

CORPORATIONS

CHAPTER 108

S. B. No. 146
(Wartner and Gefreh)

LOST STOCK AND TRANSFER BOOKS

AN ACT

To provide for lost stock and transfer books of corporations by providing a procedure for creating a new stock and transfer book where stock and transfer book lost or incomplete, providing procedure with respect thereto, and providing for effect to be given thereto.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.) Upon an affidavit made by the secretary of the corporation (1) that the stock and transfer book required to be kept by section 10-0314 of the Revised Code of North Dakota for 1943 has been lost and that the names and addresses of the stockholders and the total number of shares issued and outstanding are unknown, in whole or in part, or (2) showing that the records of stock ownership of the corporation are incomplete and that it is impossible or impracticable for the corporation to function without a determination with respect thereto, the secretary of state shall authorize the corporation to publish a notice to stockholders stating that on or before a date specified, which shall not be less than six months from the date of the first publication of said notice, all stockholders of the corporation shall register their shares with the corporation at an address stated in said notice. If the secretary of the corporation is unable to act or if unknown or if the corporation has no secretary, any other officer or director of the corporation, or if there is no officer or director, any stockholder may execute and furnish such affidavit, in which case the affidavit shall state that the secretary of the corporation is unable to act, or that he is unknown, or that the corporation has no secretary.

§ 2.) For the purposes of this Act, a stockholder shall register his shares by presenting to the corporation at the address stated, the stock certificates representing the shares of stock owned by such stockholder, and thereupon the secretary of the corporation, or any other officer or director thereof, shall register the name and address of the stockholder, the number and class of shares held, and the certificate number of the stock certificate upon a stock and transfer list. If the stockholder

in whose name the stock was issued is dead, the fiduciary or other person then entitled to the stock shall present in addition an affidavit stating that the stockholder in whose name the stock was issued is dead and setting forth facts to show that the fiduciary or other person is entitled to the stock. If the certificate is lost or destroyed, the stockholder or other person entitled thereto may, in lieu of the stock certificate, present proof of such loss or destruction and of his rights of ownership.

§ 3.) The notice to stockholders shall be published once a week for four successive weeks in a newspaper of general circulation in the county in which the corporation has its principal office or place of business in the state, as set forth in the charter, and a copy of the notice shall be sent by registered mail to the last known address of all stockholders of record, if any, and all persons known or believed to be stockholders. The notice shall state that, after the time specified for registering shares has expired, the corporation will recognize as shareholders only those persons who have registered their shares in accordance with this section.

§ 4.) At the expiration of the time fixed in said notice, the secretary of the corporation, or any other officer or director authorized to make the affidavit to the secretary of state, shall furnish the stock and transfer list prepared by him to the secretary of state, together with proof of publication and mailing of the notice required by this Act. Upon finding that the corporation has complied with this section, the secretary of state shall certify a copy of the stock and transfer list to the corporation as the true record of stock ownership on that date in all matters pertaining to the corporation. The stock and transfer list so certified shall be deemed to be the true record of all outstanding stock and the ownership thereof on the date of certification. As soon as possible after such certification the secretary of the corporation shall establish a new stock and transfer book containing the names of those persons on the certified stock and transfer list. For all purposes of the corporation the stock outstanding and the ownership thereof shall be deemed to be as stated from time to time in the new stock and transfer book.

§ 5.) Nothing herein contained shall be construed to prevent any stockholder from proving his right to the ownership of shares of stock in an action brought for that purpose in any court of record of this state, but any judgment of any such court shall not affect the validity or propriety of any action theretofore taken in good faith by the corporation on the basis of the new stock and transfer book at the time of such action.

Approved March 14, 1959.

CHAPTER 109

S. B. No. 219
(Gronvold, Wenstrom, Roen,)
(Saumur, Freed, Hernet)

SMALL BUSINESS INVESTMENT CORPORATIONS

AN ACT

Relating to the organization of small business investment corporations.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.)

1. Any ten or more natural persons who are residents of this state may form a small business investment corporation by complying with the conditions prescribed in this Act.
2. They subscribe and acknowledge a certificate specifying:
 - a. The name, the general nature of its business and the principal place of transacting its business. The name shall distinguish the corporation from all other corporations authorized to do business in the state, and shall contain the words "small business investment corporation".
 - b. The period of its duration, which shall be not more than twenty years.
 - c. The name and residence of each incorporator.
 - d. The names and addresses of those composing this board until the first election.
 - e. The highest amount of indebtedness or liability to which the corporation shall be subject.
3. The certificate may contain any other lawful provision defining and regulating the powers and business of the corporation, its officers, directors, members, and stockholders.

§ 2.) The purpose of the corporation is to assist, encourage and through the cooperative efforts of the institutions and corporations which, from time to time become members thereof, develop and advance the business prosperity and economic welfare of this state; to encourage and assist in the location of new business and industry in this state and to rehabilitate existing business and industry; to stimulate and assist in the expansion of all kinds of business activity which will tend to promote the business development and maintain the eco-

conomic stability of this state, and provide maximum opportunities for employment; to cooperate and act in conjunction with other organizations, public or private, the objects of which are the promotion and advancement of industrial, commercial, agricultural and recreational developments in this state; and to furnish money and credit to approved and deserving applicants, for the promotion, development and conduct of all kinds of business activity in this state, thereby establishing a source of credit not otherwise readily available therefor.

§ 3.) Upon the filing of the articles of incorporation with the secretary of state, he shall issue to the corporation over the great seal of the state of North Dakota a certificate that the articles containing the required state of facts have been filed in his office; and thereupon the persons signing the articles, and their associates and successors shall be a body corporate by the name and for the purposes stated in such articles.

§ 4.) In furtherance of the purposes for which such corporation is organized, and in addition to the powers conferred by the general laws relating to business corporations, any such corporation shall, subject to the restrictions and limitations herein contained, have the following powers:

1. Borrow money and otherwise incur indebtedness for any of the purposes of the corporation; to issue its bonds, debentures, notes or other evidences of indebtedness, whether secured or unsecured, therefor and to secure the same by mortgage, pledge, deed of trust or other lien on its property, franchises, rights and privileges of every kind and nature or any part thereof.
2. Lend money to, and to guarantee, endorse, or act as surety on the bonds, notes, contracts or other obligations of, or otherwise assist financially, any person, firm, corporation or association, and to establish and regulate the terms and conditions with respect to any such loans or financial assistance and the charges for interest and service connected therewith.
3. Purchase, receive, hold, lease, or otherwise acquire, and to sell, convey, mortgage, lease, pledge, or otherwise dispose of, upon such terms and conditions as the board of directors may deem advisable, real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations.

4. Acquire, by purchase or otherwise, the goodwill, business, rights, real and personal property and other assets, or any part thereof, of such persons, firms, corporations, joint stock companies, associations or trusts as may be in furtherance of the corporate purposes provided herein, and to assume, undertake, guarantee or pay the obligations, debts and liabilities of any such person, firm, corporation, joint stock company, association, or trust; to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments, and, in furtherance of the corporate purposes provided herein, to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, lease, or otherwise dispose of industrial plants or business establishments.
5. Acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes or other securities and evidences of interest in, or indebtedness of, any person, firm, corporation, joint stock company, association or trust, and, while the owner or holder thereof, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.
6. Cooperate with and avail itself of the facilities of the economic development commission and any similar governmental agencies; and to cooperate with and assist, and otherwise encourage, local organizations in the various communities of the state the purpose of which shall be the promotion, assistance, and development of the business prosperity and economic welfare of such communities and of this state.

§ 5.) The provisions of chapters 10-19 to 10-23, inclusive, of the 1957 Supplement to the North Dakota Revised Code of 1943 shall apply to corporations incorporated under this law insofar as they may be applicable and not inconsistent with this law.

§ 6.) The capital stock of the corporation shall be six thousand shares of no par value, which shall be issued for fifty dollars per share in cash. At least twenty-five percent of the capital stock shall be paid into the treasury of the corporation in cash before the corporation may transact any business other than such as relates to its organization.

§ 7.)

1. All the corporate powers of the corporation shall be exercised by a board of not less than fifteen elected

directors who shall be residents of North Dakota and, except in the case of the first board, representative of the various sections of the state as determined in the bylaws. The number of directors and their term of office shall be determined in the bylaws. If any vacancy occurs in the board of directors through death, resignation, or otherwise, the remaining directors may elect a person to fill the vacancy until the next annual meeting of the corporation.

2. The first board of directors shall adopt bylaws, which remain effective until amended or repealed by action of a subsequent board.
3. The first annual meeting shall be held at a date to be fixed by the board of directors as soon as reasonably possible after a minimum of twenty-five percent of the capital stock of the corporation shall have been paid into its treasury. The annual meeting shall be called in the manner provided by the bylaws. At the first annual meeting, and at each annual meeting thereafter, a majority of the elected directors shall be elected by a vote of the nonstockholder members of the corporation hereinafter provided for, and the remaining elected directors shall be elected by a vote of the stockholder members. The stockholder members shall have one vote for each share of stock. The nonstockholder members shall each have one vote, and each nonstockholder member having a loan limit as herein defined of more than ten thousand dollars shall have one additional vote in such election.

§ 8.) The nonstockholder members of the corporation shall consist of such national or state banks, savings banks, saving and loan associations, trust companies, stock or mutual insurance companies and other financial institutions as may make application for membership in said corporation, and membership shall become effective upon the acceptance of such application by the board of directors. Each such member of the corporation shall lend money to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by a majority of the directors. The total amount of loans by any member at any one time shall not exceed the following limit, to be determined as of the time such member becomes a member (on the basis of the balance sheet of such member at the close of its preceding fiscal year, certified by its proper officers); two and one-half percent of the capital and surplus of commercial banks and trust companies; two and one-half percent of one-half of the total surplus accounts of savings banks; two and one-half percent of the guaranty funds, surplus and undivided

profits of savings and loan associations and two and one-half percent of the capital and surplus of stock insurance companies; two and one-half percent of the guaranty funds or of the surplus, whichever is applicable, of mutual insurance companies and comparable limits approved by the board of directors of the corporation for other banking, financing, and insurance companies and related corporations, partnerships, foundations, and other institutions. All loan limits shall be established at the thousand dollar amount nearest to the amount computed in accordance with the aforesaid percentages. All calls of funds which nonstockholder members are committed to lend to the corporation shall be prorated by the corporation among the nonstockholder members in the same proportion that the individual lines of credit bear to the aggregate lines of credit. Upon sixty days written notice, a member of the corporation may withdraw from membership in the corporation at the expiration date of such notice, and after said expiration date shall be free of obligations hereunder except those accrued prior to said expiration date.

§ 9.) The corporation shall set apart as an earned surplus all of its net earnings in each and every year until such earned surplus shall equal the total of the paid-in capital. Said earned surplus shall be held in cash or invested in United States Government bonds, and shall be kept and used to meet losses and contingencies of the corporation. Whenever the amount of the earned surplus becomes impaired, it shall be restored to the required amount in the manner provided for its original accumulation.

§ 10.) At no time shall the total obligations of the corporation exceed ten times the amount of the paid-in capital and surplus, not including earned surplus.

§ 11.) The corporation shall not deposit any of its funds in any banking institution unless such institution has been designated as a depository by a vote of a majority of the directors, exclusive of any director who is an officer or director of the depository so designated. The corporation shall not receive money on deposit. No loans shall be made directly or indirectly to any officer of the corporation or to any firm of which such officer is a member, or officer.

§ 12.) Any person or firm who applies for a loan or obtains money from the investment corporation shall be required to invest in the stock of the corporation in an amount to be fixed by the board of directors of not less than two percent nor more than five percent of the funds obtained.

§ 13.) The holders of capital stock as such shall have no preemptive or preferential right to purchase or subscribe for

any part of the unissued capital stock of the corporation of any class or for any new issue of stock of any class, whether now or hereafter authorized or issued, or to purchase or subscribe for any bonds or other obligations, whether or not convertible into stock of any class of the corporation, now or hereafter authorized or issued.

