

# CORPORATIONS

## CHAPTER 102

H. B. No. 173—(Graham and Bergeson)

### CORPORATIONS TRANSFER OF STOCK

An Act regulating the transfer of shares of stock in corporations, repealing all acts or parts of acts in conflict herewith, and making certain exceptions thereto.

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

§ 1. HOW TITLE TO CERTIFICATES AND SHARES MAY BE TRANSFERRED.] Title to a certificate and to the shares represented thereby can be transferred only,

(a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

(c) By delivery of the certificate with an assignment endorsed thereon or in a separate instrument signed by the trustee in bankruptcy, receiver, guardian, executor, administrator or other person duly authorized by law to transfer the certificate on behalf of the person appearing by the certificate to be the owner of the shares represented thereby.

The provisions of this section shall be applicable although the charter or articles of incorporation or code of regulations or by-laws of the corporation issuing the certificate and the certificate itself, provide that the shares represented thereby shall be transferable only on the books of the corporation or shall be registered by a registrar or transferred by a transfer agent.

§ 2. POWERS OF THOSE LACKING FULL LEGAL CAPACITY AND OF FIDUCIARIES NOT ENLARGED.] Nothing in this act shall be construed as enlarging the powers of an infant or other person lacking full legal capacity, or of a trustee, executor or admin-

istrator, or other fiduciary, to make a valid indorsement, assignment or power of attorney.

§ 3. CORPORATION NOT FORBIDDEN TO TREAT REGISTERED HOLDER AS OWNER.] Nothing in this act shall be construed as forbidding a corporation,

(a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, or

(b) To hold liable for calls and assessments a person registered on its books as the owner of shares.

§ 4. TITLE DERIVED FROM CERTIFICATE EXTINGUISHES TITLE DERIVED FROM A SEPARATE DOCUMENT.] The title of a transferee of a certificate under a power of attorney or assignment not written upon the certificate, and the title of any person claiming under such transferee, shall cease and determine if, at any time prior to the surrender of the certificate to the corporation issuing it, another person, for value in good faith, and without notice of the prior transfer, shall purchase and obtain delivery of such certificate and the written assignment or power of attorney of such person, though contained in a separate document.

§ 5. WHO MAY DELIVER A CERTIFICATE.] The delivery of a certificate to transfer title in accordance with the provisions of Section 1, is effectual, except as provided in Section 7, though made by one having no right of possession and having no authority from the owner of the certificate or from the person purporting to transfer the title.

§ 6. INDORSEMENT EFFECTUAL IN SPITE OF FRAUD, DURESS, MISTAKE, REVOCATION, DEATH, INCAPACITY OR LACK OF CONSIDERATION OR AUTHORITY.] The indorsement of a certificate by the person appearing by the certificate to be the owner of the shares represented thereby is effectual, except as provided in Section 7, though the indorser or transferor,

(a) was induced by fraud, duress or mistake, to make the indorsement or delivery, or

(b) has revoked the delivery of the certificate, or the authority given by the indorsement or delivery of the certificate, or

(c) has died or become legally incapacitated after the indorsement, whether before or after the delivery of the certificate, or

(d) has received no consideration.

§ 7. RECISSION OF TRANSFER.] If the indorsement or delivery of a certificate,

- (a) was procured by fraud or duress, or
- (b) was made under such mistakes as to make the indorsement or delivery inequitable; or if the delivery of a certificate was made
- (c) without authority from the owner, or
- (d) after the owner's death or legal incapacity, the possession of the certificate may be reclaimed and the transfer thereof rescinded, unless:
  - (1) The certificate has been transferred to a purchaser for value in good faith without notice of any facts making the transfer wrongful, or,
  - (2) The injured person has elected to waive the injury, or has been guilty of laches in endeavoring to enforce his rights.

Any court of appropriate jurisdiction may enforce specifically such right to reclaim the possession of the certificate or to rescind the transfer thereof and, pending litigation, may enjoin the further transfer of the certificate or impound it.

