

HOUSE BILL NO. 1084

Introduced by

Government and Veterans Affairs Committee

(At the request of the Secretary of State)

1 A BILL for an Act to amend and reenact section 10-06.1-14, subsection 1 of section
2 10-19.1-135, section 10-19.1-137, subsection 1 of section 10-19.1-140, subsection 2 of section
3 10-32.1-75, subsection 1 of section 10-32.1-77, subsection 1 of section 10-32.1-81,
4 subsection 2 of section 10-33-128, section 10-33-130, and subsection 1 of section 10-33-133 of
5 the North Dakota Century Code, relating to business filing requirements with the secretary of
6 state.

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

8 **SECTION 1. AMENDMENT.** Section 10-06.1-14 of the North Dakota Century Code is
9 amended and reenacted as follows:

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

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

16 **SECTION 2. AMENDMENT.** Subsection 1 of section 10-19.1-135 of the North Dakota
17 Century Code is amended and reenacted as follows:

- 18 1. An applicant for a certificate shall file with the secretary of state an application
19 executed by an authorized person on forms prescribed by the secretary of state and
20 setting forth:
- 21 a. The name of the foreign corporation and, if different, the name under which it
 - 22 proposes to transact business in this state;
 - 23 b. The jurisdiction of its incorporation;

- 1 c. The date of incorporation in the jurisdiction of its incorporation and the period of
2 duration of the foreign corporation;
- 3 d. The address of the principal executive office of the foreign corporation;
- 4 e. The name of the registered agent of the foreign corporation as provided in
5 chapter 10-01.1, and if a noncommercial registered agent, the address of such
6 noncommercial registered agent in this state;
- 7 f. The purpose of the corporation which it proposes to pursue in transacting
8 business in this state;
- 9 g. The names and addresses of the directors and officers of the foreign corporation;
10 and
- 11 h. Any additional information deemed necessary or appropriate by the secretary of
12 state to enable the secretary of state to determine whether the foreign
13 corporation is entitled to a certificate of authority to transact business in this state.

14 **SECTION 3. AMENDMENT.** Section 10-19.1-137 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **10-19.1-137. Foreign corporation - Amendments to the certificate of authority.**

17 If any statement in the application for a certificate of authority by a foreign corporation is
18 false when made or the foreign corporation changes the foreign corporation's name or purposes
19 sought in this state, the foreign corporation promptly shall file with the secretary of state an
20 application for an amended certificate of authority executed by an authorized person on forms
21 prescribed by the secretary of state correcting the statement and, in the case of a change in the
22 foreign corporation's name, a certificate to that effect authenticated by the proper officer of the
23 jurisdiction under the laws of which the foreign corporation is incorporated.

- 24 1. In the case of a dissolution, a foreign corporation need not file an application for an
25 amended certificate of authority but shall promptly file with the secretary of state a
26 certificate to that effect authenticated by the proper officer of the jurisdiction under the
27 laws of which the foreign corporation is incorporated.
- 28 2. A foreign corporation that changes the foreign corporation's name and applies for an
29 amended certificate of authority, and is the owner of a service mark, trademark, or
30 trade name, is a general partner named in a fictitious name certificate, is a general
31 partner in a limited partnership or limited liability limited partnership, or is a managing

1 partner in a limited liability partnership that is on file with the secretary of state, shall
2 change the foreign corporation's name in each of the foregoing registrations that is
3 applicable when the foreign corporation files an application for an amended certificate
4 of authority.

5 **SECTION 4. AMENDMENT.** Subsection 1 of section 10-19.1-140 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 1. A foreign corporation authorized to transact business in this state may withdraw from
8 this state upon procuring from the secretary of state a certificate of withdrawal. In
9 order to procure the certificate, the foreign corporation shall file with the secretary of
10 state an application for withdrawal, on forms prescribed by the secretary of state,
11 together with the fees provided in section 10-19.1-147, which must set forth:
- 12 a. The name of the corporation and the state or country under the laws of which it is
13 incorporated;
 - 14 b. That the corporation is not transacting business in this state;
 - 15 c. That the corporation surrenders its authority to transact business in this state;
 - 16 d. That service of process in any action, suit, or proceeding based upon any cause
17 of action arising in this state during the time the corporation was authorized to
18 transact business in this state may thereafter be made on such corporation as
19 provided in section 10-01.1-13;
 - 20 e. A post-office address to which a person may mail a copy of any process against
21 the corporation; and
 - 22 f. Any additional information necessary or appropriate to enable the secretary of
23 state to determine and assess any unpaid fees payable by the foreign
24 corporation.

25 **SECTION 5. AMENDMENT.** Subsection 2 of section 10-32.1-75 of the North Dakota
26 Century Code is amended and reenacted as follows:

- 27 2. The application must be on forms prescribed by the secretary of state and
28 accompanied by payment of the fees provided in section 10-32.1-92 together with a
29 certificate of good standing or a certificate of existence duly authenticated by the
30 organizing officer of the state or country where the foreign limited liability company is
31 organized.

