
CORPORATIONS

CHAPTER 102

H. B. No. 537

(The Legislative Research Committee)

NORTH DAKOTA BUSINESS CORPORATION ACT

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AN ACT

Relating to creation, organization, reorganization, operation, powers, purposes, reports, fees, charges, and dissolution of domestic and foreign profit corporations organized or operating within this state for any lawful purpose, providing certain penalties for violation of certain sections of this Act and relating to deferred repeal of chapters 10-01, 10-02, 10-03, 10-05, 10-14, 10-16 and 10-17 of the North Dakota Revised Code of 1943, as amended.

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

§ 1. **Short Title.)** This Act shall be known and may be cited as the "North Dakota Business Corporation Act."

§ 2. **Definitions.)** As used in this Act, unless the context otherwise requires, the term:

1. "Corporation" or "domestic corporation" means a corporation for profit subject to the provisions of this Act, except a foreign corporation, unless from the context of any statute, a different intention plainly appears;
2. "Foreign corporation" means a corporation for profit organized under laws other than the laws of this state for a purpose or purposes for which a corporation may be organized under this Act;
3. "Articles of incorporation" means the original or restated articles of incorporation and all amendments thereto and includes articles of merger;
4. "Shares" means the units into which the proprietary interests in a corporation are divided;
5. "Subscriber" means one who subscribes for shares in a corporation, whether before or after incorporation;
6. "Shareholder" means one who is a holder of record of shares in a corporation;
7. "Authorized shares" means the shares of all classes which the corporation is authorized to issue;
8. "Treasury shares" means shares of a corporation which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been canceled or restored to the status of authorized but unissued shares. Treasury shares shall be deemed to be "issued" shares, but not "outstanding" shares;
9. "Net assets" means the amount by which the total assets of a corporation, excluding treasury shares, exceed the total debts of the corporation;
10. "Stated capital" means, at any particular time, the sum of

- a. the par value of all shares of the corporation having a par value that have been issued,
 - b. the amount of the consideration received by the corporation for all shares of the corporation without par value that have been issued, except such part of the consideration therefor as may have been allocated to capital surplus in a manner permitted by law, and
 - c. such amounts not included in subdivisions a and b of this subsection as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation shall be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees and other charges imposed by this Act;
11. "Surplus" means the excess of the net assets of a corporation over its stated capital;
 12. "Earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital or otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent such distributions and transfers are made out of earned surplus;
 13. "Capital surplus" means the entire surplus of a corporation other than its earned surplus; and
 14. "Insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business.

§ 3. Purposes.) Corporations may be organized under this Act for any lawful purpose or purposes, unless from the context of any statute a different intention plainly appears.

§ 4. General Powers.) Each corporation shall have power:

1. To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation;
2. To sue and be sued, complain and defend, in its corporate name;

3. To have a corporate seal which may be altered at pleasure, and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;
4. To purchase, take, receive, lease, or otherwise acquire, own, hold, improve, use and otherwise deal in and with, real or personal property, or any interest therein, wherever situated;
5. To sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its property and assets;
6. To lend money to its employees other than its officers and directors, and otherwise assist its employees, officers, and directors;
7. To purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of, and otherwise use and deal in and with, shares or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals, or direct or indirect obligations of the United States or of any other government, state, territory, governmental district, or municipality, or of any instrumentality thereof;
8. To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income;
9. To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested;
10. To conduct its business, carry on its operations, and have offices and exercise the powers granted by this Act in any state, territory, district, or possession of the United States, or in any foreign country;
11. To elect or appoint officers and agents of the corporation, and define their duties and fix their compensation;
12. To make and alter bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for the administration and regulation of the affairs of the corporation;
13. To make donations for the public welfare or for charitable, scientific or educational purposes; and in time of war to make donations in aid of war activities;

14. In time of war to transact any lawful business in aid of the United States in the prosecution of the war;
15. To indemnify any director or officer or former director or officer of the corporation, or any person who may have served at its request as a director or officer of another corporation in which it owns shares or of which it is a creditor, against expenses actually and necessarily incurred by him in connection with the defense of any action, suit or proceeding in which he is made a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for negligence or misconduct in the performance of duty; but such indemnification shall not be deemed exclusive of any other rights to which such director or officer may be entitled, under any bylaw, agreement, vote of shareholders, or otherwise;
16. To pay pensions and establish pension plans, pension trusts, profit-sharing plans, stock bonus plans, stock option plans, and other incentive plans for its directors, officers, and employees;
17. To cease its corporate activities and surrender its corporate franchise; and
18. To have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

§ 5. Right Of Corporation To Acquire And Dispose Of Its Own Shares.) A corporation shall have the right to purchase, take, receive or otherwise acquire, hold, own, pledge, transfer or otherwise dispose of its own shares, but purchases of its own shares, whether direct or indirect, shall be made only to the extent of earned surplus available therefor, and, if the articles of incorporation so permit or with the affirmative vote of the holders of at least two-thirds of all shares entitled to vote thereon, to the extent of capital surplus available therefor, and subject to the following additional limitations:

1. No purchase of its own shares shall be made at a time when the corporation is insolvent or when such purchase would render the corporation insolvent; and
2. To the extent that earned surplus or capital surplus is used as the measure of the corporation's right to purchase its own shares, such surplus shall be restricted so long as such shares are held as treasury shares, and upon the disposition or cancellation of any such shares the restriction shall be removed pro tanto.

Notwithstanding the foregoing limitations, a corporation may purchase or otherwise acquire its own shares for the purpose of:

- a. Eliminating fractional shares;
- b. Collecting or compromising indebtedness to the corporation;
- c. Paying dissenting shareholders entitled to payment for their shares under the provisions of this Act; and
- d. Effecting, subject to the other provisions of this Act, the retirement of its redeemable shares by redemption or by purchase at not to exceed the redemption price.

§ 6. Defense Of Ultra Vires.) No act of a corporation and no conveyance or transfer of real or personal property to or by a corporation shall be invalid by reason of the fact that the corporation was without capacity or power to do such act or to make or receive such conveyance or transfer, but such lack of capacity or power may be asserted:

1. In a proceeding by a shareholder against the corporation to enjoin the doing of any act or acts or the transfer of real or personal property by or to the corporation. If the unauthorized acts or transfer sought to be enjoined are being, or are to be, performed or made pursuant to any contract to which the corporation is a party, the court may, if all of the parties to the contract are parties to the proceeding and if it deems the same to be equitable, set aside and enjoin the performance of such contract, and in so doing may allow to the corporation or to the other parties to the contract, as the case may be, compensation for the loss or damage sustained by either of them which may result from the action of the court in setting aside and enjoining the performance of such contract, but anticipated profits to be derived from the performance of the contract shall not be awarded by the court as a loss or damage sustained;
2. In a proceeding by the corporation, whether acting directly or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against the incumbent or former officers or directors of the corporation; and
3. In a proceeding by the attorney general, as provided in this Act, to dissolve the corporation, or in a proceeding by the attorney general to enjoin the corporation from the transaction of unauthorized business.

§ 7. Corporate Name.) The corporate name:

1. Shall contain the word "corporation", "company", "incorporated" or "limited", or shall contain an abbreviation of one of such words;
2. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation; and
3. Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Act.

§ 8. Reserved Name.) The exclusive right to the use of a corporate name may be reserved by:

1. Any person intending to organize a corporation under this Act;
2. Any domestic corporation intending to change its name;
3. Any foreign corporation intending to make application for a certificate of authority to transact business in this state;
4. Any foreign corporation authorized to transact business in this state and intending to change its name; and
5. Any person intending to organize a foreign corporation and intending to have such corporation make application for a certificate of authority to transact business in this state.

The reservation shall be made by filing with the secretary of state an application to reserve a specified corporate name, executed by the applicant. If the secretary of state finds that the name is available for corporate use, he shall reserve the same for the exclusive use of the applicant for a period of one hundred and twenty days.

The right to the exclusive use of a specified corporate name so reserved may be transferred to any other person or corporation by filing in the office of the secretary of state a notice of such transfer, executed by the applicant for whom the name was reserved, and specifying the name and address of the transferee.

§ 9. Registered Office And Registered Agent.) Each corporation shall have and continuously maintain in this state:

1. A registered office which may be, but need not be the same as its place of business; and

2. A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, or a foreign corporation authorized to transact business in this state, having a business office identical with such registered office.

§ 10. Change Of Registered Office Or Registered Agent.)

A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation;
2. The address of its then registered office;
3. If the address of its registered office be changed, the address to which the registered office is to be changed;
4. The name of its then registered agent;
5. If its registered agent be changed, the name of its successor registered agent;
6. That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
7. That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by its president or a vice president, and verified by him, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this Act, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

Any registered agent of a corporation may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail a copy thereof to the corporation at its registered office. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

§ 11. Service Of Process On Corporation And Nonresident Directors.) The registered agent so appointed by a corporation shall be an agent of such corporation and any nonresident director upon whom any process, notice or demand required or permitted by law to be served upon the corporation or director may be served.

Directors shall be considered as persons engaged in business in this state for the purposes of this section, and accep-

tance of a directorship includes appointment of the secretary of state as an agent for personal service of legal process, notice or demand.

Whenever a corporation shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such corporation and any nonresident director upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its registered office or to the nonresident director at his filed address, as the case may be. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a corporation or director in any other manner now or hereafter permitted by law.

§ 12. Authorized Shares.) Each corporation shall have power to create and issue the number of shares stated in its articles of incorporation. Such shares may be divided into one or more classes, any or all of which classes may consist of shares with par value or shares without par value, with such designations, preferences, limitations, and relative rights as shall be stated in the articles of incorporation. The articles of incorporation may limit or deny the voting rights of the shares of any class to the extent not inconsistent with the provisions of this Act.

Without limiting the authority herein contained, a corporation, when so provided in its articles of incorporation, may issue shares of preferred or special classes:

1. Subject to the right of the corporation to redeem any of such shares at the price fixed by the articles of incorporation for the redemption thereof;
2. Entitling the holders thereof to cumulative, noncumulative or partially cumulative dividends;

3. Having preference over any other class or classes of shares as to the payment of dividends;
4. Having preference in the assets of the corporation over any other class or classes of shares upon the voluntary or involuntary liquidation of the corporation; and
5. Convertible into shares of any other class or into shares of any series of the same or any other class, except a class having prior or superior rights and preferences as to dividends or distribution of assets upon liquidation, but shares without par value shall not be converted into shares with par value unless that part of the stated capital of the corporation represented by such shares without par value is, at the time of conversion, at least equal to the aggregate par value of the shares into which the shares without par value are to be converted.

§ 13. Issuance Of Shares Of Preferred Or Special Classes In Series.) If the articles of incorporation so provide, the shares of any preferred or special class may be divided into and issued in series. If the shares of any such class are to be issued in series, then each series shall be so designated as to distinguish the shares thereof from the shares of all other series and classes. Any or all of the series of any such class and the variations in the relative rights and preferences as between different series may be fixed and determined by the articles of incorporation, but all shares of the same class shall be identical except as to the following relative rights and preferences, as to which there may be variations between different series:

1. The rate of dividend;
2. The price at and the terms and conditions on which shares may be redeemed;
3. The amount payable upon shares in event of involuntary liquidation;
4. The amount payable upon shares in event of voluntary liquidation;
5. Sinking fund provisions for the redemption or purchase of shares;
6. The terms and conditions on which shares may be converted, if the shares of any series are issued with the privilege of conversion.

If the articles of incorporation shall expressly vest authority in the board of directors, then, to the extent that the articles of incorporation shall not have established series and fixed and determined the variations in the relative rights and preferences as between series, the board of directors shall have authority to divide any or all of such classes into series

and, within the limitations set forth in this section and in the articles of incorporation, fix and determine the relative rights and preferences of the shares of any series so established.

In order for the board of directors to establish a series, where authority so to do is contained in the articles of incorporation, the board of directors shall adopt a resolution setting forth the designation of the series and fixing and determining the relative rights and preferences thereof, or so much thereof as shall not be fixed and determined by the articles of incorporation.

Prior to the issue of any shares of a series established by resolution adopted by the board of directors, the corporation shall file in the office of the secretary of state a statement setting forth:

- a. The name of the corporation;
- b. A copy of the resolution establishing and designating the series, and fixing and determining the relative rights and preferences thereof;
- c. The date of adoption of such resolution; and
- d. That such resolution was duly adopted by the board of directors.

Such statement shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, and all fees have been paid, he shall endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof, file one of such duplicate originals in his office, and return the other duplicate original to the corporation or its representative.

Upon the filing of such statement by the secretary of state, the resolution establishing and designating the series and fixing and determining the relative rights and preferences thereof shall become effective and shall constitute an amendment of the articles of incorporation.

§ 14. Subscriptions For Shares.) A subscription for shares of a corporation to be organized shall be irrevocable for a period of six months, unless otherwise provided by the terms of the subscription agreement or unless all of the subscribers consent to the revocation of such subscription.