§ 8. RESCISSION OF TRANSFER OF CERTIFICATE DOES NOT INVALIDATE SUBSEQUENT TRANSFER BY TRANSFEREE IN POSSESSION.] Although the transfer of a certificate or of shares represented thereby has been rescinded or set aside, nevertheless, if the transferee has possession of the certificate or of a new certificate representing part of the whole of the same shares of stock, a subsequent transfer of such certificate by the transferee, mediately or immediately, to a purchaser for value in good faith, without notice of any facts making the transfer wrongful, shall give such purchaser an indefeasible right to the certificate and the shares represented thereby.

§ 9. DELIVERY OF UNINDORSED CERTIFICATE IMPOSES OBLIGATION TO INDORSE.] The delivery of a certificate by the person appearing by the certificate to be the owner thereof without the indorsement requisite for the transfer of the certificate and the shares represented thereby, but with intent to transfer such certificate or shares, shall impose an obligation, in the absence of an agreement to the contrary, upon the person so delivering, to complete the transfer by making the necessary indorsement. The transfer shall take effect as of the time when the indorsement is actually made. This obligation may be specifically enforced.

§ 10. INEFFECTUAL ATTEMPT TO TRANSFER AMOUNTS TO A PROMISE TO TRANSFER.] An attempted transfer of title to a certificate or to the shares represented thereby without delivery of the certificate shall have the effect of a promise to transfer and the obligation, if any, imposed by such promise shall be determined by the law governing the formation and performance of contracts.

§ 11. WARRANTIES ON SALE OF CERTIFICATE.] A person who for value transfers a certificate, including one who assigns for value a claim secured by a certificate, unless a contrary intention appears, warrants—

- (a) That the certificate is genuine,
- (b) That he has a legal right to transfer it, and
- (c) That he has no knowledge of any fact which would impair the validity of the certificate.

In the case of an assignment of a claim secured by a certificate, the liability of the assignor upon such warranty shall not exceed the amount of the claim.

§ 12. NO WARRANTY IMPLIED FROM ACCEPTING PAYMENT OF A DEBT.] A mortgagee, pledgee, or other holder for security of a certificate who in good faith demands or receives payment of the debt for which such certificate is security, whether from a party to a draft drawn for such debt, or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such certificate, or the value of the shares represented thereby.

§ 13. NO ATTACHMENT OR LEVY UPON SHARES UNLESS CERTIFICATE SURRENDERED OR TRANSFER ENJOINED.] No attachment or levy upon shares of stock for which a certificate is outstanding shall be valid until such certificate be actually seized by the officer making the attachment or levy, or be surrendered to the corporation which issued it, or its transfer by the holder be enjoined. Except where a certificate is lost or destroyed, such corporation shall not be compelled to issue a new certificate for the stock until the old certificate is surrendered to it.

§ 14. CREDITOR'S REMEDIES TO REACH CERTIFICATE.] A creditor whose debtor is the owner of a certificate shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such certificate or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which cannot readily be attached or levied upon by ordinary legal process.

§ 15. ALTERATION OF CERTIFICATE DOES NOT DIVEST TITLE TO SHARES.] The alteration of a certificate, whether fraudulent or not and by whomsoever made, shall not deprive the owner of his title to the certificate and the shares originally represented thereby, and the transfer of such a certificate shall convey to the transferee a good title to such certificate and to the shares originally represented thereby.

§ 16. LOST OR DESTROYED CERTIFICATE.] Where a certificate has been lost or destroyed, a court of competent jurisdiction may

order the issue of a new certificate therefor on service of process upon the corporation and on reasonable notice by publication, and in any other way which the court may direct, to all persons interested, and upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient surety to be approved by the court to protect the corporation or any person injured by the issue of the new certificate from any liability or expense, which it or they may incur by reason of the original certificate remaining outstanding. The court may also in its discretion order the payment of the corporation's reasonable costs and counsel fees.

The issue of a new certificate under an order of the court as provided in this section, shall not relieve the corporation from liability in damages to a person to whom the original certificate has been or shall be transferred for value without notice of the proceedings or of the issuance of the new certificate.

