

Sixtieth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1492

Introduced by

Representatives Damschen, DeKrey, Monson, Vigesaa

Senators Oehlke, Wanzek

1 A BILL for an Act to amend and reenact section 10-06.1-24 of the North Dakota Century Code,
2 relating to a penalty for violation of the corporate farming provisions.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 10-06.1-24 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **10-06.1-24. Enforcement - Penalty.**

7 1. The recorder shall mail or deliver a copy of every instrument filed or recorded,
8 within thirty days after the instrument is recorded, to the attorney general if the
9 instrument documents evidence of a lease agreement or purchase agreement
10 pursuant to subsection 6 or 7 or if the instrument conveys the title to farmland or
11 ranchland to a corporation or limited liability company. The attorney general shall
12 commence an action in the district court of the county in which the substantial
13 portion of farmland or ranchland used in violation of this chapter is situated if the
14 attorney general has reason to believe that any person is violating this chapter.
15 The attorney general shall file for record with the recorder of each county in which
16 any portion of the land is located a notice of the pendency of the action. If the
17 court finds that the land in question is being held in violation of this chapter, or that
18 a corporation or limited liability company is conducting the business of farming or
19 ranching in violation of this chapter, the court shall enter an order so declaring.
20 The attorney general shall file any such order for record with the recorder of each
21 county in which any portion of the land is located. Thereafter, the corporation or
22 limited liability company shall, within the time set by the court not to exceed one
23 year from the date of the court's final order, divest itself of any farming or ranching
24 land owned or leased by it in violation of this chapter, and cease all farming or

ranching operations. Any corporation or limited liability company that fails to comply with the court's order is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved or terminated by the secretary of state.

Any corporation or limited liability company under section 10-06.1-09 which fails to comply with the court's order is subject to a civil penalty not to exceed one hundred thousand dollars and may be dissolved or terminated by the secretary of state.

2. The divestment period is deemed to be a covenant running with the title to the land against any corporate or limited liability company grantee, corporate or limited liability company successor, or corporation or limited liability company assignee of the corporation or limited liability company not authorized to do business under this chapter.

3. Any land not divested within the divestment period prescribed must be sold at public sale in the manner prescribed by law for the foreclosure of real estate mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law, including enjoining the corporation or limited liability company from completing performance on the remainder of any leasehold which is in violation of this chapter.

4. Subject to the divestiture requirements of subsections 5, 6, and 7, a domestic or foreign corporation or limited liability company may acquire farmland or ranchland as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.

5. Unless retention of the farmland or ranchland is permitted under subsection 6 or 7, all farmland or ranchland acquired as security for indebtedness, in the collection of debts, or by the enforcement of a lien or claim shall be disposed of within three years after acquiring ownership, if the acquisition would otherwise violate this chapter.

6. The disposition requirement does not apply to a corporation or limited liability company that has acquired title to the land through the process of foreclosure of a mortgage, or a deed from a mortgagor instead of a foreclosure, if, by the expiration of one month after what is or what would have been the redemption period of the

mortgage if the mortgage had been foreclosed, that corporation or limited liability company leases to the prior mortgagor from whom it was acquired, with an option to purchase, and if documents evidencing the lease agreement have been filed with the recorder of each county in which the land is located. A copy of a notice of lease is sufficient evidence. The exemption in this subsection applies for only five years and then only if the property has been appraised in accordance with subsection 8. The annual lease payments required of the tenant may not exceed seven percent of the appraised value.

7. The disposition requirement does not apply to a corporation or limited liability company that has acquired title to the land through the process of foreclosure of a mortgage, or a deed from the mortgagor instead of foreclosure, if, by the expiration of one month after what is or what would have been the redemption period of the mortgage if the mortgage had been foreclosed, that corporation or limited liability company contracts for the sale of the land to the prior mortgagor from whom it was acquired, and if documents evidencing the purchase agreement have been filed with the recorder of each county in which the land is located. A copy of a notice of the contract for deed is sufficient evidence. An exemption under this subsection is valid only if an appraisal has been made in accordance with subsection 8, and if it is valid, the exemption is unlimited in duration. The sale price may not exceed the price determined by the appraisers.

8. If an appraisal is required, the appraisal must be made by three independent appraisers, one selected by the corporation or limited liability company, one selected by the prior mortgagor, and the third selected by the first two appraisers.

9. If a corporation or limited liability company holds land pending divestiture, and the holding is not otherwise governed by this section, the land must be leased to persons actually engaged in farming or ranching and a disposal may not be to a corporation or limited liability company unless ownership by that corporation or limited liability company is authorized under this chapter.

10. The civil penalty for a violation of section 10-06.1-10 may not exceed one hundred thousand dollars.

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1 ~~10.~~ 11. ~~Any~~ Except as provided in subsection 10, any corporation or limited liability
2 company continuing to violate this chapter is subject to a civil penalty not to
3 exceed twenty-five thousand dollars and may be dissolved or terminated by the
4 attorney general in accordance with the laws of this state.