

CORPORATIONS

CHAPTER 102

H. B. No. 721
(Burk, Miller)

ISSUANCE AND SALE OF SECURITIES

AN ACT

To amend and reenact subsection 7 of section 10-04-05, subsection 5 of section 10-04-06, subsection 3 of section 10-04-10, and section 10-04-18 of the North Dakota Century Code, relating to the supervision of issue and sale of securities.

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

§ 1. Amendment.) Subsection 7 of section 10-04-05 of the North Dakota Century Code Supplement is hereby amended and reenacted to read as follows:

7. Commercial paper maturing in not more than twelve months from date of issue;

§ 2. Amendment.) Subsection 5 of section 10-04-06 of the North Dakota Century Code Supplement is hereby amended and reenacted to read as follows:

5. The sale of securities to any bank, savings bank, savings institution, trust company, insurance company, registered dealer, or any corporation, organization or association, a principal part of whose business consists of the buying of securities;

§ 3. Amendment.) Subsection 3 of section 10-04-10 of the North Dakota Century Code Supplement is hereby amended and reenacted to read as follows:

3. Investment Counsel. No person, partnership, corporation, or association shall offer for sale or sell any investment service in this state except as provided by the provisions of this subsection. 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 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 10-04-14; 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 securi-

ties of its clients. A registrant as investment counsel shall notify the commissioner of any change of address.

§ 4. **Amendment.)** Section 10-04-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-18. 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 in the penitentiary for not less than one year nor more than five years, or in the county jail for not less than three months nor more than one year, or both such fine and imprisonment.

Approved March 18, 1963.

CHAPTER 103

S. B. No. 282
(Wartner)

CHANGE IN REGISTERED OFFICE OR AGENT

AN ACT

To create and enact subsection 20 of section 10-23-04 and to amend and reenact sections 10-19-10 and 10-22-09 of the North Dakota Century Code, relating to the change of registered office or registered agent for domestic and foreign corporations and establishing a fee for the filing of such change.

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

§ 1. **Amendment.)** Section 10-19-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-19-10. Change of Registered Office or Registered Agent.)

1. 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:

- A. The name of the corporation;
- B. The address of its then registered office;
- C. If the address of its registered office be changed, the address to which the registered office is to be changed;
- D. The name of its then registered agent;

- E. If its registered agent be changed, the name of its successor registered agent;
- F. That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
- G. 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 a registered agent changes his or its business address to a place within the same county he or it may change such address and the address of the registered office of any corporations of which he or it is the registered agent by filing a statement as required above with one copy thereof for each corporation listed on the certificate except that it need be signed only by the registered agent, need not be responsive to subdivision E or G and must recite that a copy of that statement has been mailed to each such corporation. If the secretary of state finds that such statement conforms to the provisions of chapters 10-19 through 10-23, 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.

2. 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 at its registered office. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

§ 2. Amendment.) Section 10-22-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-09. Change of Registered Office or Registered Agent of Foreign Corporation.)

1. A foreign corporation authorized to transact business 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:

- A. The name of the corporation;
- B. The address of its then registered office;
- C. If the address of its registered office be changed, the address to which the registered office is to be changed;
- D. The name of its then registered agent;

- E. If its registered agent be changed, the name of its successor registered agent;
- F. That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
- G. 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 a registered agent changes his or its business address to a place within the same county he or it may change such address and the address of the registered office of any corporations of which he or it is the registered agent by filing a statement as required above with one copy thereof for each corporation listed on the certificate except that it need be signed only by the registered agent, need not be responsive to subdivision E or G and must recite that a copy of the statement has been mailed to each such corporation. If the secretary of state finds that such statement conforms to the provisions of this section, 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.

2. Any registered agent of 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 registered office. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

§ 3.) Subsection 20 of section 10-23-04 of the North Dakota Century Code is hereby created and enacted to read as follows:

- 20. Filing statement of change of address of registered office by registered agent, two dollars for each corporation affected by such change.

Approved March 21, 1963.