§ 17. RULE FOR CASES NOT PROVIDED FOR BY THIS ACT.] In any case not provided for by this act, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent, executors, administrators and trustees, and to the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy, or other invalidating cause, shall govern.

§ 18. INTERPRETATION SHALL GIVE EFFECT TO PURPOSE OF UNIFORMITY.] This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

§ 19. DEFINITION OF INDORSEMENT.] A certificate is indorsed when an assignment or a power of attorney to sell, assign, or transfer the certificate or the shares represented thereby is written on the certificate and signed by the person appearing by the certificate to be the owner of the shares represented thereby, or when the signature of such person is written without more upon the back of the certificate. In any of such cases a certificate is indorsed though it has not been delivered.

§ 20. DEFINITION OF PERSON APPEARING TO BE THE OWNER OF CERTIFICATE.] The person to whom a certificate was originally issued is the person appearing by the certificate to be the owner thereof, and of the shares represented thereby, until and unless he indorses the certificate to another specified person, and thereupon such other specified person is the person appearing by the certificate to be the owner thereof until and unless he also indorses the certificate to another specified person. Subsequent special indorsements may be made with like effect.

§ 21. OTHER DEFINITIONS.] (1) In this act, unless the context or subject matter otherwise requires—

“Certificate” means a certificate for shares in a domestic or foreign corporation.

“Shares” means a share or shares of stock in a domestic or foreign corporation.

“Delivery” means voluntary transfer of possession from one person to another.

“Person” includes a corporation or partnership or two or more persons having a joint or common interest.

To “purchase” includes to take as mortgage or as pledgee.

“Purchaser” includes mortgagee and pledgee.

“State” includes state, territory, district and insular possession of the United States.

“Transfer” means transfer of legal title.

“Title” means legal title and does not include a merely equitable or beneficial ownership or interest.

“Value” is any consideration sufficient to support a simple contract. An antecedent or pre-existing obligation, whether for money or not, constitutes value where a certificate is taken either in satisfaction thereof or as security therefor.

(2) A thing is done “in good faith” within the meaning of this act, when it is in fact done honestly, whether it be done negligently or not.

§ 22. APPLICATION OF THE TRANSFER ACT.] The provisions of the transfer act shall apply to certificate for shares whether issued before or after the taking effect of the transfer act, and to transfers made in this state whether of certificates for shares of domestic or foreign corporations, and also, so far as applicable, to voting trust certificates and stock purchase or subscription warrants which shall be transferable in the same manner and with the same effect as certificates for shares. This act shall not apply to Building and Loan associations, Mutual or Cooperative associations or cooperative corporations.

§ 23. REPEAL.] All Acts or parts of acts inconsistent with this act are hereby repealed.

§ 24. NAME.] This act may be cited as the Uniform Stock Transfer Act.

Approved March 9, 1943.

## CHAPTER 103

H. B. No. 229—(Public Welfare Committee)

## HOSPITAL SERVICE PLAN CORPORATIONS

An Act providing for the organization and regulation of Non-Profit Hospital Service Plan Corporations, and declaring an emergency.

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

§ 1. Any corporation organized under the laws of this state, on a strictly non-profit basis, for the purpose of establishing and operating a non-profit hospital service plan whereby hospital service is provided by hospitals with which such corporation has a contract, to persons who become subscribers to said plan under a contract with such corporation for such hospital service shall be subject to, and, governed by the provisions of this act and shall not be subject to the laws of this state relating to insurance, and insurance companies, except as hereinafter specifically provided.

§ 2. The hospital service plan operated by such corporation, may also provide for hospital service to such subscribers in other than contracting hospitals, in case of emergency or expediency, and subject to the approval of the governing body of such hospital service plan corporation.

§ 3. The articles of incorporation of all such non-profit hospital service plan corporations, and all amendments, shall be filed with the secretary of state, and a certified copy thereof with the Commissioner of Insurance. Any hospital service plan corporation that has heretofore incorporated under the laws of the State of North Dakota, and is now operating such a non-profit hospital service plan in this state, shall forthwith file a copy of the articles of incorporation, and all amendments thereto, with the commissioner of insurance, and thereupon be subject to the provisions of this act.

