member resigns or retires in contravention of the articles of organization or a member-control agreement, the member who has wrongfully resigned or retired is liable to the limited liability company to the extent damaged by the wrongful resignation or retirement.

10-32-31. Assignment of financial rights.

1. Except as provided in subsection 3, a member's financial rights are transferable in whole or in part.
2. An assignment of a member's financial rights entitles the assignee to receive, to the extent assigned, only the share of profits and losses and the distributions to which the assignor would otherwise be entitled.
   a. An assignment of a member's financial rights does not dissolve the limited liability company and does not entitle or empower the assignee to become a member, to exercise any governance rights, to receive any notices from the limited liability company, or to cause dissolution.
   b. The assignment may not allow the assignee to control the member's exercise of governance rights.
3. A restriction on the assignment of financial rights may be imposed in the articles, in a member-control agreement, in the bylaws, by a resolution adopted by the members, or by an agreement among or other written action by members or among them and the limited liability company. A restriction is not binding with respect to financial rights reflected in the required records before the adoption of the restriction, unless the

owners of those financial rights are parties to the agreement or voted in favor of the restriction.

4. Subject to subsection 5, a written restriction on the assignment of financial rights that is not manifestly unreasonable under the circumstances and is noted conspicuously in the required records may be enforced against the owner of the restricted financial rights or a successor or transferee of the owner, including a pledgee or a legal representative. Unless noted conspicuously in the required records, a restriction, even though permitted by this section, is ineffective against a person without knowledge of the restriction.
5. With regard to restrictions on the assignment of financial rights, a would-be assignee of financial rights is entitled to rely on a statement of membership interest issued by the limited liability company under section 10-32-28. A restriction on the assignment of financial rights, which is otherwise valid and in effect at the time of the issuance of a statement of membership interest but which is not reflected in that statement, is ineffective against an assignee who takes an assignment in reliance on the statement.
6. Notwithstanding any provision of law, articles of organization, member-control agreement, bylaws, other agreement, resolution, or action to the contrary, a security interest in a member's financial rights may be foreclosed and otherwise enforced, and a secured party may assign a member's financial rights in accordance with title 41 without the consent or approval of a member whose financial rights are subject to the security interest.

10-32-32. Assignment of governance rights.

1. A member's governance rights are assignable, in whole or in part, only as provided in this section.
2. Subject to subsection 6, a member may, without the consent of any other member, assign governance rights, in whole or in part, to another person already a member at the time of the assignment. Except as otherwise provided in the articles of organization or a member-control agreement, any other assignment of any governance rights is effective only if all the members, other than the member seeking to make the assignment, approve the assignment by unanimous written consent.
3. When an assignment of governance rights is effective under subsection 2:
   a. If the assignment is not a security interest, the assignee becomes a member, if not already a member; and
   b. If the assignor does not retain any governance rights, the assignor ceases to be a member.
4. When an assignment other than a security interest is effective under subsection 2, unless the written consent under subsection 2 otherwise provides:
   a. The assignee is liable in proportion to the interest assigned for the obligations of the assignor under section 10-32-56, including liability for unperformed promises that have been reflected as contributions in the required records, and section 10-32-65 existing at the time of transfer, except to the extent that, at the time the assignee became a member, the liability was unknown to the assignee, and could not be ascertained from the required records; and
   b. The assignor is not released from liability to the limited liability company for obligations of the assignor existing at the time of transfer under sections 10-32-56 and 10-32-65.
5. If any purported or attempted assignment of governance rights is ineffective for failure to obtain the consent required in subsection 2:
   a. The purported or attempted assignment is ineffective in its entirety; and
   b. Any assignment of financial rights that accompanied the purported or attempted assignment of governance rights is void.
6. Restrictions on the transfer of governance rights may be imposed following the same procedures and under the same conditions as stated in subsections 3 and 4 of section 10-32-31 for restricting the transfer of financial rights.

7. Subject to subsection 6, a member may grant a security interest in a complete membership interest or governance rights without obtaining the consent required by subsection 2. However, a secured party may not take or assign ownership of governance rights without first obtaining the consent required by subsection 2. If a secured party has a security interest in a member's financial rights and governance rights, including a security interest in a complete membership interest, this subsection's requirement that the secured party obtain the consents required by subsection 2 applies only to taking or assigning ownership of the governance rights and does not apply to taking or assigning ownership of the financial rights.
8. Notwithstanding any provision of law, articles of organization, member-control agreement, bylaws, other agreement, resolution, or action to the contrary, a security interest in a member's full membership interest or governance rights may be foreclosed and otherwise enforced, and a secured party may assign a member's complete membership interest or governance rights in accordance with title 41, all without the consent or approval of the member whose full membership interest or governance rights are the subject of the security interest.

10-32-33. Effective date of assignments.

Any permissible assignment of financial rights under section 10-32-31 or of governance rights or a complete membership interest under section 10-32-32 will be effective as to and binding on the limited liability company only when the assignee's name, address, and the nature and extent of the assignment are reflected in the required records of the limited liability company, except that a permissible and otherwise valid security interest in a complete membership interest, financial rights, or governance rights will be effective as to and binding on the limited liability company as provided in title 41 whether or not the information about the secured party or the permissible and otherwise valid security interest is reflected in the required records of the limited liability company.

10-32-34. Rights of judgment creditor.

On application to a court of competent jurisdiction by any judgment creditor of a member, the court may charge a member's or an assignee's financial rights with payment of the unsatisfied amount of the judgment with interest.

1. To the extent so charged, the judgment creditor has only the rights of an assignee of a member's financial rights under section 10-32-31.
2. This chapter does not deprive any member or assignee of financial rights of the benefit of any exemption laws applicable to the membership interest.
3. This section is the sole and exclusive remedy of a judgment creditor with respect to the judgment debtor's membership interest.

10-32-35. Powers of estate of a deceased or incompetent member.

1. If a member who is an individual dies or a court of competent jurisdiction adjudges the member to be incompetent to manage the member's person or property, or an order for relief under the bankruptcy code is entered with respect to the member, the member's executor, administrator, guardian, conservator, trustee, or other legal representative may exercise all of the member's rights for the purpose of settling the estate or administering the member's property. If a member is a corporation, trust, or other entity and is dissolved, terminated, or placed by a court in receivership or bankruptcy, the powers of that member may be exercised by its legal representative or successor.
2. If an event referred to in subsection 1 causes the termination of a member's membership interest and the termination does not result in dissolution, then subject to the articles of organization and any member-control agreement:
    a. As provided in subsection 3 of section 10-32-30, the terminated member's interest will be considered to be merely that of an assignee of the financial rights owned before the termination of membership; and

b. The rights to be exercised by the legal representative of the terminated member will be limited accordingly.

10-32-36. Sharing of profits and losses.

Unless otherwise provided in the articles of organization, in a member-control agreement, or by the board under subsections 5 and 6 of section 10-32-56, the profits and losses of a limited liability company must 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 required records.

10-32-37. Preemptive rights.

1. Unless denied or limited in the articles of organization, in a member-control agreement, or by the board pursuant to subdivision b of subsection 5 of section 10-32-56, a member of a limited liability company has the preemptive rights provided in this section.
2. A preemptive right is the right of a member to make contributions of a certain amount or to make a contribution allowance agreement specifying future contributions of a certain amount before the limited liability company may accept new contributions from other persons or to make contribution allowance agreements with other persons.
3. A member has a preemptive right whenever the limited liability company proposes to accept contributions from other persons, or to make contribution allowance agreements with other persons, pertaining to membership interests of the same series or class as the series or class owned by the member.
4. Unless otherwise provided in the articles of organization or a member-control agreement, no preemptive rights pursuant to this section arise as to contributions to be accepted from others or as to contribution allowance agreements to be made with others when the contribution is:
   a. To be made in a form other than money;
   b. To be made or reflected pursuant to a plan of merger;
   c. To be made or reflected pursuant to an employee or incentive benefit plan approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote;
   d. To be made pursuant to a previously made contribution allowance agreement; or
   e. To be made or reflected pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a statute of this state or of the United States.
5. The extent to which each member may make a new contribution, or obtain the right to make a new contribution under a contribution allowance agreement, by exercise of a preemptive right as to any class or series is the ratio that the value of that member's contributions, as reflected in the required records as pertaining to that class or series before the contribution, bears to the total value of all members' contributions reflected in the required records as pertaining to that class or series before the new contribution.
6. A member may waive a preemptive right in writing. The waiver is binding upon the member whether or not consideration has been given for the waiver. Unless otherwise provided in the waiver, a waiver of preemptive rights is effective only for the proposed contribution or contribution allowance agreement described in the waiver.
7. When proposing to accept new contributions, or to make contribution allowance agreements, with respect to which members have preemptive rights under this section, the board shall cause notice to be given to each member entitled to preemptive rights. The notice must be given at least ten days before the date by which the member must exercise a preemptive right and must contain:
   a. The extent of the member's preemptive right, being:
      (1) In the case of a preemptive right to make a contribution, the amount of the contribution to be made; and
      (2) In the case of a preemptive right to make a contribution allowance agreement, the amount of the contribution to be allowed under that contribution allowance agreement;

b. The method used to determine the extent of the member's preemptive right;
c. The terms and conditions upon which the member may make a contribution or make a contribution allowance agreement; and
d. The time within which and the method by which the member must exercise the right.

8. If a member does not exercise preemptive rights to make a contribution or to make a contribution allowance agreement, then for a period not exceeding one year after the date fixed by the board for the exercise of those preemptive rights and to the extent of the preemptive rights not exercised, the board may accept contributions or make contribution allowance agreements on terms no less favorable to the limited liability company than those offered to the member.
9. If the members of a limited liability company are entitled to cumulative voting in the election of governors, no amendment to the articles of organization or a member-control agreement which has the effect of denying, limiting, or modifying the preemptive rights provided in this section may be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board under cumulative voting are cast against the amendment.
10. A denial or limitation of preemptive rights otherwise provided in this section does not limit the power of a limited liability company to grant first refusal rights, contribution allowance rights, or other rights to make contributions to the limited liability company, to members, to persons who have entered into contribution agreements, or to other persons before accepting contributions or before making allowance agreements with any other person.

10-32-38. Regular meetings of members.

1. Regular meetings of members may be held on an annual or other less frequent periodic basis but need not be held unless required by the articles of organization, a member-control agreement, the bylaws, or subsection 2.
2. If a regular meeting of members has not been held within the earlier of six months after the fiscal yearend of the corporation or fifteen months after its last meeting:
   a. A member or members owning five percent or more of the voting power of all members entitled to vote may demand a regular meeting of members by written notice of demand given to the president or the secretary of the limited liability company.
   b. Within thirty days after receipt of the demand by one of those managers, the board shall cause a regular meeting of members to be called and held on notice no later than ninety days after receipt of the demand.
   c. If the board fails to cause a regular meeting to be called and held as required by this subsection, the member or members making the demand may call the regular meeting by giving notice as required by section 10-32-40.
   d. All necessary expenses of the notice and the meeting must be paid by the limited liability company.
3. A regular meeting, if any, must be held on the date and at the time and place fixed by, or in a manner authorized by the articles, a member-control agreement, or the bylaws, except a meeting called by or at the demand of a member pursuant to subsection 2 must be held in the county where the principal executive office of the limited liability company is located. To the extent authorized in the articles, a member-control agreement, or the bylaws, the board may determine that a regular meeting of the members shall be held solely by means of remote communication in accordance with subdivision a of subsection 2 of section 10-32-43.2.
4. At each regular meeting of members:
   a. There must be an election of qualified successors for governors who serve for an indefinite term or whose terms have expired or are due to expire within six months after the date of the meeting.
   b. No other particular business is required to be transacted at a regular meeting.

c. Any business appropriate for action by the members may be transacted at a regular meeting.

10-32-39. Special meetings of members.

1. Special meetings of the members may be called for any purpose or purposes at any time, by:
   a. The president;
   b. Two or more governors;
   c. A person authorized in the articles, a member-control agreement, or the bylaws to call special meetings; or
   d. A member or members owning ten percent or more of the voting power of all membership interests entitled to vote.
2. A member or members owning ten percent or more of the voting power of all membership interests entitled to vote may demand a special meeting of members by written notice of demand given to the president or secretary of the limited liability company and containing the purposes of the meeting.
   a. Within thirty days after receipt of the demand by one of those managers, the board shall cause a special meeting of members to be called and held on notice no later than ninety days after receipt of the demand, all at the expense of the limited liability company.
   b. If the board fails to cause a special meeting to be called and held as required by this subsection, the member or members making the demand may call the meeting by giving notice as required by section 10-32-40.
   c. All necessary expenses of the notice and the meeting must be paid by the limited liability company.
3. Special meetings must be held on the date and at the time and place fixed by the president, the board, or a person authorized by the articles, a member-control agreement, or the bylaws to call a meeting, except a special meeting called by or at the demand of a member or members pursuant to subsection 2 must be held in the county where the principal executive office is located. To the extent authorized in the articles, a member-control agreement, or the bylaws, the board may determine that a special meeting of the members shall be held solely by means of remote communication in accordance with subdivision a of subsection 2 of section 10-32-43.2.
4. The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting. Any business transacted at a special meeting that is not included in those stated purposes is voidable by or on behalf of the limited liability company, unless all of the members have waived notice of the meeting in accordance with subsection 4 of section 10-32-40.

10-32-39.1. Court-ordered meeting of members.

1. The district court of the county where the principal executive office of a limited liability company is located may order a meeting to be held:
   a. On application of a member or members holding five percent or more of the voting power of all membership interests entitled to vote, if a meeting was not held within the earlier of six months after the fiscal yearend of the limited liability company or fifteen months after its last meeting; or
   b. On application of a voting member who signed a demand for a special meeting valid under section 10-32-39 or a person entitled to call a special meeting if:
      (1) Notice of the special meeting was not given within thirty days after the date the demand was delivered to a manager; or
      (2) The special meeting was not held in accordance with the notice.
2. The court may fix the time and place of the meeting, specify a record date for determining members entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting

constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purposes of the meeting.

3. If the court orders a meeting, it may also order the limited liability company to pay the costs of the member, including reasonable attorney's fees incurred to obtain the order.

10-32-40. Notice of member meetings.

1. Except as otherwise provided in this chapter, notice of all meetings of members must be given to every owner of membership interests entitled to vote, unless:
   a. The meeting is an adjourned meeting to be held not more than one hundred twenty days after the date fixed for the original meeting and the date, time, and place of the meeting were announced at the time of the original meeting or any adjournment of the original meeting; or
   b. The following have been mailed by first-class mail to a member at the address in the limited liability company records and returned nondeliverable:
      (1) Two consecutive regular meeting notices and notices of any special meetings held during the period between the two regular meetings; or
      (2) All payments of distribution sent during a twelve-month period, provided there were at least two sent during the twelve-month period.
   c. An action or meeting that is taken or held without notice under subdivision b has the same force and effect as if notice was given. If the member delivers a written notice of the member's current address to the limited liability company, the notice requirement is reinstated.
2. If notice of an adjourned meeting is required under subdivision a of subsection 1, then the date for determination of membership interests entitled to notice of and entitled to vote at the adjourned meeting must comply with subsection 1 of section 10-19.1-73.2, except, if the date of the meeting is set by court order, the court may provide that the original date of determination will continue in effect or may fix a new date.
3. The notice:
   a. In all instances when a specific minimum notice period has not otherwise been fixed by law, must be given at least ten days before the date of the meeting, or a shorter time provided in the articles of organization, a member-control agreement, or the bylaws, and not more than fifty days before the date of the meeting;
   b. Must contain the date, time, and place of the meeting;
   c. Must contain the information with respect to dissenters' rights required by subsection 2 of section 10-32-55, if applicable;
   d. Must inform members if proxies are permitted at the meeting and, if so, state the procedure for appointing proxies;
   e. Must contain a statement of the purpose of the meeting, in the case of a special meeting;
   f. Must contain any other information:
      (1) Required by the articles of organization, any member-control agreement, the bylaws, or this chapter; or
      (2) Considered necessary or desirable by the board; and
   g. May contain any other information considered necessary or desirable by the person or persons calling the meeting.
4. A member may waive notice of a meeting of members.
   a. A waiver of notice by a member entitled to notice is effective:
      (1) Whether given before, at, or after the meeting; and
      (2) Whether given in writing or by attendance.
   b. Attendance by a member at a meeting is a waiver of notice of that meeting, except when the member:
      (1) Objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or
      (2) Objects before a vote on an item of business because the item may not lawfully be considered at that meeting and does not participate in the consideration of the item at that meeting.

10-32-40.1. Voting rights.

1. The board may fix or authorize a manager to fix a date not more than fifty days, or a shorter time period provided in the articles of organization, a member-control agreement, or the bylaws, before the date of a meeting of members as the date for the determination of the owners of membership interests entitled to notice of and entitled to vote at the meeting. When a date is so fixed, only members on that date are entitled to notice of and permitted to vote at that meeting of members.
2. A determination of the owners of membership interests entitled to notice and to vote at a meeting of members is effective for an adjournment of the meeting unless the board fixes a new date for determining the right to notice and to vote, which it must do if the meeting is adjourned to a date more than fifty days after the record date for determining members entitled to notice of the original meeting.
3. If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting:
   a. It must provide the original record date for notice and voting continues in effect; or
   b. It may fix a new record date for notice and voting.
4. A resolution approved by the affirmative vote of a majority of the governors present may establish a procedure whereby a member may certify in writing to the limited liability company that all or a portion of the membership interest registered in the name of the member are held for the account of one or more beneficial owners. Upon receipt by the limited liability company of the writing, the persons specified as beneficial owners, rather than the actual member, are deemed the members for the purposes specified in the writing.
5. Unless otherwise provided in the articles, in a member-control agreement, or by the board under subsections 5 and 6 of section 10-32-56, members have voting power in proportion to the value of the contributions of the members as reflected in the required records.
6. The articles of organization or a member-control agreement may give or prescribe the manner of giving a creditor, securityholder, or other person a right to vote under this section.
7. Membership interests owned by two or more members may be voted by any one of them unless the limited liability company receives written notice from any one of them denying the authority of that person to vote those membership interests.
8. Except as provided in subsection 7, an owner of a membership interest entitled to vote may vote any portion of the membership interest in any way the member chooses. If a member votes without designating the proportion voted in a particular way, the member is considered to have voted all of the membership interest in that way.

10-32-40.2. Voting list.

1. After fixing a record date for notice of and voting at a meeting, a limited liability company shall prepare an alphabetical list of the names of its members who are entitled to notice and to vote. The list must show the address and the voting power of each member.
2. The list of members must be available for inspection by a member with voting rights for the purpose of communication with other members concerning the meeting, beginning two business days after the meeting notice is given and continuing through the meeting, at the principal executive office of the limited liability company or at a reasonable place identified in the meeting notice in the city where the meeting will be held.
   a. The list also must be available at the meeting.
   b. A member, a member's agent, or the attorney of the member or member's agent is entitled on written demand to inspect and to copy the list, at a reasonable time and at the member's expense, during the period it is available for inspection and at any time during the meeting or an adjournment.
3. If the limited liability company refuses to allow a member with voting rights, the member's agent, or the attorney of the member or member's agent to inspect the list of

members before or at the meeting, the district court of the county where the principal executive office of the limited liability company is located, on application of the member, may:

a. Order the inspection or copying at the limited liability company's expense;
b. Postpone the meeting until the inspection or copying is complete; or
c. Order the limited liability company to pay the member's costs, including reasonable attorney's fees, incurred to obtain the order.

4. Unless a written demand to inspect and copy a membership list has been made under subsection 2 before the membership meeting and a limited liability company improperly refuses to comply with the demand, refusal or failure to comply with this section does not affect the validity of action taken at the meeting.
5. A member, agent, or attorney who gains access to a membership list under this section may not use or give to another for use the membership list for any purpose other than a proper purpose. Upon application of the limited liability company, the district court may issue a protective order or order other relief necessary to enforce this subsection.

