

## CORPORATIONS

### CHAPTER 106

S. B. No. 186  
(Duffy and Page)  
at the request of  
(The State Examiner)

#### AN ACT

Relating to securities; creating a new body of law and providing for the administration thereof, and repealing chapter 10-04 of the North Dakota Revised Code of 1943, as amended.

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

§ 1. TITLE.) This Act shall be known as the securities act of 1951.

§ 2. DEFINITIONS.) When used in this Act, unless the context or subject matter otherwise requires:

1. "Commissioner" shall mean the commissioner of securities of this state;
2. "Dealer" shall mean every person, other than a salesman, who engages in this state, either for all or part of his time,
  - a. Directly or indirectly, as agent, broker or principal in the business of offering, buying, selling or otherwise dealing or trading in securities issued by another person; or
  - b. Directly or through an officer, director, employee or agent, which officer, director, employee or agent is not registered as a dealer under this Act, in selling securities issued by such person.
3. "Registered dealer" shall mean a dealer registered under this Act;
4. "Issuer" shall mean every person who issues or proposes to issue any security, except that,
  - a. With respect to certificates of deposit, voting trust certificates, collateral trust certificates, certificates of interest, or shares in an unincorporated investment trust, whether or not of the fixed, restricted management, or unit type, issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the

- trust or other agreement or instrument under which such securities are issued;
- b. With respect to equipment trust certificates or like securities, issuer means the persons by whom the equipment or property is or is to be used; and
  - c. With respect to fractional interests in oil, gas or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, fractional interests in which are created for the purpose of sale.
5. "Offer for sale" or "offer to sell" shall mean every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, shall be deemed an offer to sell the security to be acquired by subscription or conversion;
  6. "Person" shall mean an individual, a corporation, a partnership, an association, a joint stock company, a trust or any other unincorporated organization;
  7. "Sale" or "sell" shall mean every sale or other disposition of a security or interest in a security for value, and every contract to make any such sale or disposition. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value;
  8. "Salesman" shall mean an 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 insurer 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.
  9. "Registered salesman" shall mean a salesman registered under this Act;
  10. "Investment counsel" shall mean every person other than a registered dealer, who in this state, for compensation, engages in the business of advising others either directly or through publications or writings as to the value of securities or as to the advisability of investing in or purchasing securities, and every person, other than a dealer, who issues or promulgates analyses or issues reports

concerning securities. However, investment counsel does not include any attorney admitted to practice in this state who shall advise a client relative to the value of securities or as to the advisability of investing in or purchasing securities solely in connection with his legal practice, or any national banking association, state banking association or trust company located in this state which shall so advise its customers;

11. "Securities act of 1933" shall mean the Act of Congress of the United States known as the securities act of 1933, as now or hereafter amended;
12. "Security" shall mean any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation, certificate of interest in oil, gas, or other mineral rights, collateral trust certificates, pre-organization certificate or subscription, transferable share, investment contract, voting trust certificate, or beneficial interest in title to property, profits or earnings, or any other instrument commonly known as a security, including any guarantee of, temporary or interim certificate of interest or participation in, or warrant or right to subscribe to, convert into or purchase, any of the foregoing.

§ 3. ADMINISTRATION OF ACT.)

1. The administration of the provisions of this Act shall be vested in the state examiner, who shall be ex officio commissioner. The commissioner shall receive a salary of such amount as shall be appropriated by the legislature for his services as commissioner in addition to his salary as state examiner. The commissioner shall use a seal with the words "securities commissioner, North Dakota" and such design as the commissioner may prescribe engraved thereon by which seal the commissioner shall authenticate proceedings and documents used by him in the administration of this Act. The commissioner shall employ from time to time such clerks and employees as are necessary for the administration of this Act, and they shall perform such duties as the commissioner shall assign. In the absence or disability of the commissioner, his chief deputy examiner shall administer the provisions of this Act, as acting commissioner;
2. The commissioner shall have authority to administer oaths in, and to prescribe forms for, all matters arising under this Act. The commissioner shall cooperate with the administrators of the securities laws of other states and of the United States with a view toward achieving maximum uniformity in the interpretation of like provisions

of the laws administered by them and in the forms which are required to be filed under such laws;

3. The commissioner, or any person employed by him, shall be paid in addition to their regular compensation, transportation, board, lodging, and other traveling expenses necessary and actually incurred by each of them in the performance of their duties under this Act. Such traveling expenses shall include the expenses of the commissioner or any person designated by him in attending the annual convention of the national association of securities administrators, and the annual dues to said national association shall be paid from appropriated funds; and
4. All fees collected under this Act shall be turned into the state treasury.

§ 4. REGISTRATION OF SECURITIES.) It shall be unlawful to sell any securities in this state, except those exempt under section 5 or those sold in transactions exempt under Section 6, or those registered by description under section 7, unless such securities shall have been registered by qualification as hereinafter provided in Section 8.

§ 5. EXEMPT SECURITIES.) Sections 4, 7 and 8 of this Act shall not apply to any of the following securities:

1. Securities issued or guaranteed by the United States of America, or by any state, territory or insular possession thereof, or by any political subdivision of any such state, territory or insular possession, or by the District of Columbia, or by any public agency or instrumentality of one or more of any of the foregoing, or payable from assessments for improvements or revenues of publicly owned utilities therein;
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 by a state bank, trust company, savings bank or 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 state examiner of North Dakota;
3. Securities issued by a building and loan association or an insurance company subject to supervision by an agency of the state of North Dakota;
4. Securities issued or guaranteed as to principal, interest, or dividends, by a corporation owning or operating a railroad or other public service utility, if the corporation is

subject to regulation or supervision either as to its rates and charges or as to the issue of its securities by a public service commission or by a board, body or official having like powers, of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof, provided, however, that a corporation issuing securities, exempted under this subsection, and who have not filed an application for approval of such securities with the public service commission of the state of North Dakota, shall file with the commissioner a copy of the registration statement with all amendments thereto filed with the securities and exchange commission of the United States, if such a registration statement is made or filed, or a copy of the informative statement made to or filed with any commission, board, or body of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof, by which said corporation is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities, and shall pay a filing fee of twenty-five dollars;