Unless otherwise provided in the subscription agreement, subscriptions for shares, whether made before or after the

organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors. Any call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation. The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amount paid thereon, shall be declared as against any subscriber unless the amount due thereon shall remain unpaid for a period of twenty days after written demand has been made therefor. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber at his last post office address known to the corporation, with postage thereon prepaid. In the event of the sale of any shares by reason of any forfeiture, the excess of proceeds realized over the amount due and unpaid on such shares shall be paid to the delinquent subscriber or to his legal representative.

§ 15. Consideration For Shares.) Shares having a par value may be issued for such consideration expressed in dollars, not less than the par value thereof, as shall be fixed from time to time by the board of directors.

Shares without par value may be issued for such consideration expressed in dollars as may be fixed from time to time by the board of directors unless the articles of incorporation reserve to the shareholders the right to fix the consideration. In the event that such right be reserved as to any shares, the shareholders shall, prior to the issuance of such shares, fix the consideration to be received for such shares, by a vote of the holders of a majority of all shares entitled to vote thereon.

Treasury shares may be disposed of by the corporation for such consideration expressed in dollars as may be fixed from time to time by the board of directors.

That part of the surplus of a corporation which is transferred to stated capital upon the issuance of shares as a share dividend shall be deemed to be the consideration for the issuance of such shares.

In the event of a conversion of shares, or in the event of an exchange of shares with or without par value for the same or a different number of shares with or without par value,

whether of the same or a different class or classes, the consideration for the shares so issued in exchange or conversion shall be deemed to be:

1. The stated capital then represented by the shares so exchanged or converted;
2. That part of surplus, if any, transferred to stated capital upon the issuance of shares for the shares so exchanged or converted; and
3. Any additional consideration paid to the corporation upon the issuance of shares for the shares so exchanged or converted.

§ 16. Payment For Shares.) The consideration for the issuance of shares may be paid, in whole or in part, in money, in other property, tangible or intangible, or in labor or services actually performed for the corporation. When payment of the consideration for which shares are to be issued shall have been received by the corporation, such shares shall be considered fully paid and nonassessable.

Neither promissory notes nor future services shall constitute payment or part payment, for shares of a corporation.

In the absence of fraud in the transaction, the judgment of the board of directors or the shareholders, as the case may be, as to the value of the consideration received for shares shall be conclusive.

§ 17. Stock Rights And Options.) Subject to any provisions in respect thereof set forth in its articles of incorporation, a corporation may create and issue, whether or not in connection with the issuance and sale of any of its shares or other securities, rights or options entitling the holders thereof to purchase from the corporation shares of any class or classes. Such rights or options shall be evidenced in such manner as the board of directors shall approve and, subject to the provisions of the articles of incorporation, shall set forth the terms upon which, the time or times within which and the price or prices at which such shares may be purchased from the corporation upon the exercise of any such right or option. If such rights or options are to be issued to the directors, officers or employees of the corporation, or of any subsidiary thereof, their issuance shall be approved by a majority of the outstanding shares entitled to vote thereon, at a duly constituted meeting or authorized by, and consistent with, a plan theretofore approved by such a vote of shareholders and, in every instance, shall be set forth or incorporated by reference in the instrument or instruments evidencing such rights or options. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such

rights or options shall be conclusive. The price or prices to be received for any shares having a par value, other than treasury shares to be issued upon the exercise of such rights or options, shall not be less than the par value thereof.

§ 18. Determination Of Amount Of Stated Capital.) In case of the issuance by a corporation of shares having a par value, the consideration received therefor shall constitute stated capital to the extent of the par value of such shares, and the excess, if any, of such consideration shall constitute capital surplus.

In case of the issuance by a corporation of shares without par value, the entire consideration received therefor shall constitute stated capital unless the corporation shall determine as provided in this section that only a part thereof shall be stated capital. Within a period of sixty days after the issuance of any shares without par value, the board of directors may allocate to capital surplus not more than twenty-five percent of the consideration received for the issuance of such shares. No such allocation shall be made of any portion of the consideration received for shares without par value having a preference in the assets of the corporation in the event of involuntary liquidation except the amount, if any, of such consideration in excess of such preference.

The stated capital of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the surplus of the corporation be transferred to stated capital. The board of directors may direct that the amount of the surplus so transferred shall be deemed to be stated capital in respect of any designated class of shares.

§ 19. Expenses Of Organization, Reorganization And Financing.) The reasonable charges and expenses of organization or reorganization of a corporation, and the reasonable expenses of and compensation for the sale or underwriting of its shares, may be paid or allowed by such corporation out of the consideration received by it in payment for its shares without thereby rendering such shares not fully paid and nonassessable.

§ 20. Certificates Representing Shares.) The shares of a corporation shall be represented by certificates signed by the president or by a vice president and by the secretary or an assistant secretary of the corporation. These signatures upon a certificate may be facsimilies if the certificate is countersigned by a transfer agent, or registered by a registrar, other than the corporation itself or an employee of the corporation. In case any officer who has signed or whose facsimile signature has been placed upon such certificate shall have ceased to

be such officer before such certificate is issued, it may be issued by the corporation with the same effect as if he were such officer at the date of its issue.

Every certificate representing shares issued by a corporation which is authorized to issue shares of more than one class shall set forth upon the face or back of the certificate, or shall state that the corporation will furnish to any shareholder upon request and without charge, a full or summary statement of the designations, preferences, limitations, and relative rights of the shares of each class authorized to be issued and, if the corporation is authorized to issue any preferred or special class in series, the variations in the relative rights and preferences between the shares of each such series so far as the same have been fixed and determined and the authority of the board of directors to fix and determine the relative rights and preferences of subsequent series.

Each certificate representing shares shall state upon the face thereof:

1. That the corporation is organized under the laws of this state;
2. The name of the person to whom issued;
3. The number and class of shares, and the designation of the series, if any, which such certificate represents; and
4. The par value of each share represented by such certificate, or a statement that the shares are without par value.

No certificate shall be issued for any share until such share is fully paid.

§ 21. Issuance Of Fractional Shares Or Scrip.) A corporation may, but shall not be obliged to, issue a certificate for a fractional share, and, by action of its board of directors, may issue in lieu thereof scrip in registered or bearer form which shall entitle the holder to receive a certificate for a full share upon the surrender of such scrip aggregating a full share. A certificate for a fractional share shall, but scrip shall not unless otherwise provided therein, entitle the holder to exercise voting rights, to receive dividends thereon, and to participate in any of the assets of the corporation in the event of liquidation. The board of directors may cause such scrip to be issued subject to the condition that it shall become void if not exchanged for certificates representing full shares before a specified date, or subject to the condition that the shares for which such scrip is exchangeable may be sold by the corporation and the proceeds thereof distributed to the holders of such scrip, or subject to any other conditions which the board of directors may deem advisable.

§ 22. Liability Of Subscribers And Shareholders.) A holder of or subscriber to shares of a corporation shall be under no obligation to the corporation or its creditors with respect to such shares other than the obligation to pay to the corporation the full consideration for which such shares were issued or to be issued.

Any person becoming an assignee or transferee of shares or of a subscription for shares in good faith and without knowledge or notice that the full consideration therefor has not been paid shall not be personally liable to the corporation or its creditors for any unpaid portion of such consideration.

An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver shall not be personally liable to the corporation as a holder of or subscriber to shares of a corporation but the estate and funds in his hands shall be so liable.

No pledgee or other holder of shares as collateral security shall be personally liable as a shareholder.

§ 23. Shareholders' Preemptive Rights.) The preemptive right of a shareholder to acquire unissued or treasury shares of a corporation may be limited or denied to the extent provided in the articles of incorporation.

Unless otherwise provided by its articles of incorporation, any corporation may issue and sell its shares to its officers or employees or to the officers or employees of any subsidiary corporation, without first offering such shares to its shareholders, for such consideration and upon such terms and conditions as shall be approved by the holders of two-thirds of all shares entitled to vote thereon or by its board of directors pursuant to like approval of the shareholders.

§ 24. Bylaws.) The initial bylaws of a corporation shall be adopted by its board of directors. The power to alter, amend or repeal the bylaws or adopt new bylaws, for corporations incorporated after June 30, 1957, shall be vested in the board of directors unless reserved to the shareholders by the articles of incorporation. The bylaws of corporations incorporated prior to July 1, 1957, may be repealed, altered, or amended, or new bylaws adopted, by a two-thirds majority vote of the shareholders or members, unless such power is or has been delegated to the directors by a similar vote. The bylaws may contain any provisions for the regulation and management of the affairs of the corporation not inconsistent with law or the articles of incorporation.

§ 25. Meetings Of Shareholders.) Meetings of shareholders may be held at such place, either within or without this state, as may be provided in the bylaws. In the absence of any such provision, all meetings shall be held at the registered office of the corporation.

An annual meeting of the shareholders shall be held at such time as may be provided in the bylaws. Failure to hold the annual meeting at the designated time shall not work a forfeiture or dissolution of the corporation.

Special meetings of the shareholders may be called by the president, the board of directors, the holders of not less than one-tenth of all the shares entitled to vote at the meeting, or such other officer or persons as may be provided in the articles of incorporation or the bylaws.

§ 26. Notice Of Shareholders' Meetings.) Written or printed notice stating the place, day and hour of the meeting and, in case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten nor more than fifty days before the date of the meeting, either personally or by mail, by or at the direction of the president, the secretary, or the officer or persons calling the meeting, to each shareholder of record entitled to vote at such meeting. If mailed, such notice shall be considered to be delivered when deposited in the United States mail addressed to the shareholder at his address as it appears on the stock transfer books of the corporation, with postage thereon prepaid.

§ 27. Closing Of Transfer Books And Fixing Record Date.) For the purpose of determining shareholders entitled to notice of or to vote at any meeting of shareholders or any adjournment thereof, or entitled to receive payment of any dividend, or in order to make a determination of shareholders for any other proper purpose, the board of directors of a corporation may provide that the stock transfer books shall be closed for a stated period but not to exceed, in any case, fifty days. If the stock transfer books shall be closed for the purpose of determining shareholders entitled to notice of or to vote at a meeting of shareholders, such books shall be closed for at least ten days immediately preceding such meeting. In lieu of closing the stock transfer books, the bylaws, or in the absence of an applicable bylaw the board of directors, may fix in advance a date as the record date for any such determination of shareholders, such date in any case to be not more than fifty days and, in case of a meeting of shareholders, not less than ten days prior to the date on which the particular action, requiring such determination of shareholders, is to be taken. If the stock

transfer books are not closed and no record date is fixed for the determination of shareholders entitled to notice of or to vote at a meeting of shareholders, or shareholders entitled to receive payment of a dividend, the date on which notice of the meeting is mailed or the date on which the resolution of the board of directors declaring such dividend is adopted, as the case may be, shall be the record date for such determination of shareholders. When a determination of shareholders entitled to vote at any meeting of shareholders has been made as provided in this section, such determination shall apply to any adjournment thereof except where the determination has been made through the closing of the stock transfer books and the stated period of closing has expired.

§ 28. Voting List.) The officer or agent having charge of the stock transfer books for shares of a corporation shall make, at least ten days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten days prior to such meeting, shall be kept on file at the registered office of the corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. The original stock transfer books shall be prima facie evidence as to who are the shareholders entitled to examine such list or transfer book or to vote at any meeting of shareholders.

Failure to comply with the requirements of this section shall not affect the validity of any action taken at such meeting.

An officer or agent having charge of the stock transfer books who shall fail to prepare the list of shareholders, or keep it on file for a period of ten days, or produce and keep it open for inspection at the meeting, as provided in this section, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.

The provisions of chapter 10-18 of the North Dakota Revised Code of 1943 as amended or renumbered, except where in conflict with this section, shall continue to apply and control the transfer of shares.

§ 29. Quorum Of Shareholders.) Unless otherwise provided in the articles of incorporation, a majority of the shares entitled to vote, represented in person or by proxy, shall constitute a quorum at a meeting of shareholders, but in no

event shall a quorum consist of less than one-third of the shares entitled to vote at the meeting. If a quorum is present, the affirmative vote of the majority of the shares represented at the meeting and entitled to vote on the subject matter shall be the act of the shareholders, unless the vote of a greater number or voting by classes is required by this Act, or the articles of incorporation or bylaws.

§ 30. Voting Of Shares.) Each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a meeting of shareholders, except to the extent that the voting rights of the shares of any class or classes are limited or denied by the articles of incorporation as permitted by this Act.

Neither treasury shares, nor shares of its own stock held by a corporation in a fiduciary capacity, nor shares held by another corporation if a majority of the shares entitled to vote for the election of directors of such other corporation is held by the corporation, shall be voted at any meeting or counted in determining the total number of outstanding shares at any given time.

