

CORPORATIONS

CHAPTER 100

SENATE BILL NO. 2325

(Senators Lee, Barta, J. Roers)
(Representatives Beltz, Boschee, Schreiber-Beck)

AN ACT to create and enact a new section to chapter 10-04 of the North Dakota Century Code, relating to the restitution assistance fund for victims of securities violations; to provide a continuing appropriation; and to provide for application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-04 of the North Dakota Century Code is created and enacted as follows:

Restitution assistance fund - Continuing appropriation.

1. As used in this section:
 - a. "Claimant" means an individual who meets the definition of eligible adult under section 10-04-08.5 and files an application for restitution assistance under this section. The term includes the named party, the executor of a named party, the heirs and assignees of a named party, or any other individual with lawful authority to act for or on behalf of the named party in a restitution award in a final order.
 - b. "Final order" means an order issued by the commissioner under this chapter or a final order issued by the court in a legal action initiated by the commissioner under this chapter.
 - c. "Securities violation" means a violation of any provision of this chapter, or any rule or order issued by the commissioner under this chapter.
 - d. "Victim" means an individual who meets the definition of an eligible adult under section 10-04-08.5 and is awarded restitution in a final order.
2. A special fund is established in the state treasury and is designated as the restitution assistance fund for eligible adult victims. The commissioner shall deposit up to one million dollars per biennium from the department's revenue into the fund. The moneys in the fund are appropriated on a continuing basis to the commissioner to provide restitution assistance for victims who have not received full restitution from a final order before the application for restitution assistance is due.
3. An individual is eligible for restitution assistance if the individual:
 - a. Is a resident of the state who is a victim of a securities violation committed in this state or other jurisdiction, including a foreign country, if the

- jurisdiction does not offer assistance substantially similar to the assistance offered under this section.
- b. Is a nonresident who is a victim of a securities violation committed in this state if the nonresident's home state offers residents of this state substantially similar assistance as offered under this section.
 - c. Submits an application, in the manner prescribed by the commissioner, for restitution assistance within two years of the date of the final order, except the commissioner may grant an extension of time for submission of an application for restitution assistance upon a showing of good cause by the claimant.
4. The commissioner may award the lesser of fifty thousand dollars or fifty percent of the amount of unpaid restitution awarded in the final order to a claimant. An award of restitution assistance may be made only to one claimant per victim. The commissioner may waive any limitations on payment upon a showing of good cause.
 5. The commissioner may not award restitution assistance if:
 - a. The victim sustained the monetary injury as a result of:
 - (1) Participating or assisting in a securities violation; or
 - (2) Attempting or committing a securities violation; or
 - b. The victim profited or would have profited from a securities violation.
 6. A claimant convicted of any crime deemed relevant by the commissioner in connection to a claim made under this section shall forfeit any restitution assistance awarded to the claimant.
 7. The commissioner may bring a civil action to recover funds awarded to a claimant convicted of any crime deemed relevant by the commissioner in connection with a claim under this section.
 8. If the commissioner overturns a final order or a final order is overturned on appeal after restitution assistance has been made to a claimant, the commissioner may issue an order to recover the restitution assistance.
 9. The department is subrogated to the rights of the claimant awarded restitution assistance. The subrogation rights are against the individual ordered to pay restitution to the victim for the securities violation. In addition, the commissioner is entitled to a lien in the amount of the award on a recovery made by or on behalf of the victim. The commissioner may recover the amount in a separate action or intervene in an action brought by or on behalf of the victim.
 10. A claimant shall refund to the commissioner any amount of restitution received if the combined total of the restitution assistance exceeds the restitution awarded in the final order. Any moneys recovered by the commissioner under subsections 7, 8, and 9 must be returned to the fund.

11. The commissioner may suspend payment of claims or prorate payment of claims until such a time the commissioner determines a sufficient balance has been restored to the fund if payment of restitution assistance would result in a fund balance below one hundred thousand dollars.
12. Restitution assistance awarded by the commissioner under this section is not subject to execution, attachment, garnishment, or other process, except those executions, attachments, garnishments, or other processes brought by or on behalf of the state.
13. The commissioner may adopt rules pursuant to chapter 28-32 to carry out this section.

SECTION 2. APPLICATION. Restitution assistance awards may be made under this Act only to victims awarded restitution in a final order issued on or after the effective date of this Act.

Approved April 6, 2023

Filed April 10, 2023

CHAPTER 101

SENATE BILL NO. 2060

(Industry and Business Committee)
(At the request of the Securities Commissioner)

AN ACT to create and enact subsection 7 of section 10-04-07.2 of the North Dakota Century Code, relating to fees of an effective offering; and to amend and reenact subsection 17 of section 10-04-06, subsection 5 of section 10-04-08.4, sections 10-04-10, 10-04-10.1, and 10-04-10.3, subsection 1 of section 10-04-16, and subsection 1 of section 10-04-16.1 of the North Dakota Century Code, relating to exempt transaction filling requirements, federal crowdfunding, investment advisors' custody, postregistration recordkeeping, effectiveness of orders, and professional services for investigations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 17 of section 10-04-06 of the North Dakota Century Code is amended and reenacted as follows:

17. Any offer or sale of a security by an issuer in a transaction provided all of the following conditions are met:
 - a. Sales of securities may be made only to persons who are, or the issuer reasonably believes are, accredited investors as defined in 17 CFR 230.501(a) promulgated by the securities and exchange commission.
 - b. The exemption is not available to an issuer that is in the development stage that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person.
 - c. The issuer reasonably believes that all purchasers are purchasing for investment and not with the view to, or for, sale in connection with a distribution of the security. Any resale of a security sold in reliance of this exemption within twelve months of sale must be presumed to be with a view to distribution and not for investment, except a resale pursuant to a registration statement effective under section 10-04-04 or to an accredited investor pursuant to an exemption available under subsection 5.
 - d. (1) The exemption is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:
 - (a) Within the last five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the securities and exchange commission;

- (b) Within the last five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
 - (c) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
 - (d) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.
- (2) Paragraph 1 does not apply if:
- (a) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
 - (b) Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or
 - (c) The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this subdivision.
- e. (1) A general announcement of the proposed offering may be made by any means.
- (2) The general announcement must include only the following information, unless additional information is specifically permitted by the commissioner:
- (a) The name, address, and telephone number of the issuer of the securities;
 - (b) The name, a brief description, and price, if known, of any security to be issued;
 - (c) A brief description of the business of the issuer in twenty-five words or less;
 - (d) The type, number, and aggregate amount of securities being offered;
 - (e) The name, address, and telephone number of the person to contact for additional information; and
 - (f) A statement that:

- [1] Sales will only be made to accredited investors;
 - [2] No money or other consideration is being solicited or will be accepted by way of this general announcement; and
 - [3] The securities have not been registered with or approved by any state securities agency or the securities and exchange commission and are being offered and sold pursuant to an exemption from registration.
- f. The issuer, in connection with an offer, may provide information in addition to the general announcement under subdivision e, if such information:
- (1) Is delivered through an electronic database that is restricted to persons who have been prequalified as accredited investors; or
 - (2) Is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor.
- g. Telephone solicitation is not permitted unless prior to placing the call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor.
- h. Dissemination of the general announcement of the proposed offering to persons who are not accredited investors does not disqualify the issuer from claiming the exemption.
- i. The issuer shall file with the department a notice of transaction, a consent to service of process, a copy of the general announcement, and a nonrefundable filing fee of one hundred dollars within fifteen days after the first sale in this state. In the event the filing is not made within fifteen days after the first sale in this state, the filing fee is two hundred fifty dollars.
- j. The security offered or sold under this subsection is offered or sold by a broker-dealer and agent registered in accordance with section 10-04-10, or offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid.

SECTION 2. Subsection 7 of section 10-04-07.2 of the North Dakota Century Code is created and enacted as follows:

7. An applicant may increase the aggregate amount of each security or class of security to be registered by filing a notice of the additional aggregate dollar amount to be registered and payment of a filing fee of one-tenth of one percent of the additional aggregate dollar amount but not more than five hundred dollars.

SECTION 3. AMENDMENT. Subsection 5 of section 10-04-08.4 of the North Dakota Century Code is amended and reenacted as follows:

5. a. The following provisions apply to offerings made under federal Regulation Crowdfunding [17 CFR 227] and sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933 [15 U.S.C. 77d(a)(b) and 15 U.S.C. 77r(b)(4)(C)]:

- (1) ~~a.~~(1) An issuer that offers and sells securities in this state in an offering exempt under federal Regulation Crowdfunding [17 CFR 227],

and that either has the issuer's principal place of business in this state or sells fifty percent or greater of the aggregate amount of the offering to residents of this state, shall file electronically the following with the commissioner:

- [1](a) A completed uniform notice of federal crowdfunding offering form;
- [2](b) A copy of any document filed with the securities and exchange commission, as the commissioner may require; and
- [3](c) A filing fee of one hundred fifty dollars.

(b)(2) If the issuer has the issuer's principal place of business in this state, the filing required under this subsection must be filed with the commissioner when the issuer makes its initial form C filing concerning the offering with the securities and exchange commission. If the issuer does not have the issuer's principal place of business in this state but residents of this state have purchased fifty percent or greater of the aggregate amount of the offering, the filing required under this subsection must be filed when the issuer becomes aware that such purchases have met this threshold and in no event later than thirty days from the date of completion of the offering. The initial notice filing is effective for twelve months from the date of the filing with this state.

(2)b. An issuer conducting an offering under this subsection may renew the offering for an additional period of twelve months by electronically filing the uniform notice of federal crowdfunding offering form marked "renewal" and payment of the renewal filing fee of one hundred dollars.

~~b. A security may not be offered or sold under this subsection, except through or by a broker-dealer and agent registered in accordance with section 10-04-10, unless the security is offered and sold through an officer, director, governor, or partner of the issuer and no commission or other remuneration is paid, either directly or indirectly.~~

SECTION 4. AMENDMENT. Section 10-04-10 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10. Registration of broker-dealers, agents, investment advisers, and investment adviser representatives - Notice filings by federal covered advisers.

1. Broker-dealers. It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt. The following persons are exempt from the registration requirements:
 - a. A broker-dealer without a place of business in this state if its only transactions effected in this state are with:
 - (1) The issuer of the securities involved in the transactions;
 - (2) A broker-dealer registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter;
 - (3) An institutional investor;

- (4) A nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record;
 - (5) A bona fide pre-existing customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer maintains a principal place of residence; and
 - (6) A bona fide pre-existing customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if:
 - (a) The broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and
 - (b) Within thirty days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than forty-five days after the date on which the application is filed, or, if earlier, the date on which the commissioner notifies the person that the commissioner has denied the application for registration or has stayed the pendency of the application for good cause.
- b. A person that deals solely in United States government securities and is supervised as a broker-dealer in government securities by the board of governors of the federal reserve system, the comptroller of the currency, the federal deposit insurance corporation, or the office of thrift supervision.

Application for registration as a broker-dealer must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed with the department, and must contain information the commissioner determines to be necessary concerning the applicant.

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

There must be filed with such application a written consent to the service of process upon the commissioner in actions against such broker-dealer, conforming to the requirements of section 10-04-14.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as a broker-dealer

unless the commissioner finds that the applicant is not of good business reputation, or is not solvent, or the applicant's principals and compliance or sales supervisor do not appear qualified by training, examination, or experience to act on behalf of a broker-dealer in securities.

Except as prohibited by the Securities Exchange Act of 1934, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the broker-dealer and the broker-dealer's agents with all the provisions of this law and for the faithful performance and payment of all obligations of the broker-dealer and the broker-dealer's agents.

The bond must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect purchasers. Any such bond must have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a broker-dealer, the commissioner shall notify the applicant of such registration.

2. a. Agent. It is unlawful for an individual to transact business in this state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration. The following individuals are exempt from the registration requirements:
 - (1) An individual who represents a broker-dealer in effecting transactions in this state limited to those in section 15(h)(2) of the Securities Exchange Act of 1934;
 - (2) An individual who represents a broker-dealer that is exempt under subsection 1;
 - (3) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities; or
 - (4) An individual who represents a broker-dealer registered in this state or exempt from registration in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of one hundred million dollars acting for the account of others pursuant to discretionary authority in a signed record.
- b. Application for registration as an agent must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant and by the registered broker-dealer or issuer employing or proposing to employ such applicant, duly verified by oath, must be filed with the department, and must contain information the commissioner determines to be necessary concerning the applicant.