10-32-41. Electronic communications.

Repealed by S.L. 1997, ch. 103, § 248.

10-32-42. Act of members.

Unless this chapter or the articles of organization require a greater vote or voting by class or series:

1. Unless this chapter or the articles or a member-control agreement require a larger proportion or voting by class and except for the election of governors which is governed by section 10-32-76, the members shall take action by the affirmative vote of the owners of the greater of:
   a. A majority of the voting power of the membership interests present and entitled to vote on that item of business; or
   b. A majority of the voting power of the membership interests with voting rights that would constitute the minimum voting power needed for a quorum for the transaction of business at a meeting.

   If the articles or a member-control agreement require a larger proportion than is required by this chapter for a particular action, then the articles or member-control agreement control.
2. In any case when a class or series of membership interests is entitled by this chapter, the articles of organization, a member-control agreement, or the terms of the membership interests to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the owners of the same proportion of the membership interests as is required pursuant to subsection 1, unless the articles of organization or a member-control agreement requires a larger proportion. Unless otherwise stated in the articles, a member-control agreement or the bylaws in the case of voting as a class or series, the minimum percentage of the total voting power of membership interests of the class or series that must be present is equal to the minimum percentage of all membership interests entitled to vote required to be present under section 10-32-44.
3. Unless otherwise provided in the articles of organization, a member-control agreement, or the bylaws, members may take action at a meeting by:
   a. Voice or ballot;
   b. Action without a meeting pursuant to section 10-32-43;
   c. Ballot pursuant to section 10-32-43.1; or
   d. Remote communication pursuant to section 10-32-43.2.

10-32-42.1. Contractual requirement to submit matter to members.

A limited liability company may agree to submit a matter to its members whether or not the board determines, at any time after approving the matter, that the matter is no longer advisable and recommends that the members reject it.

10-32-43. Member action without a meeting.

An action required or permitted to be taken at a meeting of the members may be taken without a meeting by written action signed, or consented to by authenticated electronic communication, by all of the members entitled to vote on that action.

1. If the articles or a member-control agreement so provide, any action may be taken by written action signed, or consented to by authenticated electronic communication, by the members who own voting power equal to the voting power that would be required to take the same action at a meeting of the members at which all members were present.
   a. However, in no event may written action be taken by members holding less than a majority of the voting power of all membership interests entitled to vote on the action.
   b. After the adoption of the initial articles or the first making of a member-control agreement, an amendment to the articles or to a member-control agreement to permit written action to be taken by less than all members requires the approval of all the members entitled to vote on the amendment.
2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required members, unless a different effective time is provided in the written action.
   a. When written action is permitted to be taken by less than all members, all members must be notified of its text and effective date no later than five days after the date on which the action is taken.
   b. Failure to provide the notice does not invalidate the written action.
   c. A member who does not sign or consent to the written action has no liability for the action or actions taken by the written action.
3. When this chapter requires or permits a certificate concerning an action to be filed with the secretary of state, the managers signing the certificate must so indicate if the action was taken under this section.

10-32-43.1. Member action by ballot.

1. Except as provided in subsection 5, and unless prohibited or limited by the articles or the bylaws, an action that may be taken at a regular or special meeting of members may be taken without a meeting if the limited liability company mails or delivers a ballot to every member entitled to vote on the matter.
2. A ballot must set forth each proposed action and provide an opportunity to vote for or against each proposed action.
3. Approval by ballot under this section is valid only if:
   a. The number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action; and
   b. The number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
4. Solicitations for votes by ballot must:
   a. Indicate the number of responses needed to meet the quorum requirements;
   b. State the percentage of approvals necessary to approve each matter other than election of governors; and
   c. Specify the time by which a ballot must be received by the limited liability company in order to be counted.
5. Except as otherwise provided in the articles or the bylaws, a written ballot may not be revoked.
6. With respect to a ballot by electronic communication:

a. A limited liability company may deliver a ballot by electronic communication only if the limited liability company complies with subsection 4 of section 10-32-43.2 as if the ballot were a notice.
b. Consent by a member to receive notice by electronic communication in a certain manner constitutes consent to receive a ballot by electronic communication in the same manner.

10-32-43.2. Remote communications for member meetings.

1. This section shall be construed and applied to:
   a. Facilitate remote communication consistent with other applicable law; and
   b. Be consistent with reasonable practices concerning remote communication and with the continued expansion of those practices.
2. To the extent authorized in the articles, a member-control agreement, or the bylaws, and determined by the board:
   a. A meeting of the members may be held solely by any combination of means of remote communication through which the participants may participate in the meeting:
      (1) If notice of the meeting is given to every owner of membership interests entitled to vote as would be required by this chapter for a meeting; and
      (2) If the membership interests held by the members participating in the meeting would be sufficient to constitute a quorum at a meeting.
   b. A member not physically present in person or by proxy at a regular or special meeting of members may by means of remote communication participate in a meeting of members held at a designated place.
3. In any meeting of members held solely by means of remote communication under subdivision a of subsection 2 or in any meeting of members held at a designated place in which one or more members participate by means of remote communication under subdivision b of subsection 2:
   a. The limited liability company shall implement reasonable measures:
      (1) To verify that each person deemed present and entitled to vote at the meeting by means of remote communication is a member; and
      (2) To provide each member participating by means of remote communication with a reasonable opportunity to participate in the meeting, including an opportunity to:
         (a) Read or hear the proceedings of the meeting substantially concurrently with those proceedings;
         (b) If allowed by the procedures governing the meeting, have the member's remarks heard or read by other participants in the meeting; and
         (c) If otherwise entitled, vote on matters submitted to the members.
   b. Participation in a meeting by this means constitutes presence at the meeting in person or by proxy of all if all of the other requirements of section 10-32-48 are met.
4. With respect to notice to members:
   a. Any notice to members given by the limited liability company under any provision of this chapter, the articles, a member-control agreement, or the bylaws by a form of electronic communication consent to by the member to whom the notice is given is effective when given. The notice is deemed given:
      (1) If by facsimile communication, when directed to a telephone number at which the member has consented to receive notice;
      (2) If by electronic mail, when directed to an electronic mail address at which the member has consented to receive notice;
      (3) If by a posting on an electronic network on which the member has consented to receive notice, together with separate notice to the member of the specific posting, upon the later of:
         (a) The posting; or

(b) The giving of the separate notice; and

(4) If by any other form of electronic communication by which the member has consented to receive notice, when directed to the member.

b. An affidavit of the secretary, other authorized manager, or authorized agent of the limited liability company, that the notice has been given by a form of electronic communication is, in the absence of fraud, prima facie evidence of the facts stated in the affidavit.

c. Consent by a member to notice given by electronic communication may be given in writing or by authenticated electronic communication. The limited liability company is entitled to rely on any consent so given until revoked by the member, provided that no revocation affects the validity of any notice given before receipt by the limited liability company of revocation of the consent.

5. Any ballot, vote authorization, or consent submitted by electronic communication under this chapter may be revoked by the member submitting the ballot, vote, authorization, or consent so long as the revocation is received by a manager of the limited liability company at or before the meeting or before an action without a meeting is effective according to section 10-32-43.

6. Waiver of notice by a member of a meeting by means of authenticated electronic communication may be given in the manner provided in subsection 4 of section 10-32-40. Participation in a meeting by means of remote communication described in subdivisions a and b of subsection 2 is a waiver of notice of that meeting, except when the member objects:

a. At the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened; or

b. Before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

10-32-44. Quorum of members.

1. A quorum for a meeting of members is the owners of a majority of the voting power of the membership interests entitled to vote at the meeting, unless a different proportion is provided in the articles of organization, a member-control agreement, or the bylaws.

2. Except as provided in subdivision b, a quorum is necessary for the transaction of business at a meeting of members.

a. If a quorum is not present, a meeting may be adjourned from time to time for that reason.

b. If a quorum has been present at a meeting and members have withdrawn from the meeting so that less than a quorum remains, the members still present may continue to transact business until adjournment.

10-32-45. Voting rights.

Repealed by S.L. 1997, ch. 103, § 248.

10-32-46. Voting list.

Repealed by S.L. 1997, ch. 103, § 248.

10-32-47. Voting by organizations and legal representatives.

1. Membership interests of a limited liability company reflected in the required records as being owned by another domestic or foreign organization may be voted by the president or another legal representative of that organization.

2. Except as provided in subsection 3, membership interests of a limited liability company reflected in the required records as being owned by a subsidiary are not entitled to be voted on any matter.

3. Membership interests of a limited liability company in the name of, or under the control of, the limited liability company or a subsidiary in a fiduciary capacity are not entitled to

vote on any matter, except to the extent that the settlor or beneficiary possesses and exercises a right to be voted or gives the limited liability company or, with respect to membership interests in the name of or under the control of a subsidiary, binding instructions on how to vote the membership interests.

4. Subject to section 10-32-35, membership interests under the control of a person in a capacity as a personal representative, administrator, executor, guardian, conservator, or the like may be voted by the person, either in person or by proxy, without reflecting in the required records those membership interests in the name of the person.
5. Subject to section 10-32-35, membership interests reflected in the required records in the name of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver either in person or by proxy. Membership interests under the control of a trustee in bankruptcy or a receiver may be voted by the trustee or receiver without reflecting in the required records the name of the trustee or receiver, if authority to do so is contained in an appropriate order of the court by which the trustee or receiver was appointed.
6. Membership interests reflected in the required records in the name of an organization not described in subsections 1 through 5 may be voted either in person or by proxy by the legal representative of that organization.
7. The grant of a security interest in a membership interest does not entitle the holders of the security interest to vote except as provided in section 10-32-32.

10-32-48. Proxies.

1. At or before the meeting at which the appointment is to be effective, a member may cast or authorize the casting of a vote:
   a. By filing with a manager authorized to tabulate votes a written appointment of a proxy which is signed by the member.
   b. By remote communication or authenticated electronic communication to a manager authorized to tabulate votes, whether or not accompanied by written instructions of the member, of an appointment of a proxy.
      (1) The remote communication or authenticated electronic communication must set forth or be submitted with information from which it can be determined that the appointment is authorized by the member. If it is reasonably concluded that the remote communication or authenticated electronic communication is valid, the inspectors of election or, if there are not inspectors, the other persons making that determination of validity shall specify the information upon which they relied to make that determination.
      (2) A proxy so appointed may vote on behalf of the member, or otherwise participate, in a meeting by remote communication according to section 10-32-43.2, to the extent the member appointing the proxy would have been entitled to participate by remote communication according to section 10-32-43.2 if the member did not appoint the proxy.
   c. A copy, facsimile telecommunication, or other reproduction of the original writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, if the copy, facsimile telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission.
   d. An appointment of a proxy for membership interests owned jointly by two or more members is valid if signed or consented to by authenticated electronic communication by any one of the members, unless the limited liability company receives from any one of those members written notice or an authenticated electronic communication either denying the authority of that person to appoint a proxy or appointing a different proxy.
2. The appointment of a proxy is valid for eleven months, unless a longer period is expressly provided in the appointment. No appointment is irrevocable unless the appointment is coupled with an interest in the membership interests of the limited liability company.

3. An appointment may be revoked at will unless the appointment is coupled with an interest, in which case the appointment may not be terminated except in accordance with the terms of an agreement, if any, between the parties to the appointment. Appointment of a proxy is revoked by the person appointing the proxy by:
   a. Attending a meeting and voting in person; or
   b. Signing and delivering to the manager or agent authorized to tabulate proxy votes either:
      (1) A writing stating that the appointment of the proxy is revoked; or
      (2) A new appointment; or
   c. Remote communication or by authenticated electronic communication, whether or not accompanied by written instructions of the member, of:
      (1) A statement that the proxy is revoked; or
      (2) A new appointment.
4. Revocation in either manner provided in subdivision b or c of subsection 3 revokes all prior proxy appointments and is effective:
   a. When filed with a manager or with a duly authorized agent of the limited liability company; or
   b. When the remote communication or the authenticated electronic communication is received by a manager or by the duly authorized agent of the limited liability company.

   The remote communication or the authenticated electronic communication must set forth or be submitted with information from which it can be determined that the revocation or the new appointment was authorized by the member.
5. The death or incapacity of a person appointing a proxy does not revoke or affect the right of the limited liability company to accept the authority of the proxy, unless written notice of the death or incapacity is received by a manager authorized to tabulate votes before the proxy exercises the authority under that appointment.
6. Unless the appointment specifically provides otherwise, if two or more persons are appointed as proxies for a member:
   a. Any one of them may vote the membership interests on each item of business in accordance with specific instructions contained in the appointment; and
   b. If no specific instructions are contained in the appointment with respect to voting the membership interests on a particular item of business, the membership interests must be voted as a majority of the proxies determine. If the proxies are equally divided, the membership interests must not be voted.
7. Subject to section 10-32-48.1 and an express restriction, limitation, or specific reservation of authority of the proxy appearing in the appointment, the limited liability company may accept a vote or action by the proxy as the action of the member. The vote of a proxy is final, binding, and not subject to challenge, but the proxy is liable to the member for damages resulting from a failure to exercise the proxy or from an exercise of the proxy in violation of the authority granted in the appointment.
8. If a proxy is given authority by a member to vote on less than all items of business considered at a meeting of members, the member is considered to be present and entitled to vote by the proxy for purposes of subsection 1 of section 10-32-42 only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a member who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

10-32-48.1. Acceptance of member act by the limited liability company.

1. If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the record name of a member, the limited liability company, if acting in good faith, may accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the member.
2. Unless the articles, a member-control agreement, or the bylaws provide otherwise, if the name signed on a vote, consent, waiver, or proxy appointment does not

correspond to the record name of a member, the limited liability company, if acting in good faith, may accept the vote, consent waiver, or proxy appointment and give it effect as the act of the member if:

a. The member is an organization and the name signed purports to be that of an officer, manager, or agent of the organization;
b. The name signed purports to be that of an administrator, guardian, or conservator representing the member and, if the limited liability company requests, evidence of fiduciary status acceptable to the limited liability company has been presented with respect to the vote, consent, waiver, or proxy appointment;
c. The name signed purports to be that of a receiver or trustee in bankruptcy of the member, and, if the limited liability company requests, evidence of this status acceptable to the limited liability company has been presented with respect to the vote, consent, waiver, or proxy appointment;
d. The name signed purports to be that of a pledgee, beneficial owner, or attorney in fact of the member and if the limited liability company requests, evidence acceptable to the limited liability company of the signatory's authority to sign for the member has been presented with respect to the vote, consent, waiver, or proxy appointment; or
e. Two or more persons hold the membership interests as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coholders and the person signing appears to be acting on behalf of all the coholders.

3. The limited liability company may reject a vote, consent, waiver, or proxy appointment if the manager or agent authorized to tabulate votes, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the member.
4. The limited liability company or its manager or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section is not liable in damages to the member for the consequences of the acceptance or rejection.
5. Limited liability company action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

10-32-49. Member voting agreements.

A written agreement among persons who are then members or who have signed contribution agreements, relating to the voting of their membership interests, is valid and specifically enforceable by and against the parties to the agreement. The agreement may override the provisions of section 10-32-48 regarding proxies.

10-32-50. Member-control agreements.

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

b. If this chapter provides that a particular result may or must be obtained through a provision in the articles of organization, other than a provision required by subsection 1 of section 10-32-07 to be contained in the articles; in the bylaws; or by an act of the board, the same result may be accomplished through a member-control agreement valid under this section or through a procedure established by a member-control agreement valid under this section.

c. A member-control agreement may:

(1) Allocate to the members authority ordinarily exercised by the board;

(2) Allocate to the board authority ordinarily exercised by the members; or

(3) Structure the governance of the limited liability company in any agreed fashion and may waive, in whole or in part, a member's dissenting rights under sections 10-32-54 and 10-32-55.

2. With respect to the validity of a member-control agreement:

a. A member-control agreement described in subsection 1 is valid if the agreement is in writing and is signed by the persons who, on the date the agreement first becomes effective, comprise:

(1) All members of the limited liability company, regardless of voting power; and

(2) All persons who are parties to contribution agreements that on that date have not yet been fully performed, regardless of whether those parties will, when members, have voting power.

b. A member-control agreement may also include as parties persons who are neither members nor parties to a contribution agreement.

c. A member-control agreement may provide for amendment of the member-control agreement through nonunanimous means.

3. A member-control agreement valid under subsections 1 and 2 is enforceable by and against persons who are parties to the member-control agreement and is also binding upon and enforceable against persons who acquire an interest in a membership interest or in a contribution agreement having knowledge of the existence of the member-control agreement.

a. A signed original of the member-control agreement must be filed with the limited liability company.

b. The limited liability company shall note in the limited liability company's required records that the members' interests are governed by a member-control agreement entered into under this section.

c. A member or any assignee of financial rights has the right upon written demand to obtain a copy of any member-control agreement from the limited liability company at the company's expense.

4. A member-control agreement valid under subsections 1 and 2 is specifically enforceable.

5. If a member-control agreement authorized under this section takes away from any person any of the authority and responsibility that the person would otherwise possess under this chapter, the effect of the member-control agreement is also to relieve that person of liability imposed by law for acts and omissions in the possession or exercise of that authority and responsibility and to impose that liability on the person or persons possessing the authority and responsibility under the agreement.

6. This section does not apply to, limit, or restrict agreements otherwise valid, and the procedure set forth in this section is not the exclusive method of agreement among members or between the members and the limited liability company with respect to any of the matters described.

10-32-51. Required records and information.

1. A limited liability company shall keep at its principal executive office, or at another place or places within the United States determined by the board:

a. A current list of the full name and last-known business, residence, or mailing address of each member, each governor, and the president;

b. A current list of the full name and last-known business, residence, or mailing address of each assignee of financial rights other than a secured party and a description of the rights assigned;
c. A copy of the articles of organization and all amendments to the articles;
d. Copies of any currently effective written bylaws;
e. Copies of the limited liability company's federal, state, and local income tax returns and reports, if any, for the three most recent years;
f. Financial statements required by section 10-32-52;
g. Records of all proceedings of members for the last three years;
h. Records of all proceedings of the board for the last three years;
i. Reports made to members generally within the last three years;
j. Member-control agreements described in section 10-32-50;
k. A statement of all contributions accepted under subsection 3 of section 10-32-56, including for each contribution:
   (1) The identity of the member to whom the contribution relates;
   (2) The class or series to which the contribution pertains;
   (3) The amount of cash accepted by the limited liability company or promised to be paid to the limited liability company;
   (4) A description of any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company; and
   (5) The value accorded under subsection 4 of section 10-32-56 to:
      (a) Any other property transferred or promised to be transferred to the limited liability company; and
      (b) Any services rendered to or for the benefit of the limited liability company or promised to be rendered to or for the benefit of the limited liability company;
l. A statement of all contribution agreements made under section 10-32-58, including for each contribution agreement:
   (1) The identity of the would-be contributor;
   (2) The class or series to which the future contribution pertains; and
   (3) As to each future contribution to be made, the same information as subdivision k requires for contributions already accepted;
m. A statement of all contribution allowance agreements made under section 10-32-59, including for each contribution allowance agreement:
   (1) The identity of the would-be contributor;
   (2) The class or series to which the future contribution would pertain; and
   (3) As to each future contribution allowed to be made, the same information as subdivision k requires for contributions already accepted;
n. An explanation of any restatement of value made under section 10-32-57;
o. Any written consents obtained from members under this chapter; and
p. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsections 6 through 8 of section 10-32-56.

2. A member of a limited liability company has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time, and the limited liability company shall make available within ten days after receipt by a manager of the limited liability company of the written demand, all records referred to in subsection 1. If such documents are maintained at a place outside of this state, then the limited liability company shall make such documents available at its registered office, at its principal executive office within this state, or at such other place as the limited liability company and the member may agree.
3. A member of a limited liability company who has been a member for at least six months immediately preceding the member's demand or who is the holder of record of at least five percent of all membership interests of the limited liability company has a right, upon written demand, to examine and copy, in person or by a legal representative, other limited liability company records at any reasonable time only if

the member demonstrates a proper purpose for the examination. A "proper purpose" is one reasonably related to the person's interest as a member of a limited liability company.