§ 4. At least a majority of the directors of such corporation must be at all times administrators, or directors, or trustees, or members of the clinical staff of hospitals which have contracted or may contract with such corporation to render to its subscribers hospital service. The board of directors of such corporation shall consist of at least nine members and not more than one shall be from any one hospital.

§ 5. Every such corporation shall annually, on or before the first day of March, file in the office of the commissioner of insurance a statement verified by at least two of the principal officers of said corporation showing its condition on the thirty-first day of December

then next preceding, which shall be in such form and shall contain such matters as the commissioner of insurance shall prescribe.

§ 6. The commissioner of insurance, or any deputy or examiner designated by him, shall have the right, at all reasonable times, to free access to all books and records of such corporation, and may summon and examine, under oath, the officers and employees of such corporation in all matters pertaining to its financial condition. The expense of any such examination of its books and financial condition shall be borne by such corporation.

§ 7. Any corporation organized under the provisions of said chapter may enter into contracts for the rendering of hospital service to any of its subscribers with hospitals maintained and operated by the state or any of its political subdivisions, or by any corporation, association, or individual. Hospital service is meant to include bed and board, general nursing care, use of the operating room, use of the delivery room, ordinary medications and dressings and other customary routine care.

§ 8. The contracts by such corporation with the subscribers for hospital service shall at all times be subject to the approval of the commissioner of insurance.

§ 9. The contracts by such corporation with participating hospitals for hospital service shall at all times be subject to the approval of the commissioner of insurance.

§ 10. All acquisition costs in connection with the solicitation of subscribers to such hospital service plan and administration costs including salaries paid its officers, if any, shall at all times be subject to the approval of the commissioner of insurance.

§ 11. Any dissolution, merger, or liquidation of a corporation organized under the provisions of said act shall be under the supervision of the commissioner of insurance who shall have all powers with respect thereto, granted to him under the insurance laws of this state.

§ 12. The funds of any corporation subject to the provisions of this act shall be invested only in securities permitted by the laws of this state for the investment of funds of domestic insurance companies.

§ 13. This act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 12, 1943.



## CHAPTER 104

S. B. No. 186—(Interim Committee—Streibel and Kehoe)

## NO PAR CORPORATE STOCK, AMENDMENT

An Act Relating to the Issuance of no par Corporate Stock and to Amend and Re-enact Chapter 119, Session Laws of 1941.

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

§ 1. That Chapter 119, Session Laws of 1941 is hereby amended and re-enacted to read as follows:

§ 1. CORPORATE STOCK WITHOUT NOMINAL OR PAR VALUE—CLASSES OR—PREFERRED STOCK.] Any corporation of this State, heretofore or hereafter incorporated except banks, savings banks, trust companies, building and loan associations, and insurance companies, may create one or more classes of stock without any nominal or par value, with such preferences, voting powers, restrictions, and qualifications thereon not inconsistent with law as shall be expressed in its certificate of incorporation or any amendment thereto. Stock without par value which is preferred as to dividends or as to its distributive share of the assets of the corporation upon dissolution may be made subject to redemption at such time and prices as may be determined in such certificate of incorporation or amendment thereto. In the case of stock without par value which is preferred as to its distributive share of the assets of the corporation upon dissolution, the amount of such preference shall be stated in the certificate of incorporation or amendment thereto.

§ 2. SAME—STATEMENT IN CERTIFICATE OF INCORPORATION OR AMENDMENT THERETO AS TO.] In any case in which the par value of the shares of stock of a corporation shall be required to be stated in the certificate of incorporation or of any amendment thereto or in any other place, it shall be stated in respect to shares without par value that such shares are without par value, and when the amount of such stock authorized, issued or outstanding shall be required to be stated, the number of shares thereof authorized, issue or outstanding, as the case may be, shall be stated, and it shall also be stated that such shares are without par value.