§ 14.) Notwithstanding any other statute, the notes or other interest bearing obligations of any corporation organized under this Act, issued in accordance with this Act and the articles of incorporation and the bylaws of the corporation shall be legal investments for any banks, savings banks, savings and loan associations, trust companies, stock or mutual insurance companies or other financial institutions which become members of the corporation.

Approved March 17, 1959.

CHAPTER 110

S. B. No. 53

(Erickstad, Hernet, Gefreh, Luick and Johnson)
(From LRC Study)

SECURITIES REGULATION

AN ACT

To amend and reenact subsection 1 of section 10-0403, subsection 3 of section 10-0405, and sections 10-0406, 10-0408, 10-0409, 10-0410, 10-0411, 10-0413, 10-0415 and 10-0418 of the 1957 Supplement to the North Dakota Revised Code of 1943 and to create and enact sections 10-04081, 10-04082, and 10-04121 as a part of chapter 10-04 of the 1957 Supplement to the North Dakota Revised Code of 1943, relating to the administration of the securities laws; the registration of securities for sale to the public and of dealers, salesmen, and investment counsels; fraudulent practices; and the penalty for violation of the securities laws.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) Subsection 1 of section 10-0403 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

1. The state examiner shall appoint a special deputy examiner who shall be ex officio commissioner of securities, and it shall be the prime duty of such commissioner to administer the provisions of this Act. The commissioner shall receive a salary of such amount as shall be appropriated by the legislative assembly. The commissioner

shall use a seal with the words "securities commissioner, North Dakota" and such design as the commissioner may prescribe engraved thereon by which seal the commissioner shall authenticate proceedings and documents used by him in the administration of this chapter. The commissioner shall employ from time to time such clerks and employees as are necessary for the administration of this chapter, and they shall perform such duties as the commissioner shall assign. In the absence or disability of the commissioner, his chief deputy shall administer the provisions of this chapter, as acting commissioner;

§ 2. Amendment.) Subsection 3 of section 10-0405 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

3. Securities issued by a building and loan association subject to supervision by an agency of the state of North Dakota, or policy contracts of an insurance company subject to supervision by an agency of the state of North Dakota;

§ 3. Amendment.) Section 10-0406 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

10-0406. Exempt Transactions.) Except as hereinafter in this section expressly provided, sections 10-0404, 10-0407, 10-0408, and 10-0410 shall not apply to any of the following transactions:

1. Any judicial, executor's, administrator's, guardian's or conservator's sale or any sale by a receiver or trustee in insolvency or bankruptcy;
2. The sale in good faith and not for the purpose of avoiding the provisions of this chapter by a pledgee of securities pledged for a bona fide debt, provided that the amount of such securities does not exceed two percent of the entire issue of each issue of such securities outstanding, and provided further that before proceeding to sell such pledged securities the pledgee shall notify the commissioner and obtain his permission to such sale, unless such securities are exempted under section 10-0405;
3. Any isolated sale of a security by the issuer or owner thereof or by any agent for the account of such issuer or owner. A sale shall be deemed to be an isolated sale within the meaning of this exemption only if there shall not have been more than two other sales of securities of the same issue by such issuer or owner or by an agent for the account of such issuer or owner within

this state within the twelve month period immediately prior to the date of such sale. This subsection shall not exempt any dealer or his agent participating in an isolated sale from registering as hereinafter provided in section 10-0410;

4. Stock dividends or other distributions by a corporation out of its earnings or surplus, or the issuance of securities to existing security holders or creditors of a corporation in a bona fide reorganization, merger or consolidation of such corporation, carried out under the supervision or direction of a court of competent jurisdiction either in exchange for the securities or claim of such security holders or creditors, or partly in exchange therefor and partly for cash, or the sale or distribution of additional capital stock of a corporation to or among its own stockholders, where no commission or other remuneration is paid or given for soliciting or effecting such sale or distribution to stockholders;
5. The sale of securities to any bank, savings bank, savings institution, trust company, insurance company, corporation or dealer, or to any organization or association, a principal part of whose business consists of the buying of securities;
6. The issuance and delivery of securities of one corporation to the security holders of another corporation in exchange for all or substantially all of the assets of such other corporation or in connection with a consolidation or merger of such corporation, when such exchange of assets or the issuance and delivery of such securities is under the supervision or direction of a court of competent jurisdiction;
7. The issuance and delivery of any securities in exchange for any other securities of the same issuer pursuant to a right of conversion entitling the holder of the securities surrendered in exchange to make such conversion;
8. The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that:
 - a. Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics; and
 - b. Such securities do not constitute an unsold allotment to or subscription by such dealer as a partici-

- part in the distribution of such securities by the issuer, its officers or directors or by or through an underwriter; and
- c. Either Moody's, Fitch's, or Standard and Poor's securities manuals, or other recognized securities manuals approved by the commissioner contain the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen months prior to the date of such sale, and a profit and loss statement of the issuer for either the fiscal year preceding that date or the most recent year of operations; and
 - d. Such securities would qualify for registration by description pursuant to the provisions of section 10-0407; and
 - e. Such securities are limited to issuers organized under the laws of any state or territory or insular possession of the United States.
9. Subscription for shares of the capital stock of a corporation prior to the incorporation thereof, when no commission or other remuneration is paid or given for or in connection with the subscription and,
- a. The number of subscribers does not exceed fifteen; or
 - b. The amount raised by such subscription does not exceed twenty-five thousand dollars.

The commissioner may, by written order or regulation suspend or wholly revoke the exempt status of any sales or class of sales with respect to any specific security exempted by this section or may require with respect to any specific security, prior to the making of any such sales or class of sales, such information with respect thereto or the security to be sold thereunder, or such reports after the making of such sale, as the commissioner may deem necessary to enable him to determine whether or not he should suspend or revoke the exempt status of such sales or class of sales with respect to any specific security. No such revoking order may be entered without appropriate prior notice to all interested parties and until an opportunity for hearing is provided, except that the commissioner may by order summarily suspend any of the specified exemptions with respect to any specific security pending final determination of proceedings herein provided for. Notice shall be served upon the interested party personally, or by registered mail, at least twenty days before the time specified for hearing thereof, unless the service of such order is waived by the party proceeded against, or unless the parties agree upon a definite time and place for hearing thereof. If no hearing is requested by interested parties and none is ordered by the commissioner, the order will remain in effect

until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

§ 4. Amendment.) Section 10-0408 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

10-0408. Registration by Qualification.) Securities required to be registered by qualification under this chapter before they may be sold in this state shall be registered as provided in this section. Application for registration of securities by qualification shall be made by the issuer of the securities or by a registered dealer by filing in the office of the commissioner:

1. An application for registration which shall be made in writing or on forms prescribed by the commissioner and which shall contain the following information and be accompanied by the following documents:
 - a. With respect to the applicant or issuer and any significant subsidiary: its name, address, and form of organization; the state of foreign jurisdiction and date of its organization; the general character and location of its business; a general description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;
 - b. With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within thirty days of the filing of the application for registration; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected;
 - c. With respect to persons covered by subsection 1 (b) of this section: the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer to all those persons in the aggregate;
 - d. With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of

- the issuer: the information specified in subsection 1 (b) of this section other than his occupation;
- e. With respect to every promoter if the issuer was organized within the past three years: the information specified in subsection 1 (b) of this section, any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment;
 - f. With respect to any person on whose behalf any part of the offering is to be made in a non-issuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the application for registration; a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;
 - g. The title, kind, classes, and amount of securities to be offered in this state; the proposed offering price to the public or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges and a statement as to what person or corporation shall be responsible for payment of the same; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pursuant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;

- h. The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition;
- i. A description of each and every stock option or other security option outstanding, or to be created in connection with the offering, including the price at which such options may be exercised together with the amount of any such options held or to be held by every person;
- j. The capitalization and long-term debt of the issuer and any subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;
- k. The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the application for registration or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which affects its business or assets;
- l. A detailed statement showing the items of cash, property, services, patents, goodwill and any other consideration for which any securities of the issuer have been within two years or are to be issued in payment;
- m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;
- n. A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and

- bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;
- o. A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if the business were the registrant;
 - p. Other states in which it is proposed to offer the securities for sale to the public; other states in which the securities are eligible for sale to the public; states which have refused, by order or otherwise, to render the securities eligible for sale to the public or have revoked or suspended the right to sell the securities, or in which an application for qualification has been withdrawn; and, if application has been made to register the securities under the Federal Securities Act of 1933, the date upon which the application to register the securities was first filed, and a statement as to whether registration under that Act is effective, and if so, the effective date; and
 - q. Such additional information as the commissioner requires by rule or order or may subsequently request.
2. Payment of an examination fee of fifteen dollars and a registration fee of one-tenth of one percent of the aggregate offering price of securities to be sold in this state, but in no case shall such registration fee be less than twenty-five dollars or more than five hundred dollars. If the application for registration is denied such registration fee less the actual cost to the state of processing and investigating as determined by the commissioner shall be returned to the applicant.
 3. If the applicant is not domiciled in this state and is not a corporation organized or authorized to transact business under the laws of this state, a consent to service of process conforming to the requirements of section 10-0414 of this chapter.
 4. The commissioner may by rule or order require as a part of the application for registration under this section that a prospectus containing any designated part of the

information specified in subsection 1 of this section be submitted to the commissioner and the same prospectus shall be sent or given to each person to whom a sale or offer of sale is made. The commissioner may by rule or otherwise permit the omission of any item of information or document from any application for registration. In all cases in which an application is filed to register securities and a registration statement covering the same securities has been filed with the Federal Securities and Exchange Commission a copy of the registration statement so filed shall be accepted by the commissioner in lieu of the information specified in paragraph a. through q., except that it shall be accompanied by a statement of the amount of such securities to be offered in this state. All of the statements, exhibits or documents of every kind required under this section shall be certified by the applicant or the issuer or any person having knowledge of the facts. An applicant may, with the consent of the commissioner, amend or withdraw an application and any or all statements, exhibits or documents filed therewith under this section at any time prior to the registration or prior to any offering and sale of the securities sought to be registered or the entry of an order denying the registration of such securities but in no event shall the registration fee be returned.

Additional amounts of securities registered under this section may, with the consent of the commissioner, be registered by payment of the proper registration fee, which shall be computed as provided in subsection 2 of this section as a separate fee for each additional amount registered, and upon providing the commissioner with any additional information which he may request.

Registration under this section shall be effective for a period of one year and may be renewed for additional periods of one year by filing, by a date not later than fifteen days prior to the expiration of a registration, a balance sheet and a profit and loss statement of the issuer as of a date not more than ninety days prior to the date of filing, together with the payment of a renewal fee of twenty-five dollars, and upon providing the commissioner with any additional information which he may request.

§ 5.) Section 10-04081 of chapter 10-04 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby created and enacted to read as follows:

10-04081. Authority of Commissioner as to Registration of Securities.) The right to sell securities in this state shall not

be granted in any case where it appears to the commissioner that the sale of such securities would work a fraud or deception on purchasers or the public, or that the proposed disposal of the securities is on unfair terms, or if the proposed plan of business of the applicant appears to be unfair, unjust, or inequitable. When the commissioner deems it necessary he shall have power, in connection with pending applications and at the expense of the applicant, to require the applicant to furnish additional information, to order appraisals, audits, or other examinations and reports, and, where the applicant is the issuer of the securities, or the proposed sale is to be on behalf of the issuer, to make an investigation of the books, records, property, business, and affairs of such issuer.