4. On application of the limited liability company, a court in this state may issue a protective order permitting the limited liability company to withhold portions of the records of proceedings of the board for a reasonable period of time, not to exceed twelve months, in order to prevent premature disclosure of confidential information that would be likely to cause competitive injury to the limited liability company. A protective order may be renewed for successive reasonable periods of time, each not to exceed twelve months and in total not to exceed thirty-six months, for good cause shown. In the event a protective order is issued, the statute of limitations for any action that the member might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the limited liability company, it shall award reasonable expenses, including attorney's fees and disbursements, to the member. This subsection does not limit the right of a court to grant other protective orders or impose other reasonable restrictions on the nature of the limited liability company records that may be copied or examined under subsections 2 and 3 or the use or distribution of the records by the demanding member.
5. A member who has gained access under this section to any limited liability company record may not use or furnish to another for use the limited liability company record or a portion of the contents for any purpose other than a proper purpose. Upon application of the limited liability company, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subsection.
6. Copies of the information referred to in subsection 1 must be furnished at the expense of the limited liability company. In all other cases, the limited liability company may charge the requesting party a reasonable fee to cover the expenses of providing the copy.
7. The records maintained by a limited liability company may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or microimages, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A limited liability company shall convert any of the records referred to in subsections 2 and 3 upon the request of a person entitled to inspect them, and the expense of the conversion must be borne by the person who bears the expense of copying pursuant to subsection 6. A copy of the conversion is admissible in evidence, and is acceptable for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

10-32-52. Financial statements.

1. A limited liability company shall, upon written request by a member, prepare annual financial statements within one hundred eighty days after the close of the limited liability company's fiscal year, including at least a balance sheet as of the end of each fiscal year and a statement of income for the fiscal year, prepared on the basis of accounting methods reasonable in the circumstances. The financial statements may be consolidated statements of the limited liability company and one or more of its subsidiaries.
   a. If the statements are audited by a public accountant, each copy must be accompanied by a report setting forth the opinion of the accountant on the statements.
   b. If the statements are not audited by a public accountant each copy must be accompanied by a statement of the treasurer or other person in charge of the limited liability company's financial records:

(1) Stating the reasonable belief of the person that the financial statements were prepared in accordance with accounting methods reasonable in the circumstances;
(2) Describing the basis of presentation; and
(3) Describing any respects in which the financial statements were not prepared on a basis consistent with those prepared for the previous year.

2. Upon written request by a member, a limited liability company shall furnish its most recent annual financial statements as required under subsection 1 no later than ten business days after receipt of a member's written request. "Furnish" for purposes of this subsection means that the limited liability company shall deliver or mail, postage prepaid, the financial statements to the address specified by the requesting member.

10-32-52.1. Equitable remedies for members.

If a limited liability company or a manager or governor of the limited liability company violates this chapter, a court in this state, in an action brought by a member of the limited liability company, may grant equitable relief it considers just and reasonable in the circumstances and award expenses, including attorney's fees and disbursements, to the member.

10-32-53. Actions by members.

No action may be brought in this state for violations of this chapter by a member in the right of a limited liability company or foreign limited liability company unless the plaintiff is a member at the time of the transaction of which the plaintiff complains, or the plaintiff's membership interests thereafter devolved upon the plaintiff by operation of law from a person that was a member at such time.

1. In any action thereafter instituted in the right of any limited liability company or foreign limited liability company by the member, the court having jurisdiction, upon final judgment and finding that the action was brought without reasonable cause, may require the plaintiff to pay the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in defense of such action.
2. In any action now pending or hereafter instituted or maintained in the right of any limited liability company or foreign limited liability company by the owner of less than five percent of the membership interests, unless the membership interest of such owner has a market value in excess of twenty-five thousand dollars, the limited liability company in whose right such action is brought is entitled at any time before final judgment to require the plaintiff to give security for the reasonable expenses, including attorney's fees, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable.
   a. Market value must be determined on the date the plaintiff institutes the action or, in the case of an intervenor, on the date the intervenor becomes a party to the action.
   b. The amount of the security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive.
   c. The limited liability company has recourse to such security in such amount as the court having jurisdiction determines upon the termination of the action, whether or not the court finds the action was brought without reasonable cause.

10-32-54. Rights of dissenting members.

1. Subject to a member-control agreement under section 10-32-50, a member of a limited liability company may dissent from, and obtain payment for the fair value of the member's membership interests in the event of, any of the following limited liability company actions:
   a. Unless otherwise provided in the articles, an amendment of the articles of organization, but not an amendment to a member-control agreement, which

materially and adversely affects the rights or preferences of the membership interests of the dissenting member in that it:

(1) Alters or abolishes a preferential right of the membership interests;

(2) Creates, alters, or abolishes a right in respect of the redemption of the membership interests, including a provision respecting a sinking fund for the redemption or repurchase of the membership interests;

(3) Alters or abolishes a preemptive right of the owner of the membership interests to make a contribution;

(4) Excludes or limits the right of a member to vote on a matter, or to cumulate votes, except as the right may be excluded or limited through the acceptance of contributions or the making of contribution agreements pertaining to membership interests with similar or different voting rights;

(5) Changes a member's right to resign or retire;

(6) Establishes or changes the conditions for or consequences of expulsion; or

(7) Eliminates the right to obtain payment under this subdivision;

b. A sale, lease, transfer, or other disposition of property and assets of the limited liability company that requires member approval under subsection 2 of section 10-32-108, but not including:

(1) A disposition in dissolution described in subsection 4 of section 10-32-113;

(2) A disposition pursuant to an order of a court; or

(3) A disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the members in accordance with the member's respective membership interests within one year after the date of disposition;

c. A plan of merger to which the limited liability company is a constituent organization;

d. A plan of exchange to which the limited liability company is a constituent organization as the organization whose ownership interests will be acquired by the acquiring organization if the membership interests being acquired are entitled to be voted on the plan;

e. A plan of conversion adopted by the limited liability company; or

f. Any other limited liability company action taken pursuant to a member vote with respect to which the articles of organization, a member-control agreement, the bylaws, or a resolution approved by the board directs that dissenting members may obtain payment for the dissenting members' membership interests.

2. A member may not assert dissenters' rights as to less than all the membership interests registered in the name of the member, unless the member dissents with respect to all the membership interests that are beneficially owned by another person but registered in the name of the member and discloses the name and address of each beneficial owner on which behalf the member dissents. In that event, the rights of the dissenter must be determined as if the membership interests to which the member has dissented and the other membership interests were registered in the names of different members. The beneficial owner of membership interests who is not the member may assert dissenters' rights with respect to membership interests held on behalf of the beneficial owner, and must be treated as a dissenting member under the terms of this section and section 10-32-55, if the beneficial owner submits to the limited liability company at the time of or before the assertion of the rights a written consent of the member.

3. Unless the articles, the bylaws, a member-control agreement, or a resolution approved by the board otherwise provide, the right to obtain payment under this section does not apply to the members of:

a. The surviving limited liability company in a merger with respect to membership interests of the members are not entitled to be voted on the merger and are not canceled or exchanged in the merger; or

b. The limited liability company whose membership interests will be acquired by the acquiring limited liability company in a plan of exchange with respect to

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

4. The members of a limited liability company who have a right under this section to obtain payment for their membership interests do not have a right at law or in equity to have a limited liability company action described in subsection 1 set aside or rescinded, except when the limited liability company action is fraudulent with regard to the complaining member or the limited liability company.
5. If a date is fixed according to subsection 1 of section 10-32-40.1 for the determination of members entitled to receive notice of and to vote on an action described in subsection 1, only members as of the date fixed may exercise dissenters' rights.

10-32-55. Procedures for asserting dissenters' rights.

1. For purposes of this section:
   a. "Fair value of the membership interests" means the value of the membership interests of a limited liability company immediately before the effective date of the limited liability company action referred to in subsection 1 of section 10-32-54.
   b. "Interest" means interest beginning five days after the effective date of the limited liability company action referred to in subsection 1 of section 10-32-54, up to and including the date of payment, calculated at the rate provided in section 28-20-34 for interest on verdicts and judgments.
   c. "Limited liability company" means a limited liability company whose members have obtained rights to dissent under subsection 1 of section 10-32-54 and includes any successor by merger.
   d. "Member" includes a former member when dissenters' rights exist because:
      (1) The membership of that former member terminated causing dissolution; and
      (2) The dissolved limited liability company then entered into a winding-up merger under subsection 3 of section 10-32-112.
2. If a limited liability company calls a member meeting at which any action described in subsection 1 of section 10-32-54 is to be voted upon, the notice of the meeting must inform each member of the right to dissent and must include a copy of section 10-32-54 and this section. For members who have assigned some or all of their financial rights, the description must also include the procedures under subsection 8.
3. If the proposed action must be approved by the members and the limited liability company calls a meeting of members, then a member who is entitled to dissent under section 10-32-54 and who wishes to exercise dissenters' rights shall file with the limited liability company before the vote on the proposed action a written notice of intent to demand the fair value of the membership interests owned by the member and may not vote the membership interests in favor of the proposed action.
4. After the proposed action is approved by the board and, if necessary, the members, the limited liability company shall send to all members who complied with subsection 3, and all members who did not sign or consent to a written action that gave effect to the action creating the right to obtain payment under section 10-32-54 and to all members entitled to dissent if no member vote was required, a notice that contains:
   a. The address to which a demand for payment must be sent in order to obtain payment and the date by which the demand must be received;
   b. A form to be used to certify the date on which the member acquired the membership interests and to demand payment; and
   c. A copy of section 10-32-54 and this section.
5. In order to receive the fair value of the membership interests, a dissenting member must demand payment within thirty days after the notice required by subsection 4 was given, but the dissenter retains all other rights of a member until the proposed action takes effect.
6. After the limited liability company action takes effect, or after the limited liability company receives a valid demand for payment, whichever is later, the limited liability company shall remit to each dissenting member who has complied with subsections 3,

4, and 5 the amount the limited liability company estimates to be the fair value of the membership interests, plus interest, accompanied by:

a. The limited liability company's closing balance sheet and statement of income for a fiscal year ending not more than sixteen months before the effective date of the limited liability company action, together with the latest available interim financial statements;
b. An estimate by the limited liability company of the fair value of the membership interests and a brief description of the method used to reach the estimate; and
c. A copy of section 10-32-54 and this section.

7. The limited liability company may withhold the remittance described in subsection 6 from a person who was not a member on the date the action dissented from was first announced to the public. If the dissenter has complied with subsections 3, 4, and 5, the limited liability company shall forward to the dissenter the materials described in subsection 6, a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept that amount in full satisfaction. The dissenter may decline the offer and demand payment under subsection 8. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subsections 9 and 10 apply.
8. If a dissenter believes that the amount remitted under subsections 5, 6, and 7 is less than the fair value of the membership interests plus interest, the dissenter may give written notice to the limited liability company of the dissenter's own estimate of the fair value of the membership interests, plus interest, within thirty days after the limited liability company mails the remittance under subsections 5, 6, and 7, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the limited liability company.
9. If the limited liability company receives a demand under subsection 8, it shall, within sixty days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after discussion with the limited liability company or file in court a petition requesting that the court determine the fair value of the membership interests, plus interest. The petition must be filed in the county in which the registered office of the limited liability company is located, except that a surviving foreign corporation that receives a demand relating to the membership interests of a constituent limited liability company shall file the petition in the county in this state in which the last registered office of the constituent limited liability company was located. The petition must name as parties all dissenters who have demanded payment under subsection 8 and who have not reached agreement with the limited liability company. The limited liability company shall, after filing the petition, serve all parties with a summons and copy of the petition under the North Dakota Rules of Civil Procedure. Nonresidents of this state may be served by registered or certified mail or by publication as provided by law. Except as otherwise provided, the North Dakota Rules of Civil Procedure apply to this proceeding. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court considers proper, to receive evidence on and recommend the amount of the fair value of the membership interests. The court shall determine whether the member or members in question have fully complied with the requirements of this section and shall determine the fair value of the membership interests, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the limited liability company or by a dissenter. The fair value of the membership interests as determined by the court is binding on all members, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the membership interests as determined by the court, plus interest, exceeds the amount, if any, remitted under subsections 5, 6, and 7, but is not liable to the limited liability company for the amount, if any, by which the amount, if any, remitted to the dissenter under subsection 5 exceeds the fair value of the membership interests as determined by the court, plus interest.

10. The court shall determine the costs and expenses of a proceeding under subsection 9, including the reasonable expenses and compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the limited liability company, except that the court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment is found to be arbitrary, vexatious, or not in good faith.
11. If the court finds that the limited liability company has failed to comply substantially with this section, the court may assess all fees and expenses of any experts or attorneys as the court considers equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.
12. The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.
13. When an assignment of some or all of the financial rights of a membership interest is in effect, then as to that membership interest the provisions of subsections 1 through 12 must be followed subject to the following revisions:
    a. All rights to be exercised and actions to be taken by a member under subsection 2 must be taken by the member and not by any assignee of the member's financial rights. As between the limited liability company and the assignees, the actions taken or omitted by the member bind the assignees.
    b. Instead of remitting a payment under subsection 6, the limited liability company shall forward to the dissenter member:
        (1) An offer to pay the fair value of the membership interests with that amount to be allocated among and paid to the member and the assignees of financial rights according to the terms of the assignments reflected in the required records; and
        (2) A statement of that allocation.
    c. If the dissenter member accepts the amount of the offer made under subdivision b but disputes the allocation, the dissenter shall promptly so notify the limited liability company and promptly after the notification bring an action to determine the proper allocation. The suit must be filed in the county in which the registered office of the limited liability company is located, or in the case of a surviving foreign corporation that is complying with this section following a merger or an exchange with a constituent limited liability company the suit must be filed in the county in this state in which the last registered office of the constituent limited liability company was located. The suit must name as parties the member, the limited liability company, and all assignees of the member's financial rights. Upon being served with the action, the limited liability company shall promptly pay into the court the amount offered under subdivision b and shall then be dismissed from the action.
    d. If the dissenter considers the amount offered under subdivision b inadequate, the dissenter may decline the offer and demand payment under subsection 8. If the dissenter makes demand, subsections 9 and 10 apply, with the court having jurisdiction also to determine the correctness of the allocation.
    e. If the member fails to take action under either subdivision c or d, then:
        (1) As to the limited liability company, both the member and the assignees of the member's financial rights are limited to the amount and allocation offered under subdivision b; and
        (2) The limited liability company discharges its obligation of payment by making payment according to the amount and allocation offered under subdivision b.

10-32-56. Authorization, form, and acceptance of contributions.

1. Subject to any restrictions in the articles of organization or a member-control agreement and only when authorized by the board or pursuant to a member-control agreement, a limited liability company may accept contributions under subsections 2

and 3, make contribution agreements under section 10-32-58, and make contribution allowance agreements under section 10-32-59.

2. Subject to subsection 3, a person may make a contribution to a limited liability company.
3. No purported contribution is to be treated or considered as a contribution, unless:
   a. The board accepts the contribution on behalf of the limited liability company and in that acceptance describes the contribution and states the value being accorded to the contribution; and
   b. The fact of contribution and the contribution's accorded value are both reflected in the required records of the limited liability company.
4. The determinations of the board as to the amount or fair value or the fairness to the limited liability company of the contribution accepted or to be accepted by the limited liability company or the terms of payment or performance, including under a contribution agreement in section 10-32-58, and a contribution allowance agreement in section 10-32-59, are presumed to be proper if they are made in good faith and on the basis of accounting methods, or a fair valuation or other method, reasonable in the circumstances. Governors who are present and entitled to vote, and who, intentionally or without reasonable investigation, fail to vote against approving a consideration that is unfair to the limited liability company, or overvalue property or services received or to be received by the limited liability company as a contribution, are jointly and severally liable to the limited liability company for the benefit of the then members who did not consent to and are damaged by the action, to the extent of the damages of those members. A governor against whom a claim is asserted pursuant to this subsection, except in case of knowing participation in a deliberate fraud, is entitled to contribution on an equitable basis from other governors who are liable under this subsection.
5. All the membership interests of a limited liability company must:
   a. Be of one class, without series, unless a member-control agreement or the articles of organization establish, or authorize the board to establish, more than one class or series within classes;
   b. Be ordinary membership interests entitled to vote as provided in section 10-32-40.1, and have equal rights and preferences in all matters not otherwise provided for by the board unless and to the extent the articles of organization or a member-control agreement fixes the relative rights and preferences of different classes and series; and
   c. Share profits and losses as provided in section 10-32-36 and be entitled to distributions as provided in sections 10-32-60 and 10-32-61 and subdivision c of subsection 1 of section 10-32-131.
6. Subject to any restrictions in the articles of organization or a member-control agreement, the power granted in subsection 5 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series established in the articles of organization, in a member-control agreement, or by resolution of the board.
   a. A statement signed by a manager setting forth the name of the limited liability company and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed with the secretary of state together with the fees provided in section 10-32-150 before the acceptance of any contributions for which the resolution creates rights or preferences not set forth in the articles of organization or a member-control agreement.
   b. The resolution is effective when the statement has been filed with the secretary of state unless the statement specifies a later effective date within thirty days of filing the statement with the secretary of state.
7. Without limiting the authority granted in this section, a limited liability company may have membership interests of a class or series:

a. Subject to the right of the limited liability company to redeem any of those membership interests at the price fixed for their redemption by the articles of organization or by the board;
b. Entitling the members to cumulative, partially cumulative, or noncumulative distributions;
c. Having preference over any class or series of membership interests for the payment of distributions of any or all kinds;
d. Convertible into membership interests of any other class or any series of the same or another class; or
e. Having full, partial, or no voting rights, except as provided in section 10-32-17.

10-32-57. Restatement of value of previous contributions.

1. As used in this section, an "old" contribution is a contribution reflected in the required records of a limited liability company before the time the limited liability company accepts a new contribution.
2. Whenever a limited liability company accepts a new contribution, the board shall restate, as required by this section, the value of all old contributions.
3. Unless otherwise provided in the articles of organization or a member-control agreement, this subsection states the method of restating the value of old contributions that pertain to the same series or class to which the new contribution pertains:
   a. State the value the limited liability company has accorded to the new contribution under subdivision a of subsection 3 of section 10-32-56;
   b. Determine what percentage the value stated under subdivision a will constitute, after the restatement required by this subsection, of the total value of all contributions that pertain to the particular series or class to which the new contribution pertains;
   c. Divide the value stated under subdivision a by the percentage determined under subdivision b, yielding the total value, after the restatement required by this subsection, of all contributions pertaining to the particular series or class;
   d. Subtract the value stated under subdivision a from the value determined under subdivision c, yielding the total value, after the restatement required by this subsection, of all the old contributions pertaining to the particular series or class;
   e. Subtract the value, as reflected in the required records before the restatement required by this subsection, of the old contributions from the value determined under subdivision d, yielding the value to be allocated among and added to the old contributions pertaining to the particular series or class; and
   f. Allocate the value determined under subdivision e proportionally among the old contributions pertaining to the particular series or class, add the allocated values to those old contributions, and change the required records accordingly.

   The values determined under subdivision e and allocated and added under subdivision f may be positive, negative, or zero.
4. Unless otherwise provided in the articles of organization or a member-control agreement, this subsection states the method of restating the value of old contributions that do not pertain to the same series or class to which the new contribution pertains:
   a. Determine the percentage by which the restatement under subsection 3 has changed the total contribution value reflected in the required records for the series or class to which the new contribution pertains; and
   b. As to each old contribution that does not pertain to the same series or class to which the new contribution pertains, change the value reflected in the required records by the percentage determined under subdivision a. The percentage determined under subdivision a may be positive, negative, or zero.
5. If a limited liability company accepts more than one contribution pertaining to the same series or class at the same time, then for the purpose of the restatement required by

this section the limited liability company may consider all those new contributions as if they were a single contribution.