A shareholder may vote either in person or by proxy executed in writing by the shareholder or by his duly authorized attorney-in-fact. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

At each election for directors every shareholder entitled to vote at such election shall have the right to vote, in person or by proxy, the number of shares owned by him for as many persons as there are directors to be elected and for whose election he has a right to vote, or to cumulate his votes by giving one candidate as many votes as the number of such directors multiplied by the number of his shares shall equal, or by distributing such votes on the same principle among any number of such candidates.

Shares standing in the name of another corporation, domestic or foreign, may be voted by such officer, agent or proxy as the bylaws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine.

Shares held by an administrator, executor, guardian or conservator may be voted by him, either in person or by proxy, without a transfer of such shares into his name. Shares standing in the name of a trustee may be voted by him, either in person or by proxy, but no trustee shall be entitled to vote shares held by him without a transfer of such shares into his name.

Shares standing in the name of a receiver may be voted by such receiver, and shares held by or under the control of a receiver may be voted by such receiver without the transfer thereof into his name if authority so to do be contained in an appropriate order of the court by which such receiver was appointed.

A shareholder whose shares are pledged shall be entitled to vote such shares until the shares have been transferred into the name of the pledgee, and thereafter the pledgee shall be entitled to vote the shares so transferred.

Redeemable shares which have been called for redemption shall not be entitled to vote on any matter and shall not be considered outstanding shares on and after the date on which written notice of redemption has been mailed to shareholders and a sum sufficient to redeem the shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders of the shares upon surrender of certificates therefor.

§ 31. Voting Trust.) Any number of shareholders of a corporation may create a voting trust for the purpose of conferring upon a trustee or trustees the right to vote or otherwise represent their shares, for a period of not to exceed ten years, by entering into a written voting trust agreement specifying the terms and conditions of the voting trust, by depositing a counterpart of the agreement with the corporation at its registered office, and by transferring their shares to such trustee or trustees for the purpose of the agreement. The counterpart of the voting trust agreement so deposited with the corporation shall be subject to the same right of examination by a shareholder of the corporation, in person or by agent or attorney, as are the books and records of the corporation, and shall be subject to examination by any holder of a beneficial interest in the voting trust, either in person or by agent or attorney, at any reasonable time for any proper purpose.

§ 32. Board Of Directors.) The business and affairs of a corporation shall be managed by a board of directors. Directors need not be residents of this state or shareholders of the corporation unless the articles of incorporation or bylaws so require. The articles of incorporation or bylaws may prescribe other qualifications for directors. The board of directors shall have authority to fix the compensation of directors unless otherwise provided in the articles of incorporation.

§ 33. Number And Election Of Directors.) The number of directors of a corporation shall be not less than three nor more than fifteen. Subject to such limitation, the number of direc-

tors shall be fixed by the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw fixing the number of directors, the number shall be the same as that stated in the articles of incorporation. The names and addresses of the members of the first board of directors shall be stated in the articles of incorporation. Such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter the shareholders shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this Act. Each director shall hold office for the term for which he is elected unless removed earlier and until his successor shall have been elected and qualified. Each director, while in office, shall provide the secretary of state with his current residence mailing address.

§ 34. Classification Of Directors.) When the board of directors shall consist of nine or more members, in lieu of electing the whole number of directors annually, the bylaws may provide that the directors be divided into either two or three classes, each class to be as nearly equal in number as possible, the term of office of directors of the first class to expire at the first annual meeting of shareholders after their election, that of the second class to expire at the second annual meeting after their election and that of the third class, if any, to expire at the third annual meeting after their election. At each annual meeting after such classification the number of directors equal to the number of the class whose term expires at the time of such meeting shall be elected to hold office until the second succeeding annual meeting, if there be two classes, or until the third succeeding annual meeting, if there be three classes. No classification of directors shall be effective prior to the first annual meeting of shareholders.

§ 35. Vacancies.) Any vacancy occurring in the board of directors may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the board of directors. A director elected to fill a vacancy shall be elected for the unexpired term of his predecessor in office. Any directorship to be filled by reason of an increase in the number of directors shall be filled by election at an annual meeting or at a special meeting of shareholders called for that purpose.

§ 36. Removal Of Directors.) At a meeting called expressly for that purpose, directors may be removed in the manner provided in this section. The entire board may be removed, with or without cause, by a vote of the holders of a majority of the shares then entitled to vote at an election of directors. If less than the entire board is to be removed, no one of the directors may be removed if the votes of a sufficient number of shares are cast against his removal which, if then cumulatively voted at an election of the entire board of directors, or, if there be classes of directors, at an election of the class of directors of which he is a part, would be sufficient to elect him.

Whenever the holders of the shares of any class are entitled to elect one or more directors by the provisions of the articles of incorporation, the provisions of this section shall apply, in respect to the removal of a director or directors so elected, to the vote of the holders of the outstanding shares of that class and not to the vote of the outstanding shares as a whole.

§ 37. Quorum Of Directors.) A majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, shall constitute a quorum for the transaction of business unless a greater number is required by the articles of incorporation or the bylaws. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by the articles of incorporation or the bylaws.

§ 38. Executive Committee.) If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the number of directors fixed by the bylaws, or in the absence of a bylaw fixing the number of directors, then of the number stated in the articles of incorporation, may designate two or more directors to constitute an executive committee, which committee, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation shall have and may exercise all of the authority of the board of directors in the management of the corporation; but the designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed upon it or him by law.

§ 39. Place And Notice Of Directors' Meetings.) Meetings of the board of directors, regular or special, may be held either within or without this state.

Regular meetings of the board of directors may be held with or without notice as prescribed in the bylaws. Special meetings of the board of directors shall be held upon such notice as is prescribed in the bylaws. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the board of directors need be specified in the notice or waiver of notice of such meeting unless required by the bylaws.

§ 40. Dividends.) The board of directors of a corporation may, from time to time, declare and the corporation may pay dividends on its outstanding shares in cash, property, or its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation, subject to the following provisions:

1. Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, except as otherwise provided in this section;
2. If the articles of incorporation of a corporation engaged in the business of exploiting natural resources so provide, dividends may be declared and paid in cash out of the depletion reserves, but each such dividend shall be identified as a distribution of such reserves and the amount per share paid from such reserves shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof;
3. Dividends may be declared and paid in its own shares out of any treasury shares that have been reacquired out of surplus of the corporation;
4. Dividends may be declared and paid in its own authorized but unissued shares out of any unreserved and unrestricted surplus of the corporation upon the following conditions:
 - a. If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount at least equal to the aggregate par value of the shares to be issued as a dividend;
 - b. If a dividend is payable in its own shares without par value, such shares shall be issued at such stated

value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate stated value so fixed in respect of such shares; and the amount per share so transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof; and

5. No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

A split-up or division of the issued shares of any class into a greater number of shares of the same class without increasing the stated capital of the corporation shall not be construed to be a share dividend within the meaning of this section.

§ 41. Distributions In Partial Liquidation.) The board of directors of a corporation may, from time to time, distribute to its shareholders in partial liquidation, out of stated capital or capital surplus of the corporation, a portion of its assets, in cash or property, subject to the following provisions:

1. No such distribution shall be made at a time when the corporation is insolvent or when such distribution would render the corporation insolvent;
2. No such distribution shall be made unless the articles of incorporation so provide or such distribution is authorized by the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class whether or not entitled to vote thereon by the provisions of the articles of incorporation of the corporation;
3. No such distribution shall be made to the holders of any class of shares unless all cumulative dividends accrued on all preferred or special classes of shares entitled to preferential dividends shall have been fully paid;
4. No such distribution shall be made to the holders of any class of shares which would reduce the remaining net assets of the corporation below the aggregate preferential amount payable in event of voluntary liquidation to the holders of shares having preferential rights to the assets of the corporation in the event of liquidation; and

5. Each such distribution, when made, shall be identified as a distribution in partial liquidation and the amount per share disclosed to the shareholders receiving the same concurrently with the distribution thereof.

The board of directors of a corporation may also, from time to time, distribute to the holders of its outstanding shares having a cumulative preferential right to receive dividends, in discharge of their cumulative dividend rights, dividends payable in cash out of the capital surplus of the corporation, if at the time the corporation has no earned surplus and is not insolvent and would not thereby be rendered insolvent. Each such distribution, when made, shall be identified as a payment of cumulative dividends out of capital surplus.

§ 42. Loans.) No loans shall be made by a corporation to its officers or directors, and no loans shall be made by a corporation secured by its shares.

§ 43. Liability Of Directors In Certain Cases.) In addition to any other liabilities imposed by law upon directors of a corporation:

1. Directors of a corporation who vote for or assent to the declaration of any dividend or other distribution of the assets of a corporation to its shareholders contrary to the provisions of this Act or contrary to any restrictions contained in the articles of incorporation, shall be jointly and severally liable to the corporation for the amount of such dividend which is paid or the value of such assets which are distributed in excess of the amount of such dividend or distribution which could have been paid or distributed without a violation of the provisions of this Act or the restrictions in the articles of incorporation;
2. Directors of a corporation who vote for or assent to the purchase of its own shares contrary to the provisions of this Act shall be jointly and severally liable to the corporation for the amount of consideration paid for such shares which is in excess of the maximum amount which could have been paid therefor without a violation of the provisions of this Act;
3. The directors of a corporation who vote for or assent to any distribution of assets of a corporation to its shareholders during the liquidation of the corporation without the payment and discharge of, or making adequate provision for, all known debts, obligations, and liabilities of the corporation shall be jointly and severally liable to the corporation for the value of such assets which are distributed, to the extent that such debts, obligations

and liabilities of the corporation are not thereafter paid and discharged;

4. The directors of a corporation who vote for or assent to the making of a loan to an officer or director of the corporation, or the making of any loan secured by shares of the corporation, shall be jointly and severally liable to the corporation for the amount of such loan until the repayment thereof; and
5. If a corporation shall commence business before it has received at least one thousand dollars as consideration for the issuance of shares, the directors who assent thereto shall be jointly and severally liable to the corporation for such part of one thousand dollars as shall not have been received before commencing business, but such liability shall be terminated when the corporation has actually received one thousand dollars as consideration for the issuance of shares.

A director of a corporation who is present at a meeting of its board of directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered or certified mail to the secretary of the corporation immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

A director shall not be liable under subsections 1, 2, or 3 of this section if he relied and acted in good faith upon financial statements of the corporation represented to him to be correct by the president or the officer of such corporation having charge of its books of account, or stated in a written report by an independent public or certified public accountant or firm of such accountants fairly to reflect the financial condition of such corporation, nor shall he be so liable if in good faith in determining the amount available for any such dividend or distribution he considered the assets to be of their book value.

Any director against whom a claim shall be asserted under or pursuant to this section for the payment of a dividend or other distribution of assets of a corporation and who shall be held liable thereon, shall be entitled to contribution from the shareholders who accepted or received any such dividend or assets, knowing such dividend or distribution to have been made in violation of this section, in proportion to the amounts received by them respectively.

Any director against whom a claim shall be asserted under or pursuant to this section shall be entitled to contribution from the other directors who voted for or assented to the action upon which the claim is asserted.

§ 44. Actions By Shareholders.) No action shall be brought in this state by a shareholder in the right of a domestic or foreign corporation unless the plaintiff was a holder of shares or of voting trust certificates therefor at the time of the transaction of which he complains, or his shares or voting trust certificates thereafter devolved upon him by operation of law from a person who was a holder at such time.

In any action hereafter instituted in the right of any domestic or foreign corporation by the holder or holders of shares of such corporation or of voting trust certificates therefor, the court having jurisdiction, upon final judgment and a finding that the action was brought without reasonable cause, may require the plaintiff or plaintiffs to pay to the parties named as defendant the reasonable expenses, including fees of attorneys, incurred by them in the defense of such action.

In any action now pending or hereafter instituted or maintained in the right of any domestic or foreign corporation by the holder or holders of less than five percent of the outstanding shares of any class of such corporation or of voting trust certificates therefor, unless the shares or voting trust certificates so held have a market value in excess of twenty-five thousand dollars, the corporation in whose right such action is brought shall be entitled at any time before final judgment to require the plaintiff or plaintiffs to give security for the reasonable expenses, including fees of attorneys, that may be incurred by it in connection with such action or may be incurred by other parties named as defendant for which it may become legally liable. Market value shall be determined as of the date that the plaintiff institutes the action or, in the case of an intervenor, as of the date that he becomes a party to the action. The amount of such security may from time to time be increased or decreased, in the discretion of the court, upon showing that the security provided has or may become inadequate or is excessive. The corporation shall have recourse to such security in such amount as the court having jurisdiction shall determine upon the termination of such action, whether or not the court finds the action was brought without reasonable cause.

§ 45. Officers.) The officers of a corporation shall consist of a president, one or more vice presidents as may be prescribed by the bylaws, a secretary, and a treasurer, each of whom shall be elected by the board of directors at such time

and in such manner as may be prescribed by the bylaws. Such other officers and assistant officers and agents as may be deemed necessary may be elected or appointed by the board of directors or chosen in such other manner as may be prescribed by the bylaws. Any two or more offices may be held by the same person, except the offices of president and secretary.