Upon compliance with all the provisions of this Act relating to applications for registration by qualification and the requirements of the commissioner, the commissioner shall either register such securities or if he is of the opinion that sale of the securities would be contrary to the provisions of this section, he shall deny the application. If the commissioner fails to either approve or deny the application within sixty days after date of filing of the application, the applicant may request the board of review provided for in section 10-04121 to consider the application, and upon receiving such request the board of review shall consider the application and render a decision as to whether the securities shall be registered or whether the application shall be denied, which decision shall be accompanied by a findings of fact and conclusions of law supporting such decision. However, the commissioner shall have power to place such conditions, limitations and restrictions on any registration as may be necessary to carry out the purposes of this Act. Registration shall be by entry in the register of securities, which entry shall show the securities registered and for whom registered, and the conditions, limitations, and restrictions, if any, or shall make proper reference to a formal order of the commissioner on file showing such conditions, limitations, and restrictions. Included among any other reasonable conditions, limitations, and restrictions which the commissioner may deem necessary, are the following:

1. The commissioner may by rule, order or directive require that any security issued or to be issued to a promoter for a consideration different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow with him or some other depository satisfactory to him under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders

- who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than 6% of the initial offering price shown to the satisfaction of the commissioner to have been actually earned on the investment in any common stock as held. In case of dissolution or insolvency during the time such securities are held in escrow, the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full;
2. The commissioner may by rule, order or directive require that all the proceeds from the sale of the registered security be impounded until the issuer receives a specified amount of funds, which amount shall be determined by the commissioner;
 3. The commissioner may refuse to allow the granting of any stock options to any person, but if such an option is allowed, the commissioner may prescribe that the price at which the option can be exercised shall be increased each year in which it is not exercised in an amount to be determined by the commissioner and that the option shall lapse altogether after a specified period to be set by the commissioner;
 4. If any stock is given for past services or consideration, the commissioner may require that the issuer submit to him a strict and comprehensive evaluation of such past services or consideration and may limit the amount of stock so given in order that it is commensurate with the value of the past services and in no case shall the commissioner allow stock to be given for future services;
 5. The commissioner may limit the price at which the securities, either of par or no par value, may be sold, and if such securities are quoted by a recognized quotation list such price shall be limited to an amount not unreasonably in excess of the amount quoted;
 6. The commissioner may by rule, order or directive limit compensation, and all other expenses paid or incurred, directly or indirectly in connection with the organization, registration or sale of securities to an amount not in excess of compensation paid or expenses incurred in connection with the organization, registration or sale of similar securities;
 7. If more than one class of stock is issued and one class of stock is issued for the purpose of giving preference as to dividends, the commissioner may require that a greater consideration, commensurate with the value of the dividend preference, be paid per share for such stock;
 8. The commissioner may by rule, order or directive require that any security registered be sold only on a

specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the commissioner or preserved by the corporation for any period up to three years specified in the rule or order;

9. So long as the registration is effective, the commissioner may by rule or order require the person who filed for registration to file reports, not more often than quarterly, to provide reasonably current information upon the matters contained in the registration statement and to disclose the progress of the offering.

§ 6.) Section 10-04082 of chapter 10-04 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby created and enacted to read as follows:

10-04082. Advertising Matter; Regulations.) No circular, prospectus, advertisement, printed matter, document, pamphlet, leaflet, or other matter, hereinafter referred to as advertising matter, pertaining to any securities which have been registered in compliance with the provisions of this chapter, or rendering advice with relation thereto, shall be published, circulated, distributed, or caused to be published, circulated, or distributed, in any manner unless and until such advertising matter shall have been submitted in duplicate to the commissioner and approved by him. The commissioner shall not approve advertising matter relating to securities not registered or exempted under the provisions of this chapter. The commissioner shall have power to disapprove any such advertising matter which he deems in conflict with the purposes of this Act. All such advertising matter shall carry the name and address of the issuer or dealer circulating, publishing or distributing same and shall make no reference to the registration of the securities or the issuance of a license by the commissioner. The provisions of this section shall not apply to securities exempted under section 10-0405 of this chapter, nor to sales of securities made in a manner exempted under section 10-0416 of this chapter.

§ 7. Amendment.) Section 10-0409 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

10-0409. Suspension or Revocation of Registration of Securities.) The commissioner may revoke the registration of any securities registered under this chapter if, after a hearing or opportunity for hearing as provided in section 10-0412, he finds that any provisions of this chapter or any rule, order, or condition lawfully imposed under this chapter has been violated, or if he finds that:

1. The sale of such securities would work or tend to work a fraud, or deception upon the purchasers thereof or the public, or that the disposal of the securities is on unfair terms, or if the plan of business of the applicant appears to be unfair, unjust, or inequitable; or
2. The issuer of such securities is insolvent, or has violated any of the provisions of this chapter or any order of the commissioner of which such issuer has notice, or does not conduct its business in accord with law; or
3. The issuer of such securities has made any fraudulent representations in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities; or
4. The issuer of such securities has refused to permit an examination into its affairs as provided in subsection 5a of this section, or has failed to furnish the commissioner any further information required pursuant to subsection 5a of this section; or
5. Securities registered by description were not entitled to registration by description:
 - a. If the commissioner has reasonable grounds to believe that the registration of any securities registered under this chapter should be revoked upon any ground specified in this section, he or his agent may conduct an examination into the affairs of the issuer of such securities; provided, that the commissioner or his agent may conduct such an examination only if the information sought by such examination could not be obtained from other readily available sources. In making any such examination, the commissioner or his agent shall have access to and may compel the production of all the books and papers of an issuer and may administer oaths to and examine the officers and any employees of such issuer as to its business and affairs. They may also require a balance sheet exhibiting the assets and liabilities of any such issuer or his income statement, or both, to be certified to by a certified public accountant. Whenever the commissioner may deem it necessary in connection with any such examination, he may also require such balance sheet or income statement, or both, to be made more specific in such particulars as he shall point out or to be brought down to the latest practicable date. Such examination shall be made at the office of the commissioner, unless the issuer or a registered dealer requests that the examination be made at some other place, in which case the person making such request may be required

by the commissioner to advance sufficient funds to pay the actual expenses of such investigation.

- b. If the commissioner has reasonable grounds to believe that the registration of any securities under this chapter should be revoked on any ground specified in this section, he may enter an order suspending the registration of such securities pending an examination into the affairs of the issuer of such securities or pending a hearing or opportunity for hearing as provided in section 10-0412; provided, that no such suspension order shall be effective for more than 30 days and such an order, if not withdrawn by the commissioner within 30 days, shall automatically terminate 30 days after the date of its issuance. Such suspension order shall state specifically the grounds for its issuance. Upon the entry of an order suspending the registration of any securities or of an order withdrawing a suspension order previously issued, the commissioner shall send a copy of such order to the issuer of such securities and to all registered dealers by mail, or by telegraph, or by telephone, confirmed in writing.
- c. If the commissioner finds, after a hearing or opportunity for hearing as provided in section 10-0412, that there are grounds for revoking the registration of certain securities, he may enter in the register of securities an order revoking the registration of such securities. Such order shall state specifically the grounds for its issuance. Upon the entry of an order revoking the registration of securities, the commissioner shall send a copy of such order to the issuer of such securities and to all registered dealers by mail, or by telegraph, or by telephone, confirmed in writing. No order revoking the registration of securities shall invalidate any sale of such securities made prior to the entry of such order.

§ 8. **Amendment.**) Section 10-0410 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

10-0410. Registration of Dealers, Salesmen, and Investment Counsel.) No dealer or salesman shall offer for sale or sell any securities within or from this state, except in transactions exempt under section 10-0406, unless he is registered as a dealer or salesman pursuant to the provisions of this section.

1. **Dealers.** Application for registration as a dealer may be made by any person. Such application for registration shall be made in writing in a form prescribed by the

- commissioner, shall be signed by the applicant, duly verified by oath, shall be filed in the office of the commissioner, and shall contain the following information:
- a. The name of the applicant.
 - b. The address of the principal place of business of the applicant and the addresses of all branch offices, if any, of the applicant in this state.
 - c. The form of business organization and the date of organization of the applicant.
 - d. The names and business addresses of all members, partners, officers, directors, trustees or managers of the applicant; a statement of the limitations, if any, of the liability of any partner, member, manager, or trustee; and a statement setting forth in chronological order the occupational activities of each such partner, member, officer, director, trustee, or manager during the preceding ten (10) years.
 - e. A brief description of the general character of the business conducted or proposed to be conducted by the applicant.
 - f. A list of any other states in which the applicant is registered as a dealer, and, if registration of the applicant as a dealer has ever been refused, canceled, suspended or withdrawn in any state, full details with respect thereto.
 - g. Whether the applicant is registered as a dealer under the Securities Exchange Act of 1934 or any act adopted in amendment thereof and whether any such registration of the applicant has ever been denied, revoked or suspended or is then the subject of proceedings for revocation or suspension by the securities and exchange commission.
 - h. The names of all organizations of dealers or brokers of which the applicant is a member or before which any application for membership on the part of the applicant is then pending, and whether any such membership of the applicant has ever been denied, revoked or suspended or is then the subject of proceedings for revocation or suspension.
 - i. The names of any securities exchange of which the applicant or any of its partners, officers, directors, trustees, members, managers or employees is a member, and whether any such membership has ever been denied, revoked or suspended or is then the subject of proceedings for revocation or suspension.
 - j. A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the

most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant, or by a responsible officer or member of said applicant as the commissioner may require.

- k. Whether applicant or any officer, director, partner, member, trustee, or manager of the applicant, has ever been convicted of a felony or any misdemeanor other than minor highway traffic offenses and, if so, all pertinent information with respect to any such conviction.
- l. Any other information which the commissioner may by rule or order require.

The commissioner may also require such additional information as to the previous history, record or association of the applicant, its officers, directors, employees, members, partners, managers or trustees as he may deem necessary to establish whether or not the applicant should be registered as a dealer under the provisions of this law.

There shall be filed with such application a written consent to the service of process upon the commissioner in actions against such dealer, conforming to the requirements of section 10-0414 and payment of the prescribed registration fee, which shall be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection the commissioner may register such applicant as a dealer unless he shall find that the applicant is not of good business reputation, or is not solvent, or does not appear qualified by training or experience to act as a dealer in securities.

The commissioner shall require an indemnity bond or a deposit of cash or other properties approved by the commissioner running to the state of North Dakota conditioned for the faithful compliance by the dealer, his agents, and his salesmen with all the provisions of this law and for the faithful performance and payment of all obligations of the dealer and his agents and salesmen.

The bond or deposit shall be of such type as may be approved by the commissioner and shall be in such an amount as he shall deem necessary to protect purchasers when there is taken into consideration the volume of business engaged in by the applicant and the number of salesmen employed by the applicant. Any such bond shall have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a dealer he shall notify the applicant of such registration.

2. **Salesmen.** Application for registration as a salesman may be made by any individual. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant and by the registered dealer or issuer employing or proposing to employ such applicant, duly verified by oath, shall be filed in the office of the commissioner and shall contain the following information:
 - a. Name and residence and business address of the applicant.
 - b. Name of the dealer or issuer employing or proposing to employ the applicant, unless the applicant is to be self-employed.
 - c. Names and addresses of three persons of whom the commissioner may inquire as to the character and business reputation of the applicant.
 - d. Applicant's age and education.
 - e. The nature of employment and names and addresses of employers of the applicant for the period of ten years immediately preceding the date of application.
 - f. Other state or federal laws under which the applicant has ever been registered as a dealer or salesman of securities, and, if any such registration has ever been refused, canceled, suspended or revoked, full details with respect thereto.
 - g. Whether applicant has ever been convicted of a felony or misdemeanor other than minor highway traffic offenses, and if so, all pertinent information with respect to any such conviction.

The commissioner may also require such additional information as to the applicant's previous business experience as he may deem necessary to determine whether or not the applicant should be registered as a salesman under the provisions of this law. If a salesman proposes to be self-employed he shall specifically state the particular security or securities he proposes to sell in this state in his application, and if said security or securities are exempt under section 10-0405 of this chapter or have been registered by description under section 10-0407 or have been registered by qualification under section 10-0408, then the commissioner shall require, that said self-employed salesman file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed salesman with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond shall be in a form approved and in the amount required by the commissioner. There shall be filed with such application payment of the prescribed registration fee, which shall be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection the commissioner may register such applicant as a salesman unless he finds that such applicant is not of good business reputation, or that the dealer named on the application is not a registered dealer. When the commissioner has registered an applicant as a salesman he shall immediately notify the applicant of such registration.