5. Securities issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social or reformatory purposes and not for pecuniary profit;
6. Securities fully listed, or regularly approved for full listing upon the issuance thereof, upon the New York stock exchange, the midwest stock exchange, the New York curb exchange, or any other stock exchange approved by the commissioner as hereinafter provided, and all securities senior or equal in rank to any securities so listed or approved, or represented by subscription rights which have been so listed or approved. The commissioner may by written order approve any stock exchange in addition to those specified in this subsection if he finds that it would be in the public interest for securities listed on such exchange to be exempt under this subsection. The commissioner shall have power at any time by written order to withdraw the approval theretofore so granted;
7. Commercial paper maturing in not more than twelve months from date of issue;
8. Securities, other than common stock, providing for a fixed return, which have been outstanding and in the hands of the public for not less than five years and upon which no default has occurred during the five years next pre-

ceding the date of sale. The exemptions herein specified must be proved by any person who may legally offer such securities for sale in the state of North Dakota by filing with the commissioner evidence in such form as he may require for each issue of securities for which exemption is provided herein and paying a filing fee of ten dollars;

9. Securities issued by any association, corporation or co-operative formed under the statutes of the state of North Dakota, whose earnings are distributed to its members, stockholders, or patrons according to patronage;
10. Any equipment based on a chattel mortgage, lease, or agreement for the conditional sale of cars, motive power, or other rolling stock mortgaged, leased, sold to or furnished for the use of a railroad or other public service utility corporation, and any equipment security where the ownership of or title to such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state thereof, or of the Dominion of Canada, to secure the payments of such equipment security whether it be an equipment trust certificate, bond, or note; and
11. Any bond, note, or other evidence of debt issued by a holding corporation and secured by collateral consisting of any of the securities described in subsections 4 and 10 of this section, if the collateral securities equal in fair value at least one hundred twenty-five percent of the par value of the bonds, notes, or other evidences of debts secured thereby. Before any security described in this subsection is offered for sale, the person intending to offer it shall file with the commissioner descriptive circulars of the collateral securities, and pay a filing fee to the commissioner of twenty-five dollars, and unless the commissioner makes his order within three days after the receipt of such circulars requiring the securities to be qualified by application under this Act, the securities shall be exempt.

§ 6. EXEMPT TRANSACTIONS.) Except as hereinafter in this section expressly provided, sections 4, 7, 8, and 10 of this Act shall not apply to any of the following transactions:

1. Any judicial, executor's administrator's, guardian's or conservator's sale, or any sale by a receiving or trustee in insolvency or bankruptcy;
2. The sale in good faith and not for the purpose of avoiding the provisions of this Act by a pledgee of securities pledged for a bona fide debt, provided that the amount of such securities does not exceed two percent of the entire issue of each issue of such securities outstanding, and pro-

vided further that before proceeding to sell such pledged securities the pledgee shall notify the commissioner and obtain his permission to such sale, unless such securities are exempted under section 5 of this Act;

3. Any isolated sale of a security by the issuer or owner thereof or by any agent for the account of such issuer or owner. A sale shall be deemed to be an isolated sale within the meaning of this exemption only if there shall not have been more than two other sales of securities of the same issue by such issuer or owner or by an agent for the account of such issuer or owner within this state within the twelve month period immediately prior to the date of such sale. This subsection shall not exempt any dealer or his agent participating in an isolated sale from registering as hereinafter provided in section 10;
4. Stock dividends or other distributions by a corporation out of its earnings or surplus, or the issuance of securities to existing security holders or creditors of a corporation in a bona fide reorganization, merger or consolidation of such corporation, carried out under the supervision or direction of a court of competent jurisdiction either in exchange for the securities or claim of such security holders or creditors, or partly in exchange therefor and partly for cash, or the sale or distribution of additional capital stock of a corporation to or among its own stockholders, where no commission or other remuneration is paid or given for soliciting or effecting such sale or distribution to stockholders;
5. The sale of securities to any bank, savings bank, savings institution, trust company, insurance company, corporation or dealer, or to any organization or association, a principal part of whose business consists of the buying of securities;
6. The issuance and delivery of securities of one corporation to the security holders of another corporation in exchange for all or substantially all of the assets of such other corporation or in connection with a consolidation or merger of such corporation, when such exchange of assets or the issuance and delivery of such securities is under the supervision or direction of a court of competent jurisdiction;
7. The issuance and delivery of any securities in exchange for any other securities of the same issuer pursuant to a right of conversion entitling the holder of the securities surrendered in exchange to make such conversion;
8. The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that:

- a. Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics;
- b. Such securities do not constitute an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer or by or through an underwriter.

The commissioner may revoke the exemption afforded by this subsection 8 with respect to any securities by issuing an order to that effect if he shall find that the further sale of such securities in this state would work or tend to work a fraud on purchasers thereof.

9. Subscription for shares of the capital stock of a corporation prior to the incorporation thereof, when no commission or other remuneration is paid or given for or in connection with the subscription and,
  - a. The number of subscribers does not exceed fifteen: or
  - b. The amount raised by such subscription does not exceed twenty-five thousand dollars.

§ 7. REGISTRATION BY DESCRIPTION.) The following securities shall be entitled to registration by description in the manner provided in this section. Securities of an issuer which:

1. Has been in continuous operation for not less than three years; and
2. Has shown, during the period of not less than three years and not more than five years next prior to the date of registration under this section, average annual net earnings after deducting all prior charges except charges upon securities to be retired out of the proceeds of sale, as follows:
  - a. In the case of interest bearing securities, not less than one and one-half times the annual interest charges on such securities and on all other outstanding interest bearing securities of equal rank;
  - b. In the case of securities having a specified dividend rate, not less than one and one-half times the annual dividend requirements on such securities and on all outstanding securities of equal rank;
  - c. In the case of securities wherein no dividend rate is specified, not less than five percent on all outstanding

securities of equal rank, together with the amount of such securities then offered for sale, based upon the maximum price at which such securities are to be offered for sale. The ownership by an issuer of more than fifty percent of the outstanding voting stock of a corporation shall be construed as the proportionate ownership of such corporation and shall permit the inclusion of earnings of such corporation applicable to the payment of dividends upon the stock so owned in the earnings of the issuer of the securities being registered by description.