All officers and agents of the corporation, as between themselves and the corporation, shall have such authority and perform such duties in the management of the corporation as may be provided in the bylaws, or as may be determined by resolution of the board of directors not inconsistent with the bylaws.

§ 46. Removal Of Officers.) Any officer or agent may be removed by the board of directors, or by the executive committee, if any, whenever in its judgment the best interests of the corporation will be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

§ 47. Records; Penalty.) Each corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its shareholders and board of directors; and shall keep at its registered office or principal place of business, or at the office of its transfer agent or register, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of the shares held by each.

Any person who shall have been a shareholder of record for at least six months immediately preceding his demand or who shall be the holder of record of at least five percent of all the outstanding shares of a corporation, upon written demand stating the purpose thereof, shall have the right to examine, in person, or by agent or attorney, at any reasonable time or times, for any proper purpose, its books and records of account, minutes and record of shareholders and to make extracts therefrom.

Any officer or agent who, or a corporation which, shall refuse to allow any such shareholder, or his agent or attorney, so to examine and make extracts from its books and records of account, minutes, and record of shareholders, for any proper purpose, shall be liable to such shareholder in a penalty of ten percent of the value of the shares owned by such shareholder, in addition to any other damages or remedy afforded him by law. It shall be a defense to any action for penalties under this section that the person suing therefor has within two years sold or offered for sale any list of shareholders of such

corporation or any other corporation or has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the books and records of account, or minutes, or record of shareholders of such corporation or any other corporation, or was not acting in good faith or for a proper purpose in making his demand.

Nothing herein contained shall impair the power of any court of competent jurisdiction, upon proof by a shareholder of proper purpose, irrespective of the period of time during which such shareholder shall have been a shareholder of record, and irrespective of the number of shares held by him, to compel the production for examination by such shareholder of the books and records of account, minutes, and record of shareholders of a corporation.

Upon the written request of any shareholder of a corporation, the corporation shall mail to such shareholder its most recent financial statements showing in reasonable detail its assets and liabilities and the results of its operations.

§ 48. Incorporators.) Three or more natural persons of the age of twenty-one years or more, may act as incorporators of a corporation by signing, verifying and delivering in duplicate to the secretary of state articles of incorporation for such corporation.

§ 49. Articles Of Incorporation.) The articles of incorporation shall set forth:

1. The name of the corporation;
2. The period of duration, which may be perpetual;
3. The purpose or purposes for which the corporation is organized;
4. The aggregate number of shares which the corporation shall have authority to issue; if such shares are to consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are to be divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are to be without par value;
5. If the shares are to be divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;
6. If the corporation is to issue the shares of any preferred or special class in series, then the designation of each series and a statement of the variations in the relative

rights and preferences as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;

7. A statement that the corporation will not commence business until consideration of the value of at least one thousand dollars has been received for the issuance of shares;
8. Any provision limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the corporation;
9. Any provision, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision which under this Act is required or permitted to be set forth in the bylaws;
10. The address of its initial registered office, and the name of its initial registered agent at such address; for purposes of this Act, in the case of a corporation existing prior to July 1, 1957, the post office address set forth in its articles shall be considered such registered office address and the secretary of the corporation shall be considered such registered agent, unless the articles of such corporation are amended to provide differently;
11. The number of directors constituting the initial board of directors and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified; and
12. The name and address of each incorporator.

It shall not be necessary to set forth in the articles of incorporation any of the corporate powers enumerated in this Act.

§ 50. Filing Of Articles Of Incorporation.) Duplicate originals of the articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that the articles of incorporation conform to law, he shall, when all fees have been paid as in this Act prescribed:

1. Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof;
2. File one of such duplicate originals in his office; and
3. Issue a certificate of incorporation to which he shall affix the other duplicate original.

The certificate of incorporation, together with the duplicate original of the articles of incorporation affixed thereto by the secretary of state, shall be returned to the incorporators or their representative.

§ 51. Effect Of Issuance Of Certificate Of Incorporation.)

Upon the issuance of the certificate of incorporation, the corporate existence shall begin, and such certificate of incorporation shall be conclusive evidence that all conditions precedent required to be performed by the incorporators have been complied with and that the corporation has been incorporated under this Act, except as against this state in a proceeding to cancel or revoke the certificate of incorporation or for involuntary dissolution of the corporation.

§ 52. Requirement Before Commencing Business.) A corporation shall not transact any business or incur any indebtedness, except such as shall be incidental to its organization or to obtaining subscriptions to or payment for its shares, until there has been paid in for the issuance of shares consideration of the value of at least one thousand dollars.

§ 53. Organization Meeting Of Directors.) After the issuance of the certificate of incorporation an organization meeting of the board of directors named in the articles of incorporation shall be held, either within or without this state, at the call of a majority of the incorporators, for the purpose of adopting bylaws, electing officers and the transaction of such other business as may come before the meeting. The incorporators calling the meeting shall give at least three days' notice thereof by mail to each director so named, which notice shall state the time and place of the meeting.

§ 54. Right To Amend Articles Of Incorporation.) A corporation may amend its articles of incorporation, from time to time, in any and as many respects as may be desired, so long as its articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment, and, if a change in shares or the rights of shareholders, or an exchange, reclassification or cancellation of shares or rights of shareholders is to be made, such provisions as may be necessary to effect such change, exchange, reclassification or cancellation.

In particular, and without limitation upon such general power of amendment, a corporation may amend its articles of incorporation, from time to time, so as:

1. To change its corporate name;
2. To change its period of duration;

3. To change, enlarge or diminish its corporate purposes;
4. To increase or decrease the aggregate number of shares, or shares of any class, which the corporation has authority to issue;
5. To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued;
6. To exchange, classify, reclassify or cancel all or any part of its shares, whether issued or unissued;
7. To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and the relative rights in respect of all or any part of its shares, whether issued or unissued;
8. To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value;
9. To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes;
10. To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued;
11. To cancel or otherwise affect the right of the holder of the shares of any class to receive dividends which have accrued but have not been declared;
12. To divide any preferred or special class of shares, whether issued or unissued, into series and fix and determine the designations of such series and the variations in the relative rights and preferences as between the shares of such series;
13. To authorize the board of directors to establish, out of authorized but unissued shares, series of any preferred or special class of shares and fix and determine the relative rights and preferences of the shares of any series so established;
14. To authorize the board of directors to fix and determine the relative rights and preferences of the authorized but unissued shares of series theretofore established in respect of which either the relative rights and prefer-

- ences have not been fixed and determined or the relative rights and preferences theretofore fixed and determined are to be changed;
15. To revoke, diminish, or enlarge the authority of the board of directors to establish series out of authorized but unissued shares of any preferred or special class and fix and determine the relative rights and preferences of the shares of any series so established; or
 16. To limit, deny or grant to shareholders of any class the preemptive right to acquire additional or treasury shares of the corporation, whether then or thereafter authorized.

§ 55. Procedure To Amend Articles Of Incorporation.) Unless the articles provide otherwise, amendments to the articles of incorporation shall be made in the following manner:

1. The board of directors shall adopt a resolution setting forth the proposed amendment and directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;
2. Written or printed notice setting forth the proposed amendment or a summary of the changes to be effected thereby shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed amendment or such summary may be included in the notice of such annual meeting; and
3. At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

§ 56. Class Voting On Amendments.) The holders of the outstanding shares of any class entitled to vote upon a proposed amendment by the provisions of the articles of incorporation, shall be entitled to vote as a class thereon if the amendment would change the shares of any class having a par

value into the same or a different number of shares without par value, or change the shares of any class without par value into the same or a different number of shares having a par value, or change the shares of any class, whether with or without par value, into a different number of shares of the same class.

The holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the provisions of the articles of incorporation, if the amendment would:

1. Increase or decrease the aggregate number of authorized shares of such class;
2. Increase or decrease the par value of the shares of such class;
3. Effect an exchange, reclassification or cancellation of all or part of the shares of such class;
4. Effect an exchange, or create a right of exchange, of all or any part of the shares of another class into the shares of such class;
5. Change the designations, preferences, limitations or relative rights of the shares of such class;
6. Change the shares of such class, whether with or without par value, into the same or a different number of shares, either with or without par value, of the same class or another class or classes;
7. Create a new class of shares having rights and preferences prior and superior to the shares of such class, or increase the rights and preferences of any class having rights and preferences prior or superior to the shares of such class;
8. In the case of a preferred or special class of shares, divide the shares of such class into series and fix and determine the designation of such series and the variations in the relative rights and preferences between the shares of such series;
9. Limit or deny the existing preemptive rights of the shares of such class; or
10. Cancel or otherwise affect dividends on the shares of such class which had accrued but had not been declared.

§ 57. Articles Of Amendment.) The articles of amendment shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

1. The name of the corporation;

2. The amendment so adopted;
3. The date of the adoption of the amendment by the shareholders;
4. The number of shares outstanding, and the number of shares entitled to vote thereon, and if the shares of any class are entitled to vote thereon as a class, the designation and number of outstanding shares entitled to vote thereon of each such class;
5. The number of shares voted for and against such amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class, the number of shares of each such class voted for and against such amendment, respectively;
6. If such amendment provides for an exchange, reclassification or cancellation of issued shares, and if the manner in which the same shall be effected is not set forth in the amendment, then a statement of the manner in which the same shall be effected; and
7. If such amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is effected and a statement, expressed in dollars, of the amount of stated capital as changed by such amendment.

§ 58. Filing Of Articles Of Amendment.) Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this Act prescribed:

1. Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof;
2. File one of such duplicate originals in his office; and
3. Issue a certificate of amendment to which he shall affix the other duplicate original.

The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

§ 59. Effect Of Certificate Of Amendment.) Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly.

No amendment shall affect any existing cause of action in favor of or against such corporation, or any pending suit to which such corporation shall be a party, or the existing rights

of persons other than shareholders; and, in the event the corporate name shall be changed by amendment, no suit brought by or against such corporation under its former name shall abate for that reason.

§ 60. Restated Articles Of Incorporation.) A domestic corporation may at any time restate its articles of incorporation as amended, in the following manner:

1. The board of directors shall adopt a resolution setting forth the proposed restated articles of incorporation and directing that they be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;
2. Written or printed notice setting forth the proposed restated articles shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided by law for the giving of notice of meetings of shareholders. If the meeting be an annual meeting, the proposed restated articles may be included in the notice of the annual meeting;
3. At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed restated articles. They shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the shares entitled to vote thereon.

Upon their approval the restated articles of incorporation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or assistant secretary, and verified by one of the officers signing such articles, and shall set forth:

- a. The name of the corporation;
- b. The period of its duration;
- c. The purpose or purposes which the corporation is then authorized to pursue;
- d. The aggregate number of shares which the corporation has authority to issue; if such shares consist of one class only, the par value of each of such shares, or a statement that all of such shares are without par value; or, if such shares are divided into classes, the number of shares of each class, and a statement of the par value of the shares of each such class or that such shares are without par value;
- e. If the shares are divided into classes, the designation of each class and a statement of the preferences, limitations and relative rights in respect of the shares of each class;

- f. If the shares of any preferred or special class are issuable in series, the designation of each series and a statement of the variations in the relative rights and preferences as between series insofar as the same have been fixed, and a statement of any authority vested in the board of directors to establish series and fix and determine the variations in the relative rights and preferences as between series;
- g. Any existing provision limiting or denying to shareholders the preemptive right to acquire additional or treasury shares of the corporation;
- h. Any provisions, not inconsistent with law, which are then set forth in the articles of incorporation as theretofore amended, for the regulation of the internal affairs of the corporation; and
- i. A statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as theretofore amended, and that the restated articles of incorporation supersede the original articles of incorporation and all amendments thereto.

Duplicate originals of the restated articles of incorporation shall be delivered to the secretary of state. If the secretary of state finds that such restated articles of incorporation conform to law, and all fees have been paid he shall endorse on each of such duplicate originals the word "Filed" and the month, day and year of the filing thereof, file one of such duplicate originals in his office, and issue a restated certificate of incorporation to which he shall affix the other duplicate original.

The restated certificate of incorporation, together with the duplicate original of the restated articles of incorporation affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Upon the issuance of the restated certificate of incorporation by the secretary of state, the restated articles of incorporation shall become effective and shall supersede the original articles of incorporation and all amendments thereto.

§ 61. Amendment Of Articles In Reorganization; Purposes.)

Whenever a plan of reorganization of a corporation has been confirmed by decree or order of a court of competent jurisdiction in proceedings for the reorganization of such corporation, pursuant to the provisions of any applicable statute of the United States relating to reorganizations of corporations, the articles of incorporation of the corporation may be amended, in the manner provided in this section, in as many respects as may be necessary to carry out the plan and put it into effect,

so long as the articles of incorporation as amended contain only such provisions as might be lawfully contained in original articles of incorporation at the time of making such amendment.

