

CORPORATIONS

CHAPTER 132

SENATE BILL NO. 2093
 (Committee on Industry, Business, and Labor)
 (At the request of the Securities Commissioner)

SECURITIES ACT EXEMPTIONS AND REGISTRATION

AN ACT to amend and reenact subsections 8 and 12 of section 10-04-02 of the North Dakota Century Code, relating to the definitions of "salesman" and "security"; to amend and reenact subsections 2, 7, and 9 of section 10-04-05 of the North Dakota Century Code, relating to exemptions for international banks, commercial paper, and cooperatives; to amend and reenact subsection 7 of section 10-04-06 of the North Dakota Century Code, relating to a transactional exemption for convertible securities; to amend and reenact subsections 2 and 5 of section 10-04-10 of the North Dakota Century Code, relating to salesman registration and record and renewal of registrations; to amend and reenact section 10-04-11 of the North Dakota Century Code, relating to suspension or revocation of dealer's, salesman's, or investment adviser's registration; to amend and reenact section 10-04-17 of the North Dakota Century Code, relating to civil remedies; and to amend and reenact section 10-04-18 of the North Dakota Century Code, relating to criminal penalties.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
 STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 8 and 12 of section 10-04-02 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

8. "Salesman" shall mean an any individual, other than a dealer or an officer or director or member of a partnership or firm of a licensed issuer, and may be an employee or appointee or authorized by a dealer or an issuer to sell securities in this state, or be self-employed, in the business of selling a specific security or securities, which have been registered by description or by qualification in this state, who represents a dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. A partner, officer, or director of a dealer or an issuer or a person occupying a similar status or performing similar

functions is a "salesman" only if he otherwise comes within the definition.

12. "Security" shall mean any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, certificate of interest or participation in an oil, gas, or ~~other mineral rights~~ mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise, investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor where the investor has no direct control over the investment or policy decisions of the venture, voting-trust certificate, certificate of deposit for a security, or beneficial interest in title to property, profits, or earnings, or, in general, any ~~other~~ interest or instrument commonly known as a security "security", ~~including or any guarantee of certificate of interest or participation in, temporary or interim certificate of interest or participation in~~ for, receipt for, guarantee of, or warrant or right to subscribe to, convert into, or purchase, any of the foregoing.

SECTION 2. AMENDMENT. Subsections 2, 7, and 9 of section 10-04-05 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. Securities issued by a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an act of the Congress of the United States ~~of America~~ and supervised by the United States ~~of America~~, or any agency thereof, or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member, or issued by a state bank, trust company, savings bank, savings institution, or credit union incorporated under the laws of this state and subject to supervision by this state or by any agency thereof, and securities of any person subject to examination by the commissioner of banking and financial institutions of North Dakota.
7. Any note, draft, bill of exchange, or bankers' acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, is not the subject of a public offering, is prime quality negotiable commercial paper which is

eligible for discounting by federal reserve banks, has at the time of issuance a definite maturity (after all days of grace, if any) of not exceeding ~~one-year~~ nine months, is payable in cash only, and is not convertible into and does not carry an option or right to receive payment or any bonus in any other security.

9. Securities issued by any ~~association, corporation, or~~ cooperative formed under the statutes of the state of North Dakota, ~~whose earnings are distributed to its members, stockholders, or patrons according to patronage.~~

SECTION 3. AMENDMENT. Subsection 7 of section 10-04-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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, provided that the securities surrendered were not offered for sale or sold in violation of section 10-04-04.

SECTION 4. AMENDMENT. Subsections 2 and 5 of section 10-04-10 of the 1979 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. Salesmen. Application for registration as a salesman may be made by any individual eighteen years of age or older. 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 shall require as a condition of registration that the applicant, and, in the case of a corporation or partnership, all officers, directors, or partners doing securities business in this state, pass a written examination as evidence of knowledge of the securities business; provided, that not more than two officers of an issuer may be registered as a salesman for a particular original offering of the issuer's securities without being required to pass such written examination; and provided, further, that no such officer may again register within five years as such salesman for this or any other issuer without passing the written examination. ~~All--salesmen--currently--registered--on--June--30--1961--who--have--been--continuously--registered--as--securities--salesmen--in--the--state--of--North--Dakota--since--July--17--1958--may--have--their--registrations--renewed--without--being--required--to--pass--such--written--examination--Such--examination--shall--be--given--once--each--month--in--the--capital--city--and--at--least--once--each--quarter--in--other--locations--in--the--state--the--time--and--place--of--such--examination--to--be--designated--by--the--securities--commissioner.~~

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 10-04-05, or have been registered by description under section 10-04-07, or have been registered by announcement under section 10-04-07.1, or have been registered by qualification under section 10-04-08, 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. 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.

