

# CORPORATIONS

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## CHAPTER 125

H. B. No. 150  
(Hilleboe)

### REGULATION OF SECURITIES TRANSACTIONS

#### AN ACT

To create and enact subsection 11 of section 10-04-06 of the North Dakota Century Code, relating to exempt transactions in the Securities Act; and to amend and reenact subsections 8, 9 and 10 of section 10-04-06, subsections 1, 2, 3 and 5 of section 10-04-10 of the North Dakota Century Code, relating to division designations and to require certain applicants to be twenty-one years or older.

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

**Section 1. Amendment.)** Subsections 8, 9, and 10 of section 10-04-06 of the 1967 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

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

- c. Either Moody's, Fitch's, or Standard and Poor's securities manuals, or other recognized securities manuals approved by the commissioner contain the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen months prior to the date of such sale, and a profit and loss statement of the issuer for either the fiscal year preceding that date or the most recent year of operations; and
  - d. Such securities would qualify for registration by description pursuant to the provisions of section 10-04-07; and
  - e. Such securities are limited to issuers organized under the laws of any state or territory or insular possession of the United States; and
  - f. Provided, however, that even though the foregoing conditions might all be met, the exemption would not apply to the securities of open-end management companies, mutual funds, unit investment trusts, contractual plans and face amount certificate companies; and
9. The sale of preorganization subscriptions for share of stock of a corporation prior to the incorporation thereof is exempt provided each of the four following conditions are met:
- a. The number of persons solicited does not exceed fifteen people, or the amount raised by such subscription does not exceed twenty-five thousand dollars in the aggregate;
  - b. Such solicitation or sale is evidenced by a written agreement;
  - c. No commission or other remuneration is given, or promised, directly or indirectly, for or in connection with the sale of such securities;
  - d. No payment in any form is made by any subscriber; and no consideration is received, directly or indirectly, by any person from the purchasers of such securities until, either:

- (1) Registration by qualification of such securities, or registration of the securities provided for in the preorganization subscription, is made under section 10-04-08 of the North Dakota Century Code; or
  - (2) Until articles of incorporation are filed with the secretary of state, and the corporation has held its first organizational meeting; and
10. The sale of capital stock of a corporation may be exempted by the securities commissioner if the corporation is organized under chapter 10-30 of the laws of North Dakota or approved by the small business administration as qualifying for loans under section 502 of the Small Business Investment Act of 1958, as amended; and

**Section 2.)** Subsection 11 of section 10-04-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

11. Any investment contract issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan, provided that the securities which fund the plan or are the subject of the plan are otherwise exempt pursuant to section 10-04-05 of this Chapter.

**Section 3. Amendment.)** Subsections 1, 2, 3, and 5, of section 10-04-10 of the 1967 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. **DEALERS.** Application for registration as a dealer may be made by any person twenty-one 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, 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 years.
- e. A brief description of the general character of the business conducted or proposed to be conducted by the applicant.
- f. A list of any other states in which the applicant is registered as a dealer, and, if registration of the applicant as a dealer has ever been refused, canceled, suspended, or withdrawn in any state, full details with respect thereto.
- g. Whether the applicant is registered as a dealer under the Securities Exchange Act of 1934 or any Act in amendment thereof and whether any such registration of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension by the securities and exchange commission.
- h. The names of all organizations of dealers or brokers of which the applicant is a member or before which any application for membership on the part of the applicant is then pending, and whether any such membership of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
- i. The names of any securities exchange of which the applicant or any of its partners, officers, directors, trustees, members, managers, or employees is a member, and whether any such membership has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.

- j. A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant, or by a responsible officer or member of said applicant as the commissioner may require.
- k. Whether applicant or any officer, director, partner, member, trustee, or manager of the applicant, has ever been convicted of a felony or any misdemeanor other than minor highway traffic offenses and, if so, all pertinent information with respect to any such conviction.
- 1. Any other information, which the commissioner may by rule or order require.

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

There shall be filed with such application a written consent to the service of process upon the commissioner in actions against such dealer, conforming to the requirements of section 10-04-14 and payment of the prescribed registration fee, which shall be returned if registration is refused.

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

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

this law and for the faithful performance and payment of all obligations of the dealer and his agents and salesmen.

