

CORPORATIONS

CHAPTER 95

H. B. No. 779

(Miller, Meschke, Whittlesey)

SECURITIES REGULATION

AN ACT

To amend and reenact subsection 7 of section 10-04-05, subsection 9 of section 10-04-06 and subsection 1 of section 10-04-07.1 of the 1963 Supplement to the North Dakota Century Code, relating to the supervision of issue and sale of securities.

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

§ 1. Amendment.) Subsection 7 of section 10-04-05 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

7. Any note, draft, bill of exchange or bankers' acceptance, which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, is not the subject of a public offering, has at the time of issuance a definite maturity (after all days of grace, if any) of not exceeding one year, is payable in cash only, and is not convertible into and does not carry an option or right to receive payment or any bonus in any other security;

§ 2. Amendment.) Subsection 9 of section 10-04-06 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. The sale of preorganization subscriptions for shares of stock of a corporation prior to the incorporation thereof is exempt provided each of the four following conditions are met:
 1. 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;
 2. Such solicitation or sale is evidenced by a written agreement;

3. No commission or other remuneration is given, or promised, directly or indirectly, for or in connection with the sale of such securities;
4. 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:
 - a. 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
 - b. Until articles of incorporation are filed with the secretary of state, and the corporation has held its first organizational meeting.

§ 3. Amendment.) Subsection 1 of section 10-04-07.1 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Securities that have been outstanding and in the hands of the public for not less than one year as a result of prior original registration in North Dakota or through securities and exchange commission registration, by the issuer, or by the underwriter on behalf of an issuer, shall be entitled to registration by announcement in the manner and subject to the conditions provided by this section.

In addition to the foregoing, stock (having equal voting rights with other classes) of life insurance companies may also qualify for registration under this section provided the company has been in continuous operation for twenty years immediately preceding the date of filing for registration and provided further that in addition to supplying the information required by subdivisions a through c of subsection 2 of this section the applicant can supply all of the following:

- a. A balance sheet and an earnings statement showing statutory net earnings after all dividends (returned premiums) to policyholders and after all expenses including state and federal income taxes for the fiscal period ended not more than twelve months prior to the filing date upon which either an unqualified or a qualified opinion has been expressed by a certified public accountant: provided, however, that any qualification of opinion relates only to generally accepted principles of accounting which may have been modified to meet the reporting requirements of the various state insurance departments; and

- b. Such balance sheet separates the surplus account into its component parts and shows a positive balance in the accumulated unrestricted retained earnings account (on statutory basis); and
- c. Earnings statements for the four fiscal years immediately preceding the beginning date of the earnings statement required in subdivision a of this subsection prepared by the same certified public accountant showing statutory net earnings after the deductions enumerated in subdivision a of this subsection for each fiscal year; provided, however, that these statements need not be accompanied by an unqualified or a qualified opinion of the certified public accountant unless such certified public accountant did actually perform an audit of the company for any year or years covered by the earnings statements in which case the requirements of subdivision a of this subsection apply for the year or years so audited; and
- d. A statement prepared by a certified public accountant or actuary showing a net gain in insurance in force for each of the last five fiscal years.

Approved March 15, 1965.

CHAPTER 96

H.B. No. 777

(Miller, Meschke, Whittlesey)

SECURITIES REGULATION

AN ACT

To amend and reenact sections 10-04-07, 10-04-08, and subsection 6 of section 10-04-10 of the North Dakota Century Code, relating to the supervision of issue and sale of securities.

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

§ 1. Amendment.) Section 10-04-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-07. 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, including state and federal income taxes, 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 commissioner 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 10-04-14. Such filing with the commissioner, which may be made either by delivery in the office of the commissioner or by posting by registered or certified 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 the 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 fifty 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 fifty 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.