5. Record and renewal of registrations. The names and addresses of all persons who have been registered as dealers, salesmen, or investment advisers, and all orders with respect thereto, shall be recorded in a register of dealers, salesmen, and investment advisers in the office of the commissioner. Every registration under this section shall expire ~~on the first day of May in each year. Registration of dealers, salesmen, and investment advisers may be renewed each year, at any time not less than fifteen and not more than sixty days before expiration thereof, by (1) the payment of the proper registration fee and (2) in the case of a dealer or investment adviser, 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 or investment adviser as of the most recent practicable date one year from its effective date unless renewed.~~ The commissioner may by rule provide for expirations and renewals, including dates, forms, and procedures, adjust registration fees to correspond with expiration dates, and do any other thing which may be necessary or convenient in order to participate in a central registration depository or any similar arrangement designed to promote uniformity, to ease regulatory burdens, or to encourage cooperation with other states, the securities and exchange commission, or any registered national securities association or exchange. Upon any change in the proprietors, partners, officers, or directors of a registered dealer or investment adviser, such registered dealer or investment adviser 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 advisers.

SECTION 5. AMENDMENT. Section 10-04-11 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-11. SUSPENSION OR REVOCATION OF DEALER'S, SALESMAN'S, AND INVESTMENT ADVISER'S REGISTRATION.

- 1. The commissioner may revoke the registration of any dealer, salesman, or investment adviser if, after a hearing or opportunity for hearing as provided in section 10-04-12, he finds that such registered dealer, salesman, or investment adviser:
 - 1- a. 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- b. Is, in the case of a dealer or investment adviser, insolvent; or
 - 3- c. ~~Has been--guilty-of-any-fraudulent-act-or-practice-in connection-with-the-purchase-or-sale-of-any-securities engaged in dishonest, fraudulent, or unethical practices in the securities business;~~ or
 - 4- d. 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- e. Has failed to file with the commissioner any financial statement required pursuant to subsection {A} 3 of this section, or has refused to permit an examination into his affairs as provided by subsection {A} 3 of this section; or
 - 6- f. 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- g. Has been convicted of an offense determined by the commissioner to have a direct bearing upon a person's ability to serve the public as a dealer, salesman, or investment adviser, or the commissioner finds that a

person, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1; or

- 8- h. 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- i. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a dealer, salesman, or investment adviser; or
- 10- j. 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 adviser, 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; or is the subject of a United States post-office fraud order, 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- k. 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 or sale of the security; or
1. Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business; or
- m. Has failed reasonably to supervise his salesmen if he is a dealer or his employees if he is an investment adviser.
2. It shall be sufficient cause for revocation of registration of a dealer or investment adviser 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 or investment adviser.

- (A) 3. The commissioner may require any registered dealer, salesman, or investment adviser to make and keep such accounts, correspondence, memoranda, papers, books, and other records as he deems necessary to efficiently administer this chapter. 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 adviser to file with him a financial statement showing the financial condition of such dealer or investment adviser 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 adviser 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 adviser 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 adviser. 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 adviser, and may administer oaths to and examine the officers and employees of such dealer or investment adviser as to his business and affairs.
- (B) 4. If the commissioner has reasonable grounds to believe that a registered dealer, salesman, or investment adviser has been guilty of any act or omission which would be sufficient ground for revoking the registration of such dealer, salesman, or investment adviser, he may enter an order suspending the registration of such dealer, salesman, or investment adviser pending an examination into the affairs of such dealer, salesman, or investment adviser or pending a hearing or opportunity for hearing as provided in section 10-04-12; provided, that no such order shall be effective for more than thirty days, and such order, if not withdrawn by the commissioner within thirty days, shall automatically terminate thirty 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 or certified mail to the dealer, salesman, or investment adviser 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) 5. If the commissioner finds, after affording a registered dealer, a registered salesman, or a registered investment

adviser a hearing or opportunity for hearing as provided in section 10-04-12, that there are grounds to revoke the registration of such dealer, salesman, or investment adviser, he may enter an order in the register of dealers, salesmen, and investment advisers, revoking the registration of such dealer, salesman, or investment adviser. 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 adviser 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. 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.