Every registered dealer or issuer shall promptly notify the commissioner of the termination of the employment by him of a registered salesman; and the registration of such salesman shall automatically be suspended from the time of termination of such employment until such time as he shall notify the commissioner of his employment by another registered dealer or issuer.

3. **Investment Counsel.** Application for registration as an investment counsel may be made by any person. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant, duly verified by oath and shall be filed in the office of the commissioner and shall contain the following information:
 - a. Name, residence, and business address of the applicant.
 - b. If the applicant is a corporation or association, give full information as to agents, partners, and managing officers.
 - c. Statement showing each individual named is of good repute and possesses essential experience and education.
 - d. The plan and character of business, and the proposed method of operation.
 - e. Such other information as may be required.

If the applicant is a foreign corporation or association, it shall file with its application:

1. A copy of its articles.
2. Certificate showing authorization to transact business.

The commissioner may also require such additional information as to the previous history, record or association of the applicant, its officers, directors, employees, members, partners, managers or trustees, as he may deem necessary to establish whether or not the applicant should be registered as an investment counsel under the provisions of this chapter.

There shall be filed with such application:

- a. A written consent to the service of process upon the commissioner in actions against such investment counsel conforming to the requirements of section 10-0414, and

- b. Payment of the prescribed registration fee, which shall be returned if registration is refused, and
- c. A financial statement or balance sheet, prepared in accordance with standard accounting practice showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant or by a responsible officer or member of said applicant.

When an applicant has fully complied with the provisions of this subsection the commissioner may register such applicant as an investment counsel unless he shall find that the applicant is not of good business reputation, or is not solvent.

No investment counsel may be granted a dealer's or salesman's registration.

An investment counsel shall not take, hold or exercise any power of attorney on behalf of its clients, either to purchase or sell securities, or to collect or pay any consideration for securities of its clients.

An investment counsel shall not receive or hold any securities of its clients or receive or hold any consideration for such securities of its clients. He shall be limited to giving advice to buy or sell securities, but shall take no part, directly or indirectly, in consummating the purchase or sale of securities of its clients. A registrant as investment counsel shall notify the commissioner of any change of address.

4. **Refusal of Registration.** If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-0412, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, he shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order shall be mailed to the applicant at his business address, and if the application is for registration as a salesman, to the registered dealer or issuer who proposed to employ such applicant. If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a dealer's, salesman's, or investment counsel's registration under section 10-0411, such act or omission may constitute a sufficient ground for a finding by the commissioner, that such applicant is not of "good business reputation."
5. **Record and Renewal of Registrations.** The names and addresses of all persons who have been registered as

dealers, salesmen, or investment counsels, and all orders with respect thereto, shall be recorded in a register of dealers, salesmen, and investment counsels in the office of the commissioner. Every registration under this section shall expire on the 31st day of December in each year. Registration of dealers, salesmen, and investment counsels may be renewed each year, at any time not less than fifteen (15) and not more than sixty (60) days before expiration thereof, by (1) the payment of the proper registration fee and (2) in the case of dealer, the filing of a financial statement, prepared in accordance with standard accounting practice and certified to by an independent certified public accountant or by a responsible officer or member, showing the financial condition of such dealer as of the most recent practicable date. Upon any change in the proprietors, partners, officers or directors of a registered dealer or investment counsel, such registered dealer or investment counsel shall promptly notify the commissioner in writing of such changes. The commissioner shall record such changes, without fee, in the register of dealers, salesmen, and investment counsels.

6. **Fees.** The fee for registration and for each annual renewal thereof shall be:
- a. For each dealer employing not more than three salesmen in this state.....\$ 50.00
 - b. For each dealer employing more than three, but not more than five salesmen in this state...\$ 75.00
 - c. For each dealer employing more than five salesmen in this state.....\$100.00
 - d. For each salesman.....\$ 5.00
 - e. For each investment counsel.....\$ 25.00

§ 9. Amendment.) Section 10-0411 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

10-0411. Suspension or Revocation of Dealers', Salesmen's and Investment Counsels' Registration.) The commissioner may revoke the registration of any dealer, salesman, or investment counsel if, after a hearing or opportunity for hearing as provided in section 10-0412, he finds that such registered dealer, salesman, or investment counsel:

1. Has violated or failed to comply with, any provisions of this chapter or any order or rule of the commissioner under this chapter; or
2. Is, in the case of a dealer, insolvent; or
3. Has been guilty of any fraudulent act or practice in connection with the purchase or sale of any securities; or

4. Conducts business in purchasing or selling securities at such variations from current market prices as, in the light of all the circumstances, are unconscionable or unfair to the purchasing public, or if such variance, including commissions on sales, unreasonably exceeds the price quoted by a recognized national quotation list as prescribed by the commissioner; or
5. Has failed to file with the commissioner any financial statement required pursuant to subsection (A) of this section, or has refused to permit an examination into his affairs as provided by subsection (A) of this section; or
6. Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or
7. Has been convicted of any misdemeanor involving a security or any aspect of the securities business, or any felony; or
8. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business; or
9. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a dealer, salesman, or investment counsel; or
10. Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a dealer, salesman, or investment counsel, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the securities and exchange commission suspending or expelling him from a national securities exchange or national securities association; but the commissioner may not enter an order under this subsection on the basis of an order under another state Act unless that order was based on facts which would currently constitute a ground for an order of revocation or suspension under this section; or
11. Has, in connection with the offer, sale, or purchase of any security, directly or indirectly, effected a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase of the security.

It shall be sufficient cause for revocation of registration of a dealer or investment counsel as provided in this section, in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be sufficient ground for revoking the registration of an individual dealer.

- (A) The commissioner may require any registered dealer, salesman, or investment counsel to make and keep such accounts, correspondence, memoranda, papers, books, and other records as he deems necessary to efficiently administer this chapter, and such records shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records. The commissioner may at any time require a registered dealer or investment counsel to file with him a financial statement showing the financial condition of such dealer or investment counsel as of the most recent practicable date, and may require that such financial statement be verified by a certified public accountant; provided, however, that the commissioner shall not require any registered dealer or investment counsel to file such a financial statement more than twice in any one year. If the commissioner has reasonable grounds to believe that the registration of any registered dealer, salesman, or investment counsel should be revoked upon any grounds specified in this section, the commissioner or his agent may conduct an examination into the affairs of any such registered dealer, salesman, or investment counsel. In making any such examination, the commissioner or his agent shall have access to and may compel the production of all the books and papers of a registered dealer, salesman, or investment counsel, and may administer oaths to and examine the officers and employees of such dealer or investment counsel as to his business and affairs.
- (B) If the commissioner has reasonable grounds to believe that a registered dealer, salesman, or investment counsel has been guilty of any act or omission which would be sufficient ground for revoking the registration of such dealer, salesman, or investment counsel, he may enter an order suspending the registration of such dealer, salesman, or investment counsel pending an examination into the affairs of such dealer, salesman, or investment counsel or pending a hearing or opportunity for hearing as provided in section 10-0412; provided, that no such order shall be effective for more than 30 days, and such order, if not withdrawn by the commissioner within 30

days, shall automatically terminate 30 days after the date of its issuance. Such suspension order shall state specifically the grounds for its issuance. Upon the entry of such suspension order, or of an order withdrawing a suspension order previously entered, the commissioner shall send a copy of such order by registered mail to the dealer, salesman, or investment counsel whose registration is affected thereby at his business address, and, if such order affects the registration of a salesman, to the registered dealer who employs such salesman.

- (C) If the commissioner finds, after affording a registered dealer or a registered salesman, or a registered investment counsel a hearing or opportunity for hearing as provided in section 10-0412 that there are grounds to revoke the registration of such dealer, salesman, or investment counsel he may enter an order in the register of dealers, salesmen, and investment counsels, revoking the registration of such dealer, salesman, or investment counsel. Such order shall state specifically the grounds for its issuance. A copy of such order shall be sent by registered mail to the dealer, salesman, or investment counsel whose registration is revoked thereby at his business address and, if the revocation is of the registration of a salesman, to the registered dealer who employs such salesman. Suspension or revocation of the registration of a dealer shall also suspend or revoke the registration of all of his salesmen; but suspension or revocation of the registration of a salesman solely because he was employed by a dealer whose registration was suspended or revoked shall not prejudice subsequent applications for registration by such salesman.

§ 10. Amendment.) Section 10-0415 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

10-0415. Fraudulent Practices.) It shall be a fraudulent practice and it shall be unlawful

1. For any person knowingly to subscribe to, or make or cause to be made, any material false statement or representation in any application, financial statement or other document or statement required to be filed under any provision of this chapter, or to omit to state any material statement or fact in any such document or statement which is necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
2. For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly to employ any device, scheme, or artifice to defraud; or

3. For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
4. For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to engage in any act, practice, or course of business which operates or would operate as a fraud or deception upon purchasers or the public; or
5. For any person, in connection with the offer, sale, or purchase of any security, directly or indirectly, to effect a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase of the security.

§ 11. **Amendment.**) Section 10-0418 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

10-0418. Penalties.) Any person who shall willfully violate any provision of this chapter or who willfully violates any rule or order of the commissioner made pursuant to the provisions of this chapter, or who shall engage in any act, practice or transaction declared by any provision of this chapter to be unlawful shall upon conviction thereof be sentenced to pay a fine of not less than five hundred dollars nor more than five thousand dollars or imprisonment for not less than three months nor more than five years, or both such fine and imprisonment.

§ 12.) Section 10-04121 of chapter 10-04 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby created and reenacted to read as follows:

10-04121. Board of Review.) There shall be a board of review, consisting of the attorney general, secretary of state and the manager of the Bank of North Dakota, which shall consider appeals made from the final orders entered by the commissioner under section 10-0412. Any person adversely affected by an order of the commissioner entered under section 10-0412 may, within twenty days after the date of the entry of the order of the commissioner, make application to the board of review asking review of such order. The board of review shall act upon such request for review of the order of the commissioner and shall enter a decision thereon in writing within 45 days after receipt of the application which decision shall be accompanied by a findings of fact and conclusions of law supporting such decision. Notice of decisions of such

board shall be remitted to the person applying to the board for review and to the commissioner. Decisions of the board shall be made from the records and transcripts prepared during the hearings provided for in section 10-0412 and any additional evidence that may be submitted in writing by the commissioner or aggrieved person to the board. A majority of the board shall constitute a quorum and shall be sufficient to render a decision upon matters before it. No person may appeal to the district courts under the provisions of section 10-0413 until he has made application to the board of review pursuant to the provisions of this section, and until a decision has been rendered by such board.

§ 13. Amendment.) Section 10-0413 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

10-0413. Appeals.) An appeal may be taken from any decision of the board of review by any person adversely affected thereby to the district court of Burleigh County, North Dakota, by serving on the commissioner within 20 days after the date of entry of the decision of the board of review a written notice of appeal, signed by the appellant, stating:

- a. The order of the board of review from which the appeal is taken; and
- b. The grounds upon which a reversal or modification of such order is sought; and
- c. A demand for a certified transcript of the record of such order.
 1. Upon receipt of such notice of appeal, the commissioner shall, within 10 days thereafter, make, certify and deliver to the appellant a transcript of the record of the order from which the appeal is taken; provided, that the appellant shall pay the reasonable costs of such transcript. The appellant shall, within 5 days after receipt of such transcript, file such transcript and a copy of the notice of appeal with the clerk of the court. Said notice of appeal and transcript of the record shall constitute appellant's complaint. Said action shall thereupon be entered on the trial calendar of the court.
 2. If the order of the commissioner shall be reversed, the court shall by order specifically direct the commissioner as to his further action in the matter, including the making and entering of any order or orders in connection therewith, and the conditions, limitations, or restrictions to be therein contained.

Approved March 17, 1959.