- c. The commissioner shall require as a condition of registration that the applicant pass a written examination as evidence of knowledge of the securities business.
- d. The commissioner may also require such additional information as to the applicant's previous business experience as the commissioner deems necessary to determine whether or not the applicant should be registered as an agent under the provisions of this law. If an agent proposes to be self-employed, the agent shall specifically state the particular security or securities the agent proposes to sell in this state in the application, and if said security or securities are exempt under section 10-04-05 or 10-04-06, or have been registered by announcement under section 10-04-07.1, or have been registered by coordination under section 10-04-07.2, or have been registered by qualification under section 10-04-08, then the commissioner may require that said self-employed agent file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed agent with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond must be in a form approved and in the amount required by the commissioner.
- e. When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an agent unless the commissioner finds that such applicant is not of good business reputation, or that the broker-dealer named on the application is not a registered broker-dealer. When the commissioner has registered an applicant as an agent, the commissioner shall immediately notify the broker-dealer of such registration.
- f. Every registered broker-dealer or issuer promptly shall notify the department of the termination of the employment by the broker-dealer or issuer of a registered agent.

Application for registration as an agent must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant and by the registered broker-dealer or issuer employing or proposing to employ such applicant, duly verified by oath, must be filed with the department, and must contain information the commissioner determines to be necessary concerning the applicant.

The commissioner shall require as a condition of registration that the applicant pass a written examination as evidence of knowledge of the securities business; provided, that not more than two officers or managers of an issuer may be registered as an agent 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 or manager may again register within three years as such agent for this or any other issuer without passing the written examination.

The commissioner may also require such additional information as to the applicant's previous business experience as the commissioner deems necessary to determine whether or not the applicant should be registered as an agent under the provisions of this law. If an agent proposes to be self-employed, the agent shall specifically state the particular security or securities the agent proposes to sell in this state in the application, and if said

security or securities are exempt under section 10-04-05 or 10-04-06, 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 may require that said self-employed agent file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed agent with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond must be in a form approved and in the amount required by the commissioner.

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

Every registered broker-dealer or issuer shall promptly notify the department of the termination of the employment by the broker-dealer or issuer of a registered agent.

3. Investment advisers.

a. It is unlawful for any person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser. The following persons are exempt from the registration requirements:

(1) A person without a place of business in this state that is registered under the securities laws of the state in which the person has its principal place of business if its only clients in this state are:

(a) Federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter;

(b) Institutional investors; or

(c) Bona fide pre-existing clients whose principal places of residence are not in this state if the investment adviser is registered under the securities laws of the state in which the clients maintain principal places of residences.

(2) A person without a place of business in this state if the person has had, during the preceding twelve months not more than five clients resident in this state in addition to those specified in paragraph 1; or

(3) Any other person exempted by rule or order of the commissioner issued under this chapter.

b. Application for registration as an investment adviser must be made in writing or electronically in a form prescribed by the commissioner, must be signed by the applicant, duly verified by oath, must be filed with the

department, and must contain information the commissioner determines to be necessary concerning the applicant.

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

Except as prohibited by the Investment Advisers Act of 1940, the commissioner may require an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by the investment adviser and the investment adviser's representatives with all the provisions of this law and for the faithful performance and payment of all obligations of the investment adviser and the investment adviser's representatives. The bond must be of such type as may be approved by the commissioner and must be in such amount as the commissioner deems necessary to protect persons in this state. Any such bond must have as surety thereon a surety company authorized to do business in this state.

The commissioner may by rule or order provide for an examination to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make the person an investment adviser.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an investment adviser unless the commissioner finds that the applicant is not of good business reputation or is not solvent.

A registrant as investment adviser shall notify the department of any change of address.

4. Federal covered adviser.
 - a. Except with respect to a federal covered investment adviser described in subdivision b, it shall be unlawful for a person to transact business in this state as a federal covered adviser unless such person has made a notice filing with the department, in writing or electronically, consisting of a copy of those documents that have been filed with the securities and exchange commission as the commissioner may require by rule or otherwise and the prescribed notice filing fee.
 - b. The following federal covered investment advisers are not required to comply with the notice filing requirement:
 - (1) A federal covered investment adviser without a place of business in this state if its only clients are:
 - (a) Federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter;
 - (b) Institutional investors; or

(c) Bona fide pre-existing clients whose principal places of residence are not in this state.

- (2) A federal covered investment adviser without a place of business in this state if the person has had, during the preceding twelve months, not more than five clients that are resident in this state in addition to those specified under paragraph 1.

A notice filing is effective from receipt until the following December thirty-first. It may be renewed by filing with the department, prior to expiration, those documents filed with the securities and exchange commission as the commissioner may require by rule or otherwise, with the notice filing renewal fee.

If the information contained in any document filed with the department is or becomes inaccurate or incomplete in any material respect, the federal covered adviser shall file an amendment with the department whenever such amendment is filed with the securities and exchange commission.

A notice filing may be terminated by a federal covered adviser by filing a notice of termination with the department.

5. Investment adviser representatives. It is unlawful for an individual to transact business in this state as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative or that the investment adviser representative is employed by or associated with an investment adviser that is exempt from registration or a federal covered investment adviser that is excluded from the notice filing requirements.

Application for registration as an investment adviser representative must be submitted in writing or electronically in a form prescribed by the commissioner, be signed by the applicant and if applicable, by the investment adviser employing or proposing to employ the applicant, be duly verified by oath, be filed with the department, and contain information the commissioner determines to be necessary concerning the applicant.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register the applicant as an investment adviser representative unless the commissioner finds that the applicant is not of good business reputation; that the investment adviser named in the application is not a registered investment adviser; or the federal covered adviser named in the application has not made a notice filing with the commissioner, as required by subsection 4. When the commissioner has registered an applicant as an investment adviser representative, the commissioner shall immediately notify the investment adviser or the federal covered adviser, as applicable, of such registration.

Every registered investment adviser shall promptly notify the department of the termination of the employment by the adviser of a registered investment adviser representative. Every registered investment adviser representative employed by a federal covered adviser or the federal covered adviser shall promptly notify the department of the termination of such employment. The registration of the investment adviser representative is automatically

suspended from the time of termination of employment until such time as the representative is registered by the commissioner as a representative of another investment adviser or federal covered adviser.

The commissioner shall require as a condition of registration that the applicant pass a written examination as evidence of knowledge of the securities business and comply with any continuing education requirements as prescribed by the commissioner. At the discretion of the commissioner, certain professional designations may be accepted in lieu of an examination.

6. Refusal of registration. If the commissioner has reason to believe there are grounds to refuse the approval of any application under this section, the commissioner may, by order, summarily postpone the approval of any application made under this section. If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-04-12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, the commissioner shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order must be mailed to the applicant at the applicant's business address, and if the application is for registration as an agent, to the registered broker-dealer or issuer or if the application is for registration as an investment adviser representative to the investment adviser or federal covered adviser 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 broker-dealer's, agent's, investment adviser's, or investment adviser representative's registration under section 10-04-11, such act or omission may constitute a sufficient ground for a finding by the commissioner that such applicant is not of good business reputation.
7. Record and renewal of registrations. The names and addresses of all persons who have been registered as broker-dealers, agents, investment advisers, or investment adviser representatives, and all orders with respect thereto, and the names and addresses of all federal covered advisers who have made a notice filing must be recorded in a register of broker-dealers, agents, investment advisers, federal covered advisers, and investment adviser representatives in the office of the commissioner. Every registration and notice filing under this section expires on December thirty-first of each year, unless renewed. The commissioner may by order provide for expirations and renewals, including dates, forms, and procedures, adjust registration and notice filing fees to correspond with expiration dates, and do any other thing which may be necessary or convenient in order to participate in a central registration depository or any similar arrangement designed to promote uniformity, to ease regulatory burdens, or to encourage cooperation with other states, the securities and exchange commission, or any registered national securities association or exchange.
8. Fees. The fee, which must accompany the application, for registration, transfer, or notice filing, and for each annual renewal thereof is:
 - a. For each broker-dealer \$200.00
 - b. For each agent \$60.00
 - c. For each investment adviser or federal covered adviser \$100.00

- d. For each investment adviser representative \$50.00

An application to register as a broker-dealer, agent, investment adviser, or investment adviser representative may, with the consent of the commissioner, be withdrawn upon written application.

SECTION 5. AMENDMENT. Section 10-04-10.1 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10.1. Advisory activities.

1. It is unlawful for any person who receives, directly or indirectly, any consideration from another person for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
 - a. To employ any device, scheme, or artifice to defraud the other person; or
 - b. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.
2. It is unlawful for any person, in the solicitation of a client for investment advisory services, to make any false or misleading statement of material fact, or to fail to disclose a material fact.
3. It is unlawful for any person who provides investment advisory services subject to the provisions of this chapter to knowingly sell any security to or purchase any security from a client while acting for the person's own account or as a broker for another client unless the person first makes a written disclosure to the client of the capacity in which the person is acting and obtains the client's written consent to the transaction.
4. It is unlawful for any person who provides investment advisory services subject to the provisions of this chapter to engage in dishonest or unethical practices as the commissioner may define by rule.
5. It is unlawful for any investment adviser to enter, extend, or renew any investment advisory contract unless the investment advisory contract provides in writing that:
 - a. The investment adviser may not be compensated on the basis of a share of capital gains, earnings, or capital appreciation of the funds or any portion of the funds of the client. This subdivision does not prohibit an investment advisory contract that provides for compensation based on the total value of a fund determined as of a definite date or averaged as of definite dates or over a definite period. This subdivision does not prohibit an investment advisory contract that provides for performance fees permitted and determined in accordance with section 205 of the Investment Advisers Act of 1940 [Pub. L. 768; 54 Stat. 852; 15 U.S.C. 80b--5] and the rules adopted thereunder.
 - b. An assignment of the investment advisory contract may not be made by the investment adviser unless the investment adviser notifies the client of the intended assignment and obtains the prior written consent of the client.

- c. The investment adviser shall provide written notice to the client within fifteen days of any change of ownership in excess of five percent.
 - d. The investment adviser shall provide written notice to the client within fifteen days of a change of controlling interest of the investment adviser. The client may terminate the investment advisory contract without penalty by providing a written notice to the investment adviser within thirty days after the client's receipt of the notice of change of controlling interest.
6. Client securities or funds must be maintained by a qualified custodian. It is unlawful for any investment adviser to take or have custody of any securities or funds of any client unless the investment adviser acts as a fiduciary pursuant to duties as an executor, guardian, conservator, receiver, or trustee.
7. "Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession or having the ability to appropriate funds or securities. The investment adviser has custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of funds or securities, in connection with advisory services the investment adviser provides to clients.
- a. Custody includes:
- (1) Possession of client funds or securities unless the investment adviser receives the funds or securities inadvertently and returns the funds or securities to the sender within three business days of receiving the funds or securities and the investment adviser maintains the records required under section 10-04-10.3.
 - (2) Any arrangement, including a general power of attorney, under which the investment adviser is authorized or permitted to withdraw client funds or securities maintained with a custodian upon the investment adviser's instruction to the custodian; and
 - (3) Any capacity, such as general partner of a limited partnership, managing member of a limited liability company or a comparable position or another type of pooled investment vehicle, or trustee of a trust, that gives the investment adviser or its supervised person legal ownership of or access to client funds or securities.
- b. Receipt of checks drawn by clients and made payable to third parties does not meet the definition of custody if forwarded to the third party within three business days of receipt and the investment adviser maintains the records required under section 10-04-10.3.
8. Qualified custodian means the following:
- a. A depository institution;
 - b. A broker-dealer registered in this jurisdiction and with the securities and exchange commission holding the client assets in customer accounts;
 - c. A registered futures commission merchant registered under section 4f(a) of the Commodity Exchange Act [7 U.S.C. 1 et seq.], holding the client assets in customer accounts, but only with respect to client funds and

security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options; and

- d. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

SECTION 6. AMENDMENT. Section 10-04-10.3 of the North Dakota Century Code is amended and reenacted as follows:

10-04-10.3. Postregistration provisions.