SECTION 6. AMENDMENT. Section 10-04-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-17. REMEDIES. Every sale or contract for sale made in violation of any of the provisions of this chapter, or of any rule or order issued by the commissioner under any provisions of this chapter, shall be voidable at the election of the purchaser. The person making such sale or contract for sale, and every director, officer, salesman, or agent of or for such seller who shall have participated or aided in any way in making such sale shall be jointly and severally liable to such purchaser ~~in any action who may sue either at law in any court of competent jurisdiction upon tender to the seller, in person or in open court, of the securities sold or of the contracts made for~~ or in equity to recover the full amount paid by such purchaser, together with all taxable court costs, interest as provided in subsection 2, and reasonable attorney's fees ~~in any action or tender under this section~~, less the amount of any income received on the securities, upon tender to the seller, in person or in open court, of the securities sold or of the contracts made, or for damages if he no longer owns the securities. Damages are the amount that would be recoverable upon a tender less the value of the securities when the purchaser disposed of them and interest as provided in subsection 2 from the date of disposition. Provided:

1. That no action shall be brought under this section for the recovery of the purchase price after three years from the date of such sale or contract for sale nor more than one year after the purchaser has received information as to matter or matters upon which the proposed recovery is based; and
2. That no purchaser shall claim or have the benefit of this section if he shall have refused or failed to accept,

within thirty days from the date of such offer, an offer in writing of the seller to take back the securities in question and to refund the full amount paid by such purchaser, together with interest on such amount for the period from the date of payment by such purchaser down to the date of repayment, such interest to be computed:

- a. In case such securities consist of interest-bearing obligations, at the same rate as provided in such securities, less the amount of any income received on the securities.
 - b. In case such securities consist of other than interest-bearing obligations, at the legal rate of five-percent-per-annum, specified in section 47-14-05, less, in every case, the amount of any income from such securities that may have been received by such purchaser the amount of any income received on the securities.
3. Nothing in this chapter shall limit any statutory or common-law right of any person in any court for any act involved in the sale of securities.

SECTION 7. AMENDMENT. Section 10-04-18 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-18. PENALTIES.

1. Any person who willfully violates any provision of this chapter or any rule or order of the commissioner made pursuant to the provisions of this chapter, or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful shall be guilty of a class B felony.
2. As used in this section, the term "willfully", except as it applies to subdivisions a and b of subsection 1 of section 10-04-10.1 and subsections 2 and 4 of section 10-04-15, means that the person acted intentionally in the sense that he was aware of what he was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required.
3. Each violative act or omission constitutes a separate offense, and a prosecution or conviction for any one offense shall not bar a prosecution or conviction for any other offense.
4. An information must be filed or an indictment must be found under this chapter within five years after the alleged violation.

Approved March 18, 1981

CHAPTER 133

SENATE BILL NO. 2310
(Lodoen)

SALE OF GOVERNMENTALS

AN ACT to amend and reenact subsection 12 of section 10-04-06 of the North Dakota Century Code, relating to allowing bankers to place orders for governmentals as a convenience to their customers.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 12 of section 10-04-06 of the 1979 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

12. The sale of a security issued by the United States of ~~America~~, or the state of North Dakota, or any political subdivision or instrumentality of the state of North Dakota, provided that the offer for sale and sale ~~is~~ are made by an official or employee of the ~~issuing-body~~ issuer or ~~by-an-official~~ of the Bank of North Dakota acting in ~~his~~ an official capacity and not for ~~his~~ his personal pecuniary profit, or by a bank or similar financial association or institution or an official or employee thereof solely as an accommodation to customers of such association or institution and without asking or receiving a commission or remuneration other than an accommodation fee not to exceed fifty dollars in connection with the transaction.