CHAPTER 111

S. B. No. 41

(Gefreh, Brooks, Erickstad, Holand)
(From LRC Study)

NONPROFIT CORPORATION ACT

AN ACT

Relating to creation, organization, reorganization, operation, powers, purposes, reports, fees, charges, and dissolution of domestic and foreign nonprofit corporations organized or operating within this state for any lawful purpose, providing certain penalties for violations of this Act, and relating to deferred repeal of chapters 10-08, 10-09, 10-10, and 10-11 of the North Dakota Revised Code of 1943, as amended, and to assign chapters 10-24, 10-25, 10-26, 10-27, and 10-28 of the North Dakota Revised Code of 1943 to this Act.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.) Chapters 10-24, 10-25, 10-26, 10-27, and 10-28 of the North Dakota Revised Code of 1943 are hereby created and enacted to read as follows:

Chapter 10-24

North Dakota Nonprofit Corporation Act

General Provisions

10-2401. Title.) This Act shall be known and may be cited as the "North Dakota Nonprofit Corporation Act."

10-2402. Definitions.) As used in this Act, unless the context otherwise requires, the term:

1. "Corporation" or "domestic corporation" means a corporation not for profit subject to the provisions of this Act, except a foreign corporation.
2. "Foreign corporation" means a corporation not for profit organized under laws other than the laws of this state.
3. "Not for profit corporation" means a corporation no part of the income of which is distributable to its members, directors or officers.
4. "Articles of incorporation" includes the original articles of incorporation and all amendments thereto, and includes articles of merger.
5. "Bylaws" means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.
6. "Member" means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws.

7. "Board of directors" means the group of persons vested with the management of the affairs of the corporation irrespective of the name by which such group is designated.
8. "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its affairs.

10-2403. Applicability.) The provisions of this Act relating to domestic corporations shall apply to:

1. All corporations organized hereunder; and
2. All not for profit corporations heretofore organized under any Act hereby repealed, for a purpose or purposes for which a corporation might be organized under this Act.

The provisions of this Act relating to foreign corporations shall apply to all foreign not for profit corporations conducting affairs in this state for a purpose or purposes for which a corporation might be organized under this Act.

10-2404. Purposes.) Corporations may be organized under this Act for any one or more lawful purposes not for pecuniary profit and not incorporable under the Business Corporation Act or the Cooperative Association Act.

10-2405. General Powers.) Each corporation shall have power:

1. To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation.
2. To sue and be sued, complain and defend, in its corporate name.
3. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.
4. To purchase, take, receive, lease, take by gift, devise or bequest, or otherwise acquire, own, hold, improve, use and otherwise deal in and with real or personal property, or any interest therein, wherever situated.
5. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets.
6. To lend money to its employees other than its officers and directors.
7. To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or

obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district or municipality or of any instrumentality thereof.

8. To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises and income.
9. To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.
10. To conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this Act in any state, territory, district, or possession of the United States, or in any foreign country.
11. To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation.
12. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation.
13. Unless otherwise provided in the articles of incorporation, to make donations for the public welfare or for charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities.
14. When any claim is asserted, whether by action in court or otherwise, against any person by reason of his being or having been a director, or officer of a corporation, the court in the proceeding in which such claim has been asserted, or any court having the requisite jurisdiction of an action instituted by such director or officer on his claim for indemnity, may assess indemnity against the corporation, its receiver or trustee, for the amount paid by such director or officer in satisfaction of any judgment on or in compromise of any such claim (exclusive in either case of any amount paid to the corporation), and any expenses and costs (including attorneys' fees) actually and necessarily incurred by him in connection therewith to the extent that the court shall deem reasonable and equitable, provided, nevertheless, that indemnity may be assessed under this section only if the court finds that the person indemnified was not guilty of actual negligence or misconduct in the performance of his duties as such director or officer. The

right and remedy provided by this section shall be exclusive when any action brought on such claim has resulted in judgment against the person claiming indemnity, or when the person claiming indemnity has paid or agreed to pay any sum in settlement of any such claim or action, and in such case indemnity shall be awarded only upon order of court pursuant to the provisions of this section. In all other cases the right and remedy provided by this section shall not be exclusive, but each corporation shall have power to indemnify any director or officer or former director or officer of such corporation against expense and costs (including attorneys' fees) actually and necessarily incurred by him in connection with any claim asserted against him, by action in court or otherwise, by reason of his being or having been such director or officer, except in relation to matters as to which he shall have been guilty of actual negligence or misconduct in the performance of his duties as such director or officer.

15. To cease its corporate activities and surrender its corporate franchise.
16. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

10-2406. Defense of Ultra Vires.) No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation 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 or a director against the corporation to enjoin the doing or continuation of unauthorized acts, or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed pursuant to any contract to which the corporation 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 corporation or the 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, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained.

2. In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through members in a representative suit, against the officers or directors of the corporation for exceeding their authority.
3. In a proceeding by the attorney general, as provided in this Act, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from performing unauthorized acts, or in any other proceeding by the attorney general.

10-2407. Corporate Name.) The corporate name:

1. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.
2. Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any Act of this state, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate name reserved or registered as permitted by the laws of this state.
3. Shall be transliterated into letters of the English alphabet, if it is not in English.

10-2408. Registered Office and Registered Agent.) Each corporation shall have and continuously maintain in this state:

1. A registered office which may be, but need not be, the same as its principal office.
2. A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with such registered office.

10-2409. Change of Registered Office or Registered Agent.)

A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. The address of its then registered office.
3. If the address of its registered office be changed, the address to which the registered office is to be changed.
4. The name of its then registered agent.
5. If its registered agent be changed, the name of its successor registered agent.

6. That the address of its registered office and the address of the office of its registered agent, as changed will be identical.
7. That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by its president or a vice president, and verified by him, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this Act, he shall file such statement in his office, and upon such filing, the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation in care of an officer, who is not the resigning registered agent, at the last known address of such officer. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

10-2410. Service of Process on Corporation.) The registered agent so appointed by a corporation shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered mail, addressed to the corporation at its registered office. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by

law to be served upon a corporation in any other manner now or hereafter permitted by law.

10-2411. Members.) A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of such class or classes, the manner of election or appointment and the qualifications and rights of the members of each class shall be set forth in the articles of incorporation or the bylaws. If the corporation has no members, that fact shall be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.

10-2412. Bylaws.) The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws shall be vested in the board of directors unless otherwise provided in the articles of incorporation or the bylaws. The bylaws may contain any provisions for the regulation and management of the affairs of a corporation not inconsistent with law or the articles of incorporation.

10-2413. Meetings of Members.) Meetings of members may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation in this state.

An annual meeting of the members shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the members may be called by the president or by the board of directors. Special meetings of the members may also be called by such other officers or persons or number or proportion of members as may be provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the number or proportion of members entitled to call a meeting, a special meeting of members may be called by members having one-twentieth of the votes entitled to be cast at such meeting.

10-2414. Notice of Members' Meetings.) Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, or the secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed,

such notice shall be deemed to be delivered when deposited in the United States mail addressed to the member at his address as it appears on the records of the corporation, with postage thereon prepaid.

10-2415. Voting.) The right of the members, or any class or classes of members, to vote may be limited, enlarged or denied to the extent specified in the articles of incorporation or the bylaws. Unless so limited, enlarged or denied, each member, regardless of class, shall be entitled to one vote on each matter submitted to a vote of members.

A member may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy. Where directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

The articles of incorporation or the bylaws may provide that in all elections for directors every member entitled to vote shall have the right to cumulate his vote and to give one candidate a number of votes equal to his vote multiplied by the number of directors to be elected, or by distributing such votes on the same principle among any number of such candidates.

10-2416. Quorum.) The bylaws may provide the number or percentage of members entitled to vote represented in person or by proxy, or the number or percentage of votes represented in person or by proxy, which shall constitute a quorum at a meeting of members. In the absence of any such provision, members holding one-tenth of the votes entitled to be cast represented in person or by proxy shall constitute a quorum. The vote of a majority of the votes entitled to be cast by the members present or represented by proxy at a meeting at which a quorum is present, shall be necessary for the adoption of any matter voted upon by the members, unless a greater proportion is required by this Act, the articles of incorporation or the bylaws.

10-2417. Board of Directors.) The affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or members of the corporation unless the articles of incorporation or the bylaws so require. The articles of incorporation or the bylaws may prescribe other qualifications for directors.

10-2418. Number and Election of Directors.) The number of directors of a corporation shall be not less than three.

Subject to such limitation, the number of directors shall be fixed by the bylaws, except as to the number of the first board of directors which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment of the articles of incorporation. No decrease in number shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation.

The directors constituting the first board of directors shall be named in the articles of incorporation and shall hold office until the first annual election of directors or for such other period as may be specified in the articles of incorporation or the bylaws. Thereafter, directors shall be elected or appointed in the manner and for the terms provided in the articles of incorporation or the bylaws. In the absence of a provision fixing the term of office, the term of office of a director shall be one year.

Directors may be divided into classes and the terms of office of the several classes need not be uniform. Each director shall hold office for the term for which he is elected or appointed and until his successor shall have been elected or appointed and qualified.

A director may be removed from office pursuant to any procedure therefor provided in the articles of incorporation.

10-2419. Vacancies.) Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors unless the articles of incorporation or the bylaws provide that a vacancy or directorship so created shall be filled in some other manner, in which case such provisions shall control. A director elected or appointed, as the case may be, to fill a vacancy shall be elected or appointed for the unexpired term of his predecessor in office.

10-2420. Quorum of Directors.) A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business, unless otherwise provided in the articles of incorporation or by the bylaws; but in no event shall a quorum consist of less than one-third of the number of directors so fixed or stated. The act of the majority of the directors present at a meeting at which a quorum is present

shall be the act of the board of directors, unless the act of a greater number is required by this Act, the articles of incorporation or by the bylaws.

10-2421. Committees.) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the directors in office, may designate and appoint one or more committees each of which shall consist of two or more directors, which committees, to the extent provided in such resolution, in the articles of incorporation or in the bylaws of the corporation, shall have and exercise the authority of the board of directors in the management of the corporation; provided, however, that no such committee shall have the authority of the board of directors in reference to amending, altering or repealing the bylaws; electing, appointing or removing any member of any such committee or any director or officer of the corporation; amending the articles of incorporation; adopting a plan of merger or adopting a plan of consolidation with another corporation; authorizing the sale, lease, exchange or mortgage of all or substantially all of the property and assets of the corporation; authorizing the voluntary dissolution of the corporation or revoking the proceedings therefor; adopting a plan for the distribution of the assets of the corporation; or amending, altering or repealing any resolution of the board of directors which by its terms provides that it shall not be amended, altered or repealed by such committee. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any individual director of any responsibility imposed upon it or him by law.

10-2422. Place and Notice of Directors' Meetings.) Meetings of the board of directors, regular or special, may be held either within or without this state, and upon such notice as the bylaws may prescribe. Attendance of a director at any meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting.

10-2423. Officers.) The officers of a corporation shall consist of a president, one or more vice presidents, a secretary, a treasurer and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any

such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws.

10-2424. Removal of Officers.) Any officer elected or appointed may be removed by the persons authorized to elect or appoint such officer whenever in their judgment the best interests of the corporation will be served thereby. The removal of an officer shall be without prejudice to the contract rights, if any, of the officer so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

10-2425. Books and Records.) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, board of directors and committees having any of the authority of the board of directors; and shall keep at its registered office or principal office in this state a record of the names and addresses of its members entitled to vote. All books and records of a corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

10-2426. Shares of Stock and Dividends Prohibited.) A corporation shall not have or issue shares of stock. No dividend shall be paid and no part of the income of a corporation shall be distributed to its members, directors or officers. A corporation may pay compensation in a reasonable amount to its members, directors or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this Act, and no such payment, benefit or distribution shall be deemed to be a dividend or a distribution of income.

10-2427. Loans to Directors and Officers Prohibited.) No loans shall be made by a corporation to its directors or officers. The directors of a corporation who vote for or assent to the making of a loan to a director or officer of the corporation, and any officer or officers participating in the making of such loan, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof.

10-2428. Incorporators.) One or more persons may incorporate a corporation by signing, verifying and delivering articles of incorporation in duplicate to the secretary of state.

