

PROPERTY

CHAPTER 329

S. B. No. 215
(Gefreh)

TRADE NAME REGISTRATION

AN ACT

To provide for the registration of trade names with the secretary of state for business which is transacted in this state.

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

§ 1. Trade Name Defined; Registration.) Every name under which any person shall hereafter do or transact any business in this state, other than the true name of such person, is hereby declared to be a "trade name" if such name is registered under the provisions of this Act, and any person who has registered a trade name hereunder may institute a civil suit prohibiting any other person from using such name. The provisions of this Act shall not prohibit any person engaged in business under a trade name prior to July 1, 1959, from continuing business under such name.

§ 2. Trade Name; Registration; Statement; Contents; Change of Registration.) Any person who engages in business in this state under a trade name after July 1, 1959, may register with the secretary of state for purposes of registering a trade name, a verified statement upon blanks furnished by the secretary of state, setting forth: (1) the trade name to be registered and all persons concerned in the business, (2) the name or names and residences of each and every person interested in or owning any part of the business, and (3) the nature of the business in detail. If, however, the interest of any person or persons engaged in business under a trade name shall change or cease to exist, or any other person shall become interested therein, such change shall be registered within ninety days after any change shall take place in the ownership of the business or any part thereof in the same manner as an original registration.

§ 3. Trade Name; Nature.) No trade name registered shall be the same as, or deceptively similar to the name of any other trade name registered in the office of the secretary of state.

§ 4. Trade Names; Registration; Fee; Renewal; Notice.) For the registration of each trade name as provided for in this Act, there shall be paid to the secretary of state a fee of twenty dollars for an original registration, and a fee of two dollars for a change in the original registration as provided in this Act. Any registration shall remain in force for a period of ten years from the date of the original registration, and may be renewed by re-registering in the same manner as an original registration, if renewed within thirty days before the expiration date. The secretary of state shall notify the registrant by registered or certified mail at least ninety days before the expiration of such registrations.

§ 5. Certificate of Registration; Publication.) Every certificate of the registration of a trade name, within thirty days from the time of the registration of such trade name shall be indexed in the office of the secretary of state and a copy of the certificate shall be given to the registrant.

Approved March 2, 1959.

CHAPTER 330

S. B. No. 156
(Wartner and Holand)

ACCUMULATION OF INCOME, REPEAL

AN ACT

To repeal sections 47-0304 and 47-0305 of the North Dakota Revised Code of 1943, relating to the accumulation of income.

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

§ 1. Repeal.) Sections 47-0304 and 47-0305 of the North Dakota Revised Code of 1943 are hereby repealed.

Approved March 19, 1959.

CHAPTER 331

H. B. No. 757
(Wheeler)

MARKETABLE RECORD TITLE EXCEPTIONS

AN ACT

To amend and reenact subdivision d of subsection 1 of section 47-19A11 of the 1957 Supplement to the North Dakota Revised Code of 1943, relating to marketable record title and providing for a limitation upon the nonapplication of said chapter to conditions subsequent; and providing for an effective date.

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

§ 1. Amendment.) Subdivision d of subsection 1 of section 47-19A11 of the 1957 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

- d. A mere possibility not coupled with an interest nor a mere right of reentry or repossession for breach of a condition subsequent created by a conveyance of record less than forty years; nor

§ 2. Effective Date.) This Act shall become effective January 1, 1960.

Approved March 12, 1959.

CHAPTER 332

H. B. No. 762
(Wheeler)

WHEN INSTRUMENTS DEEMED RECORDED

AN ACT

To amend and reenact section 47-1908 of the North Dakota Revised Code of 1943, relating to when an instrument shall be deemed recorded.

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

§ 1. Amendment.) Section 47-1908 of the North Dakota Revised Code of 1943 is amended and reenacted to read as follows:

47-1908. When Instrument is Deemed Recorded.) An instrument is deemed to be recorded when, whether entitled to record or not, it is deposited with the proper officer for record, if such instrument is subsequently recorded.