Approved March 6, 1981

CHAPTER 134

SENATE BILL NO. 2233
(Vosper, Iszler, Nelson, Roen)

CORPORATE FARMING OR RANCHING

AN ACT to create and enact sections 10-06-01.1, 10-06-07, 10-06-08, 10-06-09, 10-06-10, 10-06-11, 10-06-12, 10-06-13, 10-06-14, and 10-06-15 of the North Dakota Century Code, defining farming or ranching, authorizing certain family-type corporations to engage in farming and ranching, and providing for reports and enforcement; to amend and reenact sections 10-06-01 and 10-06-04 of the North Dakota Century Code, prohibiting farming by corporations with an exception for certain cooperatives; to repeal sections 10-06-02, 10-06-03, 10-06-05, and 10-06-06 of the North Dakota Century Code, relating to disposal of lands acquired by corporations in violation of the law; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-06-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-01. FARMING OR RANCHING BY DOMESTIC--AND--FOREIGN CORPORATIONS PROHIBITED. All corporations, ~~both--domestic---and foreign,~~ except as otherwise provided in this chapter, are hereby prohibited from owning or leasing land used for farming or ranching and from engaging in the business of farming or agriculture ranching. As used in this chapter, "corporation" includes any joint stock company or association.

SECTION 2. Section 10-06-01.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-01.1. FARMING OR RANCHING - DEFINITION. As used in this chapter, "farming or ranching" means cultivating land for production of agricultural crops or livestock, or the raising or producing of livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. It does not include production of timber or forest products, nor does it include a contract whereby a processor or

distributor of farm products or supplies provides grain, harvesting, or other farm services.

SECTION 3. AMENDMENT. Section 10-06-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-04. COOPERATIVE CORPORATIONS EXEMPTED, WHEN ALLOWED TO ENGAGE IN THE BUSINESS OF FARMING OR RANCHING - REQUIREMENTS. Nothing-in-this This chapter shall-be-construed-to does not prohibit cooperative corporations, seventy-five percent of whose members or stockholders shareholders are actual farmers or ranchers residing on farms or ranches or depending principally on farming or ranching for their livelihood, from acquiring real estate and engaging in cooperative farming or agriculture ranching.

SECTION 4. Section 10-06-07 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-07. CORPORATION ALLOWED TO ENGAGE IN THE BUSINESS OF FARMING OR RANCHING - REQUIREMENTS. This chapter does not prohibit a domestic corporation from owning real estate and engaging in the business of farming or ranching, if all of the following requirements are met:

1. The corporation does not have more than fifteen shareholders or members.
2. Each shareholder or member is related to each of the other shareholders or members within one of the following degrees of kinship: parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or is the spouse of a person so related.
3. Each shareholder is an individual, except that any of the following may also be shareholders:
 - a. A trust for the benefit of an individual or a class of individuals who are related to a shareholder or member of the corporation within the degrees of kinship specified in this section.
 - b. An estate of a decedent who was related to a shareholder or member of the corporation within the degrees of kinship specified in this section.

Neither a trust nor an estate may be a shareholder if the beneficiaries of the trust or the estate together with the other shareholders and members are more than fifteen in number.

4. Each individual who is a shareholder or member is a citizen of the United States or a permanent resident alien of the United States.

5. The officers and directors of the corporation must be shareholders or members who are actively engaged in operating the farm or ranch and at least one of its shareholders or members shall be an individual residing on or operating the farm or ranch.
6. An annual average of at least sixty-five percent of the corporation's gross income over the previous five years, or for each year of its existence, if less than five years, shall have been derived from farming or ranching operations.
7. The corporation's income from rent, royalties, dividends, interest, and annuities does not exceed twenty percent of the corporation's gross receipts.