In particular and without limitation upon such general power of amendment, the articles of incorporation may be amended for such purpose so as to:

- A. Change the corporate name, period of duration or corporate purposes of the corporation;
- B. Repeal, alter or amend the bylaws of the corporation;
- C. Change the aggregate number of shares, or shares of any class, which the corporation has authority to issue;
- D. Change the preferences, limitations and relative rights in respect of all or any part of the shares of the corporation, and classify, reclassify or cancel all or any part thereof, whether issued or unissued;
- E. Authorize the issuance of bonds, debentures or other obligations of the corporation, whether or not convertible into shares of any class or bearing warrants or other evidences of optional rights to purchase or subscribe for shares of any class, and fix the terms and conditions thereof; and
- F. Constitute or reconstitute and classify or reclassify the board of directors of the corporation, and appoint directors and officers in place of or in addition to all or any of the directors or officers then in office.

§ 62. Amendment Of Articles In Reorganization; Procedure.) Amendments to the articles of incorporation pursuant to section 61 of this Act shall be made in the following manner:

1. Articles of amendment approved by decree or order of such court shall be executed and verified in duplicate by such person or persons as the court shall designate or appoint for the purpose, and shall set forth the name of the corporation, the amendments of the articles of incorporation approved by the court, the date of the decree or order approving the articles of amendment, the title of the proceedings in which the decree or order was entered by a court having jurisdiction of the proceedings for the reorganization of the corporation pursuant to the provisions of an applicable statute of the United States.
2. Duplicate originals of the articles of amendment shall be delivered to the secretary of state. If the secretary of state finds that the articles of amendment conform to law, he shall, when all fees have been paid as in this Act prescribed:

- a. Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof.
- b. File one of such duplicate originals in his office.
- c. Issue a certificate of amendment to which he shall affix the other duplicate original.

The certificate of amendment, together with the duplicate original of the articles of amendment affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Upon the issuance of the certificate of amendment by the secretary of state, the amendment shall become effective and the articles of incorporation shall be deemed to be amended accordingly, without any action thereon by the directors or shareholders of the corporation and with the same effect as if the amendments had been adopted by unanimous action of the directors and shareholders of the corporation.

§ 63. Restriction On Redemption Or Purchase Of Redeemable Shares.) No redemption or purchase of redeemable shares shall be made by a corporation when it is insolvent or when such redemption or purchase would render it insolvent, or which would reduce the net assets below the aggregate amount payable to the holders of shares having prior or equal rights to the assets of the corporation upon involuntary dissolution.

§ 64. Cancellation Of Redeemable Shares By Redemption Or Purchase.) When redeemable shares of a corporation are redeemed or purchased by the corporation, the redemption or purchase shall effect a cancellation of such shares, and a statement of cancellation shall be filed as provided in this section. Thereupon such shares shall be restored to the status of authorized but unissued shares, unless the articles of incorporation provide that such shares when redeemed or purchased shall not be reissued, in which case the filing of the statement of cancellation shall constitute an amendment to the articles of incorporation and shall reduce the number of shares of the class so canceled which the corporation is authorized to issue by the number of shares so canceled.

The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

1. The name of the corporation;
2. The number of redeemable shares canceled through redemption or purchase, itemized by classes and series;

3. The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation;
4. The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation; and
5. If the articles of incorporation provide that the canceled shares shall not be reissued, then the number of shares which the corporation has authority to issue, itemized by classes and series, after giving effect to such cancellation.

Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this Act prescribed:

- a. Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof;
- b. File one of such duplicate originals in his office; and
- c. Return the other duplicate original to the corporation or its representative.

Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled.

Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this Act.

§ 65. Cancellation Of Other Reacquired Shares.) A corporation may at any time, by resolution of its board of directors, cancel all or any part of the shares of the corporation of any class reacquired by it, other than redeemable shares redeemed or purchased, and in such event a statement of cancellation shall be filed as provided in this section.

The statement of cancellation shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

1. The name of the corporation;
2. The number of reacquired shares canceled by resolution duly adopted by the board of directors, itemized by classes and series, and the date of its adoption;

3. The aggregate number of issued shares, itemized by classes and series, after giving effect to such cancellation; and
4. The amount, expressed in dollars, of the stated capital of the corporation after giving effect to such cancellation.

Duplicate originals of such statements shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this Act prescribed:

- a. Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof;
- b. File one of such duplicate originals in his office; and
- c. Return the other duplicate original to the corporation or its representative.

Upon the filing of such statement of cancellation, the stated capital of the corporation shall be deemed to be reduced by that part of the stated capital which was, at the time of such cancellation, represented by the shares so canceled, and the shares so canceled shall be restored to the status of authorized but unissued shares.

Nothing contained in this section shall be construed to forbid a cancellation of shares or a reduction of stated capital in any other manner permitted by this Act.

§ 66. Reduction Of Stated Capital In Certain Cases.) A reduction of the stated capital of a corporation, where such reduction is not accompanied by any action requiring an amendment of the articles of incorporation and not accompanied by a cancellation of shares, may be made in the following manner:

1. The board of directors shall adopt a resolution setting forth the amount of the proposed reduction and the manner in which the reduction shall be effected, and directing that the question of such reduction be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;
2. Written or printed notice, stating that the purpose or one of the purposes of such meeting is to consider the question of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors, shall be given to each shareholder of record entitled to vote thereon within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders; and

3. At such meeting a vote of the shareholders entitled to vote thereon shall be taken on the question of approving the proposed reduction of stated capital, which shall require for its adoption the affirmative vote of the holders of at least a majority of the shares entitled to vote thereon.

When a reduction of the stated capital of a corporation has been approved as provided in this section, a statement shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, and shall set forth:

- a. The name of the corporation;
- b. A copy of the resolution of the shareholders approving such reduction, and the date of its adoption;
- c. The number of shares outstanding, and the number of shares entitled to vote thereon;
- d. The number of shares voted for and against such reduction, respectively; and
- e. A statement of the manner in which such reduction is effected, and a statement, expressed in dollars, of the amount of stated capital of the corporation after giving effect to such reduction.

Duplicate originals of such statement shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this Act prescribed:

- (1) Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof;
- (2) File one of such duplicate originals in his office; and
- (3) Return the other duplicate original to the corporation or its representative.

Upon the filing of such statement, the stated capital of the corporation shall be reduced as therein set forth.

No reduction of stated capital shall be made under the provisions of this section which would reduce the amount of the aggregate stated capital of the corporation to an amount equal to or less than the aggregate preferential amounts payable upon all issued shares having a preferential right in the assets of the corporation in the event of involuntary liquidation, plus the aggregate par value of all issued shares having a par value but no preferential right in the assets of the corporation in the event of involuntary liquidation.

§ 67. Special Provisions Relating To Surplus And Reserves.) The surplus, if any, created by or arising out of a reduction of the stated capital of a corporation shall be capital surplus.

The capital surplus of a corporation may be increased from time to time by resolution of the board of directors directing that all or a part of the earned surplus of the corporation be transferred to capital surplus.

A corporation may, by resolution of its board of directors, apply any part or all of its capital surplus to the reduction or elimination of any deficit arising from losses, however incurred, but only after first eliminating the earned surplus, if any, of the corporation by applying such losses against earned surplus and only to the extent that such losses exceed the earned surplus, if any. Each such application of capital surplus shall, to the extent thereof, effect a reduction of capital surplus.

A corporation may, by resolution of its board of directors, create a reserve or reserves out of its earned surplus for any proper purpose or purposes, and may abolish any such reserve in the same manner. Earned surplus of the corporation to the extent so reserved shall not be available for the payment of dividends or other distributions by the corporation except as expressly permitted by this Act.

§ 68. Procedure For Merger.) Any two or more domestic corporations may merge into one of such corporations pursuant to a plan of merger approved in the manner provided in this Act.

The board of directors of each corporation shall, by resolution adopted by each such board, approve a plan of merger setting forth:

1. The names of the corporations proposing to merge, and the name of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation;
2. The terms and conditions of the proposed merger;
3. The manner and basis of converting the shares of each merging corporation into shares or other securities or obligations of the surviving corporation;
4. A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger; and
5. Such other provisions with respect to the proposed merger as are deemed necessary or desirable.

§ 69. Procedure For Consolidation.) Any two or more domestic corporations may consolidate into a new corporation pursuant to a plan of consolidation approved in the manner provided in this Act.

The board of directors of each corporation shall, by a resolution adopted by each such board, approve a plan of consolidation setting forth:

1. The names of the corporations proposing to consolidate, and the name of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation;
2. The terms and conditions of the proposed consolidation;
3. The manner and basis of converting the shares of each corporation into shares or other securities or obligations of the new corporation;
4. With respect to the new corporation, all of the statements required to be set forth in articles of incorporation for corporations organized under this Act; and
5. Such other provisions with respect to the proposed consolidation as are deemed necessary or desirable.

§ 70. Approval By Shareholders.) The board of directors of each corporation, upon approving such plan of merger or plan of consolidation, shall, by resolution, direct that the plan be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting. Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting, not less than twenty days before such meeting, in the manner provided in this Act for the giving of notice of meetings of shareholders, and shall state the purpose of the meeting, whether the meeting be an annual or a special meeting. A copy or a summary of the plan of merger or plan of consolidation, as the case may be, shall be included in or enclosed with such notice.

At each such meeting, a vote of the shareholders shall be taken on the proposed plan of merger or consolidation. Each outstanding share of each such corporation shall be entitled to vote on the proposed plan of merger or consolidation, whether or not such share has voting rights under the provisions of the articles of incorporation of such corporation. The plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of each such corporation, unless any class of shares of any such corporation is entitled to vote as a class thereon, in which event, as to such corporation, the plan of merger or consolidation shall be approved upon receiving the affirmative vote of the holders of at least two-thirds of

the outstanding shares of each class of shares entitled to vote as a class thereon and of the total outstanding shares. Any class of shares of any such corporation shall be entitled to vote as a class if the plan of merger or consolidation, as the case may be, contains any provision which, if contained in a proposed amendment to articles of incorporation, would entitle such class of shares to vote as a class.

After such approval by a vote of the shareholders of each corporation, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to provisions therefor, if any, set forth in the plan of merger or consolidation.

§ 71. Articles Of Merger Or Consolidation.) Upon such approval, articles of merger or articles of consolidation shall be executed in duplicate by each corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers of each corporation signing such articles, and shall set forth:

1. The plan of merger or the plan of consolidation;
2. As to each corporation, the number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; and
3. As to each corporation, the number of shares voted for and against such plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against such plan, respectively.

Duplicate originals of the articles of merger or articles of consolidation shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this Act prescribed:

- a. Endorse on each duplicate original the word "Filed", and the month, day and year of the filing thereof;
- b. File one of such duplicate originals in his office; and
- c. Issue a certificate of merger or a certificate of consolidation to which he shall affix the other duplicate original.

The certificate of merger or certificate of consolidation, together with the duplicate original of the articles of merger or articles of consolidation affixed thereto by the secretary of state, shall be returned to the surviving or new corporation, as the case may be, or its representative.

§ 72. Merger Of Subsidiary Corporation.) Any corporation owning at least ninety-five percent of the outstanding shares

of each class of another corporation may merge such other corporation into itself without approval by a vote of the shareholders of either corporation.

Its board of directors shall, by resolution, approve a plan of merger setting forth the name of the subsidiary corporation and the name of the corporation owning at least ninety-five percent of its shares, which is hereinafter designated as the surviving corporation, and showing the manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the surviving corporation or the cash or other consideration to be paid or delivered upon surrender of each share of the subsidiary corporation.

A copy of such plan of merger shall be mailed to each shareholder of record of the subsidiary corporation.

Articles of merger shall be executed in duplicate by the surviving corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of its officers signing such articles, and shall set forth:

1. The plan of merger;
2. The number of outstanding shares of each class of the subsidiary corporation and the number of such shares of each class owned by the surviving corporation; and
3. The date of the mailing to shareholders of the subsidiary corporation of a copy of the plan of merger.

On and after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of the subsidiary corporation, duplicate originals of the articles of merger shall be delivered to the secretary of state. If the secretary of state finds that such articles conform to law, he shall, when all fees have been paid as in this Act prescribed;

- a. Endorse on each of such duplicate originals the word "Filed", the month, day and year of the filing thereof;
- b. File one of such duplicate originals in his office; and
- c. Issue a certificate of merger to which he shall affix the other duplicate original.

The certificate of merger, together with the duplicate original of the articles of merger affixed thereto by the secretary of state, shall be returned to the surviving corporation or its representative.

§ 73. Effect Of Merger Or Consolidation.) Upon the issuance of the certificate of merger or the certificate of consolidation by the secretary of state, the merger or consolidation shall be effected.