10-2429. Articles of Incorporation.) The articles of incorporation shall set forth:

1. The name of the corporation.
2. The period of duration, which may be perpetual.
3. The purpose or purposes for which the corporation is organized.
4. Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for distribution of assets on dissolution or final liquidation.
5. The address of its initial registered office, and the name of its initial registered agent at such address.
6. The number of directors constituting the initial board of directors, and the names and addresses of the persons who are to serve as the initial directors.
7. The name and address of each incorporator.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

Unless the articles of incorporation provide that a change in the number of directors shall be made only by amendment to the articles of incorporation, a change in the number of directors made by amendment to the bylaws shall be controlling. In all other cases, whenever a provision of the articles of incorporation is inconsistent with a bylaw, the provision of the articles of incorporation shall be controlling.

10-2430. Filing of Articles of Incorporation.) Duplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this Act prescribed:

1. Endorse on each of such duplicate originals the word "filed", and the month, day and year of the filing thereof.
2. File one of such duplicate originals in his office.
3. Issue a certificate of incorporation to which he shall affix the other duplicate original.

The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative.

10-2431. Effect of Issuance of Certificate of Incorporation.) Upon the issuance of the certificate of incorporation, the cor-

porate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act, except as against the state in a proceeding to cancel or revoke the certificate of incorporation.

10-2432. Organization Meetings.) After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

A first meeting of the members may be held at the call of the directors, or a majority of them, upon at least three days' notice, for such purposes as shall be stated in the notice of the meeting.

10-2433. Right to Amend Articles of Incorporation.) A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as are lawful under this Act.

10-2434. Procedure to Amend Articles of Incorporation.) Amendments to the articles of incorporation shall be made in the following manner:

1. Where there are members having voting rights, the board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed amendment shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.
2. Where there are no members, or no members having voting rights, an amendment shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Any number of amendments may be submitted and voted upon at any one meeting.

10-2435. Articles of Amendment.) The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

1. The name of the corporation.
2. The amendment so adopted.
3. Where there are members having voting rights,
 - a. a statement setting forth the date of the meeting of members at which the amendment was adopted, that a quorum was present at such meeting, and that such amendment received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or
 - b. a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.
4. Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the amendment was adopted, and a statement of the fact that such amendment received the vote of a majority of the directors in office.

10-2436. Filing of Articles of Amendment.) Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this Act prescribed:

1. Endorse on each of such duplicate originals the word "filed", and the month, day and year of the filing thereof.
2. File one of such duplicate originals in his office.
3. Issue a certificate of amendment to which he shall affix the other duplicate original.

The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

10-2437. Effect of Certificate of Amendment.) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending action

to which such corporation shall be a party, or the existing rights of persons other than members; and, in the event the corporate name shall be changed by amendment, no action brought by or against such corporation under its former name shall abate for that reason.

Chapter 10-25

North Dakota Nonprofit Corporation Act

Merger, Consolidation, and Sale of Assets

10-2501. Procedure for Merger.) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this Act.

Each corporation shall adopt a plan of merger setting forth:

1. The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation.
2. The terms and conditions of the proposed merger.
3. A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger.
4. Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

10-2502. Procedure for Consolidation.) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this Act.

Each corporation shall adopt a plan of consolidation setting forth:

1. The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.
2. The terms and conditions of the proposed consolidation.
3. With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Act.
4. Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

10-2503. Approval of Merger or Consolidation.) A plan of merger or consolidation shall be adopted in the following manner:

1. Where the members of any merging or consolidating corporation have voting rights, the board of directors

of such corporation shall adopt a resolution approving the proposed plan and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice setting forth the proposed plan or a summary thereof shall be given to each member entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of members. The proposed plan shall be adopted upon receiving at least two-thirds of the votes which members present at each such meeting or represented by proxy are entitled to cast.

2. Where any merging or consolidating corporation has no members, or no members having voting rights, a plan of merger or consolidation shall be adopted at a meeting of the board of directors of such corporation upon receiving the vote of a majority of the directors in office.

After such approval, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

10-2504. Articles of Merger or Consolidation.) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers of each corporation signing such articles, and shall set forth:

1. The plan of merger or the plan of consolidation.
2. Where the members of any merging or consolidating corporation have voting rights, then as to each such corporation (a) a statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at such meeting, and that such plan received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (b) a statement that such amendment was adopted by a consent in writing signed by all members entitled to vote with respect thereto.
3. Where any merging or consolidating corporation has no members, or no members having voting rights, then as to each such corporation a statement of such fact, the date of the meeting of the board of directors at which the plan was adopted and a statement of the fact that such plan received the vote of a majority of the directors in office.

Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this Act prescribed:

- a. Endorse on each of such duplicate originals the word "filed", and the month, day and year of the filing thereof.
- b. File one of such duplicate originals in his office.
- c. Issue a certificate of merger or a certificate of consolidation to which he shall affix the other duplicate original.

The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative.

10-2505. Effective Date of Merger or Consolidation.) Upon the issuance of the certificate of merger, or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected.

10-2506. Effect of Merger or Consolidation.) When such merger or consolidation has been effected:

1. The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation.
2. The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease.
3. Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Act.
4. Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any

- interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.
5. Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation.
 6. In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the articles of incorporation of corporations organized under this Act shall be deemed to be the articles of incorporation of the new corporation.

10-2507. Sale, Lease, Exchange, or Mortgage of Assets.) A sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any corporation for profit, domestic or foreign, as may be authorized in the following manner:

1. Where there are members having voting rights, the board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge or other disposition and directing that it be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of the corporation shall be given to each member entitled to vote at such meeting, within the time and in the manner provided by this Act for the giving of notice of meetings of members. At such meeting the members may authorize such sale, lease, exchange, mortgage, pledge or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms

and conditions thereof and the consideration to be received by the corporation therefor. Such authorization shall require at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast. After such authorization by a vote of members, the board of directors, nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge or other disposition of assets subject to the rights of third parties under any contracts relating thereto, without further action or approval by members.

2. Where there are no members, or no members having voting rights, a sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all, the property and assets of a corporation shall be authorized upon receiving the vote of a majority of the directors in office.

Chapter 10-26

North Dakota Nonprofit Corporation Act

Dissolution

10-2601. Voluntary Dissolution.) A corporation may dissolve and wind up its affairs in the following manner:

1. Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to dissolve the corporation shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.
2. Where there are no members, or no members having voting rights, the dissolution of the corporation shall be authorized at a meeting of the board of directors upon the adoption of a resolution to dissolve by the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation shall cease to conduct its affairs except insofar as may be necessary for

the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to collect its assets and apply and distribute them as provided in this Act.

10-2602. Distribution of Assets.) The assets of a corporation in the process of dissolution shall be applied and distributed as follows:

1. All liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provisions shall be made therefor;
2. Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution, shall be returned, transferred or conveyed in accordance with such requirements;
3. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving corporation, pursuant to a plan of distribution adopted as provided in this Act;
4. Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;
5. Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, as may be specified in a plan of distribution adopted as provided in this Act.

10-2603. Plan of Distribution.) A plan providing for the distribution of assets, not inconsistent with the provisions of this Act, may be adopted by a corporation in the process of dissolution and shall be adopted by a corporation for the purpose of authorizing any transfer or conveyance of assets for which this Act requires a plan of distribution, in the following manner:

1. Where there are members having voting rights, the board of directors shall adopt a resolution recommending a plan of distribution and directing the submission thereof to a vote at a meeting of members having voting rights, which may be either an annual or a special

meeting. Written or printed notice setting forth the proposed plan of distribution or a summary thereof shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. Such plan of distribution shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.

2. Where there are no members, or no members having voting rights, a plan of distribution shall be adopted at a meeting of the board of directors upon receiving a vote of a majority of the directors in office.

10-2604. Revocation of Voluntary Dissolution Proceedings.)

A corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke the action theretofore taken to dissolve the corporation, in the following manner:

1. Where there are members having voting rights, the board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a meeting of members having voting rights, which may be either an annual or a special meeting. Written or printed notice stating that the purpose, or one of the purposes, of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at such meeting, within the time and in the manner provided in this Act for the giving of notice of meetings of members. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at such meeting or represented by proxy are entitled to cast.
2. Where there are no members, or no members having voting rights, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

Upon the adoption of such resolution by the members, or by the board of directors where there are no members or no members having voting rights, the corporation may thereupon again conduct its affairs.

10-2605. Articles of Dissolution.) If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation shall have been paid

and discharged, or adequate provision shall have been made therefor, and all of the remaining property and assets of the corporation shall have been transferred, conveyed or distributed in accordance with the provisions of this Act, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president, and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

1. The name of the corporation.
2. Where there are members having voting rights, (a) a statement setting forth the date of the meeting of members at which the resolution to dissolve was adopted, that a quorum was present at such meeting, and that such resolution received at least two-thirds of the votes which members present at such meeting or represented by proxy were entitled to cast, or (b) a statement that such resolution was adopted by a consent in writing signed by all members entitled to vote with respect thereto.
3. Where there are no members, or no members having voting rights, a statement of such fact, the date of the meeting of the board of directors at which the resolution to dissolve was adopted and a statement of the fact that such resolution received the vote of a majority of the directors in office.
4. That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor.
5. That all the remaining property and assets of the corporation have been transferred, conveyed or distributed in accordance with the provisions of this Act.
6. That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

10-2606. Filing of Articles of Dissolution.) Duplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this Act prescribed:

1. Endorse on each of such duplicate originals the word "filed", and the month, day and year of the filing thereof.
2. File one of such duplicate originals in his office.
3. Issue a certificate of dissolution to which he shall affix the other duplicate original.

The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by members, directors and officers as provided in this Act.

10-2607. Involuntary Dissolution.) A corporation may be dissolved involuntarily by a decree of the district court in an action filed by the attorney general when it is established that:

1. The corporation procured its articles of incorporation through fraud; or
2. The corporation has continued to exceed or abuse the authority conferred upon it by law; or
3. The corporation has failed for ninety days to appoint and maintain a registered agent in this state; or
4. The corporation has failed for ninety days after change of its registered agent to file in the office of the secretary of state a statement of such change.

10-2608. Notification to Attorney General.) The secretary of state shall certify, from time to time, the names of all corporations which have given causes for dissolution as provided in this Act, together with the facts pertinent thereto. Whenever the secretary of state shall certify the name of a corporation to the attorney general as having given any cause for dissolution, the secretary of state shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the attorney general shall file an action in the name of the state against such corporation for its dissolution.

10-2609. Venue and Process.) Every action for the involuntary dissolution of a corporation shall be commenced by the attorney general either in the district court of the county in which the registered office of the corporation is situated, or in the district court of Burleigh County. Summons shall issue and be served as in other civil actions. If process is returned not found, the attorney general shall cause publication to be made as in other civil cases in some newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. The attorney general may include in one notice the names of any number of corporations against which actions are then pending in the same

court. The attorney general shall cause a copy of such notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the attorney general of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice.

10-2610. Jurisdiction of Court to Liquidate Assets and Affairs of Corporation.) Courts of equity shall have full power to liquidate the assets and affairs of a corporation:

1. In an action by a member or director when it is made to appear:
 - a. That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or
 - b. That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or
 - c. That the corporate assets are being misapplied or wasted; or
 - d. That the corporation is unable to carry out its purposes.
2. In an action by a creditor:
 - a. When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or
 - b. When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.
3. Upon application by a corporation to have its dissolution continued under the supervision of the court.
4. When an action has been filed by the attorney general to dissolve a corporation and it is established that liquidation of its affairs should precede the entry of a decree of dissolution.

Proceedings under subsections 1, 2, or 3 of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally.

10-2611. Procedure in Liquidation of Corporation by Court.)