1. Every broker-dealer, agent, investment adviser, and investment adviser representative conducting business in this state shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as described below:
 - a. With the exclusion of a broker-dealer whose activities are limited to the sale of securities that it issues and who is not a member or required to be a member of any self-regulatory organization, every broker-dealer registered in or conducting business in this state, and each branch office located in or conducting business in this state, must keep and maintain all records as required by:
 - (1) Federal statutes or by rules or regulations promulgated by the securities and exchange commission.
 - (2) Rules promulgated by any securities exchange or self-regulatory organization of which the broker-dealer is a member.
 - (3) The laws, rules, or regulations of any state in which the broker-dealer is registered or maintains a place of business from which it conducts securities business in North Dakota.
 - b. Every investment adviser which maintains its principal place of business in any state, other than this state, and is registered as an investment adviser in the state in which it maintains its principal place of business, shall keep and maintain such books and records as required by the state in which it maintains its principal place of business.
 - c. Every investment adviser which maintains its principal place of business in this state, or is not registered or exempt from registration in the state in which it maintains its principal place of business, shall keep and maintain the following books and records for a period of three years:
 - (1) Financial documents of the investment adviser which shall include:
 - (a) Journals and ledgers tracking income and expenses of the investment adviser. These documents must be continually maintained to within thirty days of current.
 - (b) Trial balances, financial statements, and internal audit papers.

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- (c) Checkbooks and statements on any type of account on which the investment adviser has check-writing privileges.
 - (d) Statements regarding any account of the investment adviser with any insurance company, broker-dealer, investment adviser, federal covered adviser, or financial institution.
- (2) A file which contains copies of all incoming and outgoing correspondence between the investment adviser or its representative and any of its customers, prospective customers, or former customers.
 - (3) A file containing a copy of each customer complaint against the investment adviser or a representative of the investment adviser.
 - (4) A file containing all advertisements used by the investment adviser or a representative of the investment adviser. To the extent that past performance of the investment adviser is used in advertising materials, the investment adviser shall maintain all accounts, records, and internal working papers that form the basis of the performance of the investment adviser.
 - (5) Copies of all contracts between the investment adviser and its customers.
 - (6) A manual regarding the supervisory procedures of the investment adviser, unless the investment adviser is wholly owned by the only representative of the investment adviser and the investment adviser has no employees.
 - (7) With respect to discretionary accounts:
 - (a) A list of all discretionary accounts.
 - (b) A file containing all discretionary trading agreements.
 - (c) A list of all trades that were conducted on a discretionary basis.
 - (8) All records created by the investment adviser or provided by a client or prospective client of an investment adviser regarding the financial condition of the client or prospective client.
 - (9) Records tracking all securities purchased by or advice provided by the investment adviser and the payment for the services if any. These records shall disclose whether the investment adviser or the investment adviser representative had any direct or indirect beneficial interest in the investment involved.
 - (10) ~~An updated~~ A copy of part H2 of the form ADV, annually updated and filed with the department, and a summary of all material updates changes to the same part 1 and part 2 of form ADV, as required to be filed with the department within ninety days of the material change.
 - (11) A list of all parties to whom referral fees have been paid and the amount of money paid to each such person.

- (12) A listrecord containing the date of receipt and date of transmission of each customer checkfunds provided to the investment adviser for the purpose of deposit with the custodian of the investment adviser. Copies of each of the any checks or electronic transfer instructions. must be maintained with the listrecord.

All records required to be maintained pursuant to subdivision a or b must be preserved as set forth in the rules or regulations of the jurisdiction originating the recordkeeping requirement. The commissioner may by rule enhance or waive the requirements of this subsection.

It is a violation of this subsection for any person who is registered, required to be registered, or is affiliated with or employed by any such entity, to create or cause to be created any record discussed in this subsection, if such record contains a material misstatement or misrepresentation regarding a customer or a customer's investments and the person knew or should have known of the falsity of the information or acted in reckless disregard of the truthfulness of the information.

2. Every registered broker-dealer, agent, investment adviser, and investment adviser representative shall file such financial reports as the commissioner prescribes by rule.
3. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.
4. All the records of any registered person are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or outside this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, if deemed practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or any other jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business, and in so cooperating may share any information obtained as a result of any investigation or examination.
5. The commissioner and the commissioner's representatives may copy records or require a registrant to copy records and provide the copies to the commissioner and the commissioner's representatives to the extent and in a manner reasonable under the circumstances.

SECTION 7. AMENDMENT. Subsection 1 of section 10-04-16 of the North Dakota Century Code is amended and reenacted as follows:

1. Issue any order, including cease and desist, rescission, stop, and suspension orders, which the commissioner deems necessary or appropriate in the public interest or for the protection of investors. An order of the commissioner is effective upon issuance. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty against any person found in an administrative action to have violated any

provision of this chapter, or any rule or order adopted or issued under this chapter, in an amount not to exceed ten thousand dollars for each violation. The commissioner may bring actions to recover penalties pursuant to this section in district court. A person aggrieved by an order issued pursuant to this subsection may request a hearing before the commissioner if a written request is made within fifteen days after receipt of the order. If a request for hearing is made under this subsection, the commissioner shall schedule a hearing within a reasonable time. Subsections 3 and 4 of section 10-04-12 apply to any hearing conducted under this subsection. If, after a hearing, the commissioner sustains an order previously issued, the sustaining order is subject to appeal to the district court of Burleigh County according to the procedures set forth in chapter 28-32. Any order issued under this subsection is a final order if it is properly served and no hearing was requested within the required timeline. If an order issued under this subsection is sustained or modified after a hearing held in accordance with section 10-04-12, the order sustaining or modifying that order is a final order. If the final order is not appealed in accordance with the procedures set forth in chapter 28-32 or if the final order is sustained on appeal, the securities department may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

SECTION 8. AMENDMENT. Subsection 1 of section 10-04-16.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The department may:
 - a. Make such public or private investigations within or outside of this state as deemed necessary to determine whether any person has violated, is violating, or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.
 - (1) For the purposes of this section, an investigation may include an examination of the books and records of any person registered under the provisions of this chapter. In the discretion of the commissioner, the expense reasonably attributed to an investigation under this section must be paid by the broker-dealer, agent, investment adviser, or investment adviser representative whose affairs are investigated.
 - (2) No person is liable to a broker-dealer, agent, investment adviser, federal covered adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required or requested by the securities department pursuant to this subsection or required to be maintained under section 10-04-10.3, unless the person knew, or should have known at the time the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.
 - (3) Professional services contracted and rendered under this section are exempt from chapter 54-44.4.
 - b. Require or permit any person to file a statement in writing, under oath or otherwise, as to all the facts and circumstances concerning the matter to be investigated.

- c. Publish information concerning any violation of this chapter or any rule or order hereunder and may keep confidential the information or documents obtained or prepared in the course of any investigation conducted under this section but only during an active and ongoing investigation. If an investigation under this section extends beyond six months, the commissioner shall, upon a request by any party, state in writing that the need for confidentiality still exists, the general reason why the need exists, and the date, as can best be determined at the time, when the need for confidentiality will cease.

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 102

HOUSE BILL NO. 1371

(Representatives Thomas, D. Anderson, Fisher, Hagert, Headland, Lefor)
(Senators Conley, Hogue, Luick, Wanzek)

AN ACT to create and enact four new sections to chapter 10-06.1 of the North Dakota Century Code, relating to authorized livestock farm corporation and authorized livestock farm limited liability company requirements, and initial and annual reporting requirements for authorized livestock farm corporations, and authorized livestock farm limited liability companies; to amend and reenact sections 10-06.1-01, 10-06.1-02, 10-06.1-03, 10-06.1-04, 10-06.1-05, 10-06.1-06, 10-06.1-07, and 10-06.1-08, subsection 1 of section 10-06.1-09, and sections 10-06.1-10, 10-06.1-11, 10-06.1-12, 10-06.1-13, 10-06.1-14, 10-06.1-15, 10-06.1-16, 10-06.1-17, 10-06.1-18, 10-06.1-19, 10-06.1-20, 10-06.1-21, 10-06.1-22, 10-06.1-23, 10-06.1-24, 10-06.1-25, 10-06.1-26, and 10-06.1-27 of the North Dakota Century Code, relating to agricultural definitions, ownership exceptions for beekeeping, agriculture support services, livestock backgrounding and feedlot operations, raising or producing of livestock by persons that have limited landholdings, and required reporting for corporate farming; to provide a penalty; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-01. Definitions.

For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Agricultural support services" means the business of providing aerial or surface application services for others of seed, fertilizer, pesticides, or soil amendments, or the business of custom harvesting.
2. "Aquaculture" means the breeding, growing, or harvesting of fish or the growing of aquatic plants or crops.
3. "Authorized livestock farm corporation" means a corporation, joint-stock company or association formed for livestock backgrounding, livestock finishing, or the production of poultry or poultry products, milk or dairy products, or swine or swine products which is allowed to engage in the business of farming or ranching under section 13 of this Act, which, at all times, complies with the requirements of this chapter.
4. "Authorized livestock farm limited liability company" means a limited liability company formed for livestock backgrounding, livestock finishing, or the production of poultry or poultry products, milk or dairy products, or swine or swine products which is allowed to engage in the business of farming or ranching under section 13 of this Act, which, at all times, complies with the requirements of this chapter.

5. "Beekeeping" means the breeding or rearing of bee colonies or the owning, maintenance, or management of bee apiaries.
6. "Custom harvesting" means the business of providing crop harvesting services for others.
7.
 - a. "Farming or ranching" means cultivating land for production of agricultural crops or livestock, or the raising or producing of agricultural crops, fruit, horticultural products, or livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. It or livestock backgrounding, or livestock finishing.
 - b. The term does not include:
 - (1) Agricultural support services;
 - (2) Aquaculture or greenhouse agriculture by a person that has farmland or ranchland holdings not exceeding forty acres [16.19 hectares];
 - (3) Beekeeping;
 - (4) The production of timber or forest products, the;
 - (5) The growing or processing of marijuana under chapter 19-24.1; or a
 - (6) A contract whereby under which a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.
- 2-8. "Farming or ranching corporation" means a farm or ranch corporation, joint-stock company, or association which is allowed to engage in the business of farming or ranching under section 10-06.1-12, which, at all times, complies with the requirements of this chapter.
- 3-9. "Farming or ranching limited liability company" means a farm or ranch limited liability company which is allowed to engage in the business of farming or ranching under section 10-06.1-12, which, at all times, complies with the requirements of this chapter.
10. "Farmland or ranchland" means agricultural land in this state used for farming or ranching.
11. "Greenhouse agriculture" means the growing of plants or crops primarily under a controlled environment in a sheltered structure with walls and a roof, both made primarily of transparent or translucent material.
- 4-12. "Livestock" includes beef cattle, dairy cattle, elk, bison, poultry, swine, sheep, goats, llamas, and alpacas.
13. "Livestock backgrounding" means the feeding or growing of livestock from weaning until the livestock enter a livestock finishing feedlot or facility.
14. "Livestock finishing" means the feeding or growing of livestock for the purpose of expeditiously preparing the livestock for harvest.

15. "Nonprofit organization" means an organization or trust that has tax-exempt status under at least one of the following sections of the Internal Revenue Code:

- a. An organization that was in existence on December 31, 1984, and that is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals under section 501(c)(3), or is a domestic fraternal organization under section 501(c)(10).
- b. A charitable, religious, educational, or scientific organization classified as either a private foundation or as a public charity having status as an organization described in section 509(a)(1) or (3).
- c. A trust described in section 4947 for which a deduction is allowable under section 170.

5-16. "Operating the farm or ranch" means engaging in personal labor or management activities on or off the farm or ranch, which contribute to the farm or ranch operations.

SECTION 2. AMENDMENT. Section 10-06.1-02 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-02. Farming or ranching by corporations and limited liability companies prohibited.