When such merger or consolidation has been effected:

1. The several corporations parties to the plan of merger or consolidation shall be a single corporation, which, in the case of a merger, shall be that corporation designated in the plan of merger as the surviving corporation, and, in the case of a consolidation, shall be the new corporation provided for in the plan of consolidation;
2. The separate existence of all corporations parties to the plan of merger or consolidation, except the surviving or new corporation, shall cease;
3. Such surviving or new corporation shall have all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Act;
4. Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations; and all property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed; and the title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation;
5. Such surviving or new corporation shall thenceforth be responsible and liable for all the liabilities and obligations of each of the corporations so merged or consolidated; and any claim existing or action or proceeding pending by or against any of such corporations may be prosecuted as if such merger or consolidation had not taken place, or such surviving or new corporation may be substituted in its place. Neither the rights of creditors nor any liens upon the property of any such corporation shall be impaired by such merger or consolidation;
6. In the case of a merger, the articles of incorporation of the surviving corporation shall be deemed to be amended to the extent, if any, that changes in its articles of incorporation are stated in the plan of merger; and, in the case of a consolidation, the statements set forth in the articles of consolidation and which are required or permitted to be set forth in the

articles of incorporation of corporations organized under this Act shall be deemed to be the original articles of incorporation of the new corporation; and

7. The net surplus of the merging or consolidating corporations which was available for the payment of dividends immediately prior to such merger or consolidation, to the extent that such surplus is not transferred to stated capital by the issuance of shares or otherwise, shall continue to be available for the payment of dividends by such surviving or new corporation.

§ 74. Merger Or Consolidation Of Domestic And Foreign Corporations.) One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner, if such merger or consolidation is permitted by the laws of the state under which each such foreign corporation is organized:

1. Each domestic corporation shall comply with the provisions of this Act with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized; and
2. If the surviving or new corporation, as the case may be, is to be governed by the laws of any state other than this state, it shall comply with the provisions of this Act with respect to foreign corporations if it is to transact business in this state, and in every case it shall file with the secretary of state of this state:
 - a. an agreement that it may be served with process in this state in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to such merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of any such domestic corporation against the surviving or new corporation;
 - b. an irrevocable appointment of the secretary of state of this state as its agent to accept service of process in any such proceeding; and
 - c. an agreement that it will promptly pay to the dissenting shareholders of any such domestic corporation the amount, if any, to which they shall be entitled under the provisions of this Act with respect to the rights of dissenting shareholders.

The effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations, if the surviving or new corporation is to be

governed by the laws of this state. If the surviving or new corporation is to be governed by the laws of any state other than this state, the effect of such merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except insofar as the laws of such other state provide otherwise.

§ 75. Rights Of Dissenting Shareholders In Mergers Or Consolidations.) If a shareholder of a corporation which is a party to a merger or consolidation shall file with such corporation, prior to or at the meeting of shareholders at which the plan of merger or consolidation is submitted to a vote, a written objection to such plan of merger or consolidation, and shall not vote in favor thereof, and such shareholder, within ten days after the date on which the vote was taken, shall make written demand on the surviving or new corporation, domestic or foreign, for payment of the fair value of his shares as of the day prior to the date on which the vote was taken approving the merger or consolidation, or if a shareholder of a corporation being merged into another corporation in a case where a meeting of shareholders is not required by law shall make such written demand within fifteen days after the plan of such merger shall have been mailed to shareholders, then, if the merger or consolidation is effected, the surviving or new corporation shall pay to such shareholder, upon surrender of his certificate or certificates representing such shares, the fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the ten-day period shall be bound by the terms of the merger or consolidation.

Within ten days after the merger or consolidation is effected, the surviving or new corporation, as the case may be, shall give notice thereof to each dissenting shareholder who has made demand as herein provided for the payment of the fair value of his shares.

If within thirty days after the date on which such merger or consolidation was effected the value of such shares is agreed upon between the dissenting shareholder and the surviving or new corporation, payment therefor shall be made within ninety days after the date on which such merger or consolidation was effected, upon the surrender of his certificate or certificates representing such shares. Upon payment of the agreed value the dissenting shareholders shall cease to have any interest in such shares or in the corporation.

If within such period of thirty days the shareholder and the surviving or new corporation do not so agree, then the dissenting shareholder may, within sixty days after the expira-

tion of the thirty-day period, bring an action in any court of competent jurisdiction asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the surviving or new corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such merger or consolidation, together with interest thereon to the date of such judgment. The judgment shall be payable only upon and simultaneously with the surrender to the surviving or new corporation of the certificate or certificates representing such shares upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares, or in the surviving or new corporation. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him shall be bound by the terms of the merger or consolidation.

Shares acquired by the surviving or new corporation pursuant to the payment of the agreed value thereof or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by such corporation as in the case of other treasury shares.

The provisions of this section shall not apply to a merger if on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic or foreign, that are parties to the merger, and shall not apply to shareholders of the surviving corporation if no meeting of shareholders of the surviving corporation was necessary to authorize the merger.

§ 76. Sale Or Mortgage Of Assets In Regular Course Of Business.) The sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets of a corporation, when made in the usual and regular course of the business of the corporation, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money or property, real or personal, including shares of any other corporation, domestic or foreign, as shall be authorized by its board of directors; and in such case no authorization or consent of the shareholders shall be required.

§ 77. Sale Or Mortgage Of Assets Other Than In Regular Course Of Business.) A sale, lease, exchange, mortgage, pledge, or other disposition of all, or substantially all, the property and assets, with or without the good will, of a corporation, if not made in the usual and regular course of its business, may be made upon such terms and conditions and for such consideration, which may consist in whole or in part of money

or property, real or personal, including shares of any other corporation, domestic or foreign, as may be authorized in the following manner:

1. The board of directors shall adopt a resolution recommending such sale, lease, exchange, mortgage, pledge, or other disposition and directing the submission thereof to a vote at a meeting of shareholders, which may be either an annual or a special meeting;
2. Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or a special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the proposed sale, lease, exchange, mortgage, pledge, or other disposition;
3. At such meeting the shareholders may authorize such sale, lease, exchange, mortgage, pledge, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. Each outstanding share of the corporation shall be entitled to vote thereon, whether or not entitled to vote thereon by the provisions of the articles of incorporation. Such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation, unless any class of shares is entitled to vote as a class thereon, in which event such authorization shall require the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of shares entitled to vote as a class thereon and of the total outstanding shares; and
4. After such authorization by a vote of shareholders, the board of directors nevertheless, in its discretion, may abandon such sale, lease, exchange, mortgage, pledge, or other disposition of assets, subject to the rights of third parties under any contracts relating thereto, without further action or approval by shareholders.

§ 78. Rights Of Dissenting Shareholders Upon Sale Or Exchange Of Assets.) In the event that a sale or exchange of all or substantially all of the property and assets of a corporation otherwise than in the usual and regular course of its business, or in connection with the dissolution and liquidation of the corporation, is authorized by a vote of the shareholders of the corporation, any shareholder who shall have filed with the corporation a written objection thereto, prior

to or at the meeting of shareholders at which the sale or exchange is authorized, and who shall not have voted in favor thereof, may, within ten days after the date on which the vote was taken, make written demand on the corporation for the payment to him of the fair value of his shares as of the day prior to the date on which the vote was taken. If the sale or exchange is effected, the corporation shall pay to such shareholder, upon surrender of his certificate or certificates representing such shares, the fair value thereof. Such demand shall state the number and class of the shares owned by such dissenting shareholder. Any shareholder failing to make demand within the ten-day period shall be bound by the terms of the sale or exchange.

Within ten days after the sale or exchange is effected, the corporation shall give notice thereof to each dissenting shareholder who has made demand as herein provided for the payment of the fair value of his shares.

If within thirty days after the date on which the sale or exchange was effected the value of such shares is agreed upon between the dissenting shareholder and the corporation, payment therefor shall be made within ninety days after the date on which the sale or exchange was effected, upon the surrender of his certificate or certificates representing such shares. Upon payment of the agreed value, the dissenting shareholders shall cease to have any interest in such shares or in the corporation.

If within such period of thirty days the shareholder and the corporation do not so agree, then the dissenting shareholder may, within sixty days after the expiration of the thirty-day period, bring an action in any court of competent jurisdiction asking for a finding and determination of the fair value of such shares, and shall be entitled to judgment against the corporation for the amount of such fair value as of the day prior to the date on which such vote was taken approving such sale or exchange, together with interest thereon to the date of such judgment. The judgment shall be payable only upon and simultaneously with the surrender to the corporation of the certificate or certificates representing such shares. Upon payment of the judgment, the dissenting shareholder shall cease to have any interest in such shares or in the corporation. Unless the dissenting shareholder shall file such petition within the time herein limited, such shareholder and all persons claiming under him shall be bound by the terms of the sale or exchange.

The right of a dissenting shareholder to be paid the fair value of his shares as herein provided shall cease if and when the corporation shall abandon the sale or exchange or the

shareholders shall revoke the authority to make such sale or exchange.

Shares acquired by the corporation pursuant to the payment of the agreed value thereof or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by the corporation as in the case of other treasury shares.

§ 79. Voluntary Dissolution By Incorporators.) A corporation which has not commenced business and which has not issued any shares, may be voluntarily dissolved by its incorporators at any time within two years after the date of the issuance of its certificate of incorporation, in the following manner:

1. Articles of dissolution shall be executed in duplicate by a majority of the incorporators, and verified by them, and shall set forth:
 - a. The name of the corporation;
 - b. The date of issuance of its certificate of incorporation;
 - c. That none of its shares has been issued;
 - d. That the corporation has not commenced business;
 - e. That the amount, if any, actually paid in on subscriptions for its shares, less any part thereof disbursed for necessary expenses, has been returned to those entitled thereto;
 - f. That no debts of the corporation remain unpaid; and
 - g. That a majority of the incorporators elect that the corporation be dissolved.
2. Duplicate originals of the articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that the articles of dissolution conform to law, he shall, when all fees have been paid as in this Act prescribed:
 - a. Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof;
 - b. File one of such duplicate originals in his office; and
 - c. Issue a certificate of dissolution to which he shall affix the other duplicate original.

The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the secretary of state, shall be returned to the incorporators or their representative. Upon the issuance of such certificate of dissolution by the secretary of state, the existence of the corporation shall cease.

§ 80. Voluntary Dissolution By Consent Of Shareholders.)

A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

Upon the execution of such written consent, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

1. The name of the corporation;
2. The names and respective addresses of its officers;
3. The names and respective addresses of its directors;
4. A copy of the written consent signed by all shareholders of the corporation; and
5. A statement that such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

§ 81. Voluntary Dissolution By Act Of Corporation.)

A corporation may be dissolved by the act of the corporation, when authorized in the following manner:

1. The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of such dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;
2. Written or printed notice shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of meetings of shareholders, and, whether the meeting be an annual or special meeting, shall state that the purpose, or one of the purposes, of such meeting is to consider the advisability of dissolving the corporation;
3. At such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. Each outstanding share of the corporation shall be entitled to vote thereon, whether or not entitled to vote thereon by the provisions of the articles of incorporation. Such resolution shall be adopted upon receiving the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation, unless any class of shares is entitled to vote as a class thereon, in which event the resolution shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class of

- shares entitled to vote as a class thereon and of the total outstanding shares; and
4. Upon the adoption of such resolution, a statement of intent to dissolve shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:
 - a. The name of the corporation;
 - b. The names and respective addresses of its officers;
 - c. The names and respective addresses of its directors;
 - d. A copy of the resolution adopted by the shareholders authorizing the dissolution of the corporation;
 - e. The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each such class; and
 - f. The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively.

§ 82. Filing Of Statement Of Intent To Dissolve.) Duplicate originals of the statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this Act prescribed:

1. Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof;
2. File one of such duplicate originals in his office; and
3. Return the other duplicate original to the corporation or its representative.

§ 83. Effect Of Statement Of Intent To Dissolve.) Upon the filing by the secretary of state of a statement of intent to dissolve, whether by consent of shareholders or by act of the corporation, the corporation shall cease to carry on its business, except insofar as may be necessary for the winding up thereof, but its corporate existence shall continue until a certificate of dissolution has been issued by the secretary of state or until a decree dissolving the corporation has been entered by a court of competent jurisdiction as in this Act provided.

§ 84. Procedure After Filing Of Statement Of Intent To Dissolve.) After the filing by the secretary of state of a statement of intent to dissolve:

1. The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation;
2. The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests; and
3. The corporation, at any time during the liquidation of its business and affairs, may make application to the district court for the county in which the registered office or principal place of business of the corporation is situated, to have the liquidation continued under the supervision of the court as provided in this Act.

§ 85. Revocation Of Voluntary Dissolution Proceedings By Consent Of Shareholders.) By the written consent of all of its shareholders, a corporation may, at any time prior to the issuance of a certificate of dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

1. The name of the corporation;
2. The names and respective addresses of its officers;
3. The names and respective addresses of its directors;
4. A copy of the written consent signed by all shareholders of the corporation revoking such voluntary dissolution proceedings; and
5. That such written consent has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized.