SECTION 5. Section 10-06-08 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-08. REPORTS - CONTENTS - FILING REQUIREMENTS. Every corporation owning or leasing land used for farming or ranching or engaged in farming or ranching after June 30, 1981, shall keep a record of transfers of shares or transfers of interests in the corporation. The corporation's secretary shall therein cause to be recorded all transfers of shares or transfers of interests among and between the corporation and its respective shareholders or holders of interest. Such record shall contain at least the following: The names of the transferor and transferee, their relationship, the number of shares or the percentage of interests transferred and the date of the transfer. Every corporation engaged in farming or ranching after June 30, 1981, shall file with the secretary of state a report at the time of the filing of the corporation's articles of incorporation and, thereafter, annually, prior to April fifteenth of each year containing all of the following information with respect to the preceding calendar year:

1. The name of the corporation and its place of incorporation.
2. The address of the registered office of the corporation in this state and the name and address of its registered agent in this state.
3. The acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation and used for farming or ranching.
4. The names and addresses of the officers and the members of the board of directors of the corporation.
5. The number of shares of stock or the percentage of interest in the acreage [hectarage] the corporation used for farming or ranching owned or leased by persons

residing on the farm or ranch and actively engaged in farming or ranching and the number of shares of stock or the percentage of interest in the acreage [hectarage] the corporation used for farming or ranching owned or leased by relatives within the degree of kinship listed in subsection 2 of section 10-06-07.

6. The name, address, and number of shares of stock or the percentage of interest in the acreage [hectarage] the corporation used for farming or ranching owned or leased by each shareholder or member and the relationship of each shareholder or member to the other shareholders or members. The names and addresses and relationships of beneficiaries of trusts and estates must also be included in the report.
7. A statement as to the percentage of gross receipts of the corporation derived from rent, royalties, dividends, interest, and annuities. In addition, the corporation shall report the same information specified above as to any other shareholder or member since the last previous report.

No corporation may commence farming or ranching in this state until the secretary of state has inspected the initial report and certified that the corporation's proposed operations comply with section 10-06-07. Upon receiving the annual reports required by this section, the secretary of state shall cause to be printed in a newspaper of general circulation in each county or counties wherein any land is owned or leased by each corporation filing a report the following: The names of each corporation and its respective shareholders or members as listed in the annual report and a statement to the effect that each of the corporations listed has filed in its annual report that it owns or leases land used for farming or ranching within the county and that a description of such lands is available for inspection at the secretary of state's office.

SECTION 6. Section 10-06-09 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-09. FAILURE TO FILE REPORT - PENALTY. Every corporation which fails to file any report required under this chapter or willfully files false information on any report required under this chapter is guilty of a class A misdemeanor.

SECTION 7. Section 10-06-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-10. SECRETARY OF STATE TO TRANSMIT INFORMATION OF NONCOMPLIANCE. If the secretary of state shall find from the annual report that the corporation is not in compliance with the requirements of section 10-06-07, he shall transmit such information to the attorney general and the governor.

SECTION 8. Section 10-06-11 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-11. TAX COMMISSIONER TO COMPARE RETURNS AND REPORTS. Each year the tax commissioner shall select at random at least five percent of the income tax returns filed by corporations which report on income from farming or ranching operations and shall compare such returns with the annual report required to be filed with the secretary of state by section 10-06-08 and shall forward any apparent violations to the attorney general and the governor.

SECTION 9. Section 10-06-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-12. ATTORNEY GENERAL TO CONDUCT RANDOM COMPLIANCE PROGRAM. Each year the attorney general shall select at random at least five percent of the total number of corporations authorized by this chapter for requests for information to determine compliance with this chapter. For such purpose, the attorney general may request affidavits, stock transfer records, certified copies of marriage licenses, birth certificates, deeds, leases and such other records and documents as shall be necessary to determine compliance.

SECTION 10. Section 10-06-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-13. ENFORCEMENT. The attorney general shall commence an action in the district court of the county in which the substantial portion of farm or ranch land used in violation of this chapter is situated, if the attorney general has reason to believe that any person is violating this chapter. The attorney general shall file for record with the register of deeds of each county in which any portion of the land is located a notice of the pendency of the action. If the court finds that the land in question is being held in violation of this chapter, or that a corporation is conducting the business of farming or ranching in violation of this chapter, the court shall enter an order so declaring. The attorney general shall file any such order for record with the register of deeds of each county in which any portion of the land is located. Thereafter, the corporation shall, within the time set by the court not to exceed one year from the date of the court's final order, divest itself of any farming or ranching land owned or leased by it in violation of this chapter, and cease all farming and ranching operations. Any corporation that fails to comply with the court's order shall be dissolved by the secretary of state. The divestment period is deemed to be a covenant running with the title to the land against any corporate grantee, corporate successor, or corporation assignee of the corporation not authorized to do business under this chapter. Any land not divested within the divestment period prescribed shall be sold at public sale in the manner prescribed by law for the foreclosure of real estate mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law including enjoining the corporation from completing performance

