

HOUSE BILL NO. 1447

Introduced by

Representatives Mock, Beadle, Boschee, Schreiber Beck

Senators Casper, Sinner

1 A BILL for an Act to create and enact a new subsection to section 10-32-02 of the North Dakota
2 Century Code, relating to defining the term low-profit limited liability company; and to amend
3 and reenact section 10-06.1-17, subsection 38 of section 10-32-02, subsections 2, 5, and 6 of
4 section 10-32-02.2, subdivision b of subsection 1 of section 10-32-10, subsection 1 of section
5 10-32-114, subsection 2 of section 10-32-149, and subdivision c of subsection 1 of section
6 57-38-31.1 of the North Dakota Century Code, relating to low-profit limited liability companies;
7 and to provide for codification in the event of repeal of chapter 10-32.

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

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

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

12 Before April sixteenth of each year, every corporation engaged in farming or ranching after
13 June 30, 1981, and every limited liability company engaged in farming or ranching shall file with
14 the secretary of state an annual report signed ~~as provided in subsection 54 of~~ in accordance
15 with the definition of signed under section 10-19.1-01 if a corporation and ~~subsection 58 of~~
16 section 10-32-02 if a limited liability company. If the corporation or limited liability company is in
17 the hands of a receiver or trustee, it must be signed on behalf of the corporation or limited
18 liability company by the receiver or trustee. An annual report in a sealed envelope postmarked
19 by the United States postal service before the date provided in this section or an annual report
20 in a sealed packet with a verified shipment date by any other carrier service before the date
21 provided in this section meets the filing date requirement. An annual report must include the
22 following information with respect to the preceding calendar year:

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

- 1 2. The name of the registered agent of the corporation or limited liability company as
- 2 provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of
- 3 the registered office of the corporation or limited liability company in this state.
- 4 3. With respect to each corporation:
- 5 a. A statement of the aggregate number of shares the corporation has authority to
- 6 issue, itemized by classes, par value of shares, shares without par value, and
- 7 series, if any, within a class.
- 8 b. A statement of the aggregate number of issued shares, itemized by classes, par
- 9 value of shares, shares without par value, and series, if any, within a class.
- 10 4. With respect to each shareholder or member:
- 11 a. The name and address of each, including the names and addresses and
- 12 relationships of beneficiaries of trusts and estates which own shares or
- 13 membership interests;
- 14 b. The number of shares or membership interests or percentage of shares or
- 15 membership interests owned by each;
- 16 c. The relationship of each;
- 17 d. A statement of whether each is a citizen or permanent resident alien of the United
- 18 States; and
- 19 e. A statement of whether at least one is an individual residing on or operating the
- 20 farm or ranch.
- 21 5. With respect to management:
- 22 a. If a corporation, then the names and addresses of the officers and members of
- 23 the board of directors; or
- 24 b. If a limited liability company, then the names and addresses of the managers and
- 25 members of the board of governors.
- 26 6. A statement listing the acreage [hectarage] and location listed by section, township,
- 27 range, and county of all land in the state owned or leased by the corporation or limited
- 28 liability company and used for farming or ranching. The statement must also designate
- 29 which, if any, of the acreage [hectarage] is leased from or jointly owned with any
- 30 shareholder or member and list the name of the shareholder or member with that
- 31 acreage [hectarage].

- 1 7. A statement of the percentage of the annual average gross income of the corporation
2 or limited liability company which has been derived from farming or ranching
3 operations over the previous five years or for each year of existence if less than five
4 years.
- 5 8. A statement of the percentage of gross income of the corporation or limited liability
6 company derived from nonfarm rent, nonfarm royalties, dividends, interest, and
7 annuities during the period covered by the report.
- 8 9. A corporation engaged in farming which fails to file an annual report is subject to the
9 penalties provided in section 10-19.1-147 except that the penalties must be calculated
10 from the date of the report required by this section.
- 11 10. A limited liability company engaged in farming which fails to file an annual report is
12 subject to the penalties provided in subsections 5 and 6 of section 10-32-149 except
13 that the penalties must be calculated from the date of the report required by this
14 section.

15 **SECTION 2. AMENDMENT.** Subsection 38 of section 10-32-02 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 38. "Limited liability company" or "domestic limited liability company" means a limited
18 liability company, ~~other than a foreign limited liability company, or a low-profit limited~~
19 liability company organized under or governed by this chapter ~~excluding. The term~~
20 does not include a foreign limited liability company and does not include a nonprofit
21 limited liability company organized under or governed by chapter 10-36.

22 **SECTION 3.** A new subsection to section 10-32-02 of the North Dakota Century Code is
23 created and enacted as follows:

24 "Low-profit limited liability company" means a limited liability company that has set
25 forth in its articles of organization a business purpose that satisfies and that is at all
26 times operated to satisfy each of the requirements listed in this subsection. The
27 low-profit limited liability company:

- 28 a. Shall significantly further the accomplishment of one or more charitable or
29 educational purposes within the meaning of 26 U.S.C. 170(c)(2)(B) and would not
30 have been formed but for its relationship to the accomplishment of the charitable
31 or educational purposes;

- 1 b. May not have as a purpose the accomplishment of one or more political or
2 legislative purposes within the meaning of 26 U.S.C. 170(c)(2)(D); and
3 c. May not have as a significant purpose the production of income or the
4 appreciation of property; however, the fact that the low-profit limited liability
5 company produces significant income or capital appreciation is not, in the
6 absence of other factors, conclusive evidence of a significant purpose involving
7 the production of income or the appreciation of property.