In proceedings to liquidate the assets and affairs of a corporation the court shall have the power to issue injunctions, to appoint a receiver or receivers pendente lite, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the affairs of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct 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 liquidating receiver or receivers with authority to collect the assets of the corporation. Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

The assets of the corporation or the proceeds resulting from a sale, conveyance, or other disposition thereof shall be applied and distributed as follows:

1. All costs and expenses of the court proceedings and all liabilities and obligations of the corporation shall be paid, satisfied and discharged, or adequate provision shall be made therefor;
2. Assets held by the corporation upon condition requiring return, transfer or conveyance, which condition occurs by reason of the dissolution or liquidation, shall be returned, transferred or conveyed in accordance with such requirements;
3. Assets received and held by the corporation subject to limitations permitting their use only for charitable, religious, eleemosynary, benevolent, educational or similar purposes, but not held upon a condition requiring return, transfer or conveyance by reason of the dissolution or liquidation, shall be transferred or conveyed to one or more domestic or foreign corporations, societies or organizations engaged in activities substantially similar to those of the dissolving or liquidating corporation as the court may direct;
4. Other assets, if any, shall be distributed in accordance with the provisions of the articles of incorporation or

the bylaws to the extent that the articles of incorporation or bylaws determine the distributive rights of members, or any class or classes of members, or provide for distribution to others;

5. Any remaining assets may be distributed to such persons, societies, organizations or domestic or foreign corporations, whether for profit or not for profit, specified in the plan of distribution adopted as provided in this Act, or where no plan of distribution has been adopted, as the court may direct.

The court shall have power to allow, from time to time, as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceeding, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

10-2612. Qualification of Receivers.) A receiver shall in all cases be a citizen of the United States or a corporation for profit authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

10-2613. Filing of Claims in Liquidation Proceedings.) In proceedings to liquidate the assets and affairs of a corporation the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

10-2614. Discontinuance of Liquidation Proceedings.) The liquidation of the assets and affairs of a corporation may be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer

exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

10-2615. Decree of Involuntary Dissolution.) In proceedings to liquidate the assets and affairs of a corporation, when the costs and expenses of such proceedings and all debts, obligations, and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed in accordance with the provisions of this Act, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts, and obligations, and all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

10-2616. Filing of Decree of Dissolution.) In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the secretary of state for the filing thereof.

10-2617. Deposits with State Treasurer.) Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to any person who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the state treasurer and shall be paid over to such person or to his legal representative upon proof satisfactory to the state treasurer of his right thereto.

10-2618. Survival of Remedy After Dissolution.) The dissolution of a corporation either:

1. By the issuance of a certificate of dissolution by the secretary of state, or
2. By a decree of court when the court has not liquidated the assets and affairs of the corporation as provided in this Act, or
3. By expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or members, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The members, directors and officers shall have power to take such corporate

or other action as shall be appropriate to protect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

Chapter 10-27

North Dakota Nonprofit Corporation Act

Foreign Corporations

10-2701. Admission of Foreign Corporation.) No foreign corporation shall have the right to conduct affairs in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this Act to conduct in this state any affairs which a corporation organized under this Act is not permitted to conduct. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this Act contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

Without excluding other activities which may not constitute conducting affairs in this state, a foreign corporation shall not be considered to be conducting affairs in this state, for the purposes of this Act, by reason of carrying on in this state any one or more of the following activities:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes.
2. Holding meetings of its directors or members or carrying on other activities concerning its internal affairs.
3. Maintaining bank accounts.
4. Creating evidences of debt, mortgages or liens on real or personal property.
5. Securing or collecting debts due to it or enforcing any rights in property securing the same.

10-2702. Powers of Foreign Corporation.) A foreign corporation which shall have received a certificate of authority under this Act shall, until a certificate of revocation or of withdrawal shall have been issued as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of author-

ization is issued; and, except as in this Act otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

10-2703. Corporate Name of Foreign Corporation.) No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

1. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation.
2. Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any Act of this state, or any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate name reserved or registered as permitted by the laws of this state.
3. Shall be transliterated into letters of the English alphabet, if it is not in English.

10-2704. Change of Name by Foreign Corporation.) Whenever a foreign corporation which is authorized to conduct affairs in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter conduct any affairs in this state until it has changed its name to a name which is available to it under the laws of this state.

10-2705. Application for Certificate of Authority.) A foreign corporation, in order to procure a certificate of authority to conduct affairs in this state, shall make application therefor to the secretary of state, which application shall set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.
2. The date of incorporation and the period of duration of the corporation.
3. The address of the principal office of the corporation in the state or country under the laws of which it is incorporated.
4. The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at such address.
5. The purpose or purposes of the corporation which it proposes to pursue in conducting its affairs in this state.

6. The names and respective addresses of the directors and officers of the corporation.
7. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such corporation is entitled to a certificate of authority to conduct affairs in this state.

Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such application.

10-2706. Filing of Application for Certificate of Authority.) Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this Act prescribed:

1. Endorse on each of such documents the word "filed", and the month, day and year of the filing thereof.
2. File in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto.
3. Issue a certificate of authority to conduct affairs in this state to which he shall affix the other duplicate original application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

10-2707. Effect of Certificate of Authority.) Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to conduct affairs in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this Act.

10-2708. Registered Office and Registered Agent of Foreign Corporation.) Each foreign corporation authorized to conduct affairs in this state shall have and continuously maintain in this state:

1. A registered office which may be, but need not be, the same as its principal office.
2. A registered agent, which agent may be either an individual resident in this state whose business office is

identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with such registered office.

10-2709. Change of Registered Office or Registered Agent of Foreign Corporation.) A foreign corporation authorized to conduct affairs in this state may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation.
2. The address of its then registered office.
3. If the address of its registered office be changed, the address to which the registered office is to be changed.
4. The name of its then registered agent.
5. If its registered agent be changed, the name of its successor registered agent.
6. That the address of its registered office and the address of the office of its registered agent, as changed, will be identical.
7. That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by its president or a vice president, and verified by him, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this Act, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Any registered agent in this state appointed by a foreign corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state who shall forthwith mail a copy thereof to the foreign corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of 30 days after receipt of such notice by the secretary of state.

10-2710. Service of Process on Foreign Corporation.) The registered agent so appointed by a foreign corporation authorized to conduct affairs in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a foreign corporation authorized to conduct affairs in this state shall fail to appoint or maintain a regis-

tered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of such copies thereof to be forwarded by registered mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

10-2711. Amendment to Articles of Incorporation of Foreign Corporation.) Whenever the articles of incorporation of a foreign corporation authorized to conduct affairs in this state are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in conducting its affairs in this state, nor authorize such corporation to conduct affairs in this state under any other name than the name set forth in its certificate of authority.

10-2712. Merger of Foreign Corporation Authorized to Conduct Affairs in This State.) Whenever a foreign corporation authorized to conduct affairs in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly authenticated by the proper officer of the state or country

under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to conduct affairs in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to pursue in this state.

10-2713. Amended Certificate of Authority.) A foreign corporation authorized to conduct affairs in this state shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application, for a certificate of authority.

10-2714. Withdrawal of Foreign Corporation.) A foreign corporation authorized to conduct affairs in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

1. The name of the corporation and the state or country, under the laws of which it is incorporated.
2. That the corporation is not conducting affairs in this state.
3. That the corporation surrenders its authority to conduct affairs in this state.
4. That the corporation revokes the authority of its registered agent in this state to accept service of process and consents that service of process in any action, suit or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct affairs in this state may thereafter be made on such corporation by service thereof on the secretary of state.
5. A postoffice address to which the secretary of state may mail a copy of any process against the corporation that may be served on him.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or a vice pres-

ident and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

10-2715. Filing of Application for Withdrawal.) Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this Act, he shall, when all fees have been paid as in this Act prescribed:

1. Endorse on each of such duplicate originals the word "filed", and the month, day and year of the filing thereof.
2. File one of such duplicate originals in his office.
3. Issue a certificate of withdrawal to which he shall affix the other duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to conduct affairs in this state shall cease.

10-2716. Revocation of Certificate of Authority.) The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

1. The corporation has failed to pay any fees or penalties prescribed by this Act when they have become due and payable; or
2. The corporation has failed to appoint and maintain a registered agent in this state as required by this Act; or
3. The corporation has failed, after change of its registered agent, to file in the office of the secretary of state a statement of such change as required by this Act; or
4. The corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this Act; or
5. The certificate of authority of the corporation was procured through fraud practiced upon the state; or
6. The corporation has continued to exceed or abuse the authority conferred upon it by this Act; or
7. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this Act.

No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless

- a. He shall have given the corporation not less than sixty days' notice thereof by mail addressed to its registered office in this state, and
- b. The corporation shall fail prior to revocation to pay such fees or penalties, or file the required statement of change of registered agent, or file such articles of amendment or articles of merger, or correct such misrepresentation.

10-2717. Issuance of Certificate of Revocation.) Upon revoking any such certificate of authority, the secretary of state shall:

1. Issue a certificate of revocation in duplicate.
2. File one of such certificates in his office.
3. Mail to such corporation at its registered office in this state a notice of such revocation accompanied by one of such certificates.

Upon the issuance of such certificate of revocation, the authority of the corporation to conduct affairs in this state shall cease.

10-2718. Conducting Affairs Without Certificate of Authority.) No foreign corporation which is conducting affairs in this state without a certificate of authority shall be permitted to maintain any action, suit or proceeding in any court of this state until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the conduct of affairs by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to conduct affairs in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state.

Chapter 10-28

North Dakota Nonprofit Corporation Act

Administration, Fees, Effect

10-2801. Fees for Filing Documents and Issuing Certificates.) The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, sixteen dollars.

2. Filing articles of amendment and issuing a certificate of amendment, twelve dollars.
3. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifteen dollars.
4. Filing a statement of change of address of registered office or change of registered agent, or both, five dollars.
5. Filing articles of dissolution, five dollars.
6. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, eighteen dollars.
7. Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, sixteen dollars.
8. Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state, eight dollars.
9. Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state, fifteen dollars.
10. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, ten dollars.
11. Filing any other statement or report, of a domestic or foreign corporation, two dollars.

10-2802. Miscellaneous Charges.) The secretary of state shall charge and collect:

1. For furnishing a certified copy of any document, instrument, or paper relating to a corporation, thirty-five cents per page and one dollar for the certificate and affixing the seal thereto.
2. At the time of any service of process on him as resident agent of a corporation, five dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

10-2803. Penalties Imposed Upon Corporation.) Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this Act interrogatories propounded by the secretary of state in accordance with the provisions of this Act, shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding five hundred dollars.

10-2804. Penalties Imposed Upon Directors and Officers.) Each director and officer of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this Act

to answer truthfully and fully interrogatories propounded to him by the secretary of state in accordance with the provisions of this Act, or who signs any articles, statement, report, application or other document filed with the secretary of state which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof may be fined in any amount not exceeding five hundred dollars.

10-2805. Interrogatories by Secretary of State.) The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of this Act, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this Act applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the secretary of state, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary or assistant secretary thereof. The secretary of state need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this Act. 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 Act.

10-2806. Information Disclosed by Interrogatories.) Interrogatories propounded by the secretary of state and the answers thereto shall not be open to public inspection nor shall the secretary of state disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this state.

10-2807. Powers of Secretary of State.) The secretary of state shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties therein imposed upon him.

10-2808. Appeal from Secretary of State.) If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other

document required by this Act to be approved by the secretary of state before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the district court of the county in which the registered office of such corporation is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state; whereupon the matter shall be tried *de novo* by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

If the secretary of state shall revoke the certificate of authority to conduct affairs in this state of any foreign corporation, pursuant to the provisions of this Act, such foreign corporation may likewise appeal to the district court of the county where the registered office of such corporation in this state is situated, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to conduct affairs in this state and a copy of the notice of revocation given by the secretary of state; whereupon the matter shall be tried *de novo* by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

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.

10-2809. Certificates and Certified Copies To Be Received in Evidence.) All certificates issued by the secretary of state in accordance with the provisions of this Act, and all copies of documents filed in his office in accordance with the provisions of this Act when certified by him, shall be taken and received in all courts, public offices, and official bodies as *prima facie* evidence of the facts therein stated. 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 corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as *prima facie* evidence of the existence or nonexistence of the facts therein stated.