1 **SECTION 6. AMENDMENT.** Subsection 1 of section 10-32.1-77 of the North Dakota
2 Century Code is amended and reenacted as follows:

- 3 1. If any statement in the application for a certificate of authority by a foreign limited
4 liability company is false when made or if the foreign limited liability company changes
5 the name of the foreign limited liability company or purposes sought in this state, then
6 the foreign limited liability company promptly shall file with the secretary of state an
7 application for an amended certificate of authority executed by an authorized person
8 on forms prescribed by the secretary of state correcting the statement and in the case
9 of a change in the name of the foreign limited liability company, a certificate to that
10 effect authenticated by the proper officer of the state or country under the laws of
11 which the foreign limited liability company is organized.

12 **SECTION 7. AMENDMENT.** Subsection 1 of section 10-32.1-81 of the North Dakota
13 Century Code is amended and reenacted as follows:

- 14 1. A foreign limited liability company authorized to transact business in this state may
15 withdraw from this state upon procuring from the secretary of state a certificate of
16 withdrawal. In order to procure the certificate, the foreign limited liability company shall
17 file with the secretary of state an application for withdrawal, on forms prescribed by the
18 secretary of state, together with the fees provided in section 10-32.1-92, which must
19 set forth:
- 20 a. The name of the foreign limited liability company and the state or country under
21 the laws of which it is organized;
 - 22 b. That the foreign limited liability company is not transacting business in this state;
 - 23 c. That the foreign limited liability company surrenders its authority to transact
24 business in this state;
 - 25 d. That service of process in any action, suit, or proceeding based upon any cause
26 of action arising in this state during the time the foreign limited liability company
27 was authorized to transact business in this state may thereafter be made on such
28 foreign limited liability company as provided in section 10-01.1-13; and
 - 29 e. A mailing address to which a person may mail a copy of any process against the
30 foreign limited liability company.

1 **SECTION 8. AMENDMENT.** Subsection 2 of section 10-33-128 of the North Dakota
2 Century Code is amended and reenacted as follows:

3 2. The application must be on forms prescribed by the secretary of state and
4 accompanied by payment of the fees provided in section 10-33-140 together with a
5 certificate of good standing or a certificate of existence duly authenticated by the
6 incorporating officer of the state or country where the corporation is incorporated.

7 **SECTION 9. AMENDMENT.** Section 10-33-130 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **10-33-130. Foreign corporation - Amendments to the certificate of authority.**

10 If any statement in the application for a certificate of authority by a foreign corporation is
11 false when made or any arrangements or other facts described change, making the application
12 inaccurate in any respect, the foreign corporation shall promptly file with the secretary of state
13 an application for an amended certificate of authority executed by an authorized person on
14 forms prescribed by the secretary of state correcting the statement and, in the case of a change
15 in the foreign corporation's name, a certificate to that effect authenticated by the proper officer
16 of the jurisdiction under the laws of which the foreign corporation is incorporated. In the case of
17 a dissolution or merger, a foreign corporation that is not the surviving organization need not file
18 an application for an amended certificate of authority but shall promptly file with the secretary of
19 state a certificate to that effect authenticated by the proper officer of the jurisdiction under the
20 laws of which the foreign corporation is incorporated. A foreign nonprofit corporation that
21 changes the foreign nonprofit corporation's name and applies for an amended certificate of
22 authority and that is the owner of a service mark, trademark, or trade name, a general partner
23 named in a fictitious name certificate, a general partner in a limited partnership or a limited
24 liability limited partnership, or a managing partner in a limited liability partnership that is on file
25 with the secretary of state shall change the foreign nonprofit corporation's name in each of the
26 foregoing registrations that apply if the foreign nonprofit corporation files an application for an
27 amended certificate of authority.

28 **SECTION 10. AMENDMENT.** Subsection 1 of section 10-33-133 of the North Dakota
29 Century Code is amended and reenacted as follows:

30 1. A foreign corporation authorized to conduct activities in this state may withdraw from
31 this state upon procuring from the secretary of state a certificate of withdrawal. In

- 1 order to procure the certificate, the foreign corporation shall file with the secretary of
2 state an application for withdrawal, on forms prescribed by the secretary of state,
3 together with the fees provided in section 10-33-140, which must set forth:
- 4 a. The name of the corporation and the state or country under the laws of which it is
5 incorporated;
 - 6 b. That the corporation is not conducting activities in this state;
 - 7 c. That the corporation surrenders its authority to conduct activities in this state;
 - 8 d. That service of process in any action, suit, or proceeding based upon any cause
9 of action arising in this state during the time the corporation was authorized to
10 conduct activities in this state may thereafter be made on such corporation as
11 provided in section 10-01.1-13; and
 - 12 e. A post-office address to which a person may mail a copy of any process against
13 the corporation.