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

2. SALESMEN. Application for registration as a salesman may be made by any individual twenty-one 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; that all salesmen currently registered on June 30, 1961, who have been continuously registered as securities salesmen in the state of North Dakota since July 1, 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 of this chapter 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 con-

ditioned for the faithful compliance by said self-employed salesman with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond shall be in a form approved and in the amount required by the commissioner. There shall be filed with such application payment of the prescribed registration fee, which shall be returned if registration is refused.

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

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

3. **INVESTMENT COUNSEL.** No person, partnership, corporation, or association shall offer for sale or sell any investment service in this state except as provided by the provisions of this subsection. Application for registration as an investment counsel may be made by any person twenty-one 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, duly verified by oath and shall be filed in the office of commissioner and shall contain the following information:
  - a. Name, residence, and business address of the applicant.
  - b. If the applicant is a corporation or association, give full information as to agents, partners, and managing officers.



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

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

- f. A copy of its articles.
- g. Certificate showing authorization to transact business.

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

There shall be filed with such application:

- h. A written consent to the service of process upon the commissioner in actions against such investment counsel conforming to the requirements of section 10-04-14, and
- i. Payment of the prescribed registration fee, which shall be returned if registration is refused, and
- 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.

When an applicant has fully complied with the provisions of this subsection the commissioner may reg-

ister such applicant as an investment counsel unless he shall find that the applicant is not of good business reputation, or is not solvent.

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

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

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

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 first day of May in each year. Registration of dealers, salesmen, and investment counsels 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 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.

Approved March 14, 1969.

## CHAPTER 126

S. B. No. 323  
(Ringsak, Nething)

EXEMPTION OF SALE OF  
SECURITY BY EMPLOYEE  
OF ISSUING BODY

## AN ACT

To create and enact subsection 12 of section 10-04-06 of the North Dakota Century Code, relating to exempt transactions.

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

Section 1.) Subsection 12 of section 10-04-06 of the North Dakota Century Code is hereby created and enacted 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 made by an official or employee of the issuing body or by an official of the Bank of North Dakota acting in his official capacity and not for his personal pecuniary profit.

Approved March 25, 1969.

## CHAPTER 127

H. B. No. 407  
(Dahl, Thompson, Halcrow)

NONSTOCKHOLDER MEMBERS' LOAN  
LIMITATIONS TO DEVELOPMENT CORPORATIONS

## AN ACT

To amend and reenact section 10-30-08 of the North Dakota Century Code, relating to nonstockholder members' development corporations.

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

**Section 1. Amendment.)** Section 10-30-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-30-08. Nonstockholder Members—Loan Limitation.)** The nonstockholder members of the corporation shall consist of such national or state banks, savings banks, savings and loan associations, trust companies, stock or mutual insurance companies, the Bank of North Dakota, and other financial institutions as may make application for membership in said corporation, and membership shall become effective upon the acceptance of such application by the board of directors. Each such member of the corporation shall lend money to the corporation as and when called upon by it to do so on such terms and other conditions as shall be approved from time to time by a majority of the directors. The total amount of loans by any member at any one time shall not exceed the following limit, to be determined as of the time such member becomes a member (on the basis of the balance sheet of such member at the close of its preceding fiscal year, certified by its proper officers); two and one-half percent of the capital and surplus of commercial banks and trust companies, and the Bank of North Dakota; two and one-half percent of one-half of the total surplus accounts of savings banks; two and one-half percent of the guaranty funds, surplus, and undivided profits of savings and loan associations and two and one-half percent of the capital and surplus of stock insurance companies; two and one-half percent of the guaranty funds or of the surplus, whichever is applicable, of mutual insurance companies and comparable limits approved by the board of directors of the corporation for other banking, financing, and insurance

companies and related corporations, partnerships, foundations, and other institutions. All loan limits shall be established at the thousand dollar amount nearest to the amount computed in accordance with the aforesaid percentages. All calls of funds which nonstockholder members are committed to lend to the corporation shall be prorated by the corporation among the nonstockholder members in the same proportion that the individual lines of credit bear to the aggregate lines of credit. Upon sixty days' written notice, a member of the corporation may withdraw from membership in the corporation at the expiration date of such notice, and after said expiration date shall be free of obligations hereunder except those accrued prior to said expiration date.

Approved March 25, 1969.