CHAPTER 104

H. B. No. 764
(Nygaard, Haugen)

CORPORATE LICENSE FEES

AN ACT

To amend section 10-23-06 of the North Dakota Century Code, to provide that said section, except as herein provided, shall not apply to building and loan and savings and loan associations with regard to the payment of license fees for domestic corporations, and to provide for separate license fees on authorized share accounts or increase in authorized share accounts of building and loan associations and savings and loan associations.

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

§ 1. **Amendment.**) Section 10-23-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-06. License Fees Payable by Domestic Corporations—Exempting Building and Loan and Savings and Loan Associations.) The secretary of state shall charge and collect from each domestic corporation license fees, based upon the value of its authorized shares, at the time of:

1. Filing articles of incorporation;
2. Filing articles of amendment increasing the number or value of authorized shares; and
3. Filing articles of merger or consolidation increasing the number or value of authorized shares which the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number or value of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

The license fees shall be the sum of twenty-five dollars for the first \$25,000 of its authorized shares, or fraction thereof, and the sum of fifty dollars for authorized shares in excess of \$25,000 but not exceeding \$50,000 and the further sum of five dollars for every additional \$10,000 of its authorized shares or fraction thereof, in excess of \$50,000.

The license fees payable on an increase in authorized shares shall be imposed only on the additional shares, but the amount of previously authorized shares shall be taken into account in determining the rate applicable to the additional authorized shares.

For the purpose of this section, shares without par value shall be considered worth one hundred dollars per share.

The provisions of this section shall not apply to a building and loan or savings and loan association.

§ 2. License Fees Payable by Savings and Loan or Building and Loan Associations.) The secretary of state shall charge and collect from each building and loan or savings and loan association, based upon its authorized share accounts, at the time of:

1. Filing articles of incorporation;
2. Filing articles of amendment increasing the number or value of authorized share accounts; and
3. Filing articles of merger or consolidation increasing the number or value of authorized share accounts which the surviving or new association, if a domestic corporation will have authority to issue above the aggregate number or value of share accounts which the savings and loan association have authority to issue.

The license fees shall be in the sum of ten dollars per each million dollars of authorized share accounts or increase in authorized share accounts.

The license fees payable on an increase in authorized share accounts shall be imposed on the increase in authorized share accounts.

Approved March 18, 1963.

CHAPTER 105

S. B. No. 358

(Committee on Delayed Bills)
(Hernett)

STATE DEVELOPMENT CORPORATIONS

AN ACT

To amend and reenact sections 10-30-01, 10-30-05, 10-30-12, and 10-30-14 of the North Dakota Century Code, changing the name of small business investment corporations to "state development corporations" and providing that their existence may be perpetual.

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

§ 1. Amendment.) Section 10-30-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30-01. Organization.) 1. Any ten or more natural persons who are residents of this state may form a state development corporation by complying with the conditions prescribed in this chapter.

2. They shall 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 "state development corporation".
- b. The period of its duration, which shall be perpetual.
- 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. Amendment.) Section 10-30-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30-05. Business Corporations Act to Apply.) The provisions of chapters 10-19 through 10-23 of this code shall apply to state development corporations as they may be applicable and not inconsistent with this chapter.

§ 3. Amendment.) Section 10-30-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30-12. Loans—Investment by Applicant.) Any person or firm who applies for a loan or obtains money from the development 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.

§ 4. Amendment.) Section 10-30-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30-14. Notes or Obligations—Legal Investments.) Notwithstanding any other statute, the notes or other interest bearing obligations of state development corporations, issued in accordance with this chapter and the articles of incorporation and the bylaws of the corporation shall be legal invest-

ments 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 21, 1963.

CHAPTER 106

H. B. No. 720
(Leahy, Wagner, Paulson, Aamoth)

PROFESSIONAL CORPORATIONS

AN ACT

Allowing persons practicing a licensed profession to form a professional corporation under the Business Corporation Act for the purpose of rendering professional service but preserving the relationship between the person rendering and the person receiving professional services and providing for continuing regulation by appropriate boards of such professions.

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

§ 1. **Title.)** This Act shall be known and may be cited as the Professional Corporation Act.

§ 2. **Statutory Policy.)** This Act shall be so construed as to effectuate its general purpose of making available to professional persons the benefits of the corporate form.