3. Securities entitled to registration by description shall be registered by filing with the commission by the issuer or by a registered dealer of:
  - a. A registration statement in a form prescribed by the commissioner, signed by the person filing such statement and containing the following information:
    - (1) Name and address of person filing statement;
    - (2) Name and business address of issuer, and address of issuer's principal office in this state, if any;
    - (3) Title of securities being registered and total amount of securities to be offered;
    - (4) Amount of securities to be offered in this state, price at which securities are to be offered for sale to the public, and amount of registration fee, computed as hereinafter provided in subsection 5; and
    - (5) A brief statement of the facts which show that the securities are entitled to be registered by description.
  - b. Payment of the required registration fee; and
  - c. If the person who is registering the securities is not domiciled in this state and is not a corporation organized or authorized to transact business under the laws of this state, a consent to service of process conforming to the requirements of section 14 of this Act. Such filing with the commissioner, which may be made either by delivery in the office of the commissioner or by posting by registered mail properly addressed to the commissioner, shall constitute the registration of securities by description and such registration shall become effective as of the time of such filing. Upon such registration by description, securities may be sold in this state by any registered dealer.

4. Upon the receipt of a registration statement, payment of the registration fee, and, if required, a consent to service of process, the commissioner shall record the registration by description of the securities described therein in the register of securities. Such registration shall be effective for a period of one year and may be renewed for additional periods of one year, if the securities are entitled to registration under this section at the time of renewal, by a new filing under this section together with the payment of the renewal fee;
5. For the registration of securities by description there shall be paid to the commissioner a registration fee of one-twentieth of one percent of the aggregate offering price of the securities which are to be sold in this state, but in no case shall such registration fee be less than twenty-five dollars or more than five hundred dollars. For the renewal of the registration of securities by description there shall be paid to the commissioner a renewal fee of twenty-five dollars; and
6. If at any time, in the opinion of the commissioner, the information in a registration statement filed with him is insufficient to establish the fact that the securities described therein are entitled to registration by description under this section, he may by order require the person who filed such statement to file such further information as may in his judgment be necessary to establish the fact that such securities are entitled to registration under this section.

§ 8. REGISTRATION BY QUALIFICATION.) Securities required to be registered by qualification under this Act before they may be sold in this state shall be registered as provided in this section.

1. Application for registration of securities by qualification shall be made by the issuer of the securities or by a registered dealer by filing in the office of the commissioner:
  - a. An application for registration which shall be made in writing and shall contain the following information:
    - (1) Name and business address of applicant;
    - (2) Name and address of issuer, and address of issuer's principal office in this state, if any;
    - (3) Title of securities to be registered and total amount of such securities to be offered;
    - (4) Amount of securities to be offered in this state, price at which securities are to be offered to the public, if known, and amount of registration fee;
    - (5) If application has been made for registration of the securities under the Securities Act of 1933,

- a. date on which documents were first filed to register the securities under that Act, and
  - b. a statement whether registration under that Act is effective, and, if so, the effective date.
- (6) Eligibility of securities for sale in other states as of date of application, if known to the applicant;
- a. States in which it is proposed to offer the securities for sale to the public;
  - b. States, if any, in which the securities are eligible for sale to the public;
  - c. States, if any, which have refused, by order or otherwise, to render the securities eligible for sale to the public or have revoked or suspended the right to sell the securities, or in which an application for qualification has been withdrawn.

There shall be submitted as part of such application for registration one copy of each of the following if available:

- (1) Issuer's charter or other instrument of organization and by-laws, and all amendments thereto.
- (2) The indenture and all supplements thereto under which the securities are to be issued.
- (3) The underwriting agreement, if any, and any agreement among underwriters and dealers pertaining to the purchase and offering of the securities.
- (4) Opinion or opinions of counsel, if any, as to validity of the securities, the validity of their issuance in the manner proposed, and the legality of the proceedings of the issuer thereof.
- (5) A specimen certificate, or form thereof of each security to be registered.

Any of the foregoing documents in items (1) to (5), inclusive, may be submitted in preliminary form, in which case a conformed copy of each must be submitted promptly after execution. Any of these documents already on file with the commissioner need not be submitted again but shall be identified by appropriate reference.

b. A prospectus which shall contain the following information:

- (1) The names and addresses of the directors, trustees and officers, if the issuer be a corporation or

association or trust; of all partners, if the issuer be a partnership; and of the issuer, if the issuer be an individual.

- (2) The purpose of incorporation (if incorporated) and a detailed statement of the general character of the business actually transacted or to be transacted by the issuer.
- (3) The specific purposes in detail and the approximate amounts to be devoted to such purposes, so far as determinable, for which the security to be issued is to raise funds.
- (4) A statement of the capitalization of the issuer.
- (5) A balance sheet as of a date not more than 90 days prior to the date of filing, and, if such balance sheet is not certified, also a certified balance sheet as of a date not more than one year prior to the date of filing unless the fiscal year of the issuer has ended within 90 days prior to the date of filing in which case the certified balance sheet may be as of the end of the preceding fiscal year.
- (6) A profit and loss statement for each of the three fiscal years preceding the date of the most recent balance sheet filed and for the period, if any, between the close of the most recent of such fiscal years and the date of the most recent balance sheet filed; or, if the issuer has been in existence for less than three fiscal years, a profit and loss statement for the period preceding the date of the most recent balance sheet filed. These statements shall be certified up to the date of the most recent certified balance sheet filed.
- (7) A statement showing the price at which such securities are proposed to be sold, together with the maximum amount of commission or other form of remuneration to be paid in cash or otherwise, directly or indirectly, for or in connection with the sale or offering for sale of such securities.
- (8) A detailed statement showing the items of cash, property, services, patents, good will and any other consideration for which any securities of the issuer have been within two years or are to be issued in payment, and any other material information or facts, information and data necessary to prevent any other statement in the prospectus from being materially misleading.

If the issuer has one or more totally-held subsidiaries, there may be required, in addition to the balance sheet and profit and loss statements required by items (5) and (6) hereof, a consolidated balance sheet and a consolidated profit and loss statement for the issuer and its totally-held subsidiaries as of the same dates as the balance sheet and profit and loss statements required by items (5) and (6).

If the securities being registered are also being registered under the Securities Act of 1933 or if such securities have already been registered under the Securities Act of 1933 and the effective date of such registration is not more than 30 days prior to the date of submission of the application under this section, the commissioner shall accept in lieu of the prospectus prescribed in this subsection the prospectus filed under the Securities Act of 1933 with all amendments to that prospectus as of the date on which the application is filed for registration by qualification under this section. If application under this section is submitted while the securities are being registered under the Securities Act of 1933, the applicant will not be required to furnish the commissioner the public offering price of the securities until the effective date of registration under the Securities Act of 1933 and he may furnish such information as to the price to the commissioner by mail, or by telegraph or by telephone promptly confirmed in writing.