on the remainder of any leasehold which is in violation of this chapter. Any domestic or foreign corporation may acquire farm or ranch land as security for indebtedness, by process of law in the collection debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise. All farm or ranch land acquired as security for indebtedness, in the collection of debts, or by the enforcement of a lien or claim shall be disposed of within three years after acquiring ownership, if the acquisition would otherwise violate this chapter. In the interim such land shall be leased to persons actually engaged in farming or ranching and a disposal shall not be to a corporation other than a corporation authorized under the provisions of this chapter. Any corporation continuing to violate the provisions of this chapter shall be dissolved by the attorney general in accordance with the provisions of the laws of this state.

SECTION 11. Section 10-06-14 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-14. PRIVATE ENFORCEMENT. This chapter may be enforced in the same manner as provided in section 10-06-13 by any corporation authorized by this chapter or any resident of legal age of a county in which the land owned or leased by a corporation in violation of this chapter is located. If such action is successful, all costs of the action shall be assessed against the defendant and a reasonable attorney fee shall be allowed the plaintiff, and, should judgment be rendered for the defendant, such costs and a reasonable attorney fee for the defendant shall be paid by the plaintiff.

SECTION 12. Section 10-06-15 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-06-15. PROTECTION OF MINORITY SHAREHOLDERS. If a shareholder owns less than fifty percent of the stock of a farming or ranching corporation doing business under this chapter, and if the terms and conditions for the repurchase of that stock by the corporation or by the other shareholders are not set forth in the bylaws, the instrument which transferred the shares to the shareholder, or are not the subject of a shareholders' agreement or an agreement between that shareholder and the corporation, then the disposition of such stock shall be determined by this section upon the withdrawal of the shareholder. Any shareholder who desires to withdraw from the corporation shall first offer the shares of stock for sale to the remaining shareholders in proportion to the shares owned by them. In the event not all of the shareholders wish to purchase the stock, any one shareholder can purchase all of the withdrawing shareholder's stock. In the event no shareholder desires to purchase the stock of a withdrawing shareholder, then the corporation itself may purchase the stock. In the event the corporation chooses not to purchase the stock of the withdrawing shareholder, then the withdrawing shareholder may sell the stock to any other person eligible to be a shareholder. In the event the withdrawing shareholder is unable to sell the stock to any other

person eligible to become a shareholder, then the withdrawing shareholder may bring an action in district court to dissolve the corporation. The court, upon a finding that the withdrawing shareholder cannot sell the stock at a fair price, shall enter an order directing that the corporation itself or any or all of the remaining shareholders pro rata or otherwise shall have twelve months from the date of the court's order to purchase the withdrawing shareholder's stock at a fair price as determined by the court and that if the stock of the withdrawing shareholder is not completely purchased at said price, the corporation shall be dissolved and the assets of the corporation shall be first used to pay all the liabilities of the corporation with the remaining net assets to be distributed pro rata to the shareholders in proportion to their stock ownership. For the purpose of this section, a "fair" price for the withdrawing shareholder's stock shall be determined as though the stock were being valued for federal gift tax purposes under the Internal Revenue Code of 1954, as amended.

SECTION 13. REPEAL. Sections 10-06-02, 10-06-03, 10-06-05, and 10-06-06 of the North Dakota Century Code are hereby repealed.

Approved March 30, 1981

CHAPTER 135

HOUSE BILL NO. 1113
(Committee on State and Federal Government)
(At the request of the Secretary of State)

CORPORATE CERTIFICATES AND FILING FEES

AN ACT to amend and reenact sections 10-22-06, 10-22-11, 10-22-12, 10-22-16, 10-23-04, 10-23-05, and 10-23-06 of the North Dakota Century Code, relating to certificate of good standing, and filing and license fees for corporate documents and certificates.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-22-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-06. 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~~, certificate of good standing 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 chapters 10-19 through 10-23 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~~ certificate of good standing.
3. Issue a certificate of authority to transact business 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.