1. All corporations and limited liability companies, except as otherwise provided in this chapter, are prohibited from owning or leasing ~~land used for farming or ranching farmland or ranchland~~ and from engaging in the business of farming or ranching.
2. A corporation or a limited liability company may be a partner in a partnership that ~~is under title 45 which owns or leases farmland or ranchland or engages in the business of farming or ranching~~ only if that corporation or limited liability company complies with this chapter.
3. Notwithstanding any other provision of law, an authorized livestock farm corporation or authorized livestock farm limited liability company may not be a partner in a partnership under title 45 which owns or leases farmland or ranchland or engages in the business of farming or ranching.

SECTION 3. AMENDMENT. Section 10-06.1-03 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-03. Retention of mineral interests prohibited.

For land and minerals acquired after July 1, 1985, any corporation or limited liability company that acquires mineral interests through foreclosure or in lieu of foreclosure which were not specifically valued at the time the security interest in the minerals was acquired, and which is prohibited from owning or leasing ~~land used in farming or ranching farmland or ranchland~~, is prohibited from retaining mineral interests in ~~land used for farming or ranching farmland or ranchland~~ when the corporation or limited liability company divests itself of the land, and the mineral interests must be passed with the surface estate of the land when the corporation or limited liability company divests itself of the land under this chapter.

SECTION 4. AMENDMENT. Section 10-06.1-04 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-04. Conversion of corporations.

1. A business corporation regulated under chapter 10-19.1 may convert to a farming or ranching corporation or an authorized livestock farm corporation by adopting an amendment to its articles of incorporation or by applying for an amended certificate of authority which specifies that the corporation elects to be subject to this chapter and by complying with all requirements of this chapter. The amendment must be filed with the secretary of state with the prescribed fee and with the initial report required by section 10-06.1-15 or section 18 of this Act.
2. A farming or ranching corporation or an authorized livestock farm corporation may convert to a business corporation by adopting an amendment to its articles of incorporation or by applying for an amended certificate of authority. The amendment must be filed with the secretary of state with the prescribed fee. The amendment must be accompanied by a report outlining the information, as of the date of the amendment, which is required under section 10-06.1-17 or section 21 of this Act, and the manner in which the corporation has divested itself of its owned or leased land holdings and its business of farming or ranching.

SECTION 5. AMENDMENT. Section 10-06.1-05 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-05. Conversion of limited liability company.

1. A business limited liability company regulated under chapter 10-32.1 may convert to a farming or ranching limited liability company or an authorized livestock farm limited liability company by adopting an amendment to its articles of organization or by applying for an amended certificate of authority which specifies that the limited liability company elects to be subject to this chapter and by complying with all requirements of this chapter. The amendment must be filed with the secretary of state with the prescribed fee and with the initial report required by section 10-06.1-15 or section 18 of this Act.
2. A farming or ranching limited liability company or an authorized livestock farm limited liability company may convert to a business limited liability company by adopting an amendment to its articles of organization or by applying for an amended certificate of authority. The amendment must be filed with the secretary of state with the prescribed fee. The amendment must be accompanied by a report outlining the information, as of the date of the amendment, which is required under section 10-06.1-17 or section 21 of this Act, and the manner in which the limited liability company has divested itself of its owned or leased land holdings and its business of farming or ranching.

SECTION 6. AMENDMENT. Section 10-06.1-06 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-06. Surface coal mining - Exception.

A corporation or limited liability company not engaged in the business of farming or ranching may own or lease ~~lands used for farming or ranching~~ farmland or

~~ranchland~~, when the business of ~~such a~~the corporation or limited liability company is the conducting of surface coal mining operations or related energy conversion, and when the owning or leasing of ~~lands used for farming or ranching~~farmland or ranchland is reasonably necessary in the conduct of the business of surface coal mining or related energy conversion. When the necessity for owning or leasing of ~~lands used for farming or ranching~~farmland or ranchland no longer exists, the exception provided in this section ceases and the corporation or limited liability company owning or leasing ~~such~~the lands is subject to this chapter.

SECTION 7. AMENDMENT. Section 10-06.1-07 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-07. Industrial and business purpose exception- ~~Exception.~~

A corporation or limited liability company that is not engaged in the business of farming or ranching may own or lease ~~land used for farming or ranching~~farmland or ranchland when the land is necessary for residential or commercial development; the siting of buildings, plants, facilities, industrial parks, or similar business or industrial purposes of the corporation or limited liability company; or for uses supportive of or ancillary to adjacent ~~nonagricultural land that is not~~ farmland or ranchland for the benefit of both land parcels. The farmland or ranchland while not being immediately used for any purpose of the corporation or limited liability company must be available to be leased by persons who farm or ranch as sole proprietorships or partnerships, or by farming or ranching corporations or farming or ranching limited liability companies ~~allowed to engage in farming or ranching under section 10-06.1-12.~~

SECTION 8. AMENDMENT. Section 10-06.1-08 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-08. Cooperative corporations allowed to engage in the business of farming or ranching - Requirements.

This chapter does not prohibit cooperative corporations, seventy-five percent of whose members or shareholders are actual farmers or ranchers residing on farms or ranches or depending principally on farming or ranching for their livelihood, from acquiring ~~real estate~~farmland or ranchland and engaging in the business of cooperative farming or ranching.

SECTION 9. AMENDMENT. Subsection 1 of section 10-06.1-09 of the North Dakota Century Code is amended and reenacted as follows:

1. A nonprofit organization or a trust for the benefit of an individual or a class of individuals related within the degrees of kinship specified in subsection 2 of section 10-06.1-12 may own or lease farmland or ranchland if that land is leased to a person who farms or ranches the land as a sole proprietorship or partnership, or a farming or ranching corporation or a farming or ranching limited liability company ~~allowed to engage in farming or ranching under section 10-06.1-12.~~

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

10-06.1-10. Acquisition of certain farmland or ranchland by certain nonprofit organizations.

A nonprofit organization may acquire farmland or ranchland only in accordance with the following:

1. Unless it is permitted to own or lease farmland or ranchland under section 10-06.1-09, the nonprofit organization must have been either incorporated in this state or issued a certificate of authority to do business in this state before January 1, 1985, or, before January 1, 1987, have been incorporated in this state if the nonprofit organization was created or authorized under Public Law No. 99-294 [100 Stat. 418]. A nonprofit organization created or authorized under Public Law No. 99-294 [100 Stat. 418] may acquire no more than twelve thousand acres [4856.228 hectares] of land from interest derived from state, federal, and private sources held in its trust fund.
2. The ~~land~~ farmland or ranchland may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:
 - a. The land must be maintained and managed for the purpose of conserving natural area and habitat for biota.
 - b. Any agricultural use of the land is in accordance with the management of the land for conservation and agricultural use, and is by a sole proprietorship or partnership, or a farming or ranching corporation or a farming or ranching limited liability company ~~allowed to engage in farming or ranching under section 10-06.1-12.~~
 - c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.
 - d. The nonprofit organization must fully comply with all state laws relating to the control of noxious and other weeds and insects.
 - e. The nonprofit organization must make payments in lieu of property taxes on the property, calculated in the same manner as if the property was subject to full assessment and levy of property taxes.
 - f. All property subject to valuation must be assessed for the purpose of making the payments under subdivision e in the same manner as other real property in this state is assessed for tax purposes. Before June thirtieth of each year, the county auditor of any county in which property subject to valuation is located shall give written notice to the nonprofit organization and the tax commissioner of the value placed by the county board of equalization upon each parcel of property subject to valuation in the county.
3. a. Before farmland or ranchland may be purchased by a nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition.
 - b. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to the agriculture commissioner who shall convene an advisory committee consisting of the director of the parks and recreation department, the agriculture commissioner, the state forester, the director of the game and fish department, the president of the North Dakota farmers union, the president of the North Dakota farm bureau, the president of the North Dakota stockmen's association, and the chairman of the county commission of any county affected by the acquisition, or their designees.

- c. The advisory committee shall hold a public hearing with the board of county commissioners concerning the proposed acquisition plan and shall make recommendations to the governor within forty-five days after receipt of the proposed acquisition plan.
 - d. The governor shall approve or disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.
4. Land acquired in accordance with this section may not be conveyed to the United States or any agency or instrumentality of the United States.
 5. On failure to qualify to continue ownership under subsection 2, the land must be disposed of within five years of that failure to qualify.

SECTION 11. AMENDMENT. Section 10-06.1-11 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-11. Required nonprofit organization divestiture of agricultural landfarmland or ranchland.

In addition to the divestiture requirements of sections 10-06.1-10 and 10-06.1-24, a nonprofit ~~corporation~~organization that acquires ~~landfarmland or ranchland~~ by gift or devise after December 31, 1984, the ownership of which is not permitted under this chapter, shall divest itself of the land within ten years after the acquisition. For purposes of this section, "ownership" means holding either fee or equitable title, unless fee title is held solely as security for payment of the purchase price, or unless fee title does not carry with it the right to immediate possession of the property. If the ~~corporation~~organization fails to divest itself of the land within the required time, the attorney general shall take action under section 10-06.1-24.

SECTION 12. AMENDMENT. Section 10-06.1-12 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-12. ~~Corporation~~Farming or ranching corporation or farming or ranching limited liability company allowed to engage in the business of farming or ranching - Requirements.

This chapter does not prohibit a farming or ranching corporation or a farming or ranching limited liability company from owning ~~real estate~~or leasing farmland or ranchland and engaging in the business of farming or ranching, if the corporation meets all the requirements of chapter 10-19.1 or the limited liability company meets all the requirements of chapter 10-32.1 which are not inconsistent with this chapter. The following requirements also apply:

1.
 - a. If a farming or ranching corporation, the corporation must not have more than fifteen shareholders.
 - b. If a farming or ranching limited liability company, the limited liability company must not have more than fifteen members.
2. Each shareholder or member must be related to each of the other shareholders or members within one of the following degrees of kinship or affinity: parent, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, great-grandparent,

great-grandchild, first cousin, second cousin, or the spouse or surviving spouse of a person so related.

3. Each shareholder or member must be an individual or one of the following:
 - a. A trust for the benefit of an individual or a class of individuals who are related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.
 - b. An estate of a decedent who was related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.
4. A trust or an estate may not be a shareholder or member if the beneficiaries of the trust or the estate together with the other shareholders or members are more than fifteen in number.
5. Each individual who is a shareholder or member must be a citizen of the United States or a permanent resident alien of the United States.
6.
 - a. If a farming or ranching corporation, the officers and directors of the corporation must be shareholders who are actively engaged in operating the farm or ranch ~~and at least one of the corporation's shareholders must be an individual residing on or operating the farm or ranch.~~
 - b. If a farming or ranching limited liability company, the governors and managers, and members authorized under a statement of authority of the limited liability company must be members who are actively engaged in operating the farm or ranch ~~and at least one of its members must be an individual residing on or operating the farm or ranch.~~
7. An annual average of at least sixty-five percent of the gross income of the farming or ranching corporation or farming or ranching limited liability company over the previous five years, or for each year of its existence, if less than five years, must have been derived from engaging in the business of farming or ranching operations.
8. The income of the farming or ranching corporation or farming or ranching limited liability company from nonfarm rent, nonfarm royalties, dividends, interest, and annuities cannot exceed twenty percent of the gross income of the corporation or limited liability company.
9. The farming or ranching corporation or farming or ranching limited liability company must own or lease farmland or rangeland ~~in this state~~.

SECTION 13. A new section to chapter 10-06.1 of the North Dakota Century Code is created and enacted as follows:

Authorized livestock farm corporation or authorized livestock farm limited liability company allowed to engage in the business of farming or ranching - Requirements.