§ 3. **Definitions.)** As used in this Act, the following words shall have the meaning indicated:

1. The term "professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which prior to the passage of this Act could not be performed by a corporation.

2. The term "professional corporation" means a corporation which is organized under this Act for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation.

§ 4. **Articles of Incorporation.)** One or more individuals may incorporate a professional corporation for the practice of a profession by filing articles of incorporation with the secretary of state. Such articles of incorporation shall meet the

requirements of the Business Corporation Act and, in addition thereto, contain the following:

1. The profession to be practiced through the professional corporation.

2. The names and residence addresses of all of the original shareholders, directors and officers of the professional corporation. At the time such articles of incorporation are filed with the secretary of state there shall also be filed a certificate by the regulating board of the profession involved that each of the directors and shareholders, if any, are duly licensed to practice such profession.

§ 5. Applicability of Business Corporation Act.) The Business Corporation Act shall be applicable to professional corporations and they shall enjoy the powers and privileges and be subject to the duties, restrictions and liabilities of other corporations except where inconsistent with the letter and purpose of this Act. This Act shall take precedence in the event of any conflict with the provisions of the Business Corporation Act.

§ 6. Purpose for Which Incorporated.) A professional corporation may be organized pursuant to the provisions of this Act only for the purpose of rendering one specific type of professional service and services ancillary thereto and shall not engage in any business other than rendering the professional service for which it was organized to render provided, however, that a professional corporation may own real and personal property necessary or appropriate for rendering the type of professional services it was organized to render and may invest its funds in real estate mortgages, stocks, bonds and any other type of investment.

§ 7. Corporate Name.) The corporate name of a corporation organized under this Act shall contain the word "chartered", "limited" or the abbreviation "Ltd.", or "professional corporation", or the abbreviation "P.C.". The use of the word "company", "corporation" or "incorporated" or any other word, abbreviation, affix or prefix indicating that it is a corporation, in the corporate name of a corporation organized under this Act, other than the words "chartered", "limited", or "professional corporation" or the abbreviations "Ltd." or "P.C.", is specifically prohibited.

§ 8. Officers, Directors and Shareholders.) No person may be simultaneously an officer, director, or shareholder of more than one professional corporation. A professional corporation which has only one shareholder need have only one director, who shall be such shareholder. He shall also serve as the president and treasurer of the corporation. The other officers

of the corporation need not be licensed or otherwise legally authorized in the same field of endeavor as the president. A professional corporation which has only two shareholders need have only two directors, who shall be such shareholders. The two shareholders shall fill all of the general offices of the corporation between them. A retired person may not continue as a director, officer or shareholder of a professional corporation.

§ 9. Issuance and Transfer of Shares.) A professional corporation may issue the shares of its capital stock only to persons who are duly licensed to render the same specific professional services as those for which the corporation was organized. A shareholder may voluntarily transfer his shares in a professional corporation only to a person who is duly licensed to render the same specific professional services as those for which the corporation was organized. Any shares issued in violation of this section are null and void. The voluntary transfer of any shares transferred in violation of this section is null and void. No shares may be transferred upon the books of the professional corporation or issued by the professional corporation until there is presented to and filed with the corporation a certificate by the regulating board stating that the person to whom the transfer is to be made or the shares issued is duly licensed to render the same specific professional services as those for which the corporation was organized.

§ 10. Professional Services Through Officers, Employees, Agents.) No corporation organized and incorporated under this Act may render professional services except through its officers, employees and agents who are duly licensed to render such professional services in this state; provided, however, that this provision shall not be interpreted to include in the term "employee", as used herein, clerks, secretaries, bookkeepers, nurses, technicians or other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required in connection with the profession practiced by a particular professional corporation.

§ 11. Professional Relationship Preserved — Liability of Shareholders — Professional Regulation.) This Act does not modify any law applicable to the relationship between a person furnishing professional service and a person receiving such service, including liability arising out of such professional service, and including the confidential relationship between the person rendering the professional service and the person receiving such professional service, if any, and all confidential

relationships previously enjoyed under the laws of this state or hereinafter enacted shall remain inviolate. Subject to the foregoing provisions, nothing contained herein shall render a director, officer, shareholder, or employee of a professional corporation personally liable in tort for any act in which he has not personally participated or in contract for any contract which he executes on behalf of a professional corporation within the limits of his authority. Nothing in this Act shall restrict or limit in any manner the authority and duty of the regulating boards for the licensing of individual persons rendering professional services. No professional corporation may do any act which is prohibited to be done by any individual persons licensed to practice the profession which the professional corporation is organized to render.