If the prospectus which is filed with the commissioner is subsequently revised, supplemented or amended, copies of such revisions, supplements or amendments shall be promptly filed with the commissioner.

- c. Payment of an examination fee of fifteen dollars and a registration fee of 1/10th of 1% of the aggregate offering price of securities to be sold in this state, but in no case shall such registration fee be less than twenty-five dollars or more than five hundred dollars. If the application for registration is denied such registration fee shall be returned to the applicant.
- d. If the applicant is not domiciled in this state and is not a corporation organized or authorized to transact business under the laws of this state, a consent to service of process conforming to the requirements of Section 14 of this Act.

All of the statements, exhibits, documents and prospectus of every kind required under this subsection shall be certified by the applicant or the issuer or any person having knowledge of the facts. An applicant

may, with the consent of the commissioner, amend or withdraw an application and any or all statements, exhibits, documents, or prospectuses filed therewith under this section at any time prior to the registration or prior to any offering and sale of the securities sought to be registered or the entry of an order denying the registration of such securities, but in no event shall the registration fee be returned.

- e. The commissioner shall within not to exceed sixty days examine an application and all documents and exhibits filed therewith. If, in his opinion, they conform to the requirements of this section and he does not find that the sale of the securities sought to be registered would work or tend to work a fraud upon purchasers thereof, he shall register the securities by qualification in a register of securities which shall be kept in his office, and he shall so notify the applicant. After such registration the securities may be sold by the applicant or by any registered dealer.

If, in the opinion of the commissioner, the application or any of the accompanying documents or exhibits do not conform to the requirements of this section, or the sale of the securities sought to be registered would work or tend to work a fraud upon purchasers thereof, he shall enter an order denying the registration of such securities by qualification; and he shall send to the applicant a copy of such order which shall state specifically the grounds for its issuance.

Additional amounts of securities registered under this section may, with the consent of the commissioner, be registered by payment of the proper registration fee, which shall be computed as provided in subsection (c) of this section as a separate fee for each additional amount registered.

Registration under this section shall be effective for a period of one year and may be renewed for additional periods of one year by filing, by a date not later than 15 days prior to the expiration of registration, a balance sheet and a profit and loss statement of the issuer as of a date not more than 90 days prior to the date of filing, together with the payment of a renewal fee of twenty-five dollars.

- f. If any prospectus, document, or exhibit filed as provided in this section shall disclose that any of the

securities sought to be registered or any securities senior thereto shall have or shall be intended to be issued for any patent right, copyright, trade mark, process, formula, good will or other intangible assets, or for organization or promotion fees or expenses, the commissioner may require that such securities shall be delivered in escrow to him or to some other depository satisfactory to him under an escrow agreement that the owners of such securities shall not be entitled to sell or transfer such securities or to withdraw such securities from escrow until all other stockholders who have paid for their stock in cash shall have been paid a dividend or dividends aggregating not less than 6% of the initial offering price shown to the satisfaction of the commissioner to have been actually earned on the investment in any common stock as held. In case of dissolution or insolvency during the time such securities are held in escrow the owners of such securities shall not participate in the assets until after the owners of all other securities shall have been paid in full.

§ 9. SUSPENSION OR REVOCATION OF REGISTRATION OF SECURITIES.) The commissioner may revoke the registration of any securities registered under this Act if, after a hearing or opportunity for hearing as provided in Section 12, he finds that:

1. The sale of such securities would work or tend to work a fraud upon the purchasers thereof; or
2. The issuer of such securities is insolvent, or has violated any of the provisions of this Act or any order of the commissioner of which such issuer has notice, or does not conduct its business in accord with law; or
3. The issuer of such securities has made any fraudulent representations in any prospectus or in any circular or other literature that has been distributed concerning the issuer or its securities; or
4. The issuer of such securities has refused to permit an examination into its affairs as provided in subsection (A) of this section, or has failed to furnish the commissioner any further information required pursuant to subsection (A) of this section; or
5. Securities registered by description were not entitled to registration by description:
  - a. If the commissioner has reasonable grounds to believe that the registration of any securities registered under

this Act should be revoked upon any ground specified in this section, he or his agent may conduct an examination into the affairs of the issuer of such securities; provided, that the commissioner or his agent may conduct such an examination only if the information sought by such examination could not be obtained from other available sources. In making any such examination, the commissioner or his agent shall have access to and may compel the production of all the books and papers of an issuer and may administer oaths to and examine the officers and any employees of such issuer as to its business and affairs. They may also require a balance sheet exhibiting the assets and liabilities of any such issuer or his income statement, or both, to be certified to by a certified public accountant. Whenever the commissioner may deem it necessary in connection with any such examination, he may also require such balance sheet or income statement, or both, to be made more specific in such particulars as he shall point out or to be brought down to the latest practicable date. Such examination shall be made at the office of the commissioner, unless the issuer or a registered dealer requests that the examination be made at some other place, in which case the person making such request may be required by the commissioner to advance sufficient funds to pay the actual expenses of such investigation.

- b. If the commissioner has reasonable grounds to believe that the registration of any securities under this Act should be revoked on any ground specified in this section, he may enter an order suspending the registration of such securities pending an examination into the affairs of the issuer of such securities or pending a hearing or opportunity for hearing as provided in Section 12 of this Act; provided, that no such suspension order shall be effective for more than 30 days and such an order, if not withdrawn by the commissioner within 30 days, shall automatically terminate 30 days after the date of its issuance. Such suspension order shall state specifically the grounds for its issuance. Upon the entry of an order suspending the registration of any securities or of an order withdrawing a suspension order previously issued, the commissioner shall send a copy of such order to the issuer of such securities and to all registered dealers by mail, or by telegraph, or by telephone, confirmed in writing.
- c. If the commissioner finds, after a hearing or opportunity for hearing as provided in Section 12, that there

are grounds for revoking the registration of certain securities, he may enter in the register of securities an order revoking the registration of such securities. Such order shall state specifically the grounds for its issuance. Upon the entry of an order revoking the registration of securities, the commissioner shall send a copy of such order to the issuer of such securities and to all registered dealers by mail, or by telegraph, or by telephone, confirmed in writing. No order revoking the registration of securities shall invalidate any sale of such securities made prior to the entry of such order.