This chapter does not prohibit an authorized livestock farm corporation or an authorized livestock farm limited liability company from owning or leasing farmland or rangeland and engaging in the business of farming or ranching if the authorized

livestock farm corporation meets all the requirements of chapter 10-19.1 or the authorized livestock farm limited liability company meets all the requirements of chapter 10-32.1 which are not inconsistent with this chapter. The following requirements also apply:

1.
 - a. If an authorized livestock farm corporation, the corporation may not have more than ten shareholders.
 - b. If an authorized livestock farm limited liability company, the limited liability company may not have more than ten members.
2.
 - a. If an authorized livestock farm corporation, shareholders holding seventy-five percent or more of the shares entitled to vote and the shares entitled to distributions must be individuals who are actively engaged in the business of farming or ranching, farming or ranching corporations, or farming or ranching limited liability companies.
 - b. If an authorized livestock farm limited liability company, members holding fifty-one percent or more of interests entitled to vote and interests entitled to distributions in the limited liability company must be individuals who are actively engaged in the business of farming or ranching, farming or ranching corporations, or farming or ranching limited liability companies.
3.
 - a. If an authorized livestock farm corporation:
 - (1) All shareholders who are individuals must be citizens of the United States, permanent resident aliens of the United States, or an authorized individual under section 47-10.1-02.
 - (2) All shareholders that are persons otherwise eligible under this chapter, and any controlling individual or entity of the person, must be organized in the United States and one hundred percent of the stock must be owned by citizens of the United States, permanent resident aliens of the United States, or an authorized individual under section 47-10.1-02.
 - b. If an authorized livestock farm limited liability company:
 - (1) All members who are individuals must be citizens of the United States, permanent resident aliens of the United States, or an authorized individual under section 47-10.1-02.
 - (2) All members that are persons otherwise eligible under this chapter, and any controlling individual or entity of the person, must be organized in the United States and one hundred percent of the interests must be owned by citizens of the United States, permanent resident aliens of the United States, or an authorized individual under section 47-10.1-02.
4. The authorized livestock farm corporation or authorized livestock farm limited liability company may not own, lease, or otherwise have an interest in more than one hundred sixty acres [64.75 hectares] of farmland or ranchland.
5.
 - a. If an authorized livestock farm corporation, none of its shareholders may hold direct or indirect interests in other authorized livestock farm corporations or in authorized livestock farm limited liability companies that

- in combination with the corporation own, lease, or otherwise have an interest in more than six hundred forty acres [259 hectares] of farmland or ranchland.
- b. If an authorized livestock farm limited liability company, none of its members may hold direct or indirect interests in other authorized livestock farm limited liability companies or in other authorized livestock farm corporations that in combination with the limited liability company own, lease, or otherwise have an interest in more than six hundred forty acres [259 hectares] of farmland or ranchland.
 - c. This section does not restrict the number of acres [hectares] of farmland or ranchland directly owned or leased by shareholders or members who are individuals, farming or ranching corporations, farming or ranching limited liability companies, or partnerships that meet the requirements of subsection 2 of section 10-06.1-02.
6. a. If an authorized livestock farm corporation, the officers and directors of the corporation must be shareholders who are individuals and who are actively engaged in operating the corporation.

b. If an authorized livestock farm limited liability company, the governors, managers, and members authorized under a statement of authority, must be members who are individuals and who are actively engaged in operating the limited liability company.
 7. An annual average of at least sixty-five percent of the gross income of the authorized livestock farm corporation or authorized livestock farm limited liability company over the previous five years, or for each year of its existence, if less than five years, must have been derived from livestock backgrounding, livestock finishing, or the production of poultry or poultry products, milk or dairy products, or swine or swine products.
 8. The income of the authorized livestock farm corporation or authorized livestock farm limited liability company from nonfarm rent, nonfarm royalties, dividends, interest, and annuities may not exceed twenty percent of the gross income of the authorized livestock farm corporation or authorized livestock farm limited liability company.
 9. The authorized livestock farm corporation or authorized livestock farm limited liability company may not engage in the production of crops or the grazing of livestock on farmland or ranchland.
 10. If the authorized livestock farm corporation or authorized livestock farm limited liability company is intended to primarily comprise an animal feeding operation or concentrated animal feeding operation on farmland or ranchland, the corporation or limited liability company must:

 - a. Begin construction of the facilities used in the animal feeding operation or concentrated animal feeding operation within one year of obtaining the agricultural landholding; and
 - b. Have a fully operational animal feeding operation or concentrated animal feeding operation within six years of obtaining the farmland or ranchland.

11. An authorized livestock farm corporation or limited liability company violating this section, or which is inactive for three consecutive years as determined by the agriculture commissioner, is subject to the divestment provisions of section 10-06.1-24.

SECTION 14. AMENDMENT. Section 10-06.1-13 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-13. Applicability of North Dakota Business Corporation Act.

Chapter 10-19.1 is applicable to farming or ranching corporations and authorized livestock farm corporations, which have the powers and privileges and are subject to the duties, restrictions, and liabilities of other business corporations except when inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with the provisions of chapter 10-19.1.

⁶⁸ **SECTION 15. AMENDMENT.** Section 10-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-14. Applicability of North Dakota limited liability company laws.

Chapter 10-32.1, ~~except those sections which pertain to foreign limited liability companies,~~ is applicable to farming or ranching limited liability companies and authorized livestock farm limited liability companies, which have the powers and privileges and are subject to the duties, restrictions, and liabilities of other business limited liability companies, except when inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with the provisions of chapter 10-32.1.

SECTION 16. AMENDMENT. Section 10-06.1-15 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-15. Initial report - ~~Shareholder~~Farming or ranching corporation shareholder and farming or ranching limited liability member requirements.

1. Every farming or ranching corporation or farming or ranching limited liability company shall file an initial report with its articles of incorporation, articles of organization, or certificate of authority. The report must be signed by the incorporators or organizers or, in the case of a certificate of authority, an authorized person, and must contain the following:
 - a. The name of the farming or ranching corporation or farming or ranching limited liability company.
 - b. With respect to each shareholder or member:
 - (1) The name and address of each, including the names and addresses and relationships of trusts and estates that own shares or membership interests;
 - (2) The number of shares or membership interests or percentage of shares or membership interests owned by each;
 - (3) The relationship of each;

⁶⁸ Section 10-06.1-14 was also amended by section 1 of House Bill No. 1084, chapter 103.

- (4) A statement of whether each is a citizen or permanent resident alien of the United States; and
- (5) A statement of whether each will be actively engaged in operating the farm or ranch ~~and whether each will reside on the farm or ranch.~~
- c. With respect to management:
- (1) If a farming or ranching corporation, ~~then~~ the names and addresses of the officers and members of the board of directors; or
- (2) If a farming or ranching limited liability company, ~~then~~ the names and addresses of the managers, members authorized under a statement of authority, and members of the board of governors.
- d. If the purchase or lease of farmland or ranchland is final at the time of the initial report, a statement listing the acreage [hectarage] and location listed by section, township, range, and county of all ~~land in the state~~ farmland or ranchland owned or leased by the farming or ranching corporation or farming or ranching limited liability company ~~and used for farming or ranching.~~ If the purchase or lease of farmland or ranchland is not yet final at the time of the initial report, a statement that there is a bona fide and imminent intent and a plan to purchase or lease farmland or ranchland ~~in the state.~~
- e. A statement that at least sixty-five percent of the gross income of the farming or ranching corporation or farming or ranching limited liability company will be derived from engaging in the business of farming or ranching operations, and that twenty percent or less of the gross income of the corporation or limited liability company will be from nonfarm rent, nonfarm royalties, dividends, interest, and annuities.
2. A farming or ranching corporation or a farming or ranching limited liability company may not commence farming or ranching in this state until the secretary of state has received and filed the articles of incorporation ~~or~~ articles of organization, or certificate of authority, and the initial report required ~~by~~ under this section.
3. The farming or ranching corporation or farming or ranching limited liability company shall furnish to the official county newspaper of each county or counties in which ~~any land~~ farmland or ranchland is owned or leased by the corporation or limited liability company a legal notice reporting the following:
- a. The name of the farming or ranching corporation or farming or ranching limited liability company and its shareholders or members as listed in the initial report.
- b. A statement ~~to the effect that the~~ farming or ranching corporation or farming or ranching limited liability company has reported that it owns or leases ~~land used for farming or ranching~~ farmland or ranchland in the county and that a description of that land is available for inspection at the ~~secretary of state's office~~ office of the secretary of state.

SECTION 17. A new section to chapter 10-06.1 of the North Dakota Century Code is created and enacted as follows:

Applicability of restriction on alien ownership of land.

The provisions of chapter 47-10.1 take precedence in the event of any conflict with this chapter.

SECTION 18. A new section to chapter 10-06.1 of the North Dakota Century Code is created and enacted as follows:

Initial report - Authorized livestock farm corporation shareholder and authorized livestock farm limited liability company member requirements.

1. Every authorized livestock farm corporation or authorized livestock farm limited liability company shall file an initial report with its articles of incorporation, articles of organization, or certificate of authority. The report must be signed by the incorporators or organizers, or in the case of a certificate of authority, an authorized person, and must contain the following:
 - a. The name of the authorized livestock farm corporation or authorized livestock farm limited liability company.
 - b. With respect to each shareholder or member:
 - (1) The name and address of each;
 - (2) If a person other than an individual, the state of incorporation, organization, or domicile;
 - (3) The number of shares or membership interests or percentage of shares or membership interests of each;
 - (4) Each person's percentage of total shares entitled to vote or membership interests entitled to vote; and whether any voting agreement exists;
 - (5) Each person's percentage of total capital and financial interests;
 - (6) As to individuals, a statement of whether each is a citizen or permanent resident alien of the United States;
 - (7) As to individuals, a statement of whether each will be actively engaged in the business of farming or ranching; and
 - (8) As to a person other than an individual, a statement of whether the person, and any controlling person of the person, is incorporated in the United States and one hundred percent of the stock or interests is owned by citizens of the United States, permanent aliens of the United States, or individuals or persons in compliance with section 47-10.1-02.
 - c. With respect to management:
 - (1) If an authorized livestock farm corporation, the names and addresses of the officers and members of the board of directors, and a statement whether each will be actively engaged in the operation of the corporation; or

- (2) If an authorized livestock farm limited liability company, the names and addresses of the managers, members of the board of governors, and members authorized under a statement of authority, and a statement whether each will be actively engaged in the operation of the limited liability company.
- d. A statement that the authorized livestock farm corporation or authorized livestock farm limited liability company does not own, lease, or hold any interest in more than one hundred sixty acres [64.75 hectares] of farmland or ranchland.
- e. If the purchase or lease of farmland or ranchland is final at the time of the initial report, a statement listing the acreage [hectarage] and location listed by section, township, range, and county of all farmland or ranchland in which the authorized livestock farm corporation or authorized livestock farm limited liability company has an ownership, leasehold, or other interest. If the purchase or lease of farmland or ranchland is not final at the time of the initial report, a statement that there is a bona fide and imminent intent and a plan to purchase or lease farmland or ranchland.
- f. A statement that no shareholders or members hold a direct or indirect interest in other authorized livestock farm corporations or authorized livestock farm limited liability companies that in combination with the corporation or limited liability company own, lease, or hold any interest in more than six hundred forty acres [259 hectares] of farmland or ranchland. An interest disclosed under this subdivision does not include the number of acres of farmland or ranchland directly owned or leased by shareholders or members that are individuals, farming or ranching corporations, farming or ranching limited liability companies, or partnerships that meet the requirements of subsection 2 of section 10-06.1-02.
- g. A statement that at least sixty-five percent of the gross income of the authorized livestock farm corporation or authorized livestock farm limited liability company will be derived from authorized livestock farm operations, and that twenty percent or less of the gross income of the corporation or limited liability company will be from nonfarm rent, nonfarm royalties, dividends, interest, and annuities.
- h. A statement that the authorized livestock farm corporation or authorized livestock farm limited liability company will not engage in the production of crops or the grazing of livestock on farmland or ranchland.
- i. If the authorized livestock farm corporation facility or authorized livestock farm limited liability company facility is not operational, a statement as to the planned date of the commencement of facility operations.
2. An authorized livestock farm corporation or authorized livestock farm limited liability company may not commence farming or ranching in this state until the secretary of state has received and filed the initial report required by this section and the articles of incorporation, articles of organization, or certificate of authority.
3. The authorized livestock farm corporation or authorized livestock farm limited liability company shall furnish to the official county newspaper of each county

in which it has an interest in farmland or ranchland a legal notice reporting the following:

- a. The name of the authorized livestock farm corporation or authorized livestock farm limited liability company and its shareholders or members as listed in the initial report.
- b. A statement that the authorized livestock farm corporation or authorized livestock farm limited liability company has reported that it holds an interest in farmland or ranchland in the county, the use of the land, and that a description of that land is available for inspection at the office of the secretary of state.
- c. A statement that each of the shareholders of the authorized livestock farm corporation or members of the authorized livestock farm limited liability company do not hold a direct or indirect interest in authorized livestock farm corporations or authorized livestock farm limited liability companies that in aggregate, own, lease, or otherwise hold an interest in more than six hundred forty acres [259 hectares] of farmland or ranchland. An interest disclosed under this subdivision does not include the number of acres of farmland or ranchland directly owned or leased by shareholders or members that are individuals, farming or ranching corporations, farming or ranching limited liability companies, or partnerships that meet the requirements of subsection 2 of section 10-06.1-02.