§ 86. Revocation Of Voluntary Dissolution Proceedings By Act Of Corporation.) By the act of the corporation, a corporation may at any time prior to the issuance of a certificate of

dissolution by the secretary of state, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

1. The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of such revocation be submitted to a vote at a special meeting of shareholders;
2. Written or printed notice, stating that the purpose or one of the purposes of such meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at such meeting within the time and in the manner provided in this Act for the giving of notice of special meetings of shareholders;
3. At such meeting a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of at least two-thirds of the outstanding shares; and
4. Upon the adoption of such resolution, a statement of revocation of voluntary dissolution proceedings shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:
 - a. The name of the corporation;
 - b. The names and respective addresses of its officers;
 - c. The names and respective addresses of its directors;
 - d. A copy of the resolution adopted by the shareholders revoking the voluntary dissolution proceedings;
 - e. The number of shares outstanding; and
 - f. The number of shares voted for and against the resolution, respectively.

§ 87. Filing Of Statement Of Revocation Of Voluntary Dissolution Proceedings.) Duplicate originals of the statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, shall be delivered to the secretary of state. If the secretary of state finds that such statement conforms to law, he shall, when all fees have been paid as in this Act prescribed:

1. Endorse on each of such duplicate originals the word "Filed" and the month, day and year of the filing thereof;
2. File one of such duplicate originals in his office; and
3. Return the other duplicate original to the corporation or its representative.

§ 88. Effect Of Statement Of Revocation Of Voluntary Dissolution Proceedings.) Upon the filing by the secretary of state of a statement of revocation of voluntary dissolution proceedings, whether by consent of shareholders or by act of the corporation, the revocation of the voluntary dissolution proceedings shall become effective and the corporation may again carry on its business.

§ 89. Articles Of Dissolution.) If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or assistant secretary, and verified by one of the officers signing such statement, which statement shall set forth:

1. The name of the corporation;
2. That the secretary of state has theretofore filed a statement of intent to dissolve the corporation, and the date on which such statement was filed;
3. That all debts, obligations and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;
4. That all the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests; and
5. That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order or decree which may be entered against it in any pending suit.

§ 90. Filing Of Articles Of Dissolution.) Duplicate originals of such articles of dissolution shall be delivered to the secretary of state. If the secretary of state finds that such articles of dissolution conform to law, he shall, when all fees have been paid as in this Act prescribed:

1. Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof;
2. File one of such duplicate originals in his office; and
3. Issue a certificate of dissolution to which he shall affix the other duplicate original.

The certificate of dissolution, together with the duplicate original of the articles of dissolution affixed thereto by the

secretary of state, shall be returned to the representative of the dissolved corporation. Upon the issuance of such certificate of dissolution the existence of the corporation shall cease, except for the purpose of suits, other proceedings and appropriate corporate action by shareholders, directors and officers as provided in this Act.

§ 91. Involuntary Dissolution.) A corporation may be dissolved involuntarily by a decree of the district court in an action filed by the attorney general when it is established that:

1. The corporation has failed to file its annual report within the time required by this Act; or
2. The corporation procured its articles of incorporation through fraud; or
3. The corporation has continued to exceed or abuse the authority conferred upon it by law; or
4. The corporation has failed for thirty days to appoint and maintain a registered agent in this state; or
5. The corporation has failed for thirty days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change.

§ 92. Notification To Attorney General.) The secretary of state, on or before the first day of July of each year, shall certify to the attorney general the names of all corporations which have failed to file their annual reports in accordance with the provisions of this Act, together with the facts pertinent thereto. He shall also certify, from time to time, the names of all corporations which have given other cause for dissolution as provided in this Act, together with the facts pertinent thereto. Whenever the secretary of state shall certify the name of a corporation to the attorney general as having given any cause for dissolution, the secretary of state shall concurrently mail to the corporation at its registered office a notice that such certification has been made. Upon the receipt of such certification, the attorney general may in his discretion file an action in the name of the state against such corporation for its dissolution. Every such certificate from the secretary of state to the attorney general pertaining to the failure of a corporation to file an annual report shall be taken and received in all courts as prima facie evidence of the facts therein stated. If, before action is filed, the corporation shall file its annual report, together with all penalties thereon, or shall appoint or maintain a registered agent as provided in this Act, or shall file with the secretary of state the required statement of change of registered office or registered agent, such fact shall

be forthwith certified by the secretary of state to the attorney general and he shall not file an action against such corporation for such cause. If, after action is filed, the corporation shall file its annual report, together with all penalties thereon, or shall appoint or maintain a registered agent as provided in this Act, or shall file with the secretary of state the required statement of change of registered office or registered agent, and shall pay the costs of such action, the action for such cause shall abate.

§ 93. Venue And Process.) Every action for the involuntary dissolution of a corporation shall be commenced by the attorney general either in the district court of the county in which the registered office of the corporation is situated, or in the district court of Burleigh County. Summons shall issue and be served as in other civil actions. If process is returned not found, the attorney general shall cause publication to be made as in other civil cases in a newspaper published in the county where the registered office of the corporation is situated, containing a notice of the pendency of such action, the title of the court, the title of the action, and the date on or after which default may be entered. The attorney general may include in one notice the names of any number of corporations against which actions are then pending in the same court. The attorney general shall cause a copy of such notice to be mailed to the corporation at its registered office within ten days after the first publication thereof. The certificate of the attorney general of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for two successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice.

§ 94. Jurisdiction Of Court To Liquidate Assets And Business Of Corporation.) The district courts of the state of North Dakota shall have full power to liquidate the assets and business of a corporation:

1. In an action by a shareholder when it is established:
 - a. That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or
 - b. That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent;
- or

- c. That the shareholders are deadlocked in voting power, and have failed, for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or
 - d. That the corporate assets are being misapplied or wasted.
2. In an action by a creditor:
 - a. When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or
 - b. When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.
 3. Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this Act, to have its liquidation continued under the supervision of the court.
 4. When an action has been filed by the attorney general to dissolve a corporation and it is established that liquidation of its business and affairs should precede the entry of a decree of dissolution.

Proceedings under subsection 1, 2, or 3 of this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them, personally.

§ 95. Procedure In Liquidation Of Corporation By Court.)

In proceedings to liquidate the assets and business of a corporation the court shall have power to issue injunctions, to appoint a receiver or receivers *pendente lite*, with such powers and duties as the court, from time to time, may direct, and to take such other proceedings as may be requisite to preserve the corporate assets wherever situated, and carry on the business of the corporation until a full hearing can be had.

After a hearing had upon such notice as the court may direct to be given to all parties to the proceedings and to any other parties in interest designated by the court, the court may appoint a liquidating receiver or receivers with authority to collect the assets of the corporation, including all amounts owing to the corporation by shareholders on account of any unpaid portion of the consideration for the issuance of shares.

Such liquidating receiver or receivers shall have authority, subject to the order of the court, to sell, convey and dispose of all or any part of the assets of the corporation wherever situated, either at public or private sale. The assets of the corporation or the proceeds resulting from a sale, conveyance or other disposition thereof shall be applied to the expenses of such liquidation and to the payment of the liabilities and obligations of the corporation, and any remaining assets or proceeds shall be distributed among its shareholders according to their respective rights and interests. The order appointing such liquidating receiver or receivers shall state their powers and duties. Such powers and duties may be increased or diminished at any time during the proceedings.

The court shall have power to allow from time to time as expenses of the liquidation compensation to the receiver or receivers and to attorneys in the proceedings, and to direct the payment thereof out of the assets of the corporation or the proceeds of any sale or disposition of such assets.

A receiver of a corporation appointed under the provisions of this section shall have authority to sue and defend in all courts in his own name as receiver of such corporation. The court appointing such receiver shall have exclusive jurisdiction of the corporation and its property, wherever situated.

§ 96. Qualifications Of Receivers.) A receiver shall in all cases be a citizen of the United States or a corporation authorized to act as receiver, which corporation may be a domestic corporation or a foreign corporation authorized to transact business in this state, and shall in all cases give such bond as the court may direct with such sureties as the court may require.

§ 97. Filing Of Claims In Liquidation Proceedings.) In proceedings to liquidate the assets and business of a corporation the court may require all creditors of the corporation to file with the clerk of court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims it shall fix a date, which shall be not less than four months from the date of the order, as the last day for the filing of claims, and shall prescribe the notice that shall be given to creditors and claimants of the date so fixed. Prior to the date so fixed, the court may extend the time for the filing of claims. Creditors and claimants failing to file proofs of claim on or before the date so fixed may be barred, by order of court, from participating in the distribution of the assets of the corporation.

§ 98. Discontinuance Of Liquidation Proceedings.) The liquidation of the assets and business of a corporation may

be discontinued at any time during the liquidation proceedings when it is established that cause for liquidation no longer exists. In such event the court shall dismiss the proceedings and direct the receiver to redeliver to the corporation all its remaining property and assets.

§ 99. Decree Of Involuntary Dissolution.) In proceedings to liquidate the assets and business of a corporation, when the costs and expenses of such proceedings and all debts, obligations and liabilities of the corporation shall have been paid and discharged and all of its remaining property and assets distributed to its shareholders, or in case its property and assets are not sufficient to satisfy and discharge such costs, expenses, debts and obligations, all the property and assets have been applied so far as they will go to their payment, the court shall enter a decree dissolving the corporation, whereupon the existence of the corporation shall cease.

§ 100. Filing Of Decree Of Dissolution.) In case the court shall enter a decree dissolving a corporation, it shall be the duty of the clerk of such court to cause a certified copy of the decree to be filed with the secretary of state. No fee shall be charged by the secretary of state for filing thereof.

§ 101. Deposit With State Treasurer Of Amount Due Certain Shareholders.) Upon the voluntary or involuntary dissolution of a corporation, the portion of the assets distributable to a creditor or shareholder who is unknown or cannot be found, or who is under disability and there is no person legally competent to receive such distributive portion, shall be reduced to cash and deposited with the state treasurer and shall be paid over to such creditor or shareholder or to his legal representative upon proof satisfactory to the state treasurer of his right thereto.

§ 102. Survival Of Remedy After Dissolution.) The dissolution of a corporation either (1) by the issuance of a certificate of dissolution by the secretary of state, or (2) by a decree of court when the court has not liquidated the assets and business of the corporation as provided in this Act, or (3) by expiration of its period of duration, shall not take away or impair any remedy available to or against such corporation, its directors, officers, or shareholders, for any right or claim existing, or any liability incurred, prior to such dissolution if action or other proceeding thereon is commenced within two years after the date of such dissolution. Any such action or proceeding by or against the corporation may be prosecuted or defended by the corporation in its corporate name. The shareholders, directors and officers shall have power to take such corporate or other action as shall be appropriate to pro-

tect such remedy, right or claim. If such corporation was dissolved by the expiration of its period of duration, such corporation may amend its articles of incorporation at any time during such period of two years so as to extend its period of duration.

§ 103. Admission Of Foreign Corporation.) No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this Act to transact in this state any business which a corporation organized under this Act is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this Act contained shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of this Act only, by reason of carrying on in this state any one or more of the following activities:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof or the settlement of claims or disputes;
2. Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;
3. Maintaining bank accounts;
4. Maintaining offices or agencies for the transfer, exchange and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;
5. Effecting sales through independent contractors;
6. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;
7. Creating evidences of debt, mortgages or liens on real or personal property;
8. Securing or collecting debts or enforcing any rights in property securing the same;
9. Transacting any business in interstate commerce; or

10. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

This section does not establish a standard for activities which may or may not subject a foreign corporation to taxation or service of process.

§ 104. Powers Of Foreign Corporation.) A foreign corporation which shall have received a certificate of authority under this Act shall, until a certificate of revocation or withdrawal shall have been issued as provided in this Act, enjoy the same, but no greater, rights and privileges as a domestic corporation organized for the purposes set forth in the application pursuant to which such certificate of authority is issued; and, except as in this Act otherwise provided, shall be subject to the same duties, restrictions, penalties and liabilities now or hereafter imposed upon a domestic corporation of like character.

§ 105. Corporate Name Of Foreign Corporation.) No certificate of authority shall be issued to a foreign corporation unless the corporate name of such corporation:

1. Shall contain the word "corporation", "company", "incorporated", or "limited", or shall contain an abbreviation of one of such words, or such corporation shall, for use in this state, add at the end of its name one of such words or an abbreviation thereof;
2. Shall not contain any word or phrase which indicates or implies that it is organized for any purpose other than one or more of the purposes contained in its articles of incorporation or that it is authorized or empowered to conduct the business of banking or insurance; and
3. Shall not be the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or any foreign corporation authorized to transact business in this state, or a name the exclusive right to which is, at the time, reserved in the manner provided in this Act, or the name of a corporation which has in effect a registration of its name as provided in this Act.

§ 106. Change Of Name By Foreign Corporation.) Whenever a foreign corporation which is authorized to transact business in this state shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the certificate of authority of such corporation shall be suspended and it shall not thereafter transact any business in this state until it has changed its name to a name which is available to it under the laws of this state.