10-32-58. Contribution agreements.

1. A contribution agreement, whether made before or after the formation of the limited liability company, is not enforceable against the would-be contributor unless it is in writing and signed by the would-be contributor.
2. Unless otherwise provided in the contribution agreement, or unless all of the would-be contributors and, if in existence, the limited liability company, consent to a shorter or longer period, a contribution agreement is irrevocable for a period of six months.
3. A contribution agreement, whether made before or after the formation of a limited liability company, must be paid or performed in full at the time or times, or in the installments, if any, specified in the contribution agreement. In the absence of a provision in the contribution agreement specifying the time at which the contribution is to be paid or performed, the contribution must be paid or performed at the time or times determined by the board, but a call made by the board for payment or performance on contributions must be uniform for all membership interests of the same class or for all membership interests of the same series.
4. Unless otherwise provided in the contribution agreement, in the event of default in the payment or performance of an installment or call when due, the limited liability company may proceed to collect the amount due in the same manner as a debt due the limited liability company. If a would-be contributor does not make a required contribution of property or services, the limited liability company shall require the would-be contributor to contribute cash equal to that portion of the value, as stated in the limited liability company required records, of the contribution that has not been made.
5. If the amount due under a contribution agreement remains unpaid for a period of twenty days after the written notice of demand for payment has been given to the delinquent would-be contributor, the membership interests that were subject to the contribution agreement may be offered for sale by the limited liability company for a price in money equaling or exceeding the sum of the full balance owed by the delinquent would-be contributor plus the expenses incidental to the sale.
   a. If the membership interests that were subject to the contribution agreement are sold pursuant to this subsection, the limited liability company shall pay to the delinquent would-be contributor or to the delinquent would-be contributor's representatives the lesser of:
      (1) The excess of net proceeds realized by the limited liability company over the sum of the amount owed by the delinquent would-be contributor plus the expenses incidental to the sales; or
      (2) The amount actually paid by the delinquent would-be contributor.
   b. If the membership interests that were subject to the contribution agreement are not sold pursuant to this subsection, the limited liability company may collect the amount due in the same manner as a debt due to the limited liability company or cancel the contribution agreement pursuant to subsection 6.
6. If the amount due under a contribution agreement remains unpaid for a period of twenty days after written notice of demand for payment has been given to the delinquent would-be contributor and the membership interests that were subject to the contribution agreement have not been sold pursuant to subsection 5, the limited liability company:
   a. May cancel the contribution agreement;
   b. May retain the portion of the contribution agreement price actually paid that does not exceed ten percent of the contribution agreement; and
   c. Shall refund to the delinquent would-be contributor or the delinquent would-be contributor's legal representatives that portion of the contribution agreement price actually paid that exceeds ten percent of the contribution price.

7. Unless otherwise provided in the articles of organization or a member-control agreement, a would-be contributor's rights under a contribution agreement may not be assigned, in whole or in part, to a person who was not a member at the time of the assignment, unless all the members approve the assignment by unanimous written consent.

10-32-59. Contribution allowance agreements.

1. Subject to any restrictions in the articles of organization or a member-control agreement, a limited liability company may enter into contribution allowance agreements under the terms, provisions, and conditions fixed by the board or by a manager pursuant to board authorization.
2. Any contribution allowance agreement must be in writing, and the writing must state in full, summarize, or incorporate by reference all of the agreement's terms, provisions, and conditions.
3. Unless otherwise provided in the articles of organization or a member-control agreement, a would-be contributor's rights under a contribution allowance agreement may not be assigned in whole or in part to a person who was not a member at the time of the assignment, unless all of the members approve the assignment by unanimous written consent.

10-32-60. Sharing of distributions.

Unless otherwise provided in the articles of organization, in a member-control agreement, or by the board under subsections 5 through 7 of section 10-32-56, distributions of cash or other assets of a limited liability company, including distributions on termination of the limited liability company, must be allocated in proportion to the value of the contributions of the members reflected in the required records.

10-32-61. Interim distributions.

Except as provided in the articles of organization or a member-control agreement, a member is entitled to receive distributions before the limited liability company's termination only as specified in the bylaws or by the act of the board.

10-32-62. Distribution in kind.

Except as provided in the articles of organization or a member-control agreement:

1. A member, regardless of the nature of the member's contribution, has no right to demand and receive any distribution from a limited liability company in any form other than cash.
2. A member may not be compelled to accept a distribution of any asset in kind from a limited liability company to the extent the percentage of the asset distributed to the member exceeds a percentage of that asset that is equal to the percentage in which the member shares in distributions from the limited liability company.

10-32-63. Status as a creditor.

At the time a member becomes entitled to receive a distribution, the member has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.

10-32-64. Limitations on distribution.

1. The board may authorize and cause the limited liability company to make a distribution only if the board determines, in accordance with subsection 2, that the limited liability company will be able to pay its debts in the ordinary course of business after making the distribution and the board does not know before the distribution is made that the determination was or has become erroneous.
   a. The limited liability company may make the distribution if it is able to pay its debts in the ordinary course of business after making the distribution.

b. The effect of a distribution on the ability of the limited liability company to pay its debts in the ordinary course of business after making the distribution must be measured in accordance with subsection 3.
c. The right of the board to authorize, and the limited liability company to make, distributions may be prohibited, limited, or restricted by the articles of organization, a member-control agreement, the bylaws, or an agreement.

2. A determination that the limited liability company will be able to pay its debts in the ordinary course of business after the distribution is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-32-86 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. No liability under section 10-32-66 or 10-32-86 will accrue if the requirements of this subsection have been met.
3. In the case of a distribution made by a limited liability company in connection with a redemption of its membership interests, the effect of the distribution must be measured as of the date on which money or other property is transferred, or indebtedness payable in installments or otherwise is incurred, by the limited liability company, or as of the date on which the member ceases to be a member of the limited liability company, whichever is the earliest. The effect of any other distribution must be measured as of the date of its authorization if payment occurs one hundred twenty days or less following the date of authorization, or as of the date of payment if payment occurs more than one hundred twenty days following the date of authorization. The provisions of chapter 13-02.1 do not apply to distributions made by a limited liability company governed by this chapter.
4. Indebtedness of a limited liability company incurred or issued in a distribution in accordance with this section to a member who as a result of the transaction is no longer a member is on a parity with the indebtedness of the limited liability company to its general unsecured creditors, except to the extent subordinated, agreed to, or secured by a pledge of any assets of the limited liability company or a related organization, or subject to any other agreement between the limited liability company and the member.
5. A distribution may be made to the owners of a class or series of membership interests only if:
   a. All amounts payable to the owners of membership interests having a preference for the payment of that kind of distribution, other than those owners who give notice to the limited liability company of their agreement to waive their rights to that payment, are paid; and
   b. The payment of the distribution does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of liquidation to the owners of membership interests having preferential rights, unless the distribution is made to those members in the order and to the extent of their respective priorities or the owners of membership interests who do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.
6. A determination that the payment of the distribution described in subsection 5 does not reduce the remaining net assets of the limited liability company below the aggregate preferential amount payable in the event of termination to the owners of membership interests having preferential rights is presumed to be proper if the determination is made in compliance with the standard of conduct provided in section 10-32-86 on the basis of financial information prepared in accordance with accounting methods, or a fair valuation or other method, reasonable in the circumstances. Liability under section 10-32-66 or 10-32-86 will not arise if the requirements of this subsection are met.
7. If the money or property available for distribution is insufficient to satisfy all preferences, the distributions must be made pro rata according to the order of priority of preferences by classes and by series within those classes unless those owners who

do not receive distributions in that order give notice to the limited liability company of their agreement to waive their rights to that distribution.

10-32-65. Liability of members for illegal distributions.

1. A member who receives a distribution made in violation of section 10-32-64 is liable to the limited liability company, its receiver or other person winding up its affairs, or a governor under subsection 2 of section 10-32-66, but only to the extent that the distribution received by the member exceeded the amount that properly could have been paid under section 10-32-64.
2. An action may not be commenced under this section more than two years from the date of the distribution.

10-32-66. Liability of governors for illegal distributions.

1. In addition to any other liabilities, a governor who is present at a meeting and fails to vote against, or who consents in writing to, a distribution made in violation of subsection 1 or 4 of section 10-32-64 or a restriction contained in the articles of organization, a member-control agreement, the bylaws, or an agreement, and fails to comply with the standard of conduct provided in section 10-32-86, is liable to the limited liability company, the limited liability company's receiver, or any other person winding up the limited liability company's affairs, jointly and severally with all other governors so liable and to other governors under subsection 3, but only to the extent that the distribution exceeded the amount that properly could have been paid under section 10-32-64.
2. A governor against whom an action is brought under this section with respect to a distribution may implead in that action all members who received the distribution and may compel pro rata contribution from them in that action to the extent provided in subsection 1 of section 10-32-65.
3. A governor against whom an action is brought under this section with respect to a distribution may implead in that action all other governors who voted for or consented in writing to the distribution and may compel pro rata contribution from them in that action.
4. An action may not be commenced under this section more than two years from the date of the distribution.

10-32-67. Organization.

1. If the first board is not named in the articles of organization, the organizers may elect the first board or may act as governors with all of the powers, rights, duties, and liabilities of governors, until governors are elected or until a contribution is accepted, whichever occurs first.
2. After the issuance of the certificate of organization, the organizers or the governors named in the articles of organization shall hold an organizational meeting at the call of a majority of the organizers or of the governors named in the articles, or take written action, for the purposes of transacting business and taking actions necessary or appropriate to complete the organization of the limited liability company, including, without limitation, amending the articles, electing governors, adopting the bylaws, electing managers, adopting banking resolutions, authorizing or ratifying the purchase, lease, or other acquisition of suitable space, furniture, furnishings, supplies, and materials, approving a limited liability company seal, adopting a fiscal year for the limited liability company, contracting to receive and accept contributions, and making any appropriate tax elections.
    a. If a meeting is held, the person or persons calling the meeting shall give at least three days' notice of the meeting to each organizer or governor named, stating the date, time, and place of the meeting.

b. Organizers and governors may waive notice of an organizational meeting in the same manner a governor may waive notice of meetings of the board under subsection 5 of section 10-32-80.

10-32-68. Bylaws.

1. A limited liability company may have bylaws, which may be known as an operating agreement. The bylaws may contain any provision relating to the management of the business or the regulation of the affairs of the limited liability company not inconsistent with section 10-32-69 or any other provision of law or the articles of organization, including:
   a. The number of governors and the qualifications, manner of election, powers, duties, and compensation, if any, of governors;
   b. The qualifications of members;
   c. Different classes of membership;
   d. The manner of admission, withdrawal, suspension, and expulsion of members;
   e. Property, voting, and other rights and privileges of members;
   f. The appointment and authority of committees;
   g. The appointment or election, duties, compensation, and tenure of offices;
   h. The time, place, and manner of calling, conducting, and giving notice of member, board, and committee meetings, or of conducting mail ballots;
   i. The making of reports and financial statements to members; or
   j. The number establishing a quorum for meetings of members and the board.
2. Unless reserved by the articles to members with voting rights, initial bylaws may be adopted by a majority of the organizers or by the first board pursuant to section 10-32-67. Unless reserved by the articles of organization or a member-control agreement to the members with voting rights, the power to adopt, amend, or repeal the bylaws is vested in the board. The power of the board is subject to the power of the members, exercisable in the manner provided in subsection 4, to adopt, amend, or repeal the bylaws adopted, amended, or repealed by the board.
3. The bylaws may be amended in the manner provided in the articles or bylaws.
   a. In the absence of such a provision, the following bylaw amendments are subject to approval by the members with voting rights:
      (1) Fixing a quorum for meetings of members;
      (2) Prescribing procedures for:
         (a) Removing governors;
         (b) Filling vacancies in the board;
         (c) Fixing the number of governors or their classifications, qualifications, or terms of office;
      (3) Removing or adding members; or
      (4) Increasing or decreasing the vote required for member actions.
4. Unless the articles or bylaws provide otherwise, members owning five percent or more of the voting power of the members entitled to vote may propose a resolution for action by the members to adopt, amend, or repeal the bylaws adopted, amended, or repealed by the board.
   a. The resolution must set forth the provision or provisions proposed for adoption, amendment, or repeal.
   b. The limitations and procedures for submitting, considering, and adopting the resolution are the same as provided in subsections 2 through 4 of section 10-32-16 for amendment of the articles of organization.

10-32-69. Board.

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

2. The owners of the membership interests entitled to vote for governors of the limited liability company may, by unanimous affirmative vote, take any action that this chapter requires or permits the board to take. As to an action taken by the members in that manner:
    a. The governors have no duties, liabilities, or responsibilities as governors under this chapter with respect to or arising from the action;
    b. The members collectively and individually have all of the duties, liabilities, and responsibilities of governors under this chapter with respect to and arising from the action;
    c. If the action relates to a matter required or permitted by this chapter or by any other law to be approved or adopted by the board, either with or without approval or adoption by the members, the action is considered to have been approved or adopted by the board; and
    d. A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board is satisfied by a statement that the members have taken the action under this subsection.

10-32-70. Number of governors.

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

10-32-71. Qualifications and election of governors.

Governors must be individuals. The method of election and any additional qualifications for governors may be imposed by or in the manner provided in the articles, a member-control agreement, or the bylaws.

10-32-72. Terms of governors.

1. With respect to length of terms:
    a. Unless fixed terms are provided for in the articles, a member-control agreement, or the bylaws, a governor serves for an indefinite term that expires at the next regular meeting of the members.
        (1) A fixed term of a governor, other than an ex officio governor, must not exceed five years.
        (2) An ex officio governor serves as long as the governor holds the office or position designated in the articles or bylaws.
    b. Unless the articles, the bylaws, or a member-control agreement provides otherwise, a governor holds office until expiration of the term for which the governor was elected or appointed and until a successor is elected and has qualified or until the earlier death, resignation, removal, or disqualification of the governor.
    c. A decrease in the number of governors or term of office does not shorten an incumbent governor's term.
    d. Except as provided in the articles, a member-control agreement, or the bylaws, the term of a governor filling a vacancy expires at the end of the unexpired term that the governor is filling.
2. The articles, a member-control agreement, or the bylaws may provide for staggering the terms of governors by dividing the total number of governors into groups.

10-32-73. Acts not void or voidable.

The expiration of a governor's term with or without the election of a qualified successor does not make prior or subsequent acts of the governors or the board void or voidable.

10-32-74. Compensation of governors.

Subject to any limitations in the articles, a member-control agreement, or the bylaws, the board may fix the compensation of governors.

10-32-75. Classification of governors.

Governors may be divided into classes as provided in the articles, a member-control agreement, or the bylaws.

10-32-76. Voting for governors and cumulative voting.

1. Unless otherwise provided in the articles or a member-control agreement and subject to subsection 2, governors are elected by a plurality of the voting power of the membership interests present and entitled to vote on the election of governors at a meeting at which a quorum is present.
2. Unless the articles of organization or a member-control agreement provides that there is no cumulative voting, each member entitled to vote for governors has the right to cumulate voting power in the election of governors by giving written notice of intent to cumulate voting power to any manager of the limited liability company before the meeting or to the presiding manager at the meeting at which the election is to occur at any time before the election of governors at the meeting, in which case:
   a. The presiding manager at the meeting shall announce, before the election of governors, that members shall cumulate their voting power; and
   b. Each member shall cumulate that member's voting power either by casting for one candidate the amount of voting power equal to the number of governors to be elected multiplied by the voting power represented by the membership interests owned by that member, or by distributing all of that voting power on the same principle among any number of candidates.
3. An amendment to the articles, a member-control agreement, or the bylaws which has the effect of denying, limiting, or modifying the right to cumulative voting for members provided in this section may not be adopted if the votes of a proportion of the voting power sufficient to elect a governor at an election of the entire board under cumulative voting are cast against the amendment.

10-32-77. Resignation of governors.

1. A governor may resign at any time by giving written notice to the limited liability company. The resignation is effective without acceptance when the notice is given to the limited liability company, unless a later effective time is specified in the notice.
2. If a resignation is made effective at a later time, the board may fill the pending vacancy before the effective time if the board provides that the successor does not take office until the effective time.

10-32-78. Nonjudicial removal of governors.

1. The provisions of this section apply unless modified by the articles of organization, a member-control agreement, or the bylaws.
2. A governor may be removed at any time, with or without cause, if:
   a. The governor was named by the board to fill a vacancy;
   b. The members have not elected governors in the interval between the time of the appointment to fill a vacancy and the time of the removal; and
   c. A majority of the remaining governors present affirmatively votes to remove the governor.
3. Any one or all of the governors may be removed at any time, with or without cause, by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote at an election of governors.
   a. If less than the entire board is to be removed, no one of the governors may be removed if the votes cast against the governor's removal which, if then cumulatively voted at the election of the entire board, or if there be classes of

governors at an election of the class of governors of which the governor is a part, would be sufficient to elect the governor.

b. If a governor has been elected solely by the holders of a class or series of membership interests as stated in the articles, any member-control agreement, or the bylaws, then that governor may be removed only by the affirmative vote of the holders of a majority of the voting power of all membership interests of that class or series entitled to vote at an election of that governor.

4. New governors may be elected at a meeting at which governors are removed.

10-32-78.1. Removal of governors by judicial proceeding.

1. The district court of the county where the principal executive office of a limited liability company is located may remove any governor of the limited liability company from office in a proceeding commenced either by the limited liability company, its members holding at least ten percent of the voting power of any class of membership interests, or the attorney general, if the court finds that:
   a. The governor engaged in fraudulent, dishonest conduct or gross abuse of authority or discretion with respect to the limited liability company or a final judgment has been entered finding the governor violated section 10-32-86; and
   b. Removal is in the best interest of the limited liability company.
2. The court that removes a governor may bar the governor from serving on the board for a period prescribed by the court.
3. If members or the attorney general commence a proceeding under subsection 1, then the limited liability company shall be made a party defendant.

10-32-79. Board vacancies.

1. Unless different rules for filling vacancies are provided for in the articles, a member-control agreement, or the bylaws:
   a. Vacancies on the board resulting from the death, resignation, removal, or disqualification of a governor may be filled by the affirmative vote of a majority of the remaining governors, even though less than a quorum; and
   b. Vacancies on the board resulting from newly created governorships may be filled by the affirmative vote of a majority of the governors serving at the time of the increase.
2. Each governor elected under this section to fill a vacancy holds office until a qualified successor is elected by the members at the next regular or special meeting of the members.
3. A vacancy that will occur at a specific later date may be filled before the vacancy occurs but the new governor may not take office until the vacancy occurs.

10-32-80. Board meetings.

1. Meetings of the board may be held from time to time as provided in the articles of organization, a member-control agreement, or the bylaws at any place within or without the state that the board may select or by any means described in subsection 2.
   a. If the articles, bylaws, or board fails to select a place for a meeting, the meeting must be held at the principal executive office, unless the articles, a member-control agreement, or the bylaws provide otherwise.
   b. The board may determine under subsection 2 that a meeting of the board shall be held solely by means of remote communication.
   c. Participation in a meeting by a means set forth in subsection 2 constitutes presence in person at the meeting.
2. Any meeting among governors may be conducted:
   a. Solely by any one or more means of remote communication through which all of the governors may participate with each other during the meeting:
      (1) If the same notice is given of the meeting as would be required by subsection 3; and

(2) If the number of governors participating in the meeting is a quorum at a meeting.

b. By means of conference telephone or, if authorized by the board, by such other means of remote communication, in each case, through which the governor, other governors so participating, and all governors physically present at the meeting may participate with each other during the meeting.

