

Introduced by

Legislative Management

(Political Subdivision Taxation Committee)

1 A BILL for an Act to amend and reenact section 1-01-49, subsection 4 of section 10-30.5-01,
2 subdivision b of subsection 1 of section 10-33-124, subsection 4 of section 26.1-50-01,
3 subsection 3 of section 40-57.1-02, subsection 11 of section 52-02.1-01, subdivision b of
4 subsection 2 of section 57-38-01.33, subdivision c of subsection 4 of section 57-38-30.5,
5 section 57-38.5-01, and subdivision g of subsection 6 of section 57-39.2-04.3 of the North
6 Dakota Century Code, relating to a uniform definition of a primary sector business; and to
7 provide an effective date.

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

9 **SECTION 1. AMENDMENT.** Section 1-01-49 of the North Dakota Century Code is amended
10 and reenacted as follows:

11 **1-01-49. Other general definitions.**

12 As used in this code, unless the context otherwise requires:

- 13 1. "Depose" includes every mode of written statement under oath or affirmation.
- 14 2. "Executor" includes administrator and "administrator" includes executor.
- 15 3. "Individual" means a human being.
- 16 4. "Oath" includes "affirmation".
- 17 5. "Organization" includes a foreign or domestic association, business trust, corporation,
18 enterprise, estate, joint venture, limited liability company, limited liability partnership,
19 limited partnership, partnership, trust, or any legal or commercial entity.
- 20 6. "Partnership" includes a limited liability partnership registered under chapter 45-22.
- 21 7. "Penitentiary" includes any affiliated facilities.
- 22 8. "Person" means an individual, organization, government, political subdivision, or
23 government agency or instrumentality.

- 1 9. "Personal property" includes money, goods, chattels, things in action, and evidences
2 of debt.
- 3 10. "Preceding" and "following" when used by way of reference to a chapter or other part
4 of a statute means the next preceding or next following chapter or other part.
- 5 11. "Primary sector business" means an individual, corporation, limited liability company,
6 partnership, or association certified by the department of commerce division of
7 economic development and finance which through the employment of knowledge or
8 labor adds value to a product, process, or service which results in the creation of new
9 wealth.
- 10 For purposes of this subsection, "new wealth" means revenues generated by a
11 business in this state through the sale of products or services to:
- 12 a. Customers outside of this state; or
- 13 b. Customers in this state if the products or services were previously unavailable or
14 difficult to obtain from a business in this state.
- 15 ~~12.~~ "Process" means a writ or summons issued in the course of judicial proceedings.
- 16 ~~12-13.~~ "Property" includes property, real and personal.
- 17 ~~13-14.~~ "Real property" shall be coextensive with lands, tenements, and hereditaments.
- 18 ~~14-15.~~ "Rule" includes regulation.
- 19 ~~15-16.~~ "Signature" or "subscription" includes "mark" when the person cannot write, the
20 person's name being written near it and written by a person who writes that person's
21 own name as a witness.
- 22 ~~16-17.~~ "State" when applied to the different parts of the United States, includes the District of
23 Columbia and the territories.
- 24 ~~17-18.~~ "Testify" includes every mode of oral statement under oath or affirmation.
- 25 ~~18-19.~~ "United States" includes the District of Columbia and the territories.
- 26 ~~19-20.~~ "Will" includes codicils.
- 27 ~~20-21.~~ "Writ" means an order or precept in writing, issued in the name of the state or of a
28 court or judicial officer.

29 **SECTION 2. AMENDMENT.** Subsection 4 of section 10-30.5-01 of the North Dakota
30 Century Code is amended and reenacted as follows:

1 4. ~~"Primary sector business" means an individual, corporation, limited liability company,~~
2 ~~partnership, or association which through the employment of knowledge or labor adds~~
3 ~~value to a product, process, or service that results in the creation of new wealth. The~~
4 ~~term has the meaning provided in section 1-01-49 and includes tourism but does not~~
5 include production agriculture.

6 **SECTION 3. AMENDMENT.** Subdivision b of subsection 1 of section 10-33-124 of the North
7 Dakota Century Code is amended and reenacted as follows:

8 b. ~~"Primary sector business" means an individual, corporation, limited liability~~
9 ~~company, partnership, or association that, through a process employing~~
10 ~~knowledge and labor, addshas the meaning provided in section 1-01-49 value to~~
11 a product produced for resale.

12 **SECTION 4. AMENDMENT.** Subsection 4 of section 26.1-50-01 of the North Dakota
13 Century Code is amended and reenacted as follows:

14 4. ~~"Primary sector business" means an individual, corporation, limited liability company,~~
15 ~~partnership, or association that through the employment of knowledge or labor adds~~
16 ~~value to a product, process, or service which results in the creation of new wealth~~
17 ~~has the meaning provided in section 1-01-49. Qualification as a primary sector business~~
18 ~~under this subsection must be determined by the department of commerce division of~~
19 economic development and finance.