§ 10. REGISTRATION OF DEALERS, SALESMEN, AND INVESTMENT COUNSEL.) No dealer or salesman shall offer for sale or sell any securities within or from this state, except in transactions exempt under Section 6, unless he is registered as a dealer or salesman pursuant to the provisions of this section.

1. DEALERS. Application for registration as a dealer may be made by any person. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant, duly verified by oath, shall be filed in the office of the commissioner, and shall contain the following information:
  - a. The name of the applicant.
  - b. The address of the principal place of business of the applicant and the addresses of all branch offices, if any, of the applicant in this state.
  - c. The form of business organization and the date of organization of the applicant.
  - d. The names and business addresses of all members, partners, officers, directors, trustees or managers of the applicant; a statement of the limitations, if any, of the liability of any partner, member, manager, or trustee; and a statement setting forth in chronological order the occupational activities of each such partner, member, officer, director, trustee, or manager during the preceding ten (10) years.
  - e. A brief description of the general character of the business conducted or proposed to be conducted by the applicant.
  - f. A list of any other states in which the applicant is registered as a dealer, and, if registration of the applicant as a dealer has ever been refused, cancelled, sus-

pending or withdrawn in any state, full details with respect thereto.

- g. Whether the applicant is registered as a dealer under the Securities Exchange Act of 1934 or any act adopted in amendment thereof and whether any such registration of the applicant has ever been denied, revoked or suspended or is then the subject of proceedings for revocation or suspension by the securities and exchange commission.
- h. The names of all organizations of dealers or brokers of which the applicant is a member or before which any application for membership on the part of the applicant is then pending, and whether any such membership of the applicant has ever been denied, revoked or suspended or is then the subject of proceedings for revocation or suspension.
- i. The names of any securities exchange of which the applicant or any of its partners, officers, directors, trustees, members, managers or employees is a member, and whether any such membership has ever been denied, revoked or suspended or is then the subject of proceedings for revocation or suspension.
- j. A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant, or by a responsible officer or member of said applicant.
- k. Whether applicant or any officer, director, partner, member, trustee, or manager of the applicant, has ever been convicted of a felony or any misdemeanor of which fraud is an essential element, and, if so, all pertinent information with respect to any such conviction.

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

There shall be filed with such application a written consent to the service of process upon the commissioner in actions against such dealer, conforming to the requirements of Section 14 of this

Act and payment of the prescribed registration fee, which shall be returned if registration is refused.

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

If the financial statement of the applicant does not show a net worth in reasonably liquid assets of at least ten thousand dollars, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the dealer and his agents with all the provisions of this law and for the faithful performance and payment of all obligations of the dealer and his agents.

The bond shall be in a form approved and in the amount required by the commissioner, and shall have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a dealer he shall notify the applicant of such registration.

2. **SALESMEN.** Application for registration as a salesman may be made by any individual. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant and by the registered dealer or issuer employing or proposing to employ such applicant, duly verified by oath, shall be filed in the office of the commissioner and shall contain the following information:
  - a. Name and residence and business address of the applicant.
  - b. Name of the dealer or issuer employing or proposing to employ the applicant, unless the applicant is to be self-employed.
  - c. Names and addresses of three persons of whom the commissioner may inquire as to the character and business reputation of the applicant.
  - d. Applicant's age and education.
  - e. The nature of employment and names and addresses of employers of the applicant for the period of ten years immediately preceding the date of application.
  - f. Other state or federal laws under which the applicant has ever been registered as a dealer or salesman of securities, and, if any such registration has ever been

refused, cancelled, suspended or revoked, full details with respect thereto.

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 5 of this Act, or have been registered by description under Section 7 of this Act or have been registered by qualification under Section 8 of this Act, then the commissioner may require, if he so decides, 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 Act and for the faithful performance and payment of all obligations hereunder. The bond shall be in a form approved and in the amount required by the commissioner. There shall be filed with such application payment of the prescribed registration fee, which shall be returned if registration is refused.

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

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

3. INVESTMENT COUNSEL. Application for registration as an investment counsel may be made by any person. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant, duly verified by oath and shall be filed in the office of the commissioner and shall contain the following information:
  - a. Name, residence, and business address of the applicant.
  - b. If the applicant is a corporation or association, give full information as to agents, partners, and managing officers.

- c. Statement showing each individual named is of good repute and possesses essential experience and education.
- d. The plan and character of business, and the proposed method of operation.
- e. Such other information as may be required.

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

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

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

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 14 of this Act, 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 salesmen's registration.

An investment counsel shall not take, hold or exercise any power of attorney on behalf of its clients, either to purchase or

sell securities, or to collect or pay any consideration for securities of its clients.

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

4. **REFUSAL OF REGISTRATION.** If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, he shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order shall be mailed to the applicant at his business address, and if the application is for registration as a salesman, to the registered dealer or issuer who proposed to employ such applicant.

If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a dealer's, salesman's, or investment counsel's registration under section 11 of this Act, such act or omission may constitute a sufficient ground for a finding by the commissioner, that such applicant is not of "good business reputation."

5. **RECORD AND RENEWAL OF REGISTRATIONS.** The names and addresses of all persons who have been registered as dealers, salesmen, or investment counsels, and all orders with respect thereto, shall be recorded in a register of dealers, salesmen, and investment counsels in the office of the commissioner. Every registration under this section shall expire on the 31st day of December in each year. Registration of dealers, salesmen, and investment counsels may be renewed each year, at any time not less than fifteen (15) and not more than sixty (60) days before expiration thereof, by (1) the payment of the proper registration fee and (2) in the case of dealer, the filing of a financial statement, prepared in accordance with standard accounting practice and certified to by an independent certified public accountant or by a responsible officer or member, showing the financial condition of such dealer as of the most recent practicable date.

Upon any change in the proprietors, partners, officers or directors of a registered dealer or investment counsel, such registered dealer or investment counsel shall promptly notify the commissioner in writing of such changes. The commissioner shall record such changes, without fee, in the register of dealers, salesmen, and investment counsels.