SECTION 19. AMENDMENT. Section 10-06.1-16 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-16. Share and membership interest transfer records.

1. a. Every corporation owning or leasing ~~land used for farming or ranching~~ farmland or ranchland or engaged in the business of farming or ranching ~~after June 30, 1981~~, shall keep a record of transfers of shares or transfers of interests in the corporation.
- b. Every limited liability company owning or leasing ~~land used for farming or ranching~~ farmland or ranchland or engaged in the business of farming or ranching shall keep a record of transfers of membership interests in the limited liability company.
2. a. If a corporation, the corporation's secretary shall cause to be recorded in the record all transfers of shares or transfers of interests among and between the corporation and its respective shareholders or holders of interest.
- b. If a limited liability company, the limited liability company's secretary shall cause to be recorded in the record all transfers of membership interests among and between the limited liability company and its respective members.
3. The record must contain at least the following: the names of the transferor and transferee, their relationship, the date of the transfer and, if a corporation, the number of shares or the percentage of interests transferred or, if a limited liability company, the number or percentage of membership interests transferred.

SECTION 20. AMENDMENT. Section 10-06.1-17 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-17. Annual report - Farming or ranching corporations and farming or ranching limited liability companies - Contents - Filing requirements.

1. Except for the first annual report, the annual report of a farming or ranching corporation engaged in farming or ranching after June 30, 1981, and/or a farming or ranching limited liability company engaged in the business of farming or ranching must be delivered to the secretary of state before April sixteenth of each year. The first annual report must be delivered before April sixteenth in the year following the calendar year of the effective date of the articles of incorporation, articles of organization, or certificate of authority.
2. The annual report must be signed as provided in subsection 58 of section 10-19.1-01 if a farming or ranching corporation and subsection 49 of section 10-32.1-02 if a farming or ranching limited liability company, and submitted on a form prescribed by the secretary of state. If the corporation or limited liability company is in the hands of a receiver or trustee, it the annual report must be signed on behalf of the corporation or limited liability company by the receiver or trustee.
3. An annual report of the farming or ranching corporation or the farming or ranching limited liability company must include the following information with respect to the preceding calendar year:
 4. a. The name of the farming or ranching corporation or farming or ranching limited liability company.
 2. b. The name of the registered agent of the farming or ranching corporation or farming or ranching limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the corporation or limited liability company in this state.
 3. c. With respect to each farming or ranching corporation:
 - a. (1) A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
 - b. (2) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
 4. d. With respect to each farming or ranching limited liability company:
 - (1) A statement of the aggregate membership interests the limited liability company has authority to issue, itemized by classes and series, if any, within a class.
 - (2) A statement of the aggregate membership interests, itemized by classes and series, if any, within a class.
 - e. With respect to each shareholder or member:

- a. (1) The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;
 - b. (2) The number of shares or membership interests or percentage of shares or membership interests owned by each;
 - e. (3) The relationship of each; and
 - d. (4) A statement of whether each is a citizen or permanent resident alien of the United States; and
 - e. ~~A statement of whether at least one is an individual residing on or operating the farm or ranch.~~
5. f. With respect to management:
- a. (1) If a farming or ranching corporation, ~~then~~ the name and address of each officer and member of the board of directors, and a statement of whether each is a shareholder actively engaged in operating the farm or ranch; or
 - b. (2) If a farming or ranching limited liability company, ~~then~~ the name and address of each manager and, member of the board of governors, and member authorized under a statement of authority, and a statement of whether each is a member actively engaged in operating the farm or ranch.
6. g. A statement providing the land description and listing the acreage [hectarage] and location listed by section, township, range, and county of all ~~land in the state~~farmland or ranchland owned or leased by the farming or ranching corporation or farming or ranching limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].
7. h. A statement of the percentage of the annual average gross income of the farming or ranching corporation or farming or ranching limited liability company which has been derived from engaging in the business of farming or ranching operations over the previous five years or for each year of existence if less than five years.
8. i. A statement of the percentage of gross income of the farming or ranching corporation or farming or ranching limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.
- 9.4. A farming or ranching corporation engaged in the business of farming or ranching which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-19.1, except that the penalties must be calculated from the date of the report required byunder this section.

10-5. A farming or ranching limited liability company engaged in the business of farming or ranching which fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-32.1, except that the penalties must be calculated from the date of the report required by under this section.

SECTION 21. A new section to chapter 10-06.1 of the North Dakota Century Code is created and enacted as follows:

Annual report - Authorized livestock farm corporations and authorized livestock farm limited liability companies - Contents - Filing requirements.

1. Except for the first annual report, the annual report of an authorized livestock farm corporation or authorized livestock farm limited liability company must be delivered to the secretary of state before April sixteenth of each year. The first annual report must be delivered before April sixteenth in the year following the calendar year of the effective date of the articles of incorporation, articles of organization, or certificate of authority.
2. The annual report must be signed as defined in subsection 58 of section 10-19.1-01 if an authorized livestock farm corporation and subsection 49 of section 10-32.1-02 if an authorized livestock farm limited liability company and submitted on a form prescribed by the secretary of state. If the authorized livestock farm corporation or authorized livestock farm limited liability company is in the hands of a receiver or trustee, the annual report must be signed on behalf of the authorized livestock farm corporation or authorized livestock farm limited liability company by the receiver or trustee.
3. An annual report of the authorized livestock farm corporation or the authorized livestock farm limited liability company must include the following information with respect to the preceding calendar year:
 - a. The name of the authorized livestock farm corporation or authorized livestock farm limited liability company.
 - b. The name of the registered agent of the authorized livestock farm corporation or authorized livestock farm limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, the address of the registered office of the authorized livestock farm corporation or authorized livestock farm limited liability company in this state.
 - c. With respect to each authorized livestock farm corporation:
 - (1) A statement of the aggregate number of shares the authorized livestock farm corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
 - (2) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.
 - d. With respect to each authorized livestock farm limited liability company:

- (1) A statement of the aggregate membership interests the authorized livestock farm limited liability company has authority to issue, itemized by classes and series, if any, within a class.
 - (2) A statement of the aggregate number of issued membership interests, itemized by classes and series, if any, within a class.
- e. With respect to each shareholder or member:
- (1) The name and address of each;
 - (2) If a person other than an individual, the state of incorporation, organization, or domicile;
 - (3) The number of shares or membership interests or percentage of shares or membership interests of each;
 - (4) Each person's percentage of total shares entitled to vote, or membership interests entitled to vote, and whether any voting agreement exists;
 - (5) Each person's percentage of total capital and financial interests;
 - (6) As to individuals, a statement of whether each is a citizen or permanent resident alien of the United States;
 - (7) As to individuals, a statement of whether each will be actively engaged in the business of farming or ranching; and
 - (8) As to persons other than an individual, a statement of whether the person, and any controlling person of the person, is incorporated or organized in the United States and one hundred percent of the stock or interests is owned by citizens of the United States, permanent resident aliens of the United States, or individuals or persons in compliance with section 47-10.1-02.
- f. With respect to management:
- (1) If an authorized livestock farm corporation, the names and addresses of the officers and members of the board of directors, and a statement whether each actively is engaged in the operation of the corporation; or
 - (2) If an authorized livestock farm limited liability company, the names and addresses of the managers and members of the board of governors, and a statement whether each actively is engaged in the operation of the limited liability company.
- g. A statement that the authorized livestock farm corporation or authorized livestock farm limited liability company does not own, lease, or hold any interest in more than one hundred sixty acres [64.75 hectares] of farmland or ranchland.
- h. A statement providing the farmland or ranchland description and listing the acreage [hectarage] and location listed by section, township, range, and

- county of all farmland or rangeland in which the authorized livestock farm corporation or authorized livestock farm limited liability company has an ownership, leasehold, or other interest.
- i. A statement that no shareholders or members hold a direct or indirect interest in other authorized livestock farm corporations or authorized livestock farm limited liability companies that in combination with the corporation or limited liability company own, lease, or hold any interest in more than six hundred forty acres [259 hectares] of farmland or rangeland. The interest disclosed under this subdivision does not include the number of acres [hectares] of farmland or rangeland directly owned or leased by shareholders or members who are individuals, farming or ranching corporations, farming or ranching limited liability companies, or partnerships that meet the requirements of subsection 2 of section 10-06.1-02.
 - j. A statement that the authorized livestock farm corporation or authorized livestock farm limited liability company does not engage in the production of crops or the grazing of livestock on farmland or rangeland.
 - k. The first date of livestock operations.
 - l. A statement of the percentage of the annual average gross income of the authorized livestock farm corporation or authorized livestock farm limited liability company which has been derived from authorized livestock farm operations over the previous five years or for each year of existence if less than five years.
 - m. A statement of the percentage of gross income of the authorized livestock farm corporation or authorized livestock farm limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.
4. An authorized livestock farm corporation engaged in authorized livestock farm operations that fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-19.1, except the penalties must be calculated from the date of the report required under this section.
 5. An authorized livestock farm limited liability company engaged in authorized livestock farm operations that fails to file an annual report is subject to the penalties for failure to file an annual report as provided in chapter 10-32.1, except the penalties must be calculated from the date of the report required under this section.

SECTION 22. AMENDMENT. Section 10-06.1-18 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-18. Reports of corporations and limited liability companies not engaged in farming or ranching.

Any business or nonprofit corporation and any, limited liability company, or nonprofit organization not engaged in the business of farming or ranching which owns or leases a tract of land used for farming or ranching farmland or rangeland which is larger than twenty acres [8.09 hectares] in size shall file with the attorney general, within twelve months of any transaction involving the purchase, sale, or surface

leasing of ~~such~~the farmland or ranchland by that corporation or limited liability company, a report containing all of the following information:

1. The name of the corporation or limited liability company and its place of incorporation or organization and, if a nonprofit ~~corporation~~organization, a copy of its section 501(c)(3) exemption letter from the internal revenue service.
2. The name of the registered agent of the corporation or limited liability company as provided in chapter 10-01.1 and, if a noncommercial registered agent, then the address of the noncommercial registered agent in this state.
3. The acreage [hectarage] and location listed by section, township, range, and county of all ~~such land in the state~~the farmland or ranchland owned or leased by the corporation or limited liability company ~~and used for farming or ranching.~~
4. The date and method of acquisition or disposal of ~~such~~the farmland or ranchland.

SECTION 23. AMENDMENT. Section 10-06.1-19 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-19. Exemption from certain disclosure and other requirements for certain organizations.

Sections 10-06.1-12, 10-06.1-15, ~~18 of this Act~~, 10-06.1-17, ~~21 of this Act~~, and 10-06.1-18 do not apply to nonprofit organizations or to corporations or limited liability companies such as banks, trust companies, or foundations serving in a fiduciary capacity as the personal representative or trustee of an estate or trust for an individual described in subsection 2 of section 10-06.1-12.

SECTION 24. AMENDMENT. Section 10-06.1-20 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-20. Failure to file report - Penalty.

Every corporation or limited liability company ~~which~~that willfully fails to file any report required under this chapter or willfully files false information on any report required under this chapter is guilty of a class A misdemeanor.

SECTION 25. AMENDMENT. Section 10-06.1-21 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-21. Secretary of state to transmit information of noncompliance.

