

**FIRST ENGROSSMENT
with House Amendments
ENGROSSED SENATE BILL NO. 2276**

Introduced by

Senators Wardner, Armstrong

1 A BILL for an Act to amend and reenact subsection 7 of section 10-33-21, section 10-33-100,
2 and subsection 4 of section 10-33-108 of the North Dakota Century Code, relating to the
3 prohibition of the diversion of restricted assets and the priority of those assets in a dissolution.

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

5 **SECTION 1. AMENDMENT.** Subsection 7 of section 10-33-21 of the North Dakota Century
6 Code is amended and reenacted as follows:

7 7. A corporation may make contracts and incur liabilities, borrow money, issue its
8 securities, and secure any of its obligations by mortgage of or creation of a security
9 interest in all or any of its property, franchises, and income. All assets received by a
10 corporation from donors for special use or purpose must be designated as temporarily
11 restricted or permanently restricted in accordance with the applicable financial
12 accounting standards board codification and disclosed on the corporation's financial
13 statements. A corporation may pledge as collateral, grant a security interest in, or
14 borrow from assets initially designated as temporarily restricted only for purposes that
15 are in accordance with the donor's restrictions. A corporation may not pledge as
16 collateral, grant a security interest in, or borrow from assets designated as
17 permanently restricted assets.

18 **SECTION 2. AMENDMENT.** Section 10-33-100 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **10-33-100. Procedure in dissolution.**

21 1. When a notice of intent to dissolve has been filed with the secretary of state, the
22 board, or the officers acting under the direction of the board, shall proceed as soon as
23 possible to collect or make provision for the collection of debts owing to the

- 1 corporation and to pay or make provision for the payment of debts, obligations, and
2 liabilities of the corporation according to their priorities.
- 3 2. Notwithstanding section 10-33-94, when a notice of intent to dissolve has been filed
4 with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose
5 of all or substantially all of the property and assets of a dissolving corporation without
6 a vote of the members, subject to sections 10-33-95 and 10-33-122.
- 7 3. ~~Property, including money, remaining after the discharge of the debts, obligations, and~~
8 ~~liabilities of the corporation~~ must be distributed under section 10-33-105.

9 **SECTION 3. AMENDMENT.** Subsection 4 of section 10-33-108 of the North Dakota
10 Century Code is amended and reenacted as follows:

- 11 4. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or
12 other disposition must be applied in the following order of priority to the payment and
13 discharge of:
- 14 a. Assets received and held for a special use or purpose must be distributed
15 pursuant to subsection 2 of section 10-33-105;
- 16 b. The costs and expenses of the proceedings, including attorney's fees and
17 disbursements;
- 18 ~~b.c.~~ Debts, taxes, and assessments due the United States, this state and its
19 subdivisions, and other states and their subdivisions, in that order;
- 20 ~~e.d.~~ Claims duly proved and allowed to employees under title 65. Claims under this
21 subdivision may not be allowed if the corporation carried workforce safety and
22 insurance coverage, as provided by law, at the time the injury was sustained;
- 23 ~~d.e.~~ Claims, including the value of all compensation paid in any medium other than
24 money, duly proved and allowed to employees for services performed within
25 three months preceding the appointment of the receiver, if any; and
- 26 ~~e.f.~~ Other claims duly proved and allowed.