§ 2. Amendment.) Section 10-04-08 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-08. Registration by Qualification.) Securities required to be registered by qualification under this chapter before they may be sold in this state shall be registered as provided in this section. 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:

1. An application for registration which shall be made in writing or on forms prescribed by the commissioner and which shall contain the following information and be accompanied by the following documents:
 - a. With respect to the applicant or issuer and any significant subsidiary: its name, address, and form of organization; the state of foreign jurisdiction and date of its organization; the general character and location of its business; a general description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;
 - b. With respect to every director and officer of the issuer, or person occupying a similar status or performing similar functions: his name, address, and principal occupation for the past five years; the amount of securities of the issuer held by him as of a specified date within thirty days of the filing of the application for registration; the amount of the securities covered by the registration statement to which he has indicated his intention to subscribe; and a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected;
 - c. With respect to persons covered by subsection 1b of this section: the remuneration paid during the past twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer to all those persons in the aggregate;

- d. With respect to any person owning of record, or beneficially if known, ten percent or more of the outstanding shares of any class of equity security of the issuer: the information specified in subsection 1b of this section other than his occupation;
- e. With respect to every promoter if the issuer was organized within the past three years: the information specified in subsection 1b of this section, any amount paid to him within that period or intended to be paid to him, and the consideration for any such payment;
- f. With respect to any person on whose behalf any part of the offering is to be made in a non-issuer distribution: his name and address; the amount of securities of the issuer held by him as of the date of the filing of the application for registration; a description of any material interest in any transaction with the issuer or any subsidiary effected within the past three years or proposed to be effected; and a statement of his reasons for making the offering;
- g. The title, kind, classes, and amount of securities to be offered in this state; the proposed offering price to the public or the method by which it is to be computed; any variation therefrom at which any proportion of the offering is to be made to any person or class of persons other than the underwriters, with a specification of any such person or class; the basis upon which the offering is to be made if otherwise than for cash; 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; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering, or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges and a statement as to what person or corporation shall be responsible for payment of the same; the name and address of every underwriter and every recipient of a finder's fee; a copy of any underwriting or selling-group agreement pur-

- suant to which the distribution is to be made, or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities which are to be offered otherwise than through an underwriter;
- h. The estimated cash proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the amount to be used for each purpose; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of any such funds; and, if any part of the proceeds is to be used to acquire any property, including good will, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons who have received commissions in connection with the acquisition, and the amounts of any such commissions and any other expense in connection with the acquisition;
 - i. A description of each and every stock option or other security option outstanding, or to be created in connection with the offering, including the price at which such options may be exercised together with the amount of any such options held or to be held by every person;
 - j. The capitalization and long-term debt of the issuer and any subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration for which the issuer or any subsidiary has issued any of its securities within the past two years or is obligated to issue any of its securities;
 - k. The dates of, parties to, and general effect concisely stated of, every management or other material contract made or to be made otherwise than in the ordinary course of business if it is to be performed in whole or in part at or after the filing of the application for registration or was made within the past two years, together with a copy of every such contract; and a description of any pending litigation or proceeding to which the issuer is a party and which affects its business or assets;
 - l. A detailed statement showing the items of cash, property, services, patents, goodwill and any other consideration for which any securities of the issuer

have been within two years or are to be issued in payment;

- m. A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering;
 - n. A specimen or copy of the security being registered; a copy of the issuer's articles of incorporation and bylaws, as currently in effect; and a copy of any indenture or other instrument covering the security to be registered;
 - o. A balance sheet of the issuer as of a date within four months prior to the filing of the registration statement; a profit and loss statement and analysis of surplus for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessors' existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of any business, the same financial statements which would be required if the business were the registrant;
 - p. Other states in which it is proposed to offer the securities for sale to the public; other states in which the securities are eligible for sale to the public; states 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; and, if application has been made to register the securities under the Federal Securities Act of 1933, the date upon which the application to register the securities was first filed, and a statement as to whether registration under that Act is effective, and if so, the effective date; and
 - q. Such additional information as the commissioner requires by rule or order or may subsequently request.
2. a. Payment of a filing fee of fifteen dollars per application and a registration fee for each security or class of security to be registered as follows:

One-tenth of one percent of the first \$750,000 of the aggregate offering price of each security or class of security to be registered;

One-twentieth of one percent on any amount in excess of \$750,000 of the aggregate offering price of each security or class of security to be registered; but,

in no event shall such registration fee be less than fifty dollars for each security or class of security to be registered. If the application for registration is denied such registration fee less the actual cost to the state of processing and investigating as determined by the commissioner shall be returned to the applicant.