§ 107. Application For Certificate Of Authority.) A foreign corporation, in order to procure a certificate of authority to transact business in this state, shall make application therefor to the secretary of state, which application shall set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated;
2. If the name of the corporation does not contain the word "corporation", "company", "incorporated", or "limited", or does not contain an abbreviation of one of such words then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this state;
3. The date of incorporation and the period of duration of the corporation;
4. The address of the principal office of the corporation in the state or country under the laws of which it is incorporated;
5. The address of the proposed registered office of the corporation in this state, and the name of its proposed registered agent in this state at such address;
6. The purpose or purposes of the corporation which it proposes to pursue in the transaction of business in this state;
7. The names and respective addresses of the directors and officers of the corporation;
8. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;
9. 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;
10. A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this Act;
11. An estimate, expressed in dollars, of the value of all property to be owned by the corporation for the following year, wherever located, and an estimate of the value of the property of the corporation to be located within this state during such year, and an estimate, expressed in dollars, of the gross amount of business which will be transacted by the corporation during such year, and an estimate of the gross amount thereof which will be transacted by the corporation at or from places of business in this state during such year; and
12. Such additional information as may be necessary or appropriate in order to enable the secretary of state to

determine whether such corporation is entitled to a certificate of authority to transact business in this state and to determine the fees payable as in this Act prescribed.

Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the corporation by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such application.

§ 108. Filing Of Application For Certificate Of Authority.)

Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a copy of its articles of incorporation and all amendments thereto, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as in this Act prescribed:

1. Endorse on each of such documents the word "Filed", and the month, day and year of the filing thereof;
2. File in his office one of such duplicate originals of the application and the copy of the articles of incorporation and amendments thereto; and
3. Issue a certificate of authority to transact business in this state to which he shall affix the other duplicate original application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

§ 109. Effect Of Certificate Of Authority.) Upon the issuance of a certificate of authority by the secretary of state, the corporation shall be authorized to transact business in this state for those purposes set forth in its application, subject, however, to the right of this state to suspend or to revoke such authority as provided in this Act.

§ 110. Registered Office And Registered Agent Of Foreign Corporation.) Each foreign corporation authorized to transact business in this state shall have and continuously maintain in this state:

1. A registered office which may be, but need not be, the same as its place of business in this state; and
2. A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic

corporation, or a foreign corporation authorized to transact business in this state, having a business office, identical with such registered office.

§ 111. Change Of Registered Office Or Registered Agent Of Foreign Corporation.) A foreign corporation authorized to transact business in this state may change its registered office, or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

1. The name of the corporation;
2. The address of its then registered office;
3. If the address of its registered office be changed, the address to which the registered office is to be changed;
4. The name of its then registered agent;
5. If its registered agent be changed, the name of its successor registered agent;
6. That the address of its registered office and the address of the business office of its registered agent, as changed, will be identical; and
7. That such change was authorized by resolution duly adopted by its board of directors.

Such statement shall be executed by the corporation by its president or a vice president, and verified by him, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this Act, he shall file such statement in his office, and upon such filing the change of address of the registered office, or the appointment of a new registered agent, or both, as the case may be, shall become effective.

§ 112. Service Of Process On Foreign Corporation.) The registered agent so appointed by a foreign corporation authorized to transact business in this state shall be an agent of such corporation upon whom any process, notice or demand required or permitted by law to be served upon the corporation may be served.

Whenever a foreign corporation authorized to transact business in this state shall fail to appoint or maintain a registered agent in this state, or whenever any such registered agent cannot with reasonable diligence be found at the registered office, or whenever the certificate of authority of a foreign corporation shall be suspended or revoked, then the secretary of state shall be an agent of such corporation upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his

office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of such copies thereof to be forwarded by registered or certified mail, addressed to the corporation at its principal office in the state or country under the laws of which it is incorporated. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand, required or permitted by law to be served upon a corporation in any other manner now or hereafter permitted by law.

§ 113. Amendment To Articles Of Incorporation Of Foreign Corporation.) Whenever the articles of incorporation of a foreign corporation authorized to transact business in this state are amended, such foreign corporation shall, within thirty days after such amendment becomes effective, file in the office of the secretary of state a copy of such amendment duly authenticated by the proper officer of the state or country under the laws of which it is incorporated; but the filing thereof shall not of itself enlarge or alter the purpose or purposes which such corporation is authorized to pursue in the transaction of business in this state, nor authorize such corporation to transact business in this state under any other name than the name set forth in its certificate of authority.

§ 114. Merger Of Foreign Corporation Authorized To Transact Business In This State.) Whenever a foreign corporation authorized to transact business in this state shall be a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and such corporation shall be the surviving corporation, it shall, within thirty days after such merger becomes effective, file with the secretary of state a copy of the articles of merger duly authenticated by the proper officer of the state or country under the laws of which such statutory merger was effected; and it shall not be necessary for such corporation to procure either a new or amended certificate of authority to transact business in this state unless the name of such corporation be changed thereby or unless the corporation desires to pursue in this state other or additional purposes than those which it is then authorized to transact in this state.

§ 115. Amended Certificate Of Authority.) A foreign corporation authorized to transact business in this state shall procure an amended certificate of authority in the event it changes its corporate name, or desires to pursue in this state other or additional purposes than those set forth in its prior application for a certificate of authority, by making application therefor to the secretary of state.

The requirements in respect to the form and contents of such application, the manner of its execution, the filing of duplicate originals thereof with the secretary of state, the issuance of an amended certificate of authority and the effect thereof, shall be the same as in the case of an original application for a certificate of authority.

§ 116. Withdrawal Of Foreign Corporation.) 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 such certificate of withdrawal, such foreign corporation shall deliver to the secretary of state an application for withdrawal, which shall set forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated;
2. That the corporation is not transacting business in this state;
3. That the corporation surrenders its authority to transact business in this state;
4. That the corporation revokes the authority of its registered agent in this state to accept service of process and consents 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 by service thereof on the secretary of state;
5. A post office address to which the secretary of state may mail a copy of any process against the corporation that may be served on him;
6. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class, as of the date of such application;
7. 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, as of the date of such application;

8. A statement, expressed in dollars, of the amount of stated capital of the corporation, as of the date of such application; and
9. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess any unpaid fees payable by such foreign corporation as in this Act prescribed.

The application for withdrawal shall be made on forms prescribed and furnished by the secretary of state and shall be executed by the corporation by its president or vice president and by its secretary or an assistant secretary, and verified by one of the officers signing the application, or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee and verified by him.

§ 117. Filing Of Application For Withdrawal.) Duplicate originals of such application for withdrawal shall be delivered to the secretary of state. If the secretary of state finds that such application conforms to the provisions of this Act, he shall, when all fees have been paid as in this Act prescribed:

1. Endorse on each of such duplicate originals the word "Filed", and the month, day and year of the filing thereof;
2. File one of such duplicate originals in his office; and
3. Issue a certificate of withdrawal to which he shall affix the other duplicate original.

The certificate of withdrawal, together with the duplicate original of the application for withdrawal affixed thereto by the secretary of state, shall be returned to the corporation or its representative. Upon the issuance of such certificate of withdrawal, the authority of the corporation to transact business in this state shall cease.

§ 118. Revocation Of Certificate Of Authority.) The certificate of authority of a foreign corporation to transact business in this state may be revoked by the secretary of state upon the conditions prescribed in this section when:

1. The corporation has failed to file its annual report within the time required by this Act, or has failed to pay any fees or penalties prescribed by this Act when they have become due and payable; or
2. The corporation has failed to appoint and maintain a registered agent in this state as required by this Act; or
3. The corporation has failed, after change of its registered office or registered agent, to file in the office of the secretary of state a statement of such change as required by this Act; or

4. The corporation has failed to file in the office of the secretary of state any amendment to its articles of incorporation or any articles of merger within the time prescribed by this Act; or
5. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to this Act.

No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless (1) he shall have given the corporation not less than sixty days' notice thereof by mail addressed to its registered office in this state, and (2) the corporation shall fail prior to revocation to file such annual report, or pay such fees or penalties, or file the required statement of change of registered agent or registered office, or file such articles of amendment or articles of merger, or correct such misrepresentation.

§ 119. Issuance Of Certificate Of Revocation.) Upon revoking any such certificate of authority, the secretary of state shall:

1. Issue a certificate of revocation in duplicate;
2. File one of such certificates in his office; and
3. Mail to such corporation at its registered office in this state a notice of such revocation accompanied by one of such certificates.

Upon the issuance of such certificate of revocation, the authority of the corporation to transact business in this state shall cease.

§ 120. Application To Corporations Heretofore Authorized To Transact Business In This State.) Foreign corporations which are duly authorized to transact business in this state at the time this Act takes effect, for a purpose or purposes for which a corporation might secure such authority under this Act, shall, subject to the limitations set forth in their respective certificates of authority, be entitled to all the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this state under this Act, and from the time this Act takes effect such corporations shall be subject to all the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this state under this Act.

§ 121. Transacting Business Without Certificate Of Authority.) No foreign corporation transacting business in this state without a certificate of authority shall be permitted to

maintain any action, suit or proceeding in any court of this state, until such corporation shall have obtained a certificate of authority. Nor shall any action, suit or proceeding be maintained in any court of this state by any successor or assignee of such corporation on any right, claim or demand arising out of the transaction of business by such corporation in this state, until a certificate of authority shall have been obtained by such corporation or by a corporation which has acquired all or substantially all of its assets.

The failure of a foreign corporation to obtain a certificate of authority to transact business in this state shall not impair the validity of any contract or act of such corporation, and shall not prevent such corporation from defending any action, suit or proceeding in any court of this state.

A foreign corporation which transacts business in this state without a certificate of authority shall be liable to this state, for the years or parts thereof during which it transacted business in this state without a certificate of authority, in an amount equal to all fees which would have been imposed by this Act upon such corporation had it duly applied for and received a certificate of authority to transact business in this state as required by this Act and thereafter filed all reports required by this Act, plus all penalties imposed by this Act for failure to pay such fees.

The attorney general shall bring proceedings to recover all amounts due this state under the provisions of this section.

§ 122. Annual Report Of Domestic And Foreign Corporations.) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall file, within the time prescribed by this Act, an annual report setting forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated;
2. The address of the registered office of the corporation in this state, and the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated;
3. A brief statement of the character of the business in which the corporation is actually engaged in this state;
4. The names and respective addresses of the directors and officers of the corporation;
5. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by

- classes, par value of shares, shares without par value, and series, if any, within a class;
6. 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;
 7. A statement, expressed in dollars, of the amount of stated capital of the corporation, as defined in this Act;
 8. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the twelve months ending on the thirty-first day of December preceding the date herein provided for the filing of the annual report and the gross amount thereof transacted by the corporation at or from places of business in this state. If, on the thirty-first day of December preceding the time herein provided for the filing of such report, the corporation had not been in existence for a period of twelve months, or in the case of a foreign corporation had not been authorized to transact business in this state for a period of twelve months, the statement with respect to business transacted shall be furnished for the period between the date of incorporation or the date of its authorization to transact business in this state, as the case may be, and such thirty-first day of December; and
 9. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess the proper amount of fees payable by such corporation.

Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report, except as to the information required by subsections 7, 8, and 9 which shall be given as of the close of business on the thirty-first day of December next preceding the date herein provided for the filing of such report. It shall be executed by the corporation by its president, a vice president, secretary, an assistant secretary, or treasurer, and verified by the officer executing the report, or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation and verified by such receiver or trustee.

§ 123. Filing Of Annual Report Of Domestic And Foreign Corporations.) The annual report of a domestic or foreign corporation shall be delivered to the secretary of state between

the first day of January and the first day of March of each year, except that the first annual report of a domestic or foreign corporation shall be filed between the first day of January and the first day of March of the year next succeeding the calendar year in which its certificate of incorporation or its certificate of authority, as the case may be, was issued by the secretary of state. Proof to the satisfaction of the secretary of state that prior to the first day of March such report was deposited in the United States mail in a sealed envelope, properly addressed, with postage prepaid, shall be deemed a compliance with this requirement. If the secretary of state finds that such report conforms to the requirements of this Act, he shall file the same. If he finds that it does not so conform, he shall promptly return the same to the corporation for any necessary corrections, in which event the penalties hereinafter prescribed for failure to file such report within the time hereinabove provided shall not apply, if such report is corrected to conform to the requirements of this Act and returned to the secretary of state in sufficient time to be filed prior to the first day of April of the year in which it is due.

§ 124. Penalties Imposed Upon Corporations.) Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this Act shall be subject to a penalty of ten percent of the license fee which would be payable if it were filing its articles of incorporation at the time such annual report was to have been filed.

Each corporation, domestic or foreign, that fails or refuses to answer truthfully and fully within the time prescribed by this Act interrogatories propounded by the secretary of state in accordance with the provisions of this Act, shall be deemed to be guilty of a misdemeanor and upon conviction thereof may be fined in any amount not exceeding five hundred dollars.

§ 125. Fees For Filing Documents And Issuing