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

§ 11. SUSPENSION OR REVOCATION OF DEALERS', SALESMEN'S, AND INVESTMENT COUNSELS' REGISTRATION.) The commissioner may revoke the registration of any dealer, salesman, or investment counsel if, after a hearing or opportunity for hearing as provided in section 12, he finds that such registered dealer, salesman, or investment counsel:

- 1. Has willfully violated any provisions of this Act, or
- 2. Is, in the case of a dealer, insolvent; or
- 3. Has been guilty of any fraudulent act or practice in connection with the purchase or sale of any securities; or
- 4. Conducts business in purchasing or selling securities at such variations from current market prices as, in the light of all the circumstances, are unconscionable; or
- 5. Has failed to file with the commissioner any financial statement required pursuant to subsection (A) of this section, or has refused to permit an examination into his affairs as provided by subsection (A) of this section.

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

- (A) The commissioner may at any time require a registered dealer or investment counsel to file with him a financial statement showing the financial condition of such dealer or investment counsel as of the most recent practicable date, but such financial statement need not be certified; provided, however, that the commissioner shall not require any registered dealer or investment counsel to file such financial statement more than twice in any one year. If the commissioner has reasonable grounds to believe that the registration of any registered dealer, salesman, or investment counsel should be revoked upon any grounds specified in this section, the commissioner or his agent may conduct an examination into the affairs of any such registered dealer, salesman, or investment counsel. In making any such examination, the commissioner or his agent shall have access to and may compel the production of all the books and papers of a registered dealer, salesman, or investment counsel, and may administer oaths to and examine the officers and employees of such dealer or investment counsel as to his business and affairs.
- (B) If the commissioner has reasonable grounds to believe that a registered dealer, salesman, or investment counsel has been guilty of any act or omission which would be sufficient ground for revoking the registration of such dealer, salesman, or investment counsel, he may enter an order suspending the registration of such dealer, salesman, or investment counsel pending an examination into the affairs of such dealer, salesman, or investment counsel or pending a hearing or opportunity for hearing as provided in section 12 of this Act; provided, that no such order shall be effective for more than 30 days, and such order, if not withdrawn by the commissioner within 30 days, shall automatically terminate 30 days after the date of its issuance. Such suspension order shall state specifically the grounds for its issuance. Upon the entry of such suspension order, or of an order withdrawing a suspension order previously entered, the commissioner shall send a copy of such order by registered mail to the dealer, salesman, or investment counsel whose registration is affected thereby at his business address, and, if such order affects the registration of a salesman, to the registered dealer who employs such salesman.
- (C) If the commissioner finds, after affording a registered dealer or a registered salesman, or a registered investment counsel a hearing or opportunity for hearing as

provided in section 12 that there are grounds to revoke the registration of such dealer, salesman, or investment counsel he may enter an order in the register of dealers, salesmen, and investment counsels, revoking the registration of such dealer, salesman, or investment counsel. Such order shall state specifically the grounds for its issuance. A copy of such order shall be sent by registered mail to the dealer, salesman, or investment counsel whose registration is revoked thereby at his business address and, if the revocation is of the registration of a salesman, to the registered dealer who employs such salesman.

Suspension or revocation of the registration of a dealer shall also suspend or revoke the registration of all of his salesmen; but suspension or revocation of the registration of a salesman solely because he was employed by a dealer whose registration was suspended or revoked shall not prejudice subsequent applications for registration by such salesman.

§ 12. HEARINGS.) Before entering an order revoking the registration of any securities as provided in section 9, the commissioner shall send to the issuer of such securities, and if the application for registration of such securities was filed by a registered dealer, to such registered dealer, a notice of opportunity for hearing. Before entering an order refusing to register any person as a dealer, salesman, or investment counsel, as provided in section 10, or revoking the registration of any person as a registered dealer or registered salesman or registered investment counsel as provided in section 11, the commissioner shall send to such person, and if such person be a salesman or an applicant for registration as a salesman, to the registered dealer who employs or proposes to employ such salesman, a notice of opportunity for hearing.

1. Notices of opportunity for hearing shall be sent by registered mail, return receipt requested, to the addressee's business address, and such notice shall state:
  - a. The order which the commissioner proposes to issue;
  - b. The grounds for issuing such proposed order;
  - c. That the person to whom such notice is sent will be afforded a hearing upon request to the commissioner if such request is made within ten days after receipt of this notice.
2. Whenever a person requests a hearing in accordance with the provisions of this section, the commissioner shall im-

mediately set a date, time and place for such hearing and shall forthwith notify the person requesting such hearing thereof. The date set for such hearing shall be within 15 days, but not earlier than five days, after the request for hearing has been made, unless otherwise agreed to by both the commissioner and the person requesting such hearing.

3. For the purpose of conducting any hearing as provided in this section, the commissioner shall have the power to call any party to testify under oath at such hearings, to require the attendance of witnesses, the production of books, records, and papers, and to take the depositions of witnesses; and for that purpose the commissioner is authorized, at the request of the person requesting such hearing or upon his own initiative, to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers, directed to the sheriff of the county where such witness resides or is found, which shall be served and returned. The fees and mileage of the sheriff and witnesses shall be paid from the fund in the state treasury for the use of the commissioner in the same manner that other expenses of the commissioner are paid.
4. At any hearing conducted under this section, a party or an affected person may appear in his own behalf or may be represented by an attorney. A stenographic record of the testimony and other evidence submitted shall be taken unless the commissioner and the person requesting such hearing shall agree that such a stenographic record of the testimony shall not be taken. The commissioner shall pass upon the admissibility of evidence, but a party may at any time make objections to the rulings of the commissioner thereon, and if the commissioner refuses to admit evidence the party offering the same shall make a proffer thereof and such proffer shall be made a part of the record of such hearing.
5. In any hearing under this section, the commissioner may conduct such hearing or he may appoint a referee who shall have the same powers and authority in conducting such hearings as are in this section granted to the commissioner. Such referee shall have been admitted to the practice of law in this state and be possessed of such additional qualifications as the commissioner may require. If a hearing is conducted by a referee such referee shall submit to the commissioner a written report setting forth his findings of fact and conclusions of law and a recom-

mentation of the action to be taken by the commissioner. A copy of such written report and recommendations shall within 5 days of the time of filing thereof be served upon the person who requested the hearing, or his attorney or other representative of record, by registered mail. That person or his attorney may, within 10 days of receipt of the copy of such written report and recommendation, file with the commissioner written objections to the report and recommendations which shall be considered as if such hearing or hearings had been conducted by the commissioner before entering an order. No recommendations of the referee shall be approved, modified or disapproved by the commissioner until 10 days after service of such report and recommendations as herein provided. The recommendations of the referee may be approved, modified or disapproved by the commissioner. The commissioner may order additional testimony to be taken or permit the introduction of further documentary evidence. A transcript of testimony and evidence, objections, if any, of the parties, and additional testimony and evidence, if any, shall have the same force and effect as if such hearing or hearings had been conducted by the commissioner. All recommendations of the referee to the commissioner shall be advisory only and shall not have the effect of an order of the commissioner.