10-2810. Forms To Be Furnished by Secretary of State.) All reports required by this Act to be filed in the office of the

secretary of state shall be made on forms which shall be prescribed and furnished by the secretary of state. Forms for all other documents to be filed in the office of the secretary of state shall be furnished by the secretary of state on request therefor, but the use thereof, unless otherwise specifically prescribed in this Act, shall not be mandatory.

10-2811. Greater Voting Requirements.) Whenever, with respect to any action to be taken by the members or directors of a corporation, the articles of incorporation require the vote or concurrence of a greater proportion of the members or directors, as the case may be, than required by this Act with respect to such action, the provisions of the articles of incorporation shall control.

10-2812. Waiver of Notice.) Whenever any notice is required to be given to any member or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

10-2813. Action by Members or Directors Without a Meeting.) Any action required by this Act to be taken at a meeting of the members or directors of a corporation, or any action which may be taken at a meeting of the members or directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members entitled to vote with respect to the subject matter thereof, or all of the directors, as the case may be.

Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any articles or document filed with the secretary of state under this Act.

10-2814. Unauthorized Assumption of Corporate Powers.) All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

10-2815. Reservation of Power.) The legislative assembly shall at all times have power to prescribe such regulation, provisions and limitations as it may deem advisable, which regulations, provisions and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the legislative assembly shall have power to amend, repeal or modify this Act at pleasure.

10-2816. Effect of Repeal of Prior Acts.) The repeal of a prior Act by this Act shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of such Act, prior to the repeal thereof.

10-2817. Effect of Invalidity of Part of This Act.) If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this Act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this Act so adjudged to be invalid or unconstitutional.

10-2818. Application and Construction of Act; Deferred Repeal.)

1. All foreign and domestic nonprofit corporations are governed by the provisions of this Act (chapters 10-24, 10-25, 10-26, 10-27, and 10-28) with the following exceptions:
 - a. All domestic nonprofit corporations existing before July 1, 1959, are not subject to this Act (chapters 10-24, 10-25, 10-26, 10-27, and 10-28) until after June 30, 1961, but such nonprofit corporation may elect to become subject to its provisions by adoption of a resolution of its governing body and filing a copy thereof with the secretary of state at any time;
 - b. All foreign nonprofit corporations duly authorized to conduct affairs in this state before July 1, 1959, are not subject to this Act (chapters 10-24, 10-25, 10-26, 10-27, and 10-28) until after June 30, 1961, but such nonprofit corporation may elect to become subject to its provisions by adoption of a resolution of its governing body and filing a copy thereof with the secretary of state at any time.
 - c. The existing provisions of chapters 10-08, 10-09, 10-10, and 10-11 of the title Corporations remain in effect until July 1, 1961, but are inapplicable to nonprofit corporations which are subject to this Act (chapters 10-24, 10-25, 10-26, 10-27, and 10-28). After June 30, 1961, the existing provisions of chapters 10-08, 10-09, 10-10, and 10-11 of the title Corporations are hereby repealed.
2. This Act (chapters 10-24, 10-25, 10-26, 10-27, and 10-28) shall be construed as being part of Title 10 of the North Dakota Revised Code of 1943 as amended, and after June 30, 1961, as replacing chapters 10-08, 10-09, 10-10, and 10-11 in the Code.

10-2819. Special Provisions Regarding Religious Corporations.) In addition to the provisions of this Act every religious corporation organized or operating under the provisions of this Act shall also be subject to the following provisions:

1. No corporation or association organized for religious or charitable purposes shall require or hold real estate in this state of a greater value than five hundred thousand dollars. This provision shall not apply to the property of corporations or associations actually used for educational, hospital, charitable or religious purposes. All real estate acquired or held contrary to the provisions of this section shall be forfeited and shall escheat to the state.
2. All grants or deeds from private individuals or acts of legislative bodies transferring, conveying, or granting real estate in this state to any bishop, dean, rector, vestryman, deacon, director, minister, or other officer or officers of any church or organized religious society in trust for the use and benefit of the society of which the grantee is an officer, which have been or may be made, done, or executed, shall vest in the grantee's successor or successors in office, or in such other officer as the society at any time may designate, all the legal or other title in or to the real estate described therein as trustee of such trust for the use and benefit of the society to the same extent as such title vested in the grantee named in the grant, deed, or act. Any transfer made by an officer acquiring title by virtue of this section shall have all the validity, force, and effect that it would have had if it had been made by the grantee while holding under and by virtue of such grant, deed, or act of a legislative body.

10-2820. Special Provisions Regarding Orphans' Homes.) In addition to the provisions of this Act every orphans' home organized or operating under the provisions of this Act may:

1. Receive into its hands and under its control, and may become the legal guardian of, any child under eighteen years of age committed as a delinquent, dependent, or neglected child to its guardianship by a court of competent jurisdiction;
2. Consent, through its duly authorized agent, in the courts of this state, to adoption of a child committed to its guardianship, in accordance with the statutes of the state on that subject;
3. Enter into agreements with persons taking children. Such agreements shall conform to the requirements of section 50-1206.

10-2821. Special Provisions Regarding Cemetery Corporations.) In addition to the provisions of this Act every corporation organized or operating under the provisions of this Act,

which owns, holds, controls, or operates any land for cemetery purposes shall be subject to the following provisions:

1. Every cemetery corporation has the power to purchase or take by gift, grant, or devise, and to hold real property, not exceeding one hundred sixty acres, for the sole use and purpose of a burial ground, to lay out the same into blocks and lots with convenient avenues and walks, and to sell the lots for the sole use and purpose of burying the dead. It may hold all such personal property as the legitimate and necessary purposes of the corporation may require.
2. A cemetery corporation shall cause its land, or such portion thereof as from time to time may become necessary for lots, avenues, and walks, to be surveyed and platted, and the plat of ground as surveyed shall be acknowledged and recorded in the office of the register of deeds of the county. Each lot shall be numbered regularly by the surveyor, and such number shall be marked on the plat which is recorded.

10-2822. Special Provisions Regarding Fraternal Corporations.) In addition to the provisions of this Act every fraternal corporation organized or operating under the provisions of this Act shall be subject to the following provisions:

1. The total indebtedness of any fraternal corporation shall not exceed in amount the value of its corporate property actually owned by the corporation nor in any event the sum of one hundred thousand dollars;
2. The property of a fraternal association which is designated a corporation by this chapter shall be liable for the debts thereof. This section shall not apply to the properties or paraphernalia used in the initiatory or degree work of any such lodge, chapter, post, encampment, council, commandery, consistory, or other similar organization, nor to the rituals and other books pertaining to the written or unwritten work thereof;
3. In addition to the other provisions of this Act which will cause the cessation of a fraternal corporation, the corporation shall also cease to exist if the supreme, grand, or sovereign lodge or other superior body under which it is working shall revoke or suspend the charter which has been granted to it.

Approved March 4, 1959.

CHAPTER 112

S. B. No. 134
(Kisse, Garaas)

NAME CHANGE OF MUTUAL AID COOPERATIVES

AN ACT

To amend and reenact section 10-1202 of the 1957 Supplement to the North Dakota Revised Code of 1943 relating to mutual aid cooperatives in order to provide that such an organization which was established prior to the effective date of the present Act governing such cooperatives shall not have to mandatorily change its name.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. **Amendment.**) Section 10-1202 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

10-1202. Special Requirements and Powers.) Mutual aid cooperatives are subject to the general law governing cooperatives, but shall also state in their articles the territory to be served by the cooperative, and shall have power to act as the agent or representative of any state, federal, or other agency or corporation giving assistance to rural rehabilitation, subsistence farming, housing, or cooperative endeavors of any nature. Any cooperative that is hereafter organized under this chapter shall be known as a "mutual aid cooperative" and the word cooperative shall form a part of the name of each cooperative so organized. Any cooperative organized prior to the effective date of this Act, and whose name does not include the term "mutual aid cooperative", may at its option elect to change its name to include "mutual aid cooperative".

Approved March 4, 1959.

CHAPTER 113

S. B. No. 192

(Kisse, Garaas, Livingston, Redlin)

SALE, LEASE AND DISSOLUTION OF
ELECTRICAL COOPERATIVES

AN ACT

To create and enact section 10-13081 of the 1957 Supplement to the North Dakota Revised Code of 1943 relating to the sale, lease and dissolution of electrical cooperatives.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1.) Section 10-13081 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby created and enacted to read as follows:

10-13081. Electric Cooperatives; Sale of Physical Plant; Approval.) No electric cooperative corporation shall sell, transfer or convey, within the period of any single calendar year, physical plant in excess of five percent in value of such cooperative corporation, based upon the most recent audit of the books of said cooperative corporation, unless consent therefor shall have been obtained by vote of not less than two-thirds of the entire membership of such cooperative corporation cast at any regular or special meeting called for that purpose, after notice in writing to all the membership of such cooperative corporation not less than twenty nor more than thirty days prior to the date of such meeting. Nothing in this Act shall prohibit the sale, transfer, conveyance or exchange of electric cooperative corporation assets to another electric cooperative corporation, an agency of the state of North Dakota or agency of the Government of the United States, nor in exchange for physical plant of equal monetary value to any person, organization, public or private.

Approved March 2, 1959.

CHAPTER 114

S. B. No. 139
(Fiedler)

PROCEEDS OF COOPERATIVE ASSOCIATIONS

AN ACT

To amend and reenact subdivision a of subsection 2 of section 10-1533 of the 1957 Supplement to the North Dakota Revised Code of 1943, relating to the apportionment and distribution of proceeds of cooperative associations.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Subdivision a of subsection 2 of section 10-1533 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

- a. An amount not to exceed five percent thereof may be set aside as an educational fund to be used in teaching or promoting cooperative organization or principles when approved by a majority of the members voting at any annual meeting. Such funds shall for all purposes except the computation of net proceeds be deemed an expense of operation of the cooperative. Such funds shall not be used in any political activity. Such educational funds shall not be paid to any other cooperative, mutual aid corporation or other general farm organization unless such cooperative, mutual aid corporation or general farm organization receiving such funds provides in its bylaws or articles that officers and directors shall be elected by secret ballot and that only active or retired farmers and ranchers, their wives or husbands as the case may be and their children, are eligible to vote on the affairs of the cooperative, mutual aid corporation or general farm organization.

Approved March 17, 1959.

CHAPTER 115

H. B. No. 772
(Aamoth and Van Sickle)

SERVICE OF PROCESS ON FOREIGN CORPORATIONS

AN ACT

To amend and reenact section 10-2210 of the 1957 Supplement to the North Dakota Revised Code of 1943, relating to service of process on foreign corporation.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 10-2210 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

10-2210. Service of Process on Foreign Corporation.) The registered agent so appointed by a foreign corporation authorized to transact business in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a foreign corporation authorized to transact business in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Whenever a claim shall arise out of business transacted in this state by a foreign corporation transacting business without a certificate of authority, service of process may be made upon any person who shall be found within this state acting as an agent of, or doing business for, such corporation, or by mailing a copy thereof to the defendant corporation by registered or certified mail at its last known post office address.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

Approved March 11, 1959.

CHAPTER 116

S. B. No. 234
(Gefreh and Ringsak)

FILING ANNUAL REPORTS OF CORPORATIONS

AN ACT

To amend and reenact section 10-2302 of the 1957 Supplement to the North Dakota Revised Code of 1943 relating to the filing of annual reports of domestic and foreign corporations.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. Amendment.) Section 10-2302 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

10-2302. Filing of Annual Report of Domestic and Foreign Corporations.) The annual report for the preceding year of a domestic corporation shall be delivered to the secretary of state on or before the first day of August of each year, except that the first annual report of a domestic corporation shall be filed on or before the first day of August of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. The annual report for the preceding year of a foreign corporation shall be delivered to the secretary of state on or before the first day of April of each year, except that the first annual report of a foreign corporation shall be filed on or before the first day of April of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as

the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to the first day of August or April, as the case may be, such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds that such report conforms to the requirements of this Act, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for the failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this Act and returned to the secretary of state on or before thirty days after such corporation received the annual report for corrections. The secretary of state may extend the filing date for the annual report of any corporation whenever in his discretion he considers such an extension of time advisable and proper.

Approved March 2, 1959.