3. Unless the articles of organization, a member-control agreement, or the bylaws provide for a different time period, a governor may call a board meeting by giving at least ten days' notice or, in the case of organizational meetings under subsection 2 of section 10-32-67, at least three days' notice to all governors of the date, time, and place of the meeting.
   a. The notice need not state the purpose of the meeting unless the articles, a member-control agreement, or the bylaws otherwise require.
   b. Any notice to a governor given under any provision of this chapter, the articles, a member-control agreement, or the bylaws by a form of electronic communication consented to by the governor to whom the notice is given is effective when given.
   c. Consent by a governor to notice given by electronic communication may be given in writing or by authenticated electronic communication.
      (1) Any consent so given may be relied upon until revoked by the governor.
      (2) However, no revocation affects the validity of any notice given before receipt of revocation of the consent.
4. If the date, time, and place of a board meeting are provided in the articles, a member-control agreement, or the bylaws, or announced at a previous meeting of the board, notice is not required. Notice of an adjourned meeting need not be given other than by announcement at the meeting at which adjournment is taken.
5. A governor may waive notice of a meeting of the board. A waiver of notice by a governor entitled to notice is effective whether given before, at, or after the meeting, and whether given in writing, by authenticated electronic communication, or by attendance. Attendance by a governor at a meeting is a waiver of notice of that meeting, except when 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.

10-32-81. Absent governors.

If the articles of organization, a member-control agreement, or the bylaws so provide, a governor may give advance written consent or opposition to a proposal to be acted on at a board meeting. If the governor is not present at the meeting, consent or opposition to a proposal does not constitute presence for purposes of determining the existence of a quorum, but consent or opposition must be counted as the vote of a governor present at the meeting in favor of or against the proposal and must be entered in the minutes or other record of action at the meeting if the proposal acted on at the meeting is substantially the same or has substantially the same effect as the proposal to which the governor has consented or objected.

10-32-82. Quorum of governors.

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

10-32-83. Act of the board.

The board shall take action by the affirmative vote of the greater of a majority of governors present at a duly held meeting at the time the action is taken or a majority of the minimum proportion or number of governors that would constitute a quorum for the transaction of business at a meeting, except if this chapter, a member-control agreement, or the articles require the affirmative vote of a larger proportion or number. If a member-control agreement or the articles require a larger proportion or number than is required by this chapter for a particular action, the member-control agreement or the articles control.

10-32-84. Action without a meeting by governors.

1. An action required or permitted to be taken at a board meeting may be taken by written action signed, or consented to by authenticated electronic communication, by all of the governors. If the articles or a member-control agreement so provide, any action, other than an action requiring member approval, may be taken by written action signed, or consented to by authenticated electronic communication, by the number of governors which would be required to take the same action at a meeting of the board at which all governors were present.
2. The written action is effective when signed, or consented to by authenticated electronic communication, by the required number of governors, unless a different effective time is provided in the written action.
3. When written action is permitted to be taken by less than all governors, 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.

10-32-85. Board committees.

1. A resolution approved by the affirmative vote of a majority of the governors then holding office may establish committees having the authority of the board in the management of the business of the limited liability company only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent governors or other independent persons to consider legal rights or remedies of the limited liability company and whether those rights and remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board.
2. Committee members must be individuals. Unless the articles, a member-control agreement, or the bylaws provide for a different membership or manner of appointment, a committee consists of one or more individuals, who need not be governors, appointed by the board.
3. Sections 10-32-80 through 10-32-84 apply to committees and members of committees to the same extent as those sections apply to the board and governors.
4. Minutes, if any, of committee meetings must be made available upon request to members of the committee and to any governor.
5. The establishment of, delegation of authority to, and action by a committee does not alone constitute compliance by a governor with the standard of conduct set forth in section 10-32-86.
6. Committee members are considered to be governors for purposes of sections 10-32-86, 10-32-87, and 10-32-99.
7. Unless otherwise provided in the articles, the bylaws, or the resolution of the board establishing the committee, a committee may create one or more subcommittees, each consisting of one or more members of the committee, and may delegate to a subcommittee any or all of the authority of the committee. In this chapter, unless the language or the context clearly indicates that a different meaning is intended:
   a. Any reference to a committee is deemed to include a subcommittee; and
   b. Any reference to a committee member is deemed to include a subcommittee member.

10-32-86. Standard of conduct for governors.

1. A governor shall discharge the duties of the position of governor in good faith, in a manner the governor reasonably believes to be in the best interests of the limited liability company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. A person who so performs those duties is not liable by reason of being or having been a governor of the limited liability company.
2. A governor is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:
   a. One or more managers or employees of the limited liability company whom the governor reasonably believes to be reliable and competent in the matters presented;
   b. Counsel, public accountants, or other persons as to matters that the governor reasonably believes are within the person's professional or expert competence; or
   c. A committee of the board upon which the governor does not serve, duly established in accordance with section 10-32-85, as to matters within its designated authority, if the governor reasonably believes the committee to merit confidence.
3. Subsection 2 does not apply to a governor who has knowledge concerning the matter in question that makes the reliance otherwise permitted by subsection 2 unwarranted.
4. A governor who is present at a meeting of the board when an action is approved by the affirmative vote of a majority of the governors present is presumed to have assented to the action approved, unless the governor:
   a. 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, in which case the governor is not considered to be present at the meeting for any purpose of this chapter;
   b. Votes against the action at the meeting; or
   c. Is prohibited from voting on the action by the articles; by the bylaws; as the result of the decision to approve, ratify, or authorize a transaction pursuant to section 10-32-87; or by a conflict of interest policy adopted by the board.
5. A governor's personal liability to the limited liability company or its members for monetary damages for breach of fiduciary duty as a governor may be eliminated or limited in the articles of organization or a member-control agreement. Neither the articles nor a member-control agreement may eliminate or limit the liability of a governor:
   a. For any breach of the governor's duty of loyalty to the limited liability company or its members;
   b. For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
   c. Under section 10-32-66;
   d. For any transaction from which the governor derived an improper personal benefit; or
   e. For any act or omission occurring before the date when the provision in the articles of organization or a member-control agreement eliminating or limiting liability becomes effective.
6. In discharging the duties of the position of governor, a governor may, in considering the best interests of the limited liability company, consider the interests of the limited liability company's employees, customers, suppliers, and creditors, the economy of the state and nation, community and societal considerations, and the long-term as well as short-term interests of the limited liability company and its members, including the possibility that these interests may be best served by the continued independence of the limited liability company.

10-32-87. Governor conflicts of interest.

1. A contract or other transaction between a limited liability company and one or more of its governors or a member of the family of the governor; a director of a related organization or a member of the family of a director of a related organization; or an organization in or of which the limited liability company's governor or a member of the family of the governor is a governor, director, manager, officer, or legal representative or has a material financial interest is not void or voidable because the governor or the other organization is a party or because the governor is present at the meeting of the members or the board or a committee at which the contract or transaction is authorized, approved, or ratified, if at least one of the requirements of subsection 2 is satisfied.
2. The contract or transaction described in subsection 1 is not void or voidable if:
   a. The contract or transaction was, and the person asserting the validity of the contract or transaction sustains the burden of establishing that the contract or transaction was, fair and reasonable as to the limited liability company at the time it was authorized, approved, or ratified;
   b. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the members, whether entitled to vote, and the contract or transaction is approved in good faith by:
      (1) The owners of two-thirds of the voting power of membership interests entitled to vote which are owned by persons other than the interested governor; or
      (2) The unanimous affirmative vote of all members, whether entitled to vote;
   c. The material facts as to the contract or transaction and as to the governor's interest are fully disclosed or known to the board or a committee, and the board or committee authorizes, approves, or ratifies the contract or transaction in good faith by a majority of the governors or committee members currently holding office:
      (1) However, the interested governor or governors may not vote and are not considered for purposes of a quorum.
      (2) If as a result, the number of remaining governors is not sufficient to reach a quorum, then a quorum for the purpose of considering the contract or transaction is the number of remaining governors or committee members, not counting any vote that the interested governor might otherwise have, and not counting the governor in determining the presence of a quorum; or
   d. The contract or transaction is a distribution described in subsection 1 of section 10-32-64 or a merger or exchange described in subsection 1 or 2 of section 10-32-100.
3. For purposes of this section:
   a. A governor does not have a material financial interest in a resolution fixing the compensation of the governor or fixing the compensation of another governor as a governor, manager, employee, or agent of the limited liability company, even though the first governor is also receiving compensation from the limited liability company; and
   b. A governor has a material financial interest in each organization in which the governor, or a member of the family of the governor, has a material financial interest. A "member of the family" of the governor is a spouse, parent, child, child of a spouse, brother, sister, or the spouse of any of these individuals.
4. The procedures described under subdivisions a, b, and c of subsection 2 are not required if the contract or transaction is between related parties.

10-32-88. Managers.

1. The managers of a limited liability company must be individuals eighteen years of age or more, exercising the functions of the offices and:
   a. Must include a president, a secretary, and a treasurer, however designated; and

b. May include one or more vice presidents, however designated, as may be provided in the bylaws.

2. Unless the articles or the bylaws provide that the members with voting rights may elect the officers:
   a. Each officer must be elected by the board at the time and in the manner as may be provided in the bylaws.
   b. To the extent authorized in the articles, the bylaws, or a resolution approved by the affirmative vote of a majority of the governors present, and subject to any member-control agreement, the president may appoint one or more managers, other than the treasurer.
3. Unless otherwise provided, president shall mean chief executive officer or chief manager and treasurer shall mean chief financial manager.

10-32-89. Duties of managers and agents.

Unless otherwise provided by the articles of organization, a member-control agreement, the bylaws, or a resolution adopted by the board which is not inconsistent with the articles, a member-control agreement, or the bylaws, the managers have the following duties:

1. The president shall:
   a. Have general active management for the business of the limited liability company;
   b. When present, preside at all meetings of the board and of the members;
   c. See that all orders and resolutions of the board are carried into effect;
   d. Sign and deliver in the name of the limited liability company any deeds, mortgages, bonds, contracts, or other instruments pertaining to the business of the limited liability company, except if the authority to sign and deliver is required by law to be exercised by another person or is expressly delegated by the articles, a member-control agreement, the bylaws, or the board to some other manager or agent of the limited liability company;
   e. Maintain records of and, whenever necessary, certify all proceedings of the board and members; and
   f. Perform other duties prescribed by the board.
2. The vice president, if any, or if there is more than one, the vice presidents in the order determined by the board shall:
   a. In the absence or disability of the president, perform the duties and exercise the powers of the president; and
   b. Perform other duties and have other powers as the board may from time to time prescribe.
3. The treasurer shall:
   a. Keep accurate financial records for the limited liability company;
   b. 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;
   c. Endorse for deposit all notes, checks, and drafts received by the limited liability company as ordered by the board, making proper vouchers for them;
   d. Disburse limited liability company funds and issue checks and drafts in the name of the limited liability company, as ordered by the board;
   e. Give to the president and the board, whenever requested, an account of all transactions by the treasurer and of the financial condition of the limited liability company; and
   f. Perform other duties prescribed by the board or by the president.
4. The secretary, if any, shall:
   a. Attend all meetings of the board, all meetings of the members, and, when required, all meetings of standing committees;
   b. Record all proceedings of the meetings;
   c. Give, or cause to be given, notice of all meetings of the members and meetings of the board; and
   d. Perform other duties prescribed by the board.

5. Any other managers and agents of the limited liability company, as between the managers and agents and the limited liability company, shall perform the duties in the management of the limited liability company as may be provided in the articles, a member-control agreement, or the bylaws, or as may be determined by resolution of the board not inconsistent with the articles, a member-control agreement, or the bylaws.

10-32-90. Other managers.

Repealed by S.L. 1997, ch. 103, § 248.

10-32-91. Multiple managerial positions.

Any number of managerial positions or functions of those positions may be held or exercised by the same individual. If a record must be signed by individuals holding different positions or functions and an individual holds or exercises more than one of those positions or functions, that individual may sign the record in more than one capacity, but only if the record indicates each capacity in which the individual signs.

10-32-92. Managers deemed elected.

In the absence of an election or appointment of managers by the board, the individual or individuals exercising the functions of the principal managers of the limited liability company are deemed to have been elected to those offices.

10-32-93. Contract rights.

The election or appointment of an individual as a manager or agent does not, of itself, create contract rights. However, a limited liability company may enter into a contract with a manager or agent. The resignation or removal of the manager or agent is without prejudice to any contractual rights or obligations.

10-32-94. Resignation, removal, and vacancies.

1. A manager may resign at any time by giving written notice to the limited liability company. The resignation is effective without acceptance when the notice is given to the limited liability company, unless a later effective date is specified in the notice.
2. With respect to removal:
   a. Except as otherwise provided in the articles, the bylaws, or a member-control agreement, a manager may be removed at any time, with or without cause, by a resolution approved by the affirmative vote of a majority of the governors present.
   b. A manager appointed by the president also may be removed at any time, with or without cause, by the president.
   c. To the extent authorized in the articles, the bylaws, a member-control agreement, or a resolution approved by the affirmative vote of a majority of the governors present, the president may remove a manager elected or appointed by the board, other than the treasurer.
   d. The articles of organization, the bylaws, or a member-control agreement may provide other manners of removing a manager.
   e. A removal as described in this subsection is without prejudice to any contractual rights of the manager.
3. A vacancy in an office because of death, resignation, removal, disqualification, or other cause, may, or in the case of the president or treasurer, must be filled for the unexpired portion of the term in the manner provided in the articles, a member-control agreement, or the bylaws; in the manner determined by the board; or pursuant to section 10-32-92.

10-32-95. Delegation by managers.

Unless prohibited by the articles, a member-control agreement, the bylaws, or by a resolution adopted by the board, a manager elected or appointed by the board may, without the

approval of the board, delegate some or all of the duties and powers of an office to other individuals. A manager who delegates the duties or powers of an office remains subject to the standard of conduct for a manager with respect to the discharge of all duties and powers so delegated.

10-32-96. Standard of conduct for managers.

A manager shall discharge the duties of an office in good faith, in a manner the manager reasonably believes to be in the best interests of the limited liability company, and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. An individual exercising the principal functions of an office or to whom some or all of the duties and powers of an office are delegated pursuant to section 10-32-95 is considered a manager for purposes of this section and sections 10-32-53 and 10-32-99.

10-32-97. Loans, guarantees, and suretyship.

1. 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 by the affirmative vote of a majority of the governors present and:
   a. Is in the usual and regular course of business of the limited liability company;
   b. 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 relationship in the usual and regular course of its business, 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;
   c. 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, to benefit the limited liability company; or
   d. Whether or not separate consideration has been promised to the limited liability company, has been approved by the owners of two-thirds of the voting power of persons other than the interested person or persons.
2. A loan, guarantee, surety contract, or other financial assistance under subsection 1 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 a member's financial rights in the limited liability company.
3. This section does not grant any authority to act as a bank or to carry on the business of banking.

10-32-98. Advances.

A limited liability company may, without a vote of the governors or its members, advance money to its members who provide services, governors, managers, or employees to cover expenses that can reasonably be anticipated to be incurred by them in the performance of their duties and for which they would be entitled to reimbursement in the absence of an advance.

10-32-99. Indemnification.

1. For purposes of this section:
   a. "Limited liability company" includes a limited liability company 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 predecessor's existence ceased upon consummation of the transaction.
   b. "Official capacity" means:

(1) With respect to a governor, the position of governor in a limited liability company;
(2) With respect to a person other than a governor, the elective or appointive office or position held by a manager, member of a committee of the board, the employment relationship undertaken by an employee, agent of the limited liability company, or 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, employee, or agent of the limited liability company who, while a governor, manager, member, 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 governor, manager, member of a committee of the board, employee, or agent whose indemnification is in issue.

2. Subject to the provisions of subsection 5, 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:
a. 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;
b. Acted in good faith;
c. Received no improper personal benefit and section 10-32-87, if applicable, has been satisfied;
d. In the case of a criminal proceeding, had no reasonable cause to believe the conduct was unlawful; and
e. 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 person's acts or omissions complained of in the proceeding relate to conduct as a director, officer, trustee, employee, or agent of an employee benefit plan, 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.

3. 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 subsection 2.
4. Subject to the provisions of subsection 5, if a person is made or threatened to be made a party to a proceeding, 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 set forth 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.

   The written undertaking required by subdivision a is an unlimited general obligation of the person making it, but need not be secured and must be accepted without reference to financial ability to make the repayment.
5. The articles of organization, a member-control agreement, or the bylaws 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 through 4, including 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, or a member-control agreement, or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.
6. This section does not require, or limit the ability of, a limited liability company to reimburse expenses, including attorney's 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.
7. All indemnification determinations must be made:
   a. By the board by a majority of a quorum. Governors who are, at the time, parties to the proceeding are not counted for determining either a majority or the presence of a quorum;
   b. If a quorum under subdivision a cannot be obtained, by a majority of a committee of the board, 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, including governors who are parties;
   c. If a determination is not made under subdivision a or b, by special legal counsel, selected either by a majority of the board or a committee by vote pursuant to subdivision a or b or, if the requisite quorum of the full board cannot be obtained and the committee cannot be established, by a majority of the full board, including governors who are parties;
   d. If a determination is not made under subdivisions a through c, by the affirmative vote of the members required by section 10-32-42, other than the members who are a party to the proceeding; or
   e. If an adverse determination is made under subdivisions a through d or under subsection 8, or if no determination is made under subdivisions a through d or under subsection 8 within sixty days after the later to occur of the termination of a proceeding; or a written request for indemnification to the limited liability company; or a written request for an advance of expenses, as the case may be, by a court in this state, which may be the same court in which the proceeding involving the person's liability took place, upon application of the person and any

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

8. 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 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 subsections 2 and 3 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 4 may be made by an annually appointed committee of the board, having at least one member who is a governor. The committee shall report at least annually to the board concerning its actions.
9. A limited liability company may purchase and maintain insurance on behalf of a person in that person's official capacity against any liability asserted against and incurred by the person in or arising from that capacity, whether or not the limited liability company would have been required to indemnify the person against the liability under the provisions of this section.
10. A limited liability company that indemnifies or advances expenses to a person in accordance with 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 as part of the annual financial statements furnished to members pursuant to section 10-32-52 covering the period when the indemnification or advance was paid or accrued under the accounting method of the limited liability company reflected in the financial statements.
11. This section does not limit the power of the limited liability company to indemnify persons other than a governor, a manager, a member, an employee, or a member of a committee of the board, by contract or otherwise.

10-32-100. Merger - Exchange - Transfer.

1. With or without a business purpose, a limited liability company may merge with another domestic or foreign organization under a plan of merger approved in the manner provided in this section and sections 10-32-101 through 10-32-106 and in the manner provided in its governing statutes in the case of any other organization.
2. With respect to an exchange:
   a. A limited liability company may acquire all of the ownership interests of one or more classes or series of another domestic or foreign organization pursuant to a plan of exchange approved in the manner provided in sections 10-32-101 through 10-32-106 in the case of a domestic limited liability company and in the manner provided in its governing statutes in the case of any other organization.
   b. Another domestic or foreign organization may acquire all of the membership interests of one or more classes or series of a limited liability company pursuant to a plan of exchange approved in the manner provided in this section and in sections 10-32-101 through 10-32-107 and in the manner provided in its governing statute in the case of any other organization.
3. A limited liability company may sell, lease, transfer, or otherwise dispose of all or substantially all of the limited liability company's property and assets in the manner provided in section 10-32-108.
4. A limited liability company may participate in a merger or exchange only as permitted by this section and sections 10-32-101 through 10-32-107.

10-32-101. Plan of merger or exchange.