§ 12. Legal Disqualification.) If any officer, director or shareholder of a professional corporation becomes legally disqualified to render a professional service within this state or accepts employment or is elected to a public office that, pursuant to existing law, is a restriction or limitation upon rendering of professional service, he shall sever all employment with or financial interest in such professional corporation forthwith. A professional corporation's failure to comply or require compliance with this provision shall be a ground for the forfeiture of its right to render professional service as a professional corporation pursuant to the provisions of this Act.

§ 13. Disposition of Shares on Death or Disqualification.) The articles of incorporation may provide for the purchase or redemption of the shares of any shareholder upon the death or disqualification of such shareholder, or the same may be provided for in the bylaws or by private agreement. In the absence of a provision for the same in the articles of incorporation or the bylaws or by private agreement, the professional corporation shall have an option to purchase the shares of a deceased shareholder or a shareholder no longer qualified to own shares in such corporation within six months after the death or disqualification of the shareholder, as the case may be. The option price for such shares shall be the book value as of the end of the month immediately preceding the death or disqualification of the shareholder unless otherwise specified in the articles of incorporation, bylaws or by private agreement. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by such corporation. In the event the professional corporation fails to exercise such option, the stock of the deceased or disqualified shareholder may be sold to any person duly licensed or otherwise legally authorized to render the same professional service as that for which the professional corporation was

organized. A disqualified shareholder, or the estate of a deceased shareholder, may continue to hold shares of the professional corporation during said option period and for a reasonable period thereafter, pending transfer to another duly licensed or otherwise legally authorized person, but shall not be authorized to participate in any decisions concerning the performance of professional service.

§ 14. Death of Last or Only Shareholder—Amendment of Articles of Incorporation—Involuntary Dissolution.) In the event of the death of the last or only shareholder of a professional corporation whose shares of stock pass to heirs by intestate succession, to legatees under a last will and testament, or otherwise pass by operation of law to a person or persons not legally qualified to render the professional services which the professional corporation was organized to perform, the heirs, legatees or personal representative of such deceased shareholder, within six months after the date of death of such last or only shareholder, may amend the articles of incorporation to provide that such corporation shall continue as a general corporation under the Business Corporation Act. The death of the last or only shareholder of a professional corporation and the failure of the heirs, legatees or personal representative to make such amendment within six months after such death shall be a ground for the involuntary dissolution of the professional corporation. When such facts are brought to the attention of the secretary of state he shall forthwith certify such facts to the attorney general who shall immediately take appropriate action to dissolve the professional corporation.

§ 15. Annual Reports.) Each professional corporation organized under this Act shall file with the secretary of state an annual report at the time specified for the filing of such reports by the Business Corporation Act giving the name and residence addresses of all officers, directors and shareholders of such professional corporation as of the thirtieth day of June next preceding the filing of such report and certifying that all of such officers, directors and shareholders are duly licensed to render the same specific professional services as those for which the corporation was organized. This certificate shall be made on such form as shall be prescribed and furnished by the secretary of state, shall be signed by the president or vice president and attested by the secretary or assistant secretary of the professional corporation, and sworn to before a notary public by the persons executing the certificate and accompanied by a filing fee of \$5 payable to the secretary of state. No other fees shall be charged therefor. A duplicate original copy of such annual report shall be filed at the same time with the regulatory board which licenses the shareholders

described in the certificates and no filing fee shall be charged by the regulatory board for such filing. The regulatory boards issuing the licenses described in section 3 of this Act are hereby authorized and directed to issue the certificates required by section 4 of this Act. Such certificates shall be on forms as prescribed and furnished by the secretary of state. The regulating boards may charge and collect a fee not to exceed \$5 per person so certified to be duly licensed by such regulating board.

Approved March 8, 1963.