If the secretary of state finds from the annual report that the corporation or limited liability company is not in compliance with the requirements of section 10-06.1-12 ~~or section 13 of this Act~~, the secretary of state shall transmit ~~such~~the information to the attorney general and the governor.

SECTION 26. AMENDMENT. Section 10-06.1-22 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-22. Tax commissioner to compare returns and reports.

Each year the tax commissioner shall select at random at least five percent of the income tax returns filed by corporations or limited liability companies which report on income from engaging in the business of farming or ranching operations and shall compare ~~such~~the returns with the annual report required to be filed with the secretary of state by section 10-06.1-17 and section 21 of this Act and shall forward any apparent violations to the attorney general and the governor.

SECTION 27. AMENDMENT. Section 10-06.1-23 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-23. Attorney general to conduct random compliance program.

Each year the attorney general shall select at random at least five percent of the total number of corporations and limited liability companies authorized by~~under~~ this chapter for requests for information to determine compliance with this chapter. For ~~such~~this purpose, the attorney general may request affidavits, share transfer records, certified copies of marriage licenses, birth certificates, deeds, leases, and ~~such~~ other records and documents necessary to determine compliance. The corporation or limited liability company shall comply with any request for information made under this section.

SECTION 28. AMENDMENT. Section 10-06.1-24 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-24. Enforcement - Penalty.

1. a. The recorder shall mail or deliver a copy of every instrument filed or recorded, within thirty days after the instrument is recorded, to the attorney general if the instrument documents evidence of a lease agreement or purchase agreement pursuant to subsection 6 or 7 or if the instrument conveys the title to farmland or rangeland to a corporation or limited liability company.
- b. The attorney general shall commence an action in the district court of the county in which the substantial portion of farmland or rangeland used in violation of this chapter is situated if the attorney general has reason to believe that any person is violating this chapter. The attorney general shall file for record with the recorder of each county in which any portion of the land is located a notice of the pendency of the action.
- c. If the court finds that the ~~land in question~~farmland or rangeland is being held in violation of this chapter, or that a corporation or limited liability company is ~~conducting~~engaging in the business of farming or ranching in violation of this chapter, the court shall enter an order ~~so declaring~~pursuant to the court's findings of fact and conclusions of law. The attorney general shall file ~~any such~~the order for record with the recorder of each county in which any portion of the land is located. Thereafter, the corporation or limited liability company shall, within the time set by the court not to exceed one year from the date of the court's final order, divest itself of ~~any farming or ranching land~~the farmland or rangeland owned or leased by it in violation of this chapter, and cease ~~at~~engaging in the business of farming or ranching operations.
- d. Except as otherwise provided in subsection 10, 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.

2. The divestment period is deemed to be a covenant running with the title to the ~~land~~farmland or ranchland 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 ~~de~~engage in the business of farming or ranching under this chapter.
3. Any ~~land~~farmland or ranchland 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~~farmland or ranchland 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~~farmland or ranchland 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 landfarmland or ranchland pending divestiture, and the holding is not otherwise governed by regulated under this section, the land must be leased to persons actually engaged in the business of 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.
11. Except as provided in subsection 10, any corporation or limited liability company continuing to violate this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved or terminated by the attorney general in accordance with the laws of this state.

SECTION 29. AMENDMENT. Section 10-06.1-25 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-25. Private enforcement.

This chapter may be enforced in the same manner as provided in section 10-06.1-24 by any corporation or limited liability company authorized to engage in the business of farming or ranching by under this chapter or any resident of legal age of a county in which the landfarmland or ranchland owned or leased by a corporation or limited liability company in violation of this chapter is located. ~~If such action is successful, all costs of the action must be assessed against the defendant and a reasonable attorney's fee must be allowed the plaintiff. If judgment is rendered for the defendant, such costs and a reasonable attorney's fee for the defendant must be paid by the plaintiff.~~ If an action is brought under this section, the district court must award to the prevailing party the actual costs and disbursements and reasonable attorney's fees.

SECTION 30. AMENDMENT. Section 10-06.1-26 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-26. Protection of minority shareholders.

1. If a shareholder owns less than fifty percent of the shares of a farming or ranching corporation or authorized livestock farm corporation doing engaged in the business of farming or ranching under this chapter, and if the terms and conditions for the repurchase of those shares by the corporation or by the other shareholders are not set forth in the bylaws or the instrument which transferred the shares to the shareholder, or are not the subject of a shareholders' agreement or an agreement between that shareholder and the corporation, then the disposition of such shares must be determined by this section upon the withdrawal of the shareholder.

2. Any shareholder who desires to withdraw from the farming or ranching corporation or authorized livestock farm corporation shall first offer the shares for sale to the remaining shareholders in proportion to the shares owned by them. If not all of the shareholders wish to purchase the shares, any one shareholder may purchase all of the shares of the withdrawing shareholder. If no shareholder desires to purchase the shares of a withdrawing shareholder, then the corporation may purchase the shares. If the corporation chooses not to purchase the shares of the withdrawing shareholder, then the withdrawing shareholder may sell the shares to any other person eligible to be a shareholder. If the withdrawing shareholder is unable to sell the shares to any other person eligible to become a shareholder, then the withdrawing shareholder may bring an action in district court to dissolve the corporation.
3. Upon a finding that the withdrawing shareholder cannot sell the shares at a fair price, the court shall enter an order directing that the farming or ranching corporation or authorized livestock farm corporation itself or any or all of the remaining shareholders pro rata or otherwise shall have twelve months from the date of the court's order to purchase the shares of the withdrawing shareholder at a fair price as determined by the court and that if the shares of the withdrawing shareholder are not completely purchased at said price, the corporation shall be dissolved and the assets of the corporation shall be first used to pay all the liabilities of the corporation with the remaining net assets to be distributed pro rata to the shareholders in proportion to their ownership of shares. For the purpose of this section, a fair price for the shares of the withdrawing shareholder must be determined as though the shares were being valued for federal gift tax purposes under the Internal Revenue Code.

SECTION 31. AMENDMENT. Section 10-06.1-27 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-27. Protection of minority members.

1. If a member owns less than fifty percent of the membership interest of a farming or ranching limited liability company or authorized livestock farm limited liability company doing engaged in the business of farming or ranching under this chapter and if the terms and conditions for the repurchase of that membership interest by the limited liability company or by the other members are not set forth in the bylaws, the instrument that transferred the membership interest to the member, or are not the subject of a member-control agreement or other agreement between that member and the limited liability company, the disposition of the membership interest must be determined by~~under~~ this section upon the withdrawal of the member.
2. Any member who desires to withdraw from the farming or ranching limited liability company or authorized livestock farm limited liability company shall first offer the membership interest for sale to the remaining members in proportion to the membership interests owned by the remaining members. If not all of the members wish to purchase the membership interest, any one member can purchase all of the membership interest of the withdrawing member. If no member desires to purchase the membership interest of the withdrawing member, the limited liability company may purchase the membership interest. If the limited liability company chooses not to purchase the membership interest of the withdrawing member, the withdrawing member may sell the membership interest to any other person eligible to be a member. If the withdrawing member is unable to sell the membership interest to any

other person eligible to become a member, the withdrawing member may bring an action in district court to terminate the limited liability company.

3. Upon a finding that the withdrawing member cannot sell the membership interest at a fair price, the court shall enter an order directing that the limited liability company or authorized livestock farm limited liability company itself or any of the remaining members pro rata or otherwise, have twelve months from the date of the court's order to purchase the membership interest of the withdrawing member at a fair price as determined by the court and that if the membership interest of the withdrawing member is not completely purchased at the fair price, the limited liability company must be dissolved and the assets of the limited liability company must be first used to pay all liabilities of the limited liability company with the remaining net assets to be distributed pro rata to the members in proportion to the member's membership interest ownership. For the purpose of this section, a fair price for the membership interest of the withdrawing member must be determined as though the membership interest was being valued for federal gift tax purposes under the Internal Revenue Code.

SECTION 32. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 28, 2023

Filed April 28, 2023

CHAPTER 103

HOUSE BILL NO. 1084

(Government and Veterans Affairs Committee)
(At the request of the Secretary of State)

AN ACT to amend and reenact section 10-06.1-14, subsection 1 of section 10-19.1-135, section 10-19.1-137, subsection 1 of section 10-19.1-140, subsection 2 of section 10-32.1-75, subsection 1 of section 10-32.1-77, subsection 1 of section 10-32.1-81, subsection 2 of section 10-33-128, section 10-33-130, and subsection 1 of section 10-33-133 of the North Dakota Century Code, relating to business filing requirements with the secretary of state.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁶⁹ **SECTION 1. AMENDMENT.** Section 10-06.1-14 of the North Dakota Century Code is amended and reenacted as follows:

10-06.1-14. Applicability of North Dakota limited liability company laws.

Chapter 10-32.1, ~~except those sections which pertain to foreign limited liability companies,~~ is applicable to farming or ranching limited liability companies, which have the powers and privileges and are subject to the duties, restrictions, and liabilities of other business limited liability companies, except when inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with the provisions of chapter 10-32.1.

SECTION 2. AMENDMENT. Subsection 1 of section 10-19.1-135 of the North Dakota Century Code is amended and reenacted as follows:

1. An applicant for a certificate shall file with the secretary of state an application executed by an authorized person on forms prescribed by the secretary of state and setting forth:
 - a. The name of the foreign corporation and, if different, the name under which it proposes to transact business in this state;
 - b. The jurisdiction of its incorporation;
 - c. The date of incorporation in the jurisdiction of its incorporation and the period of duration of the foreign corporation;
 - d. The address of the principal executive office of the foreign corporation;
 - e. The name of the registered agent of the foreign corporation as provided in chapter 10-01.1, and if a noncommercial registered agent, the address of such noncommercial registered agent in this state;

⁶⁹ Section 10-06.1-14 was also amended by section 15 of House Bill No. 1371, chapter 102.

- f. The purpose of the corporation which it proposes to pursue in transacting business in this state;
- g. The names and addresses of the directors and officers of the foreign corporation; and
- h. Any additional information deemed necessary or appropriate by the secretary of state to enable the secretary of state to determine whether the foreign corporation is entitled to a certificate of authority to transact business in this state.

SECTION 3. AMENDMENT. Section 10-19.1-137 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-137. Foreign corporation - Amendments to the certificate of authority.

If any statement in the application for a certificate of authority by a foreign corporation is false when made or the foreign corporation changes the foreign corporation's name or purposes sought in this state, the foreign corporation promptly shall file with the secretary of state an application for an amended certificate of authority executed by an authorized person on forms prescribed by the secretary of state correcting the statement and, in the case of a change in the foreign corporation's name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated.

1. In the case of a dissolution, a foreign corporation need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated.
2. A foreign corporation that changes the foreign corporation's name and applies for an amended certificate of authority, and is the owner of a service mark, trademark, or trade name, is a general partner named in a fictitious name certificate, is a general partner in a limited partnership or limited liability limited partnership, or is a managing partner in a limited liability partnership that is on file with the secretary of state, shall change the foreign corporation's name in each of the foregoing registrations that is applicable when the foreign corporation files an application for an amended certificate of authority.

SECTION 4. AMENDMENT. Subsection 1 of section 10-19.1-140 of the North Dakota Century Code is amended and reenacted as follows:

1. A foreign corporation authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign corporation shall file with the secretary of state an application for withdrawal, on forms prescribed by the secretary of state, together with the fees provided in section 10-19.1-147, which must set forth:
 - a. The name of the corporation and the state or country under the laws of which it is incorporated;
 - b. That the corporation is not transacting business in this state;

- c. That the corporation surrenders its authority to transact business in this state;
- d. That service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to transact business in this state may thereafter be made on such corporation as provided in section 10-01.1-13;
- e. A post-office address to which a person may mail a copy of any process against the corporation; and
- f. Any additional information necessary or appropriate to enable the secretary of state to determine and assess any unpaid fees payable by the foreign corporation.

SECTION 5. AMENDMENT. Subsection 2 of section 10-32.1-75 of the North Dakota Century Code is amended and reenacted as follows:

2. The application must be on forms prescribed by the secretary of state and accompanied by payment of the fees provided in section 10-32.1-92 together with a certificate of good standing or a certificate of existence duly authenticated by the organizing officer of the state or country where the foreign limited liability company is organized.