Approved March 11, 1959.

CHAPTER 333

H. B. No. 761
(Wheeler)

EFFECT OF RECORDING INSTRUMENTS

AN ACT

To amend and reenact section 47-1919 of the North Dakota Revised Code of 1943, relating to notice and effect of recorded instruments.

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

§ 1. Amendment.) Section 47-1919 of the North Dakota Revised Code of 1943 is amended and reenacted to read as follows:

47-1919. Effect of Recording.) The record of any instrument shall be notice of the contents of the instrument, as it appears of record, as to all persons.

Approved March 11, 1959.

CHAPTER 334

H. B. No. 763
(Wheeler)

UNRECORDED CONVEYANCES

AN ACT

To amend and reenact section 47-1941 of the North Dakota Revised Code of 1943, relating to record title, effect of unrecorded conveyance, and priority of first deposited, accepted and recorded conveyance; and to provide for legal notice to persons claiming under unrecorded instruments, for limitation of actions, defenses and counterclaims, and for validation of the record of instruments not entitled to be recorded.

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

§ 1. Amendment.) Section 47-1941 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

47-1941. Effect of Not Recording: Priority of First Record; Constructive Notice.) Every conveyance of real estate not recorded shall be void as against any subsequent purchaser in good faith, and for a valuable consideration, of the same real estate, or any part or portion thereof, whose conveyance, whether in the form of a warranty deed, or deed of bargain and sale, or deed of quitclaim and release, of the form in common use or otherwise, first is deposited with the proper officer for record and subsequently recorded, whether entitled to record or not, or as against an attachment levied thereon or any judgment lawfully obtained, at the suit of any party, against the person in whose name the title to such land appears of record, prior to the recording of such conveyance. The fact that such first deposited and recorded conveyance of such subsequent purchaser for a valuable consideration is in the form, or contains the terms, of a deed of quitclaim and release aforesaid, shall not affect the question of good faith of the subsequent purchaser, or be of itself notice to him of any unrecorded conveyance of the same real estate or any part thereof.

§ 2. Legal Notice Given.) This Act shall be legal notice to all who claim under unrecorded instruments that prior recording of later instruments not entitled to be recorded may nullify their right, title, interest or lien, to, in or upon affected real property.

§ 3. Limitation.) From and after January 1, 1960 no action affecting any right, title, interest or lien, to, in or upon real property shall be commenced or maintained or defense or counterclaim asserted or recognized in court on the ground that a recorded instrument was not entitled to be recorded.

§ 4. Record Validated.) From and after January 1, 1960 the record of all instruments whether or not the same were entitled to be recorded shall be deemed valid and sufficient as the legal record thereof.

Approved March 11, 1959.

CHAPTER 335

H. B. No. 759
(Wheeler)

CONSTRUCTIVE NOTICE AND ADMISSIBILITY IN EVIDENCE
OF EXECUTION OF RECORDED INSTRUMENTS

AN ACT

To amend and reenact section 47-1945 of the North Dakota Revised Code of 1943, relative to constructive notice of execution of recorded instruments and admissibility in evidence without further proof.

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

§ 1. **Amendment.)** Section 47-1945 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

47-1945. Record: Constructive Notice of Execution; Instruments Recorded Admissible in Evidence Without Further Proof.) The depositing with the proper officer for record of any instrument shall be constructive notice of the execution of such instrument to all purchasers and encumbrancers subsequent to such depositing, if such instrument is subsequently recorded. All instruments entitled to record, the record of all instruments, or a duly certified copy of such record, shall be admissible in evidence in all the courts of this state and may be read in evidence in all of the courts of this state without further proof.

Approved March 11, 1959.