- b. (1) Open-end management companies, mutual funds, investment trusts, unit investment trusts, contractual plans and face amount certificates will pay a filing fee of fifteen dollars and a registration fee computed as follows: One-tenth of one percent of the first \$250,000 of dollar value, at offering prices, or maturity value of face amount certificates, plus one-twentieth of one percent of the next \$500,000 of dollar value, at offering price or maturity value of face amount certificates, plus one-fortieth of one percent of the remaining dollar value at offering price or maturity value of face amount certificates.
- (2) Provided, also that on application to register more than \$250,000, the commissioner may prescribe a maximum amount of securities to be registered at any time by any such issuer described in paragraph (1) of subdivision 2b of this section.

Provided, further, that any applicant wishing to register additional securities under this same paragraph before the expiration of one year from the date of the registration certificate may do so at the same reduced fee as if the additional shares had been included in the other registration of that year, registration year and not calendar year.

- (3) Provided, further, that those issuers of several classes of such securities may not combine the registration of several classes for the purpose of benefiting from the graduated scale of fees.
3. 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 10-04-14 of this chapter.

4. The commissioner may by rule or order require as a part of the application for registration under this section that a prospectus containing any designated part of the information specified in subsection 1 of this section be submitted to the commissioner and the same prospectus shall be sent or given to each person to whom a sale or offer of sale is made. The commissioner may by rule or otherwise permit the omission of any item of information or document from any application for registration. In all cases in which an application is filed to register securities and a registration statement covering the same securities has been filed with the Federal Securities and Exchange Commission a copy of the registration statement so filed shall be accepted by the commissioner in lieu of the information specified in paragraphs a. through q. of subsection 1, except that it shall be accompanied by a statement of the amount of such securities to be offered in this state. All of the statements, exhibits, or documents of every kind required under this section 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, or documents 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.

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 2 of this section as a separate fee for each additional amount registered, and upon providing the commissioner with any additional information which he may request.

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 fifteen days prior to the expiration of a registration, a balance sheet and a profit and loss statement of the issuer as of a date not more than ninety days prior to the date of filing, together with the payment of a renewal fee of fifty dollars, and upon providing the commissioner with any additional information which he may request.

§ 3. **Amendment.)** Subsection 6 of section 10-04-10 of the 1963 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. **Fees.** The fee, which must accompany the application, for registration and for each annual renewal thereof shall be:
- a. For each dealer employing five or less salesmen in this state\$ 75.00
 - b. For each dealer employing more than five, but not more than fifteen salesmen in this state\$100.00
 - c. For each dealer employing more than fifteen salesmen, but not more than thirty salesmen, in this state\$150.00
 - d. For each dealer employing more than thirty salesmen in this state\$200.00
 - e. For each salesman
 - Uniform examination\$ 10.00
 - State law examination\$ 5.00
 - Registration fee\$ 12.50
 - Renewal fee\$ 7.50
 - f. For each investment counsel\$ 25.00

An application to register as a dealer, salesman or investment counsel may, with the consent of the commissioner, be withdrawn upon written application, but in no event shall any registration fees be returned.

Approved March 15, 1965.

CHAPTER 97

S. B. No. 41
(Hernett, Holand, Kisse)
(From LRC Study)

ELECTRIC COOPERATIVE EXCISE TAX EXEMPTION

AN ACT

To repeal section 10-13-07 of the North Dakota Century Code, relating to fees and excise taxes payable by electric cooperatives.

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

§ 1. Repeal.) Section 10-13-07 of the North Dakota Century Code is hereby repealed.

Approved March 19, 1965.