6. If the commissioner does not receive a request for a hearing within the prescribed time, he may enter the proposed order. If a hearing is requested and conducted with respect to a proposed order, the commissioner shall issue a written order which shall set forth his findings with respect to the matters involved and enter an order in accordance with his findings.

§ 13. APPEALS.) An appeal may be taken from any order of the commissioner by any person adversely affected thereby to the district court of Burleigh county, North Dakota, by serving on the commissioner within 20 days after the date of entry of such order a written notice of appeal, signed by the appellant, stating:

- a. The order from which the appeal is taken; and
- b. The grounds upon which a reversal or modification of such order is sought; and
- c. A demand for a certified transcript of the record of such order.

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

§ 14. CONSENT TO SERVICE.) Where a consent to service of process is required under this Act, such consent to service of process shall be in the form prescribed by the commission, shall be irrevocable, and shall provide that actions arising out of or founded upon the sale of any securities in violation of this Act may be commenced against the person executing such consent in any court of competent jurisdiction and proper venue within this state, by the service of process or pleadings upon the commissioner. Service of any such process or pleadings in any such action against a person who has filed a consent to service with the commissioner shall, if made on the commissioner, be by duplicate copies, one of which shall be filed in the office of the commissioner and the other immediately forwarded by the commissioner by registered mail to the person against whom such process or pleadings are directed at his latest address on file in the office of the commissioner.

§ 15. FRAUDULENT PRACTICES.) It shall be a fraudulent practice and it shall be unlawful:

1. For any person knowingly to subscribe to, or make or cause to be made, any material false statement or representation in any application, financial statement or other document or statement required to be filed under any provision of this Act; or
2. For any person, in connection with any transaction or transactions in this state which involve any offer to sell

or to buy securities, or any sale or purchase of securities, including securities exempted under the provisions of section 5 and including any transactions exempted under the provisions of section 6 either directly or indirectly to employ any device, scheme, or artifice to defraud or to engage in any act, practice, transaction or course of business which operates or would operate as a fraud or deceit upon the purchaser or seller.

§ 16. INJUNCTIONS AND PROSECUTIONS FOR VIOLATIONS.) Whenever it shall appear to the commissioner, either upon complaint or otherwise, that any person has engaged in, or is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this Act or by any order of the commissioner issued pursuant to any section of this Act or which is declared to be illegal in this Act, the commissioner may, in his discretion :

- a. Apply to the district court of any county in this state for an injunction restraining such person and his agents, employees, partners, officers, and directors, from continuing such act, practice or transaction or engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts may warrant; or
- b. Transmit such evidence as may be available concerning such act, practice or transaction to the attorney general who may, in his discretion, institute the necessary criminal proceedings.
  1. In any proceeding for an injunction, the commissioner may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendant and his agents, employees, partners, officers, or directors, and the production of such documents, books and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant.
  2. In any criminal proceeding, the attorney general may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendant and his agents, employees, partners, officers, and directors, and the production of such documents, books and records as may appear necessary for the prosecution of such criminal pro-

ceedings. The court may impose upon any defendant convicted of any of the offenses described in this section such penalty, in accord with the provisions of section 18, as the facts may warrant.

§ 17. REMEDIES.) Every sale or contract for sale made in violation of any of the provisions of this Act, or of any order issued by the commissioner under any provisions of this Act, 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 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 the full amount paid by such purchaser, together with all taxable court costs and reasonable attorney's fees in any action or tender under this section.

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 30 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; or
  - b. In case such securities consist of other than interest-bearing obligations, at the rate of 5% per annum; less, in every case, the amount of any income from such securities that may have been received by the such purchaser.
3. Nothing in this Act shall limit any statutory or common law right of any person in any court for any act involved in the sale of securities.

§ 18. PENALTIES.) Any person who shall willfully violate any provisions of this Act or who shall engage in any act, practice or transaction declared by any provision of this Act to be unlawful shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$500.00 for first offense and shall be punished by a fine of not more than \$5,000.00 or by imprisonment for not more than one year, or by both such fine and imprisonment for subsequent offenses. Nothing in this Act shall limit any statutory or common law right of the state to punish any person for any infraction of the provisions of any law.

§ 19.) EVIDENTIARY MATTERS.)

1. In any action, civil or criminal, where a defense is based upon any exemption provided for in this Act, the burden of proving the existence of such exemption shall be upon the party raising such defense.
2. In any action, civil or criminal, a certificate signed and sealed by the commissioner, stating compliance or non-compliance with the provisions of this Act, shall constitute prima facie evidence of such compliance or non-compliance with the provisions of this Act and shall be admissible in any such action.

§ 20. REPEAL OF CERTAIN PRIOR LAWS, SAVING OF CERTAIN RIGHTS AND LIABILITIES THEREUNDER.)

1. Chapter 10-04 of the North Dakota Revised Code of 1943 as heretofore amended is hereby repealed, to take effect on the day that this Act goes into force, subject to the limitations provided in subsections (a), (b), (c), (d) and (e) of this section.
  - a. The provisions of all laws which are repealed by this Act shall remain in force for the prosecution and punishment of any person who, before the effective date of this Act, shall have committed any act contrary to the provisions of any law in force at the time such act was done, and such person may be prosecuted and punished under the law as it existed when such violation occurred.
  - b. In case of sales, contracts, or agreements made prior to the effective date of this Act, the civil rights and liabilities of the parties thereto shall remain as provided by law as it existed at the time such sales, contracts, or agreements were made, and all parts of laws repealed by this Act shall remain in force for the enforcement of such rights and liabilities.