20 **SECTION 5. AMENDMENT.** Subsection 3 of section 40-57.1-02 of the North Dakota
21 Century Code is amended and reenacted as follows:

22 3. ~~"Primary sector business" means an individual, corporation, limited liability company,~~
23 ~~partnership, or association which through the employment of knowledge or labor adds~~
24 ~~value to a product, process, or service that results in the creation of new wealth~~
25 ~~has the meaning provided in section 1-01-49.~~

26 **SECTION 6. AMENDMENT.** Subsection 11 of section 52-02.1-01 of the North Dakota
27 Century Code is amended and reenacted as follows:

28 11. ~~"Primary sector business" means an employer engaged in locating to or in this state~~
29 ~~which previously had no presence in this state, or in expanding its operations within~~
30 ~~this state, which through the employment of knowledge or labor, adds value to a~~
31 ~~product, process, or export service that results in the creation of new wealth, excluding~~

1 ~~production agriculture, if it has the meaning provided in section 1-01-49. For purposes~~
2 ~~of this subsection, a primary sector business must also be an employer, excluding an~~
3 ~~employer engaged in production agriculture, which~~ meets the following eligibility
4 criteria:

- 5 a. An employer entering into an agreement, and increasing its base employment
6 level by at least one employee, or in the case of an employer without an
7 established base employment level in this state creating at least five employees,
8 within the time set in the agreement, is entitled to the new jobs credit from
9 withholding.
- 10 b. An employer must have an economically productive and socially desirable
11 purpose within the state.
- 12 c. An employer must not be closing or reducing its operation in one area of the state
13 and relocating substantially the same operation in another area.

14 **SECTION 7. AMENDMENT.** Subdivision b of subsection 2 of section 57-38-01.33 of the
15 North Dakota Century Code is amended and reenacted as follows:

- 16 b. "Primary sector business" ~~means a business certified by the department of~~
17 ~~commerce which, through the employment of knowledge or labor, adds value to a~~
18 ~~product, process, or service that results in the creation of new wealth~~ has the
19 meaning provided in section 1-01-49.

20 **SECTION 8. AMENDMENT.** Subdivision c of subsection 4 of section 57-38-30.5 of the
21 North Dakota Century Code is amended and reenacted as follows:

- 22 c. "Primary sector business" ~~means a qualified business that through the~~
23 ~~employment of knowledge or labor adds value to a product, process, or~~
24 ~~service~~ has the meaning provided in section 1-01-49.

25 **SECTION 9. AMENDMENT.** Section 57-38.5-01 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **57-38.5-01. Definitions.**

28 As used in this chapter, unless the context otherwise requires:

- 29 1. "Director" means the director of the department of commerce division of economic
30 development and finance.

- 1 2. ~~"New wealth" means revenues to a North Dakota business which are generated by~~
2 ~~sales of products or services to customers outside of the state. "New wealth" also~~
3 ~~includes revenues to a qualified business the customers of which previously were~~
4 ~~unable to acquire, or had limited availability of, the product or service from a North~~
5 ~~Dakota provider.~~
- 6 3. "Passthrough entity" has the same meaning as in section 57-38-01.
- 7 4.3. ~~"Primary sector business" means a qualified business that through the employment of~~
8 ~~knowledge or labor adds value to a product, process, or service and which results in~~
9 ~~the creation of new wealth~~ has the meaning provided in section 1-01-49 but does not
10 include an agricultural commodity processing facility as defined under section
11 57-38.6-01.
- 12 5.4. "Qualified business" means a business other than a real estate investment trust which
13 is a primary sector business that:
- 14 a. Is incorporated or its satellite operation is incorporated as a for-profit corporation,
15 passthrough entity, or joint venture;
- 16 b. Is in compliance with the requirements for filings with the securities commissioner
17 under the securities laws of this state;
- 18 c. Has North Dakota residents as a majority of its employees in the North Dakota
19 principal office or the North Dakota satellite operation;
- 20 d. Has its principal office in this state and has the majority of its business activity
21 performed in this state, except sales activity, or has a significant operation in
22 North Dakota that has or is projected to have more than ten employees or one
23 hundred fifty thousand dollars of sales annually; and
- 24 e. Relies on innovation, research, or the development of new products and
25 processes in its plans for growth and profitability.
- 26 6.5. "Taxpayer" means an individual, estate, or trust or a corporation, passthrough entity, or
27 an angel fund. The term does not include a real estate investment trust.

28 **SECTION 10. AMENDMENT.** Subdivision g of subsection 6 of section 57-39.2-04.3 of the
29 North Dakota Century Code is amended and reenacted as follows:

- 30 g. ~~"Primary sector business" means an individual, corporation, limited liability~~
31 ~~company, partnership, or association that through the employment of knowledge~~

1 ~~or labor adds value to a product, process, or service which results in the creation-~~
2 ~~of new wealth and which has been~~has the meaning provided in section 1-01-49.
3 ~~certified by the department of commerce division of economic development and-~~
4 ~~finance to be qualified under this subdivision.~~

5 **SECTION 11. EFFECTIVE DATE.** Section 10 of this Act is effective for taxable events
6 occurring after June 30, 2017, and the remainder of this Act is effective for taxable years
7 beginning after December 31, 2016.