SECTION 6. AMENDMENT. Subsection 1 of section 10-32.1-77 of the North Dakota Century Code is amended and reenacted as follows:

1. If any statement in the application for a certificate of authority by a foreign limited liability company is false when made or if the foreign limited liability company changes the name of the foreign limited liability company or purposes sought in this state, then the foreign limited liability company promptly shall file with the secretary of state an application for an amended certificate of authority executed by an authorized person on forms prescribed by the secretary of state correcting the statement and in the case of a change in the name of the foreign limited liability company, a certificate to that effect authenticated by the proper officer of the state or country under the laws of which the foreign limited liability company is organized.

SECTION 7. AMENDMENT. Subsection 1 of section 10-32.1-81 of the North Dakota Century Code is amended and reenacted as follows:

1. A foreign limited liability company authorized to transact business in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign limited liability company shall file with the secretary of state an application for withdrawal, on forms prescribed by the secretary of state, together with the fees provided in section 10-32.1-92, which must set forth:
 - a. The name of the foreign limited liability company and the state or country under the laws of which it is organized;
 - b. That the foreign limited liability company is not transacting business in this state;
 - c. That the foreign limited liability company surrenders its authority to transact business in this state;

- d. That service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the foreign limited liability company was authorized to transact business in this state may thereafter be made on such foreign limited liability company as provided in section 10-01.1-13; and
- e. A mailing address to which a person may mail a copy of any process against the foreign limited liability company.

SECTION 8. AMENDMENT. Subsection 2 of section 10-33-128 of the North Dakota Century Code is amended and reenacted as follows:

2. The application must be on forms prescribed by the secretary of state and accompanied by payment of the fees provided in section 10-33-140 together with a certificate of good standing or a certificate of existence duly authenticated by the incorporating officer of the state or country where the corporation is incorporated.

SECTION 9. AMENDMENT. Section 10-33-130 of the North Dakota Century Code is amended and reenacted as follows:

10-33-130. Foreign corporation - Amendments to the certificate of authority.

If any statement in the application for a certificate of authority by a foreign corporation is false when made or any arrangements or other facts described change, making the application inaccurate in any respect, the foreign corporation shall promptly file with the secretary of state an application for an amended certificate of authority executed by an authorized person on forms prescribed by the secretary of state correcting the statement and, in the case of a change in the foreign corporation's name, a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. In the case of a dissolution or merger, a foreign corporation that is not the surviving organization need not file an application for an amended certificate of authority but shall promptly file with the secretary of state a certificate to that effect authenticated by the proper officer of the jurisdiction under the laws of which the foreign corporation is incorporated. A foreign nonprofit corporation that changes the foreign nonprofit corporation's name and applies for an amended certificate of authority and that is the owner of a service mark, trademark, or trade name, a general partner named in a fictitious name certificate, a general partner in a limited partnership or a limited liability limited partnership, or a managing partner in a limited liability partnership that is on file with the secretary of state shall change the foreign nonprofit corporation's name in each of the foregoing registrations that apply if the foreign nonprofit corporation files an application for an amended certificate of authority.

SECTION 10. AMENDMENT. Subsection 1 of section 10-33-133 of the North Dakota Century Code is amended and reenacted as follows:

1. A foreign corporation authorized to conduct activities in this state may withdraw from this state upon procuring from the secretary of state a certificate of withdrawal. In order to procure the certificate, the foreign corporation shall file with the secretary of state an application for withdrawal, on forms prescribed by the secretary of state, together with the fees provided in section 10-33-140, which must set forth:
 - a. The name of the corporation and the state or country under the laws of which it is incorporated;

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- b. That the corporation is not conducting activities in this state;
 - c. That the corporation surrenders its authority to conduct activities in this state;
 - d. That service of process in any action, suit, or proceeding based upon any cause of action arising in this state during the time the corporation was authorized to conduct activities in this state may thereafter be made on such corporation as provided in section 10-01.1-13; and
 - e. A post-office address to which a person may mail a copy of any process against the corporation.

Approved March 14, 2023

Filed March 15, 2023

CHAPTER 104

HOUSE BILL NO. 1215

(Representative Nathe)

AN ACT to amend and reenact subsection 7 of section 6-08.1-02, section 10-30.5-13, subsection 1 of section 17-05-13, and sections 54-17.7-13 and 54-63.1-05 of the North Dakota Century Code, relating to the filing of business incentive reports; and to repeal chapter 54-60.1 of the North Dakota Century Code, relating to business incentives, agreements, and reports administered by the department of commerce.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 6-08.1-02 of the North Dakota Century Code is amended and reenacted as follows:

7. The release by the industrial commission, in its capacity as the managing body of the Bank of North Dakota, of the following:
 - a. The name of any person who has obtained approval for direct or indirect financing or security, including a loan guarantee or a letter of credit, through the Bank of North Dakota primarily for purposes other than personal, family, or household purposes.
 - b. The amount of any financing or security referenced in subdivision a.
 - c. The amount of any net writeoff or loan forgiveness associated with the financing or security referenced in subdivision a which the industrial commission determines is uncollectible.
 - d. The program under which any financing or security referenced in subdivision a was made.
 - e. ~~Recipient reports and grantor reports as required under chapter 54-60.1.~~

⁷⁰ **SECTION 2. AMENDMENT.** Section 10-30.5-13 of the North Dakota Century Code is amended and reenacted as follows:

10-30.5-13. Small business technology investment program.

1. The corporation shall administer a small business technology investment program that provides matching investments to startup technology-based businesses.
2. The following provisions apply to small business technology investments:
 - a. A qualified applicant:

⁷⁰ Section 10-30.5-13 was repealed by section 2 of House Bill No. 1216, chapter 105.

- (1) Must be a North Dakota business that is at the startup stage;
 - (2) Must be a primary sector business in the technology field; and
 - (3) Shall meet underwriting guidelines established by the corporation.
- b. Before the corporation distributes funds under this section, the recipient shall provide the corporation with detailed documentation of the availability of two dollars of angel fund investment matching funds for each dollar of state funds distributed under this section. The matching funds must be cash, must come from a North Dakota angel fund certified under section 57-38-01.26, and may not be an in-kind asset.
3. An investment under this section may not exceed fifty thousand dollars. Eligible use of the investment funds include developing a proof of concept. A recipient may not receive more than one award under this section.
 4. ~~An investment under this section is not a business incentive under chapter 54-60.1.~~

SECTION 3. AMENDMENT. Subsection 1 of section 17-05-13 of the North Dakota Century Code is amended and reenacted as follows:

1. The authority shall deliver a written report on its activities to the legislative council each biennium. ~~Notwithstanding chapter 54-60.1, the~~The authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.

SECTION 4. AMENDMENT. Section 54-17.7-13 of the North Dakota Century Code is amended and reenacted as follows:

54-17.7-13. Reporting requirements.

The authority shall deliver a written report on its activities to the legislative council each biennium. ~~The authority is not subject to the requirements of chapter 54-60.1, but to ensure public accountability,~~ the authority shall provide an annual report to the industrial commission detailing activities and expenditures incurred during the preceding year.

SECTION 5. AMENDMENT. Section 54-63.1-05 of the North Dakota Century Code is amended and reenacted as follows:

54-63.1-05. Clean sustainable energy program - Powers and duties of the commission.

1. The commission is granted all the powers necessary to carry out the purposes of this chapter, including the power to:
 - a. Provide grants, loans, or other forms of financial assistance to qualified entities for the research, demonstration, development, and commercialization of projects, processes, activities, and technologies that reduce environmental impacts and use energy sources derived from within the state. Other forms of financial assistance include venture capital investments and interest rate buydowns. The commission must require an entity to provide assurance of financial and other types of support that demonstrate a commitment to the project, process, activity, or technology.

- The commission may develop policies for the approval of loans or loan guarantees issued from the clean sustainable energy fund.
- b. Enter into contracts or agreements to carry out the purposes of this chapter, including contracting for the administration of the program.
 - c. Keep accurate records of all financial transactions performed under this chapter.
 - d. Cooperate with any private, local, state, or national organization to make contracts and agreements for programs that advance the mission of the program.
 - e. Accept loan repayments, donations, grants, contributions, or gifts from any public or private source to carry out the purposes of this chapter, which must be deposited in the clean sustainable energy fund.
 - f. Make guidelines necessary to carry out the purposes of this chapter, including guidelines relating to the ownership of intellectual property.
 - g. Borrow from the Bank of North Dakota, as authorized by the legislative assembly, to make loans or loan guarantees under a loan program or loan guarantee program developed by the clean sustainable energy authority.
2. The commission may acquire, purchase, hold, use, lease, license, sell, transfer, or dispose of any interest in an asset necessary for clean sustainable energy technology development to facilitate the production, transportation, distribution, or delivery of clean energy commodities produced in the state as a purchases of last resort.
 3. The commission shall provide administrative support to the authority for the operation of the program, including the preparation of forms, review of applications, and ongoing review of any contracts. The commission may contract with a public or private entity to provide technical assistance necessary to implement the purposes of this chapter.
 4. ~~The commission is not subject to the reporting requirements under chapter 54-60.1.~~

SECTION 6. REPEAL. Chapter 54-60.1 of the North Dakota Century Code is repealed.

Approved March 15, 2023

Filed March 16, 2023

CHAPTER 105

HOUSE BILL NO. 1216

(Representative Nathe)

AN ACT to amend and reenact section 10-30.5-02 of the North Dakota Century Code, relating to the purpose and use of funds in the North Dakota development fund; and to repeal section 10-30.5-13 of the North Dakota Century Code, relating to the North Dakota development fund small business technology investment program.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

⁷¹ **SECTION 1. AMENDMENT.** Section 10-30.5-02 of the North Dakota Century Code is amended and reenacted as follows:

10-30.5-02. Purpose and fund uses.

1. It is the purpose of this chapter to create a statewide nonprofit development corporation that will have the authority to take equity positions in, to provide loans to, or to use other innovative financing mechanisms to provide capital for new or expanding businesses in this state, or relocating businesses to this state. The corporation's principal mission is the development and expansion of primary sector business in this state. The corporation may form additional corporations, limited liability companies, partnerships, or other forms of business associations in order to further its mission of primary sector economic development.
2. The exclusive focus of this corporation is business development in this state; however, it is not excluded from participation with other states or organizations in projects that have a clear economic benefit to state residents in the creation of jobs or secondary business. Emphasis should be to develop jobs that provide an income adequate to support a family above the poverty level.
3. Moneys in the development fund may be used to provide working capital or for financing the purchase of fixed assets but not to refinance existing debt. Moneys may also be used to make matching grants to county-authorized or city-authorized development corporations for the acquisition, leasing, or remodeling of real estate facilities for locating a prospective new primary sector business. A grant must be made as part of a package of financing in which the state is a participant.
4. The commissioner of commerce shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation.

⁷¹ Section 10-30.5-02 was also amended by section 24 of Senate Bill No. 2015, chapter 47. The North Dakota Supreme Court declared Senate Bill No. 2015 void in *Board of Trustees of The North Dakota Public Employees' Retirement System v. North Dakota Legislative Assembly*, by judgment filed October 12, 2023.

5. Moneys in the development fund may be used to provide financing to early childhood facilities licensed under chapter 50-11.1. Moneys also may be used to make grants or loans to match grants or loans made by county-authorized or city-authorized development corporations, job development authorities created under chapter 11-11.1 or 40-57.4, and regional planning councils for acquiring, leasing, or remodeling of real estate facilities or for acquiring equipment for establishing or expanding a licensed early childhood facility. In providing financing under this subsection, the corporation shall ensure funds are distributed fairly among for-profit early childhood facilities, nonprofit early childhood facilities, and public early childhood facilities. An award under this subsection may not exceed one ~~hundred thousand~~ million dollars per award.

⁷² **SECTION 2. REPEAL.** Section 10-30.5-13 of the North Dakota Century Code is repealed.

Approved April 10, 2023

Filed April 11, 2023

⁷² Section 10-30.5-13 was amended by section 2 of House Bill No. 1215, chapter 104.