1. A plan of merger or exchange must contain:

a. The name of the limited liability company and of each other constituent organization proposing to merge or participate in an exchange, and:
   (1) In the case of a merger, the name of the surviving organization; or
   (2) In the case of an exchange, the name of the acquiring organization;
b. The terms and conditions of the proposed merger or exchange;
c. The manner and basis for converting or exchanging ownership interests:
   (1) In the case of a merger, the manner and basis of converting the ownership interests of the constituent organizations into securities of the surviving organization or of any other organization or, in whole or in part, into money or other property; or
   (2) In the case of an exchange, the manner and basis of exchanging the ownership interests to be acquired for securities of the acquiring organization or any other organization or, in whole or in part, for money or other property;
d. In the case of a merger, a statement of any amendments to the articles of the surviving organization proposed as part of the merger; and
e. Any other provisions with respect to the proposed merger that are considered necessary or desirable.

2. The procedure authorized by this section does not limit the power of a limited liability company to acquire all or part of the ownership interests of one or more classes or series of any other organization through a negotiated agreement with the owners or otherwise.

10-32-102. Plan approval.

1. A resolution containing the plan of merger or exchange must be approved by the governing body as required by section 10-32-83 in the case of a domestic limited liability company or by its governing statute in the case of any other organization and must then be submitted at a regular or special meeting to the owners of each constituent organization in the case of a plan of merger; and the constituent organization whose ownership interests will be acquired by the acquiring constituent organization in the exchange, in the case of an exchange. If owners owning any class or series of ownership interests in a constituent organization are entitled to vote on the plan of merger or exchange pursuant to this subsection, then written notice must be given to every owner of that constituent organization, whether or not entitled to vote at the meeting, not less than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-32-40 for notice of meetings of members in the case of a limited liability company, or in the manner provided in its governing statute for any other organization. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.
2. At the meeting, a vote of the owners must be taken on the proposed plan. The plan of merger is adopted when approved by the affirmative vote of the owners of a majority of the voting power of all ownership interests entitled to vote as required by section 10-32-42 in the case of a domestic limited liability company, or in the manner provided in its governing statute in the case of any other organization. Except as provided in subsection 3 or a member-control agreement, a class or series of ownership interests of the constituent organization is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles or a member-control agreement, entitle the class or series of ownership interests to vote as a class or series and, in the case of an exchange, if the class or series is included in the exchange.
3. A class or series of ownership interests of the constituent organization is not entitled to vote as a class or series if the plan of merger or exchange effects a cancellation or exchange of all ownership interests of the constituent organization of all classes and series that are existing immediately before the merger or exchange and owners of ownership interests of that class or series are entitled to obtain payment for the fair

value of their ownership interests under section 10-32-55 in the case of a domestic limited liability company, or in the manner provided in the governing statute in the case of any other organization, in the event of the merger or exchange.

4. Notwithstanding subsections 1 and 2, submission of a plan of merger to a vote at a meeting of owners of a surviving constituent organization is not required if:
   a. The articles will not be amended in the transaction;
   b. Each owner of ownership interests in the constituent organization which were outstanding immediately before the effective date of the transaction will hold the same number of ownership interests with identical rights immediately after that date;
   c. The voting power of the outstanding ownership interests of the constituent organization entitled to vote immediately after the merger, plus the voting power of the outstanding ownership interests of the constituent organization entitled to vote issuable on conversion of or on the exercise of rights to purchase securities issued in the transaction, will not exceed by more than twenty percent the voting power of the outstanding ownership interests of the constituent organization entitled to vote immediately before the transaction; and
   d. The number of participating ownership interests of the constituent organization immediately after the merger, plus the number of participating ownership interests of the constituent organization issuable on conversion, or on the exercise of rights to purchase, securities issued in the transaction, will not exceed by more than twenty percent the number of participating ownership interests of the constituent organization immediately before the transaction. "Participating ownership interests" are outstanding ownership interests of the constituent organization which entitle the ownership interests owners to participate without limitation in distributions by the constituent organization.
5. If the merger or exchange is with an organization other than a limited liability company, then the plan of merger or exchange must also be approved in the manner provided in its governing statute.

10-32-103. Articles of merger - Certificate.

1. Upon receiving the approval required by section 10-32-102, articles of merger must be prepared which contain:
   a. The plan of merger; and
   b. A statement that the plan has been approved by each constituent organization in the manner provided in this chapter in the case of a domestic limited liability company, or in the manner provided in its governing statute in the case of any other organization.
2. The articles of merger must be signed on behalf of each constituent organization and filed with the secretary of state, together with the fees provided in section 10-32-150.
3. The secretary of state shall issue a certificate of merger to the surviving constituent organization, or its legal representative. The certificate must contain the effective date of merger.

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

1. If either the parent or the subsidiary is a domestic organization, then a parent that is a domestic or foreign organization owning at least ninety percent of the outstanding ownership interests of each class and series of a subsidiary that is a domestic or foreign organization directly, or indirectly through related organizations other than classes or series that absent this section would otherwise not be entitled to vote on the merger:
   a. May merge the subsidiary into the parent, or may merge the subsidiary into any other subsidiary at least ninety percent of the outstanding ownership interest of each class and series of which is owned by the parent directly or indirectly through related organizations other than classes or series that, absent this

section, would otherwise not be entitled to vote on the merger, without a vote of the owners of the parent or any subsidiary; or

b. May merge the parent, or the parent and one or more subsidiaries, into one of the subsidiaries under this section.

2. A resolution approved by the governors of the parent present as required by section 10-32-83 in the case of a domestic limited liability company, or by the present members of the governing body of the parent as required by its governing statute in the case of any other organization must set forth a plan of merger which contains:
   a. The name of the subsidiary or subsidiaries, the name of the parent, and the name of the surviving constituent organization;
   b. The manner and basis of converting the ownership interests of the subsidiary into ownership interests of the parent, the subsidiary, or of another organization or, in whole or in part, into money or other property;
   c. If the parent is a constituent organization but is not the surviving constituent organization in the merger, then a provision for the pro rata issuance of ownership interests of the surviving constituent organization to the owners of ownership interests of the parent on surrender of any ownership interests of the parent; and
   d. If the surviving constituent organization is a subsidiary, then a statement of any amendments to the articles of the surviving constituent organization that will be part of the merger.
3. Notwithstanding subsection 1:
   a. If the parent is a domestic limited liability company and the conditions of subsection 4 of section 10-32-102 are not met with respect to the parent, then the resolution is not effective unless it is approved by the affirmative vote of the holders of a majority of the voting power of all membership interests of the parent entitled to vote at a regular or special meeting held in accordance with section 10-32-102; and
   b. If the parent is a domestic or foreign organization and is not the surviving organization in the merger, then the resolution is not effective unless it is approved in accordance with the governing statute of the parent.
4. Notwithstanding subsection 3, if the parent is a constituent organization and is the surviving organization in the merger, it may change its limited liability company name, without a vote of its owners, by the inclusion of a provision to that effect in the resolution of merger setting forth the plan of merger that is approved by the affirmative vote of the board members of the parent present. Upon the effective date of the merger, the name of the parent must be changed.
5. If the subsidiary is a domestic organization, then notice of the action, including a copy of the plan of merger must be given to each owner, other than the parent, of each subsidiary that is a constituent organization to the merger before, or within ten days after, the effective date of the merger.
6. Articles of merger must be prepared which contain:
   a. The plan of merger;
   b. The number of outstanding ownership interests of each class and series of the subsidiary that is a constituent organization in the merger, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, and the number of ownership interests of each class and series of the subsidiary or subsidiaries, other than the classes or series that, absent this section, would otherwise not be entitled to vote on the merger, owned by the parent directly or indirectly, through related organizations; and
   c. A statement that the plan of merger has been approved by the parent under this section.
7. The articles of merger must be signed on behalf of the parent and filed with the secretary of state, together with the fees provided in section 10-32-150.

8. The secretary of state shall issue a certificate of merger to the surviving constituent organization in the merger or the surviving constituent organization's legal representative. The certificate must contain the effective date of merger.
9. If all of the ownership interests of one or more domestic subsidiaries that are a constituent organization to a merger under this section are not owned by the parent directly, or indirectly through related constituent organizations, immediately before the merger, then the owners of each domestic subsidiary which is either a domestic corporation or a domestic limited liability company have dissenters' rights under section 10-19.1-87 or under section 10-32-54, without regard to subsection 3 of section 10-19.1-88 or to subsection 2 of section 10-32-54, and under section 10-19.1-88 or 10-32-55.
   a. If the parent is a constituent organization but is not the surviving constituent organization in the merger, and the articles of incorporation or articles of organization of the surviving constituent organization immediately after the merger differ from the articles of incorporation or articles of organization of the parent immediately before the merger in a manner that would entitle an owner of the parent to dissenters' rights under subsection 1 of section 10-19.1-87 or under subdivision a of subsection 1 of section 10-32-54 if the articles of incorporation or articles of organization of the surviving constituent organization constitute an amendment to the articles of incorporation or articles of organization of the parent, then that owner of the parent has dissenters' rights as provided under section 10-19.1-87 or under section 10-32-54.
   b. Except as provided in this subsection, sections 10-19.1-87 and 10-32-54 do not apply to any merger affected under this section.
10. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-32-101 through 10-32-103 instead of this section, in which case this section does not apply.

10-32-105. Abandonment of plan of merger.

1. After a plan of merger is approved by the owners entitled to vote on the approval of the plan as provided in section 10-32-102, and before the effective date of the plan, the plan of merger may be abandoned:
   a. With respect to approval of the abandonment:
      (1) If the owners of ownership interests of each of the constituent organizations entitled to vote on the approval of the plan as provided in section 10-32-102 have approved the abandonment at a meeting by the owners of a majority of the voting power of the ownership interests entitled to vote as required by section 10-32-42 in the case of a domestic limited liability company, or by its governing statute in the case of any other organization;
      (2) If the owners of a constituent organization are not entitled to vote on the approval of the plan under section 10-32-102, then if the governing body of that constituent organization has approved the abandonment by the board as required by section 10-32-83 in the case of a domestic limited liability company, or by its governing statute in the case of any other organization; and
      (3) If the merger or exchange is with a foreign organization, then if abandonment is approved in the manner provided in its governing statute;
   b. If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or
   c. Pursuant to subsection 2.
2. If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned before the effective date of the plan, then a resolution by the governing body of any constituent organization abandoning the plan of merger or exchange may be approved by the governing body as required by section 10-32-83 in the case of a domestic limited liability company, or

by its governing statute in the case of any other organization subject to the contract rights of any other person under the plan.

3. If articles of merger have been filed with the secretary of state, but have not yet become effective, the constituent organizations, in the case of abandonment under subdivision a of subsection 1, then the constituent organizations or any one constituent organization, in the case of abandonment under subdivision b of subsection 1, or the abandoning constituent organization in the case of abandonment under subsection 2, shall file with the secretary of state together with the fees provided in section 10-32-150, articles of abandonment that contain:
   a. The names of the constituent organizations;
   b. The provision of this section under which the plan is abandoned; and
   c. The text of the resolution abandoning the plan.
4. If the certificate of merger has been issued, then the governing body shall surrender the certificate to the secretary of state upon filing the articles of abandonment.

10-32-106. Effective date of merger or exchange and effect.

1. A merger is effective when the articles of merger are filed with the secretary of state or on a later date specified in the articles of merger. An exchange is effective on the date specified in the plan of exchange.
2. When a merger becomes effective:
   a. The constituent organizations become a single entity, the surviving organization;
   b. The separate existence of all constituent organizations except the surviving constituent organization ceases;
   c. 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 termination and, unless previously filed, the notice of dissolution;
   d. The surviving organization has all the rights, privileges, immunities, and powers, and is subject to all the duties and liabilities of the specified organization under its governing statute;
   e. The surviving constituent organization possesses all the rights, privileges, immunities, and franchises, of a public as well as of a private nature, of each of the constituent organizations.
      (1) All property, real, personal, and mixed, and all debts due on any account, including subscriptions to ownership interests and contribution agreements, as the case may be, and all other choses in action, and every other interest of or belonging to or due to each of the constituent organizations vests in the surviving constituent organization without any further act or deed.
      (2) Confirmatory deeds, assignments, or similar instruments to accomplish that vesting may be signed and delivered at any time in the name of a constituent organization by its current officers, managers, or governing body, or, if the organization no longer exists, by its last officers, managers, or governing body.
      (3) The title to any real estate or any interest in real estate vested in any of the constituent organizations does not revert nor in any way become impaired by reason of the merger;
   f. The surviving constituent organization is responsible and liable for all the liabilities and obligations of each of the constituent organizations.
      (1) A claim of or against or a pending proceeding by or against a constituent organization may be prosecuted as if the merger had not taken place, or the surviving organization may be substituted in the place of the constituent organization.
      (2) Neither the rights of creditors nor any liens upon the property of a constituent organization are impaired by the merger; and
   g. The articles of the surviving organization are considered to be amended to the extent that changes in its articles, if any, are contained in the plan of merger.

3. When a merger 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 considered 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 dissenters' rights under section 10-19.1-87 or 10-32-54.

10-32-106.1. Continuance of limited liability company authority.

When an act or record is considered necessary or appropriate to evidence the vesting of property or other rights in the single limited liability company, the persons with authority to do so under the articles, bylaws, or member-control agreement of each constituent organization shall do the act or sign and deliver the record and for this purpose, the existence of the constituent organizations and the authority of those persons are continued.

10-32-107. Merger or exchange with foreign limited liability company or foreign organization.

1. A limited liability company may merge with, including a merger pursuant to section 10-32-104, or participate in an exchange with a foreign organization by following the procedures set forth in this section, if:
   a. With respect to a merger, the merger is permitted by its governing statute; and
   b. With respect to an exchange, the constituent organization of which the ownership interests will be acquired is an organization, regardless of whether the exchange is permitted by its governing statute.
2. Each limited liability company shall comply with the provisions of this section and sections 10-32-100 through 10-32-106 with respect to the merger or exchange of ownership interests of organizations and each foreign organization shall comply with the applicable provisions of its governing statute.
3. If the surviving organization in a merger will be a domestic limited liability company, then the surviving organization shall comply with all the provisions of this chapter.
4. If the surviving organization in a merger will be a foreign organization and will transact business in this state, then the surviving organization shall comply with its governing statute. In every case, the surviving organization shall file with the secretary of state:
   a. An agreement that the surviving organization may be served with process in this state in a proceeding for the enforcement of an obligation of a constituent organization and in a proceeding for the enforcement of the rights of a dissenting owner of an ownership interest of a constituent organization against the surviving foreign organization;
   b. An irrevocable appointment of the secretary of state as the agent of the surviving organization to accept service of process in any proceeding, and an address to which process may be forwarded as provided in section 10-01.1-13; and
   c. An agreement that the surviving foreign organization promptly will pay to the dissenting owners of ownership interests of each constituent organization the amount, if any, to which the dissenting owners are entitled under its governing statute.

10-32-108. Transfer of assets - When permitted.

1. A limited liability company may, by affirmative vote of a majority of the governors present, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, and without member approval:
   a. Sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the usual and regular course of its business;
   b. Grant a security interest in all or substantially all of its property and assets whether or not in the usual and regular course of its business; or

c. Transfer any or all of its property to an organization all of the ownership interests of which are owned, directly or indirectly through wholly owned organizations, by a limited liability company.

2. With respect to member approval:
   a. A limited liability company, by affirmative vote of a majority of the governors present, may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets, including its goodwill, not in the usual and regular course of its business, upon those terms and conditions and for those considerations, which may be money, securities, or other instruments for the payment of money or other property, as the board considers expedient, when approved at a regular or special meeting of the members by the affirmative vote of the owners of a majority of the voting power of the interests entitled to vote.
      (1) Written notice of the meeting must be given to all members whether or not they are entitled to vote at the meeting.
      (2) The written notice must state that a purpose of the meeting is to consider the sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the limited liability company.
   b. Member approval is not required under subdivision a if, following the sale, lease, transfer, or other disposition of its property and assets, the limited liability company retains a significant continuing business activity. The limited liability company will conclusively be deemed to have retained a significant continuing business activity if the limited liability company retains a business activity that represented at least:
      (1) Twenty-five percent of the limited liability company's total assets at the end of the most recently completed fiscal year; and
      (2) Twenty-five percent of either income from continuing operations before taxes or revenues from continuing operations for that fiscal year, measured on a consolidated basis with its subsidiaries for paragraph 1 and this paragraph.
3. Confirmatory deeds, assignments, or similar instruments to evidence a sale, lease, transfer, or other disposition may be signed and delivered at any time in the name of the transferor by its current managers or authorized agents, or, if the limited liability company no longer exists, by its last managers.
4. The transferee is liable for the debts, obligations, and liabilities of the transferor only to the extent provided in the contract or agreement between the transferee and the transferor or to the extent provided by this chapter or other statutes of this state. A disposition of all or substantially all of the property and assets of the limited liability company under this section is not considered to be a merger or a de facto merger pursuant to this chapter or otherwise. The transferee shall not be liable solely because it is deemed to be a continuation of the transferor.

10-32-108.1. 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 10-32-108.2 through 10-32-108.6 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 10-32-108.1 through 10-32-108.6, unless the context otherwise requires:
   a. "Act of the board" means action by the board as provided in section 10-32-83 whether:
      (1) At a meeting of the board as provided in section 10-32-80; or

(2) By a written action of the board as provided in section 10-32-84.

b. "Act of the members" means action by the members as provided in section 10-32-42 whether:
   (1) At a meeting of the members as provided in sections 10-32-38 and 10-32-39; or
   (2) By a written action of the members as provided in section 10-32-43.

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" means for an organization which is:
   (1) A corporation, its articles of incorporation;
   (2) A limited liability company, its articles of organization;
   (3) A limited partnership, its certificate of limited partnership;
   (4) A limited liability partnership, its registration; or
   (5) A limited liability limited partnership, its certificate of limited liability limited partnership.

10-32-108.2. 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.

10-32-108.3. 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 section 10-32-40.
            (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.

10-32-108.4. Articles of conversion.

1. Upon receiving the approval required by section 10-32-108.3, 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 10-32-108.3;
    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; and
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 10-32-108.6.

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, 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, 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, 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.

10-32-108.5. Abandonment of 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 10-32-108.3, 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 10-32-108.3, 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 10-32-108.3 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 2 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.

10-32-108.6. Effective date of conversion - Effect.

1. A conversion is effective when the filing requirements of subsection 2 of section 10-32-108.4 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 10-32-108.1 through 10-32-108.6 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 dissenters' rights under section 10-32-54.
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.

10-32-109. Methods of dissolution.

1. A limited liability company dissolves upon the occurrence of any of the following events:

a. When the period, if any, fixed in the articles of organization for the duration of the limited liability company expires;
b. By order of a court pursuant to sections 10-32-119 and 10-32-122;
c. Prior to accepting contributions pursuant to section 10-32-110;
d. After accepting contributions pursuant to section 10-32-111;
e. For a limited liability company with articles of organization filed with the secretary of state:
    (1) Before July 1, 1999, except as otherwise provided in the articles of organization or a member-control agreement, upon the occurrence of an event that terminates the continued membership of a member in the limited liability company, but the limited liability company is not dissolved and is not required to be wound up by reason of any event that terminates the continued membership of a member:
        (a) If there is at least one remaining member and the existence and business of the limited liability company is continued by the consent of all the remaining members obtained no later than ninety days after the termination of the continued membership; or
        (b) If the membership of the last or sole member terminates and the legal representative of that last or sole member causes the limited liability company to admit at least one member.
    (2) After June 30, 1999, upon the occurrence of an event terminating the continued membership of a member in the limited liability company:
        (a) If the articles of organization or a member-control agreement specifically provide that the termination causes dissolution and in that event only as provided in the articles or member-control agreement; or
        (b) If the membership of the last or sole member terminates and the legal representative of that last or sole member does not cause the limited liability company to admit at least one member within one hundred eighty days after the termination;
f. A merger in which the limited liability company is not the surviving organization; or
g. When terminated by the secretary of state pursuant to section 10-32-149.