8 **SECTION 4. AMENDMENT.** Subsections 2, 5, and 6 of section 10-32-02.2 of the North
9 Dakota Century Code is amended and reenacted as follows:

- 10 2. A person has notice of a fact if the person:
- 11 a. Knows of the fact;
- 12 b. Has received notice of the fact as ~~provided in subsection 42 of~~ the term notice is
13 defined under section 10-32-02;
- 14 c. Has reason to know the fact exists from all of the facts known to the person at the
15 time in question; or
- 16 d. Has notice of it under subsection 3.
- 17 5. A person receives a notification as ~~provided in subsection 42 of~~ the term notice is
18 defined under section 10-32-02.
- 19 6. Except as otherwise provided in subsection 7 and except as otherwise provided in
20 ~~subsection 42 of~~ the definition of notice under section 10-32-02, a person other than an
21 individual knows, has notice, or receives a notification of a fact for purposes of a
22 particular transaction when the individual conducting the transaction for the person
23 knows, has notice, or receives a notification of the fact, or in any event when the fact
24 would have been brought to the attention of the individual if the person had exercised
25 reasonable diligence.
- 26 a. A person other than an individual exercises reasonable diligence if it maintains
27 reasonable routines for communicating significant information to the individual
28 conducting the transaction for the person and there is reasonable compliance
29 with the routines.
- 30 b. Reasonable diligence does not require an individual acting for the person to
31 communicate information unless the communication is part of the regular duties

1 of the individual or the individual has reason to know of the transaction and that
2 the transaction would be materially affected by the information.

3 **SECTION 5. AMENDMENT.** Subdivision b of subsection 1 of section 10-32-10 of the North
4 Dakota Century Code is amended and reenacted as follows:

5 b. ~~Must~~Except as otherwise provided for a low-profit limited liability company, must
6 contain the words "limited liability company", or must contain the abbreviation
7 "L.L.C." or the abbreviation "LLC", either of which abbreviation may be used
8 interchangeably for all purposes authorized by this chapter, including real estate
9 matters, contracts, and filings with the secretary of state; ~~except a low-profit~~
10 limited liability company name must contain the words "low-profit limited liability
11 company" or the abbreviation "L3C" or "l3c";

12 **SECTION 6. AMENDMENT.** Subsection 1 of section 10-32-114 of the North Dakota Century
13 Code is amended and reenacted as follows:

14 1. If notice to creditors and claimants is given, the notice must be given by publishing the
15 notice once each week for four successive weeks in an official newspaper as defined
16 in chapter 46-06 in the county or counties where the registered office and the principal
17 executive office of the limited liability company are located and by giving written notice
18 to known creditors and claimants pursuant to ~~subsection 42 of the definition of notice~~
19 under section 10-32-02.

20 **SECTION 7. AMENDMENT.** Subsection 2 of section 10-32-149 of the North Dakota
21 Century Code is amended and reenacted as follows:

22 2. The annual report must be submitted on forms prescribed by the secretary of state.
23 The information provided must be given as of the date of the execution of the report.
24 The annual report must be signed ~~as provided in subsection 56 of~~ in accordance with
25 the definition of signed under section 10-32-02, the articles, the bylaws, or a resolution
26 approved by the affirmative vote of the required proportion or number of the governors
27 or members entitled to vote. If the limited liability company or foreign limited liability
28 company is in the hands of a receiver or trustee, the annual report must be signed on
29 behalf of the limited liability company or foreign limited liability company by the
30 receiver or trustee. The secretary of state may destroy any annual report provided for
31 in this section after the annual report is on file for six years.

1 **SECTION 8. AMENDMENT.** Subdivision c of subsection 1 of section 57-38-31.1 of the
2 North Dakota Century Code is amended and reenacted as follows:

3 c. "Passthrough entity" means a corporation that for the applicable tax year is
4 treated as an S corporation under the Internal Revenue Code, a limited liability
5 company, including a low-profit limited liability company, that for the applicable
6 tax year is not taxed as a corporation for federal income tax purposes, or a
7 general partnership, limited partnership, limited liability partnership, limited
8 liability limited partnership, trust, grantor trust, or similar entity recognized by the
9 laws of this state that is not taxed for federal income tax purposes at the entity
10 level.

11 **SECTION 9. REVISION IN THE EVENT OF REPEAL OF CHAPTER 10-32.** If chapter
12 10-32 is repealed and replaced by a new chapter by the sixty-fourth legislative assembly, the
13 legislative council shall codify the new chapter to include, as nearly as possible, the changes to
14 chapter 10-32 made by this Act.