- c. All securities which are registered pursuant to the provisions of the said Chapter 10-04 of the North Dakota Revised Code of 1943 as heretofore amended on the effective date of this Act, if such securities are not exempt under this Act, shall be deemed to have been registered by qualification under this Act, such registration to be effective for a period of one year from the effective date of this Act, and the commissioner shall have the same powers with respect to such securities that he has with respect to securities registered under the provisions of this Act. All dealers who are duly registered as dealers and all salesmen who are registered as agents under the said Chapter 10-04 of the North Dakota Revised Code of 1943 as heretofore amended on the effective date of this Act shall be deemed to be duly registered under and subject to the provisions of this Act, such registration to expire on the 31st day of December of the year in which this Act becomes effective and to be subject to renewal as provided by law.
- d. The commissioner provided for in this Act shall respectively succeed the state securities commission heretofore acting under the law hereby repealed, and as such successor shall receive all the files, papers, and property of said state securities commission relating to the administration of the said law hereby repealed. All proceedings pending before the said state securities commission under the law hereby repealed shall be continued under the provisions of this Act by the commissioner.
- e. Any legislative appropriation heretofore or hereafter made available to the state securities commission, upon the taking effect of this Act, to the extent that such appropriation is unexpended shall be available for the administration of this Act, under the direction and control of the commissioner provided for by this Act.

Approved March 8, 1951.

## CHAPTER 107

H. B. No. 592

(Fuglestad)

NON-PROFIT LIVESTOCK BREEDERS CORPORATIONS; STOCK-  
HOLDERS MEETINGS AND PRINCIPAL PLACES OF  
BUSINESS WITHIN OR WITHOUT THE STATE

## AN ACT

Relating to non-profit livestock breeders corporations; and authorizing such corporations to hold stockholders meetings and to maintain principal places of business within or without the state in accordance with authorized by-laws.

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

§ 1.) In addition to the powers otherwise conferred by law, any nonprofit livestock breeders corporation organized for the purpose of providing for the registration or recording of livestock, may in its by-laws provide:

1. That its directors may determine the time and place, within or without the state, for the holding of meetings of its stockholders, members or directors;
2. That the directors may fix the place of its principal place of business within or without the state, provided that at all times when its principal office is maintained without the state a resident agent, either an individual or a corporation, shall be maintained within this state, whose name and address shall be kept on file with the secretary of state; and
3. That its bylaws may be amended at any regular or special meeting of its stockholders or members by a two-thirds majority of the votes cast at such meeting, providing notice of the proposed amendment is given in the call for the meeting.

§ 2.) Whenever any nonprofit livestock breeders corporation shall have adopted any of the bylaws authorized by section 1, the meetings of the stockholders, members, or directors of such corporation may be held in accordance with such bylaws and such corporation may exercise any of the rights authorized thereby.

Approved March 1, 1951.

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**CHAPTER 108****H. B. No. 805****(Delayed Bills Committee)**

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**POWERS OF ELECTRIC COOPERATIVE CORPORATIONS****AN ACT**

To amend and reenact section 10-1309 of the North Dakota Revised Code of 1943, relating to powers of electric cooperative corporations.

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

§ 1. AMENDMENT.) Section 10-1309 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

10-1309. POWERS OF ELECTRIC COOPERATIVE CORPORATION.) Each corporation organized under this chapter shall have the power:

1. To sue and be sued, complain and defend, in its corporate name;
2. To have perpetual succession unless a limited period of duration is stated in its articles of incorporation;
3. To adopt a corporate seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;
4. To generate, manufacture, purchase, acquire, and accumulate electrical energy and to transmit, distribute, sell, furnish, and dispose of such electrical energy to its members only;
5. To establish, maintain, and operate electrical cold storage and electrical processing plants;
6. To construct, erect, purchase, lease as lessee and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange, and mortgage plants, buildings, works, machinery, supplies, equipment, apparatus, and transmission and distribution lines or systems necessary and proper for the operation of its business;
7. To assist only its members to wire their premises and install therein electrical and plumbing fixtures, machinery,

- supplies, apparatus, and equipment of any and all kinds and character, and in connection therewith and for such purpose, to purchase, acquire, lease, sell, distribute, install, and repair electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character, and to receive, acquire, endorse, pledge, hypothecate, and dispose of notes, bonds, and other evidences of indebtedness;
8. To furnish to other corporations organized under this chapter, or to the members thereof, electrical energy, wiring facilities, electrical and plumbing equipment, and services;
  9. To acquire, own, hold, use, exercise, and, to the extent permitted by law, to sell, mortgage, pledge, hypothecate, and dispose of franchises, rights, privileges, licenses, rights-of-way, and easements necessary and proper for the operation of its business;
  10. To purchase, receive, lease as lessee, or in any other manner acquire, own, hold, maintain, sell, exchange, and use any and all real and personal property or any interest therein;
  11. To borrow money and otherwise contract indebtedness, issue its obligations thereof, and secure the payment thereof by mortgage, pledge, or deed of trust of all or any of its property, assets, franchises, revenues, or income;
  12. To sell and convey, mortgage, pledge, lease as lessor, and otherwise dispose of all or any part of its property and assets;
  13. To use any highway, right-of-way, easement, or other similar property right owned or held by the state or any political subdivision thereof in connection with the acquisition, construction, improvement, operation or maintenance of its lines, with the consent of the local authorities having control of the street or highway proposed to be used for such purpose;
  14. To have and exercise the power of eminent domain to acquire private property for its use, such right to be paramount except as to property of the state or any political subdivision thereof;
  15. To accept gifts or grants of money, services, or property;
  16. To make any and all contracts necessary or convenient for the exercise of the powers granted in this chapter;

17. To fix, regulate, and collect rates, fees, rents, or other charges for electrical energy and other facilities, supplies, equipment, or services furnished by it;
18. To conduct its business and have offices within or without this state;
19. To elect or appoint officers, agents, and employees of the corporation, and to define their duties and fix their compensation;
20. To make and alter by-laws, not inconsistent with the articles of incorporation or with the laws of this state, for the administration and regulation of its affairs;
21. To do and perform, for itself, its members, or any other corporation organized under this chapter, or for the members thereof, any and all acts and things, and to have and exercise any and all powers necessary and proper to effectuate the purpose for which the corporation is organized; and
22. To make contracts with other cooperatives, with public utilities, with municipalities, or with any department or agency of the state or federal government, for the sale at wholesale to, or interchange of electric energy with, such cooperatives, public utilities, municipalities, or department or agency of the state or federal government, and, notwithstanding any provisions of this chapter, such cooperatives, public utilities, municipalities, or department or agency of the state or federal government shall be eligible to membership in corporations organized under this chapter.

Approved March 9, 1951.