2. A limited liability company dissolved by one of the dissolution events specified in subsection 1 must be wound up and terminated under the following dissolution provisions:
    a. When a limited liability company is dissolved under subdivision a of subsection 1 by reason of the expiration of the limited liability company's limited period of duration, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131;
    b. When a limited liability company is dissolved under subdivision b of subsection 1 by reason of a court order, the limited liability company must be wound up and terminated under sections 10-32-119 through 10-32-126;
    c. When a limited liability company is dissolved under subdivision c of subsection 1 by its organizers, the limited liability company must be wound up and terminated under section 10-32-110 and sections 10-32-112 through 10-32-118;
    d. When a limited liability company is dissolved under subdivision d of subsection 1 by its members, the limited liability company must be wound up and terminated under sections 10-32-111 through 10-32-118 and section 10-32-131; and
    e. When a limited liability company is dissolved under subdivision e of subsection 1 by reason of a termination of the continued membership of a member, the limited liability company must be wound up and terminated under sections 10-32-112 through 10-32-115 and sections 10-32-117, 10-32-118, and 10-32-131.
3. Notwithstanding any provision of law, articles of organization, member-control agreement, bylaws, other agreement, resolution, or action to the contrary, a limited liability company is not dissolved and is not required to be wound up upon the granting of a security interest in a member's membership interest, governance rights, or

financial rights, or upon the foreclosure or other enforcement of a security interest in a member's financial rights or upon the secured party's assignment, acceptance, or retention of a member's financial rights in accordance with title 41.

10-32-110. Voluntary dissolution and termination prior to accepting contributions.

A limited liability company that has not accepted contributions may be dissolved and terminated in the manner set forth in this section.

1. A majority of the organizers or governors shall sign articles of dissolution and termination containing:
   a. The name of the limited liability company;
   b. The date of organization;
   c. A statement that contributions have not been accepted; and
   d. A statement that no debts remain unpaid.
2. The articles of dissolution and termination must be filed with the secretary of state together with the fees provided in section 10-32-150.
3. When the articles of dissolution and termination have been filed with the secretary of state, the limited liability company is terminated.
4. The secretary of state shall issue to the terminated limited liability company or its legal representative a certificate of termination that contains:
   a. The name of the limited liability company;
   b. The date the articles of dissolution and termination were filed with the secretary of state; and
   c. A statement that the limited liability company is terminated.

10-32-111. Voluntary dissolution after accepting contributions.

A limited liability company may be dissolved after accepting contributions when authorized in the manner set forth in this section.

1. If the limited liability company has members, then:
   a. Written notice must be given to each member, whether or not entitled to vote at a meeting of members, within the time and in the manner provided in section 10-32-40 for notice of meetings of members and, whether the meeting is a regular or a special meeting, must state that a purpose of the meeting is to consider dissolving the limited liability company and that dissolution must be followed by the winding up and termination of the limited liability company.
   b. The proposed dissolution must be submitted for approval at a meeting of members. If the proposed dissolution is approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote, the limited liability company is dissolved.
2. If the limited liability company no longer has any members, then the governors may authorize and commence the dissolution. If the governors take that action, then:
   a. The notice of dissolution filed under section 10-32-112 shall so reflect this fact; and
   b. The governors shall have the right to revoke the dissolution proceedings in accordance with section 10-32-116.

10-32-112. Filing notice of dissolution - Effect.

1. If dissolution of the limited liability company is approved pursuant to subsection 2 of section 10-32-111, or it occurs under subdivision a or e of subsection 1 of section 10-32-109, the limited liability company shall file with the secretary of state, together with the fees provided in section 10-32-150, a notice of dissolution. The notice must contain:
   a. The name of the limited liability company; and
   b. If the dissolution:
      (1) Is approved pursuant to subsection 2 of section 10-32-111, the date and place of the meeting at which the dissolution was approved and a statement

that the requisite vote of the members was received, or that members validly took action without a meeting;

(2) Occurs under subdivision a of subsection 1 of section 10-32-109 by the expiration of the limited liability company's duration, a statement of the expiration date; or

(3) Occurs under subdivision e of subsection 1 of section 10-32-109 by the termination of a membership interest of a member, a statement that the continued membership of a member has terminated and the date of that termination.

2. When the notice of dissolution has been filed with the secretary of state, and subject to section 10-32-116, the limited liability company shall cease to carry on its business, except to the extent necessary for the winding up of the business of the limited liability company. The members shall retain the right to revoke the dissolution in accordance with section 10-32-116 and the right to remove governors or fill vacancies on the board. The limited liability company existence continues to the extent necessary to wind up the affairs of the limited liability company until the dissolution is revoked or articles of termination are filed with the secretary of state.
3. As part of winding up, the limited liability company may participate in a merger with another limited liability company or with a domestic or foreign corporation under sections 10-32-100 through 10-32-107, but the dissolved limited liability company may not be the surviving organization.
4. The filing with the secretary of state of a notice of dissolution does not affect any remedy in favor of the limited liability company or any remedy against it or its governors, managers, or members in those capacities, except as provided in section 10-32-114, 10-32-115, or 10-32-128.

10-32-113. Procedure in winding up.

1. If the business of the limited liability company is wound up and terminated by merging the dissolved limited liability company into a successor organization:
   a. The procedures stated in sections 10-32-100 through 10-32-107 must be followed;
   b. Sections 10-32-114 through 10-32-116 and sections 10-32-128 and 10-32-129 do not apply; and
   c. Once the merger is effective, a creditor or claimant of the terminated limited liability company, and all those claiming through or under the creditor or claimant, are barred from suing the terminated limited liability company on that claim or otherwise realizing upon or enforcing it against the terminated limited liability company, but the creditor, claimant, and those claiming under the creditor and claimant, may, if not otherwise barred by law, assert their claims against the surviving organization of the merger.
2. If the business of the limited liability company is to be wound up and terminated other than by merging the dissolved limited liability company into a successor organization, the procedures stated in subsections 3 through 5 must be followed.
3. When a notice of dissolution has been filed with the secretary of state, the board, or the managers acting under the direction of the board, shall proceed as soon as possible:
   a. To give notice to creditors and claimants under section 10-32-114 or to proceed under section 10-32-115;
   b. To collect or make provision for the collection of all known debts due or owing to the limited liability company, including unperformed contribution agreements; and
   c. Except as provided in sections 10-32-114, 10-32-115, and 10-32-128, to pay or make provision for the payment of all known debts, obligations, and liabilities of the limited liability company according to their priorities under section 10-32-131.
4. Notwithstanding section 10-32-108, when a notice of dissolution has been filed with the secretary of state, the governors may sell, lease, transfer, or otherwise dispose of

all or substantially all of the property and assets of a dissolved limited liability company without a vote of the members.

5. All tangible or intangible property, including money, remaining after the discharge of, or after making adequate provision for the discharge of, the debts, obligations, and liabilities of the limited liability company must be distributed to the members in accordance with section 10-32-131.

10-32-114. Winding-up procedure for limited liability companies that give notice to creditors and claimants.

If a notice of dissolution is filed with the secretary of state and the business of the limited liability company is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under subsection 3 of section 10-32-112, the limited liability company may give notice of the filing to each creditor of and claimant against the limited liability company known or unknown, present or future, and contingent or noncontingent.

1. If notice to creditors and claimants is given, the notice must be given by publishing the notice once each week for four successive weeks in an official newspaper as defined in chapter 46-06 in the county or counties where the registered office and the principal executive office of the limited liability company are located and by giving written notice to known creditors and claimants pursuant to subsection 42 of section 10-32-02.
2. The notice to creditors and claimants must contain:
   a. A statement that the limited liability company dissolved and is in the process of winding up affairs;
   b. A statement that the limited liability company filed with the secretary of state a notice of dissolution;
   c. The date of filing the notice of dissolution;
   d. The address of the office to which written claims against the limited liability company must be presented; and
   e. The date by which all claims must be received which must be the later of ninety days after published notice or, with respect to a particular known creditor or claimant, ninety days after the date on which written notice was given to that creditor or claimant. Published notice is considered given on the date of first publication for the purpose of determining this date.
3. With respect to a limited liability company that gives notice to creditors and claimants:
   a. The limited liability company has thirty days from the receipt of each claim filed according to the procedures set forth by the limited liability company on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting the notice to accept or reject. A claim not expressly rejected in this manner is considered accepted.
   b. A creditor or claimant to whom notice is given and whose claim is rejected by the limited liability company has sixty days from the date of rejection or one hundred eighty days from the date the limited liability company filed with the secretary of state the notice of dissolution, whichever is longer, to pursue any other remedies with respect to the claim.
   c. A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the limited liability company on or before the date set forth in the notice is barred from suing the dissolved limited liability company on that claim or otherwise realizing upon or enforcing that claim against the dissolved limited liability company, except as provided in section 10-32-128.
   d. A creditor or claimant whose claim is rejected by the limited liability company under subdivision b is barred from suing on that claim or otherwise realizing upon or enforcing that claim whether against the dissolved limited liability company or any successor organization, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in subdivision b.

4. Articles of termination for a limited liability company dissolving under this section which gave notice to creditors and claimants under this section must be filed with the secretary of state along with the fees provided in section 10-32-150 after:
   a. The ninety-day period in subdivision e of subsection 2 expires and the payment of claims of all creditors and claimants filing a claim within that period are made or provided for; or
   b. The longest of the periods described in subdivision b of subsection 3 expires and there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company commenced within the time provided in subdivision b of subsection 3.
5. The articles of termination for a limited liability company that gave notice to creditors and claimants under this section must state:
   a. The last date on which the notice was given and that the payment of all creditors and claimants filing a claim within the ninety-day period in subdivision e of subsection 2 was made or provided for, or the date on which the longest of the periods described in subdivision b of subsection 3 expires;
   b. That the remaining property, assets, and claims of the limited liability company were distributed in accordance with section 10-32-131, or that adequate provision was made for that distribution; and
   c. That there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company commenced within the time provided in subdivision b of subsection 3 or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against the limited liability company in a pending proceeding.

10-32-115. Winding-up procedure for limited liability companies that do not give notice to creditors and claimants.

When a notice of intent to dissolve has been filed with the secretary of state and the limited liability company elected not to give notice to creditors and claimants in the manner provided in section 10-32-114:

1. Articles of termination for a limited liability company whose business is not to be wound up and terminated by merging the dissolved limited liability company into a successor organization under subsection 3 of section 10-32-112 and that has not given notice to creditors and claimants in the manner provided in section 10-32-114 must be filed with the secretary of state after:
   a. The payment of claims of all known creditors and claimants has been made or provided for; or
   b. At least two years have elapsed from the date of filing the notice of dissolution.
2. The articles of termination for a limited liability company that has not given notice to creditors and claimants in the manner provided under section 10-32-114 must state:
   a. If articles of termination are being filed pursuant to subdivision a of subsection 1 that all known debts, obligations, and liabilities of the limited liability company have been paid and discharged or that adequate provision has been made for payment or discharge;
   b. That the remaining property, assets, and claims of the limited liability company have been distributed in accordance with section 10-32-131 or that adequate provision has been made for that distribution; and
   c. That there are no pending legal, administrative, or arbitration proceedings by or against the limited liability company or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.
3. If the limited liability company has paid or provided for all known creditors or claimants at the time articles of termination are filed, a creditor or claimant who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of dissolution is barred from suing on that claim or otherwise realizing upon or enforcing it.

4. If the limited liability company has not paid or provided for all known creditors and claimants at the time articles of termination are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of dissolution is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 10-32-128.

10-32-116. Revocation of dissolution.

1. Except as provided in subsections 4 and 5, winding-up proceedings commenced pursuant to section 10-32-111 may be revoked before the filing of articles of termination.
2. Written notice must be given to every member entitled to vote at a members' meeting within the time and in the manner provided in section 10-32-40 for notice of meetings of members and must state that a purpose of the meeting is to consider the advisability of revoking the dissolution. The proposed revocation must be submitted to the members at the meeting. If the proposed revocation is approved at a meeting by the affirmative vote of the owners of a majority of the voting power of all membership interests entitled to vote, the dissolution is revoked.
3. Revocation of dissolution is effective when a notice of revocation is filed with the secretary of state together with the fees provided in section 10-32-150. After the notice is filed the limited liability company may cease to wind up and resume business.
4. If a dissolved limited liability company is being wound up and terminated by being merged into a successor organization under subsection 3 of section 10-32-112, and the plan of merger has been approved under section 10-32-102, then the dissolution may be revoked under this section only after the plan of merger has been properly abandoned under section 10-32-105.
5. When dissolution occurs under subdivision a, b, or e of subsection 1 of section 10-32-109, revocation is prohibited.

10-32-117. Filing of articles of termination - Effective date of termination - Certificate of termination.

1. An original of the articles of termination must be filed with the secretary of state. If the secretary of state finds the articles of termination conform to the filing requirements of the chapter and all fees have been paid under section 10-32-150, the secretary of state shall issue a certificate of termination.
2. When the articles of termination have been filed with the secretary of state, or on a later date within thirty days after filing if the articles of termination so provide, the limited liability company is terminated.
3. The secretary of state shall issue to the limited liability company or its legal representative a certificate of termination that contains:
   a. The name of the limited liability company;
   b. The date the termination is effective; and
   c. A statement that the limited liability company is terminated on the effective date of termination.

10-32-118. Supervised voluntary winding up and termination following a voluntary dissolution.

After an event of dissolution has occurred and before a certificate of termination has been issued, the limited liability company or, for good cause shown, a member or creditor may apply to a court within the county in which the registered office of the limited liability company is situated to have the dissolution conducted or continued under the supervision of the court as provided in sections 10-32-119 through 10-32-128.

10-32-119. Judicial intervention and equitable remedies, dissolution, and termination.

1. A court may grant any equitable relief it considers just and reasonable in the circumstances or may dissolve, wind up, and terminate a limited liability company:

a. In a supervised voluntary winding up and termination pursuant to section 10-32-118;
b. In an action by a member when it is established that:
   (1) The governors or the persons having the authority otherwise vested in the board are deadlocked in the management of the affairs of the limited liability company and the members are unable to break the deadlock;
   (2) The governors or those in control of the limited liability company have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more members in their capacities as members or governors of any limited liability company or as managers or employees of a closely held limited liability company;
   (3) The members of the limited liability company are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to governors whose terms have expired or would have expired upon the election and qualification of their successors;
   (4) The limited liability company assets are being misapplied or wasted; or
   (5) An event of dissolution has occurred under subdivision a, d, or e of subsection 1 of section 10-32-109 but the limited liability company is not acting to wind up its affairs;
c. In an action by a creditor when:
   (1) The claim of the creditor has been reduced to judgment and an execution on the judgment has been returned unsatisfied; or
   (2) The limited liability company has admitted in writing that the claim of the creditor is due and owing and it is established that the limited liability company is unable to pay its debts in the ordinary course of business; or
d. In an action by the attorney general to dissolve the limited liability company in accordance with section 10-32-122 when it is established that a decree of termination is appropriate.

2. In an action under subdivision b of subsection 1 in which one or more of the circumstances described in that subdivision is established, a court, upon motion of a limited liability company or a member, may order the sale by a plaintiff or a defendant of all membership interests of the limited liability company held by the plaintiff or defendant to the limited liability company or the moving members, whichever is specified in the motion, if the court determines in the court's discretion that an order is fair and equitable to all parties under all of the circumstances of the case.
   a. The purchase price of any membership interest sold under this subsection is the fair value of the membership interest as of the date of the commencement of the action or as of another date found equitable by the court. If the articles of organization, a member-control agreement, or another agreement state a price for the redemption or buyout of membership interests, the court shall order the sale for the price and on the terms set forth, unless the court determines that the price or terms are unreasonable under all the circumstances of the case.
   b. Within five days after entry of the order, the limited liability company shall provide each selling member with the information the limited liability company is required to provide under subsection 6 of section 10-32-55.
   c. If the parties are unable to agree on fair value within forty days of entry of the order, the court shall determine the fair value of the membership interests under the provisions of subsection 9 of section 10-32-55, may allow interest or costs as provided in subsections 1 and 10 of section 10-32-55, and may allocate payment among the member whose membership interest is being sold and any assignees of the financial rights of that member.
   d. The purchase price must be paid in one or more installments as agreed on by the parties or, if no agreement can be reached within forty days of entry of the order, as ordered by the court upon entry of an order for the sale of a membership interest under this subsection and provided the limited liability company or the

moving members post a bond in adequate amount with sufficient sureties or otherwise satisfy the court that any full purchase price of the membership interest, plus the additional costs, expenses, and fees awarded by the court, will be paid when due and payable, the selling member no longer has any rights or status as a member, manager, or governor, except the right to receive the fair value of the membership interest plus other amounts as might be awarded.

3. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the financial condition of the limited liability company but may not refuse to order any particular form of relief solely on the grounds that the limited liability company has accumulated or current operating profits.
4. In determining whether to order relief under this section and in determining what particular relief to order, the court shall take into consideration the duty that all members in a closely held limited liability company owe one another to act in an honest, fair, and reasonable manner in the operation of the limited liability company and the reasonable expectations of the members as they exist at the inception and develop during the course of the members' relationship with the limited liability company and with each other.
5. For purposes of this section, any written agreements, including employment agreements and buy-sell agreements between or among one or more members and the limited liability company are presumed to reflect the parties' reasonable expectations concerning matters dealt with in the agreements.
6. In determining what relief to order, the court shall take into account that any relief that results in the termination of a member's membership interest may cause dissolution of the limited liability company. If the court orders relief that results in dissolution of the limited liability company, the court shall make appropriate orders providing for the winding up and termination of the dissolved limited liability company.
7. In deciding whether to order winding up through liquidation, the court shall consider whether lesser relief suggested by one or more parties, or provided in a member-control agreement, such as any form of equitable relief, or a buyout or partial liquidation coupled with the continuation of the business of the dissolved limited liability company through a successor organization, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case when it would be appropriate under all the facts and circumstances of the case.
8. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorney's fees and disbursements, to any of the other parties.
9. Proceedings under this section 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.

10-32-120. Judicial intervention procedures.

1. In proceedings under section 10-32-119, the court may issue injunctions, appoint receivers with all powers and duties the court directs, take other actions required to preserve the limited liability company assets wherever situated, and carry on the business of the limited liability company until a full hearing can be held.
2. After a full hearing has been held, upon whatever notice the court directs to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a receiver to collect the limited liability company assets, including all amounts owing to the limited liability company by persons who have made contribution agreements and by persons who have made contributions by means of enforceable promises of future performance. A receiver has authority, subject to the order of the court, to continue the business of the limited liability company and to sell,

lease, transfer, or otherwise dispose of all or any of the property and assets of the limited liability company either at public or private sale.

3. If the court determines that the limited liability company is to be dissolved with winding up to be accomplished by liquidation, then the assets of the limited liability company or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:
   a. The costs and expenses of the proceedings, including attorney's fees and disbursements;
   b. Debts, taxes, and assessments due the United States, the state of North Dakota and its subdivisions, and other states and their subdivisions, in that order;
   c. Claims duly proved and allowed to employees under the provisions of title 65. However, claims under this subdivision may not be allowed if the limited liability company carried workforce safety and insurance, as provided by law, at the time the injury was sustained;
   d. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
   e. Other claims duly proved and allowed.
4. After payment of the expenses of receivership and claims of creditors duly proved under subsection 3, the remaining assets, if any, must be distributed to the members in accordance with subsection 1 of section 10-32-131.

10-32-121. Qualifications of receivers and powers.

1. A receiver must be an individual or a domestic or foreign organization authorized to transact business or conduct activities in this state. A receiver shall give bond as directed by the court with the sureties required by the court.
2. A receiver may sue and defend in all courts as receiver of the limited liability company. The court appointing the receiver has exclusive jurisdiction of the limited liability company and its property.