SECTION 2. AMENDMENT. Section 10-22-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-11. AMENDMENT TO ARTICLES OF INCORPORATION OF FOREIGN CORPORATION. Whenever the articles of incorporation of a foreign corporation authorized to transact business 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~~ the certificate of amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated. The filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state, nor authorize such corporation to transact business in this state under any other name than the name set forth in its certificate of authority.

SECTION 3. AMENDMENT. Section 10-22-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-12. MERGER OF FOREIGN CORPORATION AUTHORIZED TO TRANSACT BUSINESS IN THIS STATE. Whenever a foreign corporation authorized to transact business 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~~ certificate of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected. It shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business 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 transact in this state.

SECTION 4. AMENDMENT. Section 10-22-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-16. REVOCATION OF CERTIFICATE OF AUTHORITY. The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon any of the following conditions:

1. The corporation has failed to file its annual report within the time required, or has failed to pay any fees or penalties prescribed by chapters 10-19 through 10-23 when they have become due and payable.
2. The corporation has failed to appoint and maintain a registered agent in this state as required by section 10-22-08.

3. The corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by section 10-22-09.
4. The corporation has failed to file in the office of the secretary of state any certificate of amendment to its articles of incorporation or any ~~articles~~ certificate of merger within the time prescribed by section 10-19-62.
5. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to chapters 10-19 through 10-23.

No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless (1) he shall have given the corporation not less than sixty days' notice thereof by mail addressed to its registered office in this state, and (2) the corporation shall fail prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement of change of registered agent or registered office, or file such ~~articles~~ certificate of amendment or ~~articles~~ certificate of merger, or correct such misrepresentation.

SECTION 5. AMENDMENT. Section 10-23-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-04. 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, ~~twenty~~ twenty-five dollars.
2. Filing articles of amendment and issuing a certificate of amendment, ~~twenty~~ twenty-five dollars.
3. Filing restated articles of incorporation, ~~twenty~~ twenty-five dollars.
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, ~~twenty~~ twenty-five dollars.
5. Filing an application to reserve a corporate name, ~~five~~ seven dollars and fifty cents.
6. Filing a notice of transfer of a reserved corporate name, ~~five~~ seven dollars and fifty cents.
7. Filing a statement of change of address of registered office or change of registered agent, or both, ~~five~~ seven dollars and fifty cents.

8. Filing a statement of the establishment of a series of shares, ~~ten~~ fifteen dollars.
9. Filing a statement of cancellation of shares, ~~ten~~ fifteen dollars.
10. Filing a statement of reduction of stated capital, ~~ten~~ fifteen dollars.
11. Filing a statement of intent to dissolve, ~~five~~ seven dollars and fifty cents.
12. Filing a statement of revocation of voluntary dissolution proceedings, ~~five~~ seven dollars and fifty cents.
13. Filing articles of dissolution, ~~five~~ seven dollars and fifty cents.
14. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, ~~twenty-five~~ thirty-seven dollars and fifty cents.
15. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, ~~twenty-five~~ thirty-seven dollars and fifty cents.
16. Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, ~~ten~~ fifteen dollars.
17. Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, ~~ten~~ fifteen dollars.
18. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, ~~ten~~ fifteen dollars.
19. Filing annual report of domestic corporation, ten dollars; of foreign corporation, twenty dollars; any other statement or report of either, ~~two~~ four dollars.
20. Filing statement of change of address of registered office by registered agent, ~~five~~ seven dollars and fifty cents for each corporation affected by such change.

SECTION 6. AMENDMENT. Section 10-23-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-05. 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, one dollar for every four pages, or fraction thereof, and ~~two~~ four dollars 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.

SECTION 7. 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.
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 ~~thirty~~ thirty ~~fifty~~ fifty dollars for the first ~~thirty~~ thirty ~~fifty~~ fifty thousand dollars of its authorized shares, or fraction thereof, and the further sum of ten dollars for every additional ten thousand dollars of its authorized shares, or fraction thereof, in excess of ~~thirty~~ thirty ~~fifty~~ fifty thousand dollars.

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 purposes of this section, shares without par value shall be considered worth one ~~hundred-dollars~~ dollar per share.

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

Approved March 12, 1981