§ 3. SAME—STOCK CERTIFICATES TO SHOW NUMBER SHARES.] Each stock certificate issued for shares without nominal or par value shall have plainly written or printed upon its face the number of shares which it represents, and no such certificate shall express any nominal or par value of such shares or express any rate of dividend to which it shall be entitled in terms of percentage of any par or other value.

§ 4. SAME—VALUE FOR TAX PURPOSES.] For the purpose of the taxes or fee prescribed to be paid on filing of any certificate or other paper relating to corporations, and for the purpose of determining the minimum or maximum capital prescribed by law for stock corporations, but for no other purpose, such shares shall be taken to be of the value of \$100.00 each.

§ 5. SAME—VALUE FIXED BY DIRECTORS.] For the purpose of any rule of law or of any statutory provision relating to the amount of capital stock issued and represented by shares of stock, without par value, except as otherwise provided in this section, such amounts shall be taken to be the amount of money or the actual value of the consideration, as fixed by the directors or otherwise, in accordance with law, as the case may be, for which such shares of stock shall have been issued. In any case in which stock having a par value shall have been issued with stock without par value for a specified consideration, in determining the amount of the capital stock issued and represented by shares of stock, without par value, the par value of such stock having a par value shall be deducted first from the amount of the money or actual value of the consideration determined as aforesaid, and the excess thereof, if any, shall be taken to be the amount of capital stock represented by the shares of stock, without par value, so issued.

§ 6. SAME—INCREASE OR REDUCTION.] The number of authorized shares of stock without par value may be increased or reduced in the manner and subject to the conditions provided in the 1943 Code of North Dakota, title Corporations. All other statutory provisions relating to stock having a par value, so far as the same may be legally, necessarily, or practically applicable to, and not inconsistent with, the provisions of this Act, shall apply to stock without par value.

§ 7. SAME—PAR VALUE STOCK CHANGED TO NON PAR VALUE STOCK.] Any such corporation may change any of its stock, common or preferred, having a par value, to an equal, greater, or less number of shares of stock, having no par value, and, in connection therewith, may fix the amount of capital stock represented by such shares of without par value, and any such corporation may reduce its capital stock by reducing the number of shares of its stock, whether the same have par value or no par value, or by reducing the par value of shares which have a par value, or by reducing the amount of capital stock represented by shares with no par value, or by any and all of such methods.

§ 8. SAME—CERTIFICATE OF INCORPORATION OR AMENDMENT THERETO TO PROVIDE FOR CONVERSION OF SHARES OF ANY CLASS INTO SHARES OF ANOTHER CLASS.] The certificate of incorporation or any amendment thereto of any such corporation may provide that shares of stock of any class shall be convertible into shares of stock

of any other class upon such terms and conditions as may be therein stated, except that shares of stock without par value shall not be convertible into shares of stock having par value.

§ 9. SAME—POWERS OF DIRECTORS AS TO ISSUE.] Subject to any limitations and restrictions set forth in the certificate of incorporation, any such corporation may, at any meeting called and held for that purpose, empower its directors to issue shares of its unissued, authorized capital stock without par value and may authorize its directors to fix the amount of money or the actual value of the consideration for which such stock shall be issued, provided the certificate of incorporation or any amendment thereto of any such corporation may empower the directors thereof to issue, from time to time, shares of such stock without par value for such consideration as the directors may deem advisable, subject to such limitations and restrictions as may be set forth therein.

§ 10. SAME—COMPUTATION OF VALUE.] For the purpose of determining the amount of stock held or owned by any stockholder, shares without par value shall be computed at the value, at the time of issue, of the cash, property, services, or expenses for which they were issued, but not including paid in surplus.

§ 11. SAME—LAWS APPLICABLE.] Except as otherwise provided herein, all laws applicable to corporations having shares of stock with par value shall apply to corporations issuing shares without par or face value.

Approved March 19, 1943.

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## COUNTIES

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### CHAPTER 105

S. B. No. 87—(Committee on Ways and Means)

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#### BOND REGISTRATION

An Act to amend and re-enact Section 2079b9 of the 1925 Supplement to the Compiled Laws of North Dakota for 1913, relating to Records of local bond issues, and repealing all acts or parts of acts in conflict herewith.

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