10-32-122. Action by 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 section 10-32-04;
   c. The limited liability company failed to comply with the requirements essential to organization under this chapter;
   d. The limited liability company has failed for thirty days to appoint and maintain a registered agent in this state as provided in chapter 10-01.1;
   e. The limited liability company has failed for thirty days after change of the registered office or registered agent to file in the office of the secretary of state a statement of such change as provided in chapter 10-01.1; or
   f. 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. An action may 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 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, the attorney general shall give the limited liability company thirty additional days in which to effect the correction before filing the action.

10-32-123. Filing claims in judicial intervention proceedings.

1. In proceedings referred to in section 10-32-119, the court may require all creditors and claimants of the limited liability company to file their claims under oath with the court administrator or with the receiver in a form prescribed by the court.
2. If the court requires the filing of claims, it shall fix a date not less than one hundred twenty days from the date of the order as the last day for the filing of claims and shall prescribe the notice of the fixed date that must be given to creditors and claimants. Before the fixed date, the court may extend the time for filing claims. Creditors and claimants failing to file claims on or before the fixed date may be barred, by order of court, from claiming an interest in or receiving payment out of the property or assets of the limited liability company.

10-32-124. Discontinuance of proceedings for winding up through liquidation.

If the court has determined that the limited liability company is to be dissolved, with winding up to be accomplished by liquidation, and subsequently the court determines that the grounds for dissolution no longer exist or that the grounds for ordering winding up through liquidation no longer exist, the court shall make whatever orders are just and reasonable under the circumstances.

10-32-125. Decree of termination.

1. If the court has ordered a dissolution, or the court has intervened under subdivision a of subsection 1 of section 10-32-119, or has ordered or caused a dissolution under any other provision of that subsection, then after the affairs of the dissolved limited liability company have been appropriately wound up the court shall enter a decree terminating the dissolved limited liability company.
2. When the decree terminating the limited liability company has been entered, the limited liability company is terminated.

10-32-126. Filing decree.

After the court enters a decree terminating a limited liability company, the court administrator shall cause a certified copy of the decree to be filed with the secretary of state. The secretary of state may not charge a fee for filing the decree.

10-32-127. Deposit with administrator of abandoned property of amount due certain persons.

Upon termination of a limited liability company, the portion of the assets distributable to a person who is unknown or cannot be found, or who is under disability, if there is no person legally competent to receive it, must be reduced to money and deposited with the administrator of abandoned property for disposition pursuant to chapter 47-30.1. The amount deposited is appropriated to the administrator of abandoned property and must be paid over to the person or a legal representative, upon proof satisfactory to the administrator of abandoned property of a right to payment.

10-32-128. Claims barred and exceptions.

1. A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings who does not file a claim or pursue a remedy in a legal proceeding within the time provided in sections 10-32-114, 10-32-115, 10-32-119, and 10-32-120 or has not initiated a legal proceeding before the commencement of the dissolution proceedings, and all those claiming through or under the creditor or claimant, or forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section.
2. At any time within one year after articles of termination have been filed with the secretary of state pursuant to section 10-32-114 or subdivision b of subsection 1 of section 10-32-115, or a decree of termination has been entered, a creditor or claimant

who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:

a. Against the limited liability company to the extent of undisposed assets; or
b. If the undisposed assets are not sufficient to satisfy the claim against a member, the member's liability is limited to a portion of the claim that is equal to the portion of the distributions to members in liquidation or termination received by the member, but a member's liability may not exceed the amount that the member actually received in the termination.

3. All known contractual debts, obligations, and liabilities incurred in the course of winding up and terminating the limited liability company's affairs must be paid or provided for by the limited liability company before the distribution of assets to a member. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy before the expiration of the applicable statute of limitations against the managers and governors of the limited liability company who are responsible for, but who fail to cause, the limited liability company to pay or make provision for payment of the debts, obligations, and liabilities or against members to the extent permitted under section 10-32-66. This subsection does not apply to dissolution and termination under the supervision or order of a court.
4. Any statutory and common-law rights of persons who may bring claims of injury to a person, including death, are not affected by dissolution under this chapter.

10-32-129. Right to sue or defend after termination.

After a limited liability company has been terminated, any of its former managers, governors, or members may assert or defend, in the name of the limited liability company, any claim by or against the limited liability company.

10-32-130. Omitted assets.

Title to assets remaining after payment of all debts, obligations, or liabilities and after distributions to members may be transferred by a court in this state.

10-32-130.1. Extension after duration expired.

1. A limited liability company whose period of duration as provided in the articles has expired and which has continued to do business despite that expiration may reinstate its articles and extend the period of duration within one year after the date of expiration by filing an amendment to the articles as set forth in this section.
2. An amendment to the articles must be approved by the board and must include:
   a. The date the period of duration expired under the articles;
   b. The date to which the period of duration is extended; and
   c. A statement that the limited liability company has been in continuous operation since before the date of expiration of its original period of duration.
3. The amendment to the articles must be presented, after notice, at a meeting of the members. The amendment is adopted when approved by the members pursuant to section 10-32-16.
4. Articles of amendment, together with any fees and delinquent filings and reports, conforming to section 10-32-18 must be filed with the secretary of state.

10-32-130.2. Effect of extension.

Filing with the secretary of state of articles of amendment extending the period of duration of a limited liability company:

1. Relates back to the date of expiration of the original period of duration of the limited liability company as provided in the articles;
2. Validates contracts or other acts within the authority of the articles, and the limited liability company is liable for those contracts or acts; and
3. Restores to the limited liability company all the assets and rights of the limited liability company to the extent they were held by the limited liability company before expiration

of its original period of duration, except those sold or otherwise distributed after that time.

10-32-131. Disposition of assets upon dissolution.

1. Subject to subsection 2, except when the dissolved limited liability company is being wound up and terminated under subsection 3 of section 10-32-112, the assets of the dissolved limited liability company must be disposed of to satisfy liabilities according to the following priorities:
   a. To creditors, including members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the limited liability company other than liabilities for interim distributions to members under section 10-32-61 or termination distributions under section 10-32-60;
   b. Unless otherwise provided in the articles of organization or a member-control agreement, to members and former members of the limited liability company in satisfaction of liabilities for distributions under section 10-32-60 or 10-32-61; and
   c. Unless otherwise provided in the articles of organization or a member-control agreement, to members first for a return of their contributions, as restated from time to time under section 10-32-57, and secondly respecting the member's membership interests in the proportions in which the members share in distributions.
2. A member who wrongfully resigns or retires is liable to the limited liability company for any damages caused by the member's wrongful resignation or retirement. Any member who breaches a member-control agreement is liable to the limited liability company for any damages caused by the breach. Any payment due a member under this section, including payments, if any, to dissenters due to winding up a merger under subsection 3 of section 10-32-112, is subject to offset of these damages.

10-32-132. Service of process on limited liability company, foreign limited liability company, and nonresident governors.

Any process, notice, or demand required or permitted by law to be served on the limited liability company, the foreign limited liability company, or a governor may be served as provided in section 10-01.1-13.

10-32-133. When a member is not a proper party.

A member of a limited liability company is not a proper party to a proceeding by or against a limited liability company except when:

1. The object of the proceeding is to determine or enforce a member's right against, or liability to, the limited liability company; or
2. The proceeding involves a claim of personal liability or responsibility of that member and that claim has some basis other than the member's status as a member.

10-32-134. State interested in proceedings.

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, 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.

10-32-135. Foreign limited liability company - Governing law.

1. Subject to the constitution of this state, the laws of the jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its members. A foreign limited liability company may not be denied a certificate of authority to transact business in this state by reason of any difference between those laws and the laws of this state.

2. 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. The certificate of authority does not authorize the foreign limited liability company to exercise any of its powers or purposes that a domestic limited liability company is forbidden by law to exercise in this state.

10-32-136. 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.

10-32-137. 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.

10-32-138. Foreign limited liability company - Application for 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. The name of the registered agent as required by chapter 10-01.1 and, if a noncommercial registered agent, then the address of such noncommercial registered agent in this state;
   d. The date 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 10-32-150 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.

10-32-139. Foreign limited liability company - Issuance of certificate of authority.

If the secretary of state finds that an application for a certificate of authority conforms to law and all fees have been paid, the secretary 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.

10-32-140. Foreign limited liability company - Amendments to the 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 the foreign limited liability company changes the foreign limited liability company's name or purposes sought in this state, 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 foreign limited liability company's name, 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 foreign limited liability company's name 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 foreign limited liability company's name in each of the foregoing registrations which is applicable when the foreign limited liability company files an application for an amended certificate of authority.

10-32-141. 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.

10-32-142. Foreign limited liability company - Merger of 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, 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.

10-32-143. 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 10-32-150, 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 post-office 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 a certificate of 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.

10-32-144. Foreign limited liability company - Revocation of certificate of authority.

1. 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:
   a. The foreign limited liability company has failed to:
      (1) Appoint and maintain a registered agent and registered office as provided in chapter 10-01.1;
      (2) File in the office of the secretary of state any amendment to its application for a certificate of authority as provided in section 10-32-140;
      (3) File in the office of the secretary of state any merger as provided in section 10-32-142; or
      (4) File in the office of the secretary of state an application for certificate of withdrawal of its authority as provided in section 10-32-143 when the limited liability company's existence has expired or the limited liability company has been dissolved or terminated in the jurisdiction of organization; or
   b. 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.
2. Except for revocation of the certificate of authority for failure to file the annual report as provided in section 10-32-149, no certificate of authority of a foreign limited liability company may be revoked by the secretary of state unless:
   a. The secretary 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, addressed to its principal executive office; and
   b. During the sixty-day period, the foreign limited liability company has failed to:
      (1) File the report of change as provided in chapter 10-01.1 regarding the registered office or the registered agent;
      (2) File any amendment;
      (3) File any merger;
      (4) File an application for withdrawal; or
      (5) Correct the misrepresentation.
3. 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.

10-32-145. Foreign limited liability company - Transaction of business without certificate of authority.

1. A foreign limited liability company transacting business in this state may not maintain any action, suit, or proceeding in any court of this state until it possesses a certificate of authority.

2. The failure of a foreign limited liability company to obtain a certificate of authority does not impair the validity of any contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending any action, suit, or proceeding in any court of this state.
3. A foreign limited liability company, by transacting business in this state without a certificate of authority, appoints the secretary of state as its agent upon whom any notice, process, or demand may be served.
4. A foreign limited liability company that transacts business in this state without a valid certificate of authority is liable to the state for the years or parts of years during which it transacted business in this state without the certificate in an amount equal to all fees that would have been imposed by this chapter upon that foreign limited liability company had it duly obtained the certificate, filed all reports required by this chapter, and paid all penalties imposed by this chapter. The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.
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 any foreign limited liability company's rights and privileges 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.
7. A member of a foreign limited liability company is not liable for the debts and obligations of the foreign limited liability company solely by reason of the company's having transacted business in this state without a valid certificate of authority.

10-32-146. Foreign limited liability company - Transactions not constituting transacting business.

1. The following activities of a foreign limited liability company, among others, do not constitute transacting business within the meaning of this chapter:
   a. Maintaining, defending, or settling any proceeding;
   b. Holding meetings of its members or carrying on any other activities concerning its internal affairs;
   c. Maintaining bank accounts;
   d. Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's own securities or maintaining trustees or depositories with respect to those securities;
   e. Selling through independent contractors;
   f. Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts;
   g. Creating or acquiring indebtedness, mortgages, and security interests in real or personal property;
   h. Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
   i. Holding, protecting, renting, maintaining, and operating real or personal property in this state so acquired;

j. Selling or transferring title to property in this state to any person; or
k. Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like manner.

2. The term "transacting business" as used in this section has no effect on personal jurisdiction under the North Dakota Rules of Civil Procedure.
3. For purposes of this section, any foreign limited liability company that owns income-producing real or tangible personal property in this state, other than property exempted under subsection 1, will be considered transacting business in this state.
4. The list of activities in subsection 1 is not exhaustive. This section does not apply in determining the contracts or activities that may subject a foreign limited liability company to service of process or taxation in this state or to regulation under any other law of this state.

10-32-147. Foreign limited liability company - Action by attorney general.

The attorney general may bring an action to restrain a foreign limited liability company from transacting business in this state in violation of this chapter.

10-32-148. 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.

10-32-149. Secretary of state - Annual report of limited liability company and foreign limited liability company.

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 56 of section 10-32-02, 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, 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, or an annual report in a sealed packet with a

verified shipment date by any other carrier service 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 subsection 2.
   (1) If the report does not conform, 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, penalties for the failure to file a report within the time provided do not apply if the report is corrected to conform to the requirements of subsection 2 and returned to the secretary of state within thirty days after the annual report was returned by the secretary of state for correction.

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 subsection 5.
   a. The secretary of state must mail notice of termination or revocation to the last registered agent at the last registered office.
   b. If the limited liability company or foreign limited liability company files its annual report after the notice is mailed, together with the annual report filing fee and late filing penalty fee as provided by section 10-32-150, the secretary of state will restore its certificate of organization or certificate of authority to good standing.
5. A limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within six months after the date established in subsection 3, ceases to exist and is considered involuntarily terminated by operation of law.
   a. The secretary of state shall note the termination of the limited liability company's certificate of organization on the records of the secretary of state and shall give notice of the action to the terminated limited liability company.
   b. Notice by the secretary of state must be mailed to the foreign limited liability company's last registered agent at the last registered office.
6. A foreign limited liability company that does not file its annual report, along with the statutory filing and penalty fees, within six months after the date established by subsection 3, forfeits its authority to transact business in this state.
   a. The secretary of state shall note the revocation of the foreign limited liability company's certificate of authority on the records of the secretary of state and shall give notice of the action to the foreign limited liability company.
   b. Notice by the secretary of state must be mailed to the foreign limited liability company's last registered agent at the last registered office.
   c. The secretary of state's decision that a certificate of authority must be revoked under this subsection is final.
7. 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 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 10-32-150. The fees must be paid and the report filed within one year following the involuntary dissolution or revocation. Reinstatement under this subsection does not affect the rights or liability for the time from the termination or revocation to the reinstatement.

10-32-150. 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 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.

6. Filing abandonment of conversion, fifty dollars.
7. Filing articles of merger and issuing a certificate of merger, fifty dollars.
8. Filing abandonment of merger or exchange, fifty dollars.
9. Filing an application to reserve a name, ten dollars.
10. Filing a notice of transfer of a reserved name, ten dollars.
11. Filing a cancellation of reserved name, ten dollars.
12. Filing a consent to use of name, ten dollars.
13. 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.
14. Filing a resolution for the establishment of a class or series of membership interests, fifty dollars.
15. Filing a notice of dissolution, ten dollars.
16. Filing a statement of revocation of voluntary dissolution proceedings, ten dollars.
17. Filing articles of dissolution and termination, twenty dollars.
18. 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.
19. Filing an amendment to the certificate of authority by a foreign limited liability company, fifty dollars.
20. 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.
21. Filing a certified statement of conversion of a foreign limited liability company, fifty dollars.
22. Filing an application for withdrawal of a foreign limited liability company and issuing a certificate of withdrawal, twenty dollars.
23. 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 10-32-149, 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 10-32-149, or the annual report lacks sufficient payment as required by this subsection.
24. Filing any process, notice, or demand for service, the fee provided in section 10-01.1-03.
25. 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.
26. Filing any other statement or report of a limited liability company or foreign limited liability company, ten dollars.
27. 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.

28. Furnishing a certificate of good standing, existence, or authorization:
    a. Fifteen dollars; and
    b. Five dollars for a search of records.

10-32-151. Audit reports and audit of limited liability companies receiving state subsidies for production of alcohol or methanol for combination with gasoline.

Repealed by S.L. 1997, ch. 103, § 248.

10-32-152. Secretary of state - Powers - Enforcement - Appeal.

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. The secretary of state may propound to any limited liability company, domestic or foreign, subject to the provisions of this chapter and to any manager or governor thereof, such interrogatories as may be reasonably necessary and proper to ascertain whether such limited liability company has complied with all provisions of this chapter applicable to such limited liability company.
    a. Such interrogatories must be answered within thirty days after mailing or within such additional time as must 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 such interrogatories be directed:
        (1) To an individual, they must be answered by that individual; or
        (2) To a limited liability company, they must be answered by the president, vice president, secretary, or assistant secretary of the limited liability company.
    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 manager or governor of a limited liability company, domestic or foreign, 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 such 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.
3. If the secretary of state rejects any record required by this chapter to be approved by the secretary of state before the same may be filed, then the secretary of state shall give written notice of the rejection to the person that delivered the record, specifying the reasons for rejection.
    a. 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 such court a petition setting forth a copy of the record sought to be filed and a copy of the written rejection of the record by the secretary of state.
    b. 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.
4. If the secretary of state dissolves 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 10-32-144, then the limited liability company or

foreign limited liability company may appeal to district court in the judicial district serving Burleigh County by filing with the clerk of such court a petition, including:

a. A copy of the limited liability company's articles of organization and a copy of the notice of dissolution given by the secretary of state; or
b. A copy of the foreign limited liability company's certificate of authority 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.

5. If the court order sought is one for reinstatement of a limited liability company that has been dissolved as provided in subsection 5 of section 10-32-149, or for reinstatement of the certificate of authority of a foreign limited liability company that has been revoked as provided in subsection 6 of section 10-32-149, then together with any other actions the court deems proper, any such 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 23 of section 10-32-150; and
   c. Pay the reinstatement fee to the secretary of state as provided in subsection 23 of section 10-32-150.
6. 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.

10-32-152.1. Delivery to and filing of records by secretary of state and effective date.

1. A record authorized or required to be delivered to the secretary of state for filing 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 secretary of state determines that a record complies with the filing requirements of this chapter, then the secretary of state shall file the record and return a copy of the filed record to the person that delivered it to the secretary of state for filing. That person shall then send a copy of the filed record to the person on whose behalf the record was filed.
2. Upon request and payment of a fee provided in section 10-32-150, the secretary of state shall send to the requester a certified copy of the requested record.
3. Except as otherwise specifically provided in this chapter, a record delivered to the secretary of state for filing under this chapter may specify a delayed effective date within ninety days. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:
   a. If the record does not specify a delayed effective date within ninety days, then on the date the record is filed as evidenced by the endorsement of the secretary of state of the date on the record.
   b. If the record specifies a delayed effective date within ninety days, then on the specified date.

10-32-152.2. Correcting a filed record.

With respect to correction of 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, 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 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 10-32-02.2; and
      (2) On the date the original record was filed as to all other persons and for all other purposes.

10-32-153. 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.

10-32-153.1. 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.

10-32-154. 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.

10-32-155. Miscellaneous - Foreign trade zones.

1. As used in this section, unless the context otherwise requires:

a. "Act of Congress" means the Act of Congress approved June 18, 1934, entitled an Act to provide for the establishment, operation, and maintenance of foreign trade zones and ports of entry of the United States, to expedite and encourage foreign commerce and for other purposes, as amended, and commonly known as the Foreign Trade Zone Act of 1934.
b. "Private organization" means a limited liability company authorized under this chapter or corporation authorized under chapter 10-19.1, one of the purposes of which is to establish, operate, and maintain a foreign trade zone by itself or in conjunction with a public corporation.
c. "Public corporation" means:
   (1) This state;
   (2) Any political subdivision of this state;
   (3) Any municipality of this state;
   (4) Any public agency:
      (a) Of this state;
      (b) Of any political subdivision of this state; or
      (c) Any municipality of this state; or
   (5) Any other corporate instrumentality of this state.

2. Any private organization or public organization has the power to apply to the proper authorities of the United States for a grant of the privilege of establishing, operating, and maintaining foreign trade zones and foreign trade subzones and to do all things necessary and proper to carry into effect the establishment, operation, and maintenance of such zones, all in accordance with the Act of Congress and other applicable laws and rules.

10-32-156. Miscellaneous - Audit reports and audit of limited liability companies receiving state subsidies for production of alcohol or methanol for combination with gasoline.

Any limited liability company that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the limited liability company, to the legislative audit and fiscal review committee. The audit must be submitted within ninety days of the close of the limited liability company's taxable year. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any limited liability company required to submit an annual report under this section.