CHAPTER 336

S. B. No. 245
(Longmire)
(By request)

MUSIC OR DRAMATICO-MUSICAL COMPOSITIONS

AN ACT

To amend and reenact sections 47-2102, 47-2103, 47-2104, 47-2105, 47-2106, 47-2107, and 47-2108 of the North Dakota Revised Code of 1943, relating to the tax levied on the selling and licensing of performing rights of music or dramatico-musical compositions, and to provide for transfer of records.

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

§ 1. **Amendment.**) Section 47-2102 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

47-2102. Music or Dramatico-Musical Compositions: Disposing of Performing Rights; Prerequisites.) No person shall sell, license the use of, or in any manner whatsoever dispose of the performing rights in or to any musical composition or dramatico-musical composition which has been copyrighted, and is the subject of a valid and existing copyright under the laws of the United States, nor collect any compensation on account of any such sale, license, or other disposition unless such person shall:

1. File with the state treasurer a list in triplicate describing each such musical composition and dramatico-musical composition, the performing rights in which said person intends to sell, license, or otherwise dispose of in this state. This description shall include the following:
 - a. The name and title of the copyrighted composition;
 - b. The number or other identifying symbol given thereto in the United States copyright office;
 - c. The name of the author;
 - d. The name of the publisher;
 - e. The name of the present owner of the copyright to said composition; and
 - f. The name of the present owner of the performing rights thereto.

Additional lists of such copyrighted compositions may be filed by any such person from time to time and shall be subject to all the provisions of this chapter. No payment or filing fee shall be required by the state treasurer for filing any list under this chapter.

2. File simultaneously an affidavit which shall describe the performance rights to be sold, licensed, or otherwise disposed of, and shall state:
 - a. That the compositions so listed are copyrighted under the laws of the United States;
 - b. That the facts contained in the list to which said affidavit relates are true;
 - c. That affiant has full authority to sell, license, or otherwise dispose of the performing rights in such compositions;
 - d. The name, age, occupation, and residence of the affiant; and
 - e. If the affiant is an agent, the name, occupation, and residence of his principal.

§ 2. **Amendment.)** Section 47-2103 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

47-2103. Copies of Performing Rights: To Be Secured From State Treasurer.) The list provided for in section 47-2102 shall be made available by the state treasurer to all persons for examination and taking copies in order that any user of such compositions in this state may be advised fully concerning the performing rights therein, avoid being overreached by false claims of ownership of said performing rights, and avoid committing innocent infringements of said works. A duplicate of any list so filed by any person, at his request, shall be certified by the state treasurer at the expense of the person making such request. The state treasurer shall give or deliver the duplicate to such person, who shall exhibit the same on demand of anyone to whom he seeks to sell, license, or otherwise dispose of said performing rights.

§ 3. **Amendment.)** Section 47-2104 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

47-2104. Owners Combining to Issue Blanket License for Public Performance; Legality.) It shall be unlawful for two or more owners of the copyrights of musical compositions or dramatico-musical compositions to associate or combine together in any manner, directly or indirectly, for the purpose of issuing blanket licenses for the public performance for profit of their compositions upon a blanket royalty or fee covering more than one, or all, of such compositions owned or controlled by the members of such association unless each individual copyright owner included in such association, or such association in behalf of each individual copyright owner, also shall make available to each user of such compositions

within the state, at the option of the user, the right to perform publicly for profit, each such copyrighted musical composition owned by him or it at a price established for each separate performance of each such composition. To this end, there shall be filed with the state treasurer, either as a part of the list required by section 47-2102, or as a separate document by such copyright owner, or by such association in behalf of such owner, a schedule of prices for the performing rights to each separate performance for profit of each such composition contained in such list, together with an affidavit of the copyright owner of such compositions that the price so stated has been determined by such copyright owner acting for himself and not either directly or indirectly in concert or by agreement with the owner or owners of any other copyrights. Such schedule of prices may contain reasonable classifications determined by use and function, or either of the users of said compositions, with separate price for each classification, if there is equal treatment of all persons within each classification and if there is no unreasonable discrimination between classifications. Any copyright owner, or such association acting in his behalf, at his election may fix one price which shall be applicable to each rendition of each of such compositions owned by him except to the extent that he elects to name specific compositions and to fix other prices for each rendition thereof. Said prices shall remain in force and effect until a new schedule of prices with respect to the performing rights to such compositions similarly has been filed in the office of the state treasurer, at any time, at the election of such owner or such association acting in his behalf, changes in prices to become effective seven days from the date of filing thereof. It shall be unlawful for any person selling, licensing the use of, or in any manner whatsoever disposing of, or contracting to dispose of, in this state, the performing rights in or to any musical composition or dramatico-musical composition, to make any charge, or to contract for or collect, any compensation as a condition of using said performing rights, based in whole or in part, on any program not containing any such composition. Any such charge or contract for compensation shall be valid and enforceable only to the extent that it is based and computed upon a program in which such composition is rendered. The schedule of prices provided for herein shall be made available by the state treasurer to all persons for examination and the taking of copies.

§ 4. Amendment.) Section 47-2105 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

47-2105. Blanket License: File Copy and Affidavit With State Treasurer.) Any person issuing a blanket license for

performance rights of any copyrighted musical or dramatico-musical composition shall file with the state treasurer, within thirty days from the date of such blanket license is issued, a true and complete copy of each such license issued or sold with respect to performance within this state, together with the affidavit of such person that such copy is a true and complete copy of the original, and that it sets forth each and every agreement between the parties thereto with respect to performing rights.

§ 5. **Amendment.)** Section 47-2106 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

47-2106. Service of Process on State Treasurer: Authorization by Owner of Performing Rights.) At the time of filing the information required in sections 47-2102 and 47-2103, the owner of the performing rights affected shall execute and deliver to the state treasurer, on a form to be furnished by the state treasurer, an authorization empowering the state treasurer to accept service of process on such person in any action or proceeding, whether cognizable at law or in equity, arising under this chapter and designating the address of such person until the same shall be changed by a new form similarly filed. Service of process may be effected thereafter in this state on such person in any such action or proceeding by serving the state treasurer with duplicate copies of such process. Immediately upon receipt of such process, the state treasurer shall mail one of the duplicate copies by registered mail to the address of such person as stated on the authorization last filed by him.

§ 6. **Amendment.)** Section 47-2107 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

47-2107. Persons Entitled to Maintain Action: Evidence Admissible.) No person shall be entitled to commence or maintain any action or proceeding in any court with respect to the performing rights of any copyrighted musical or dramatico-musical composition nor to collect any compensation on account of any sale, license, or other disposition of such performing rights, in this state, except upon pleading and proving compliance with the provisions of this chapter. Copies, certified by the state treasurer as such, of each or all of the lists, license agreements, affidavits, and other documents filed with the state treasurer pursuant to the requirements of this chapter shall be furnished by the state treasurer at the direction and at the expense of any person requesting the same. Such certified copies shall be admitted in evidence in any action or proceeding in any court to the same extent as the original thereof.

§ 7. **Amendment.**) Section 47-2108 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

47-2108. Tax Levied on Selling and Licensing Performing Rights of Music or Dramatico-Musical Compositions: Payable to State Treasurer.) A tax shall be levied and collected for the act or privilege of selling, licensing, or otherwise disposing of performing rights in music or dramatico-musical compositions in this state, in an amount equal to five percent of the gross receipts of all such sales, licenses, or other disposition of performing rights in this state, payable to the state treasurer for the benefit of the general fund of the state, on or before the fifteenth day of March of each year, with respect to the gross receipts of the preceding calendar year. The state treasurer shall adopt and publish rules and regulations not in conflict herewith, as well as a form of return and any other forms necessary to carry out the provisions of this section.

§ 8. **Transfer of Records.)** All records that are in the possession of the secretary of state relating to the administration of the provisions of chapter 47-21 of the North Dakota Revised Code of 1943 shall be transferred to the state treasurer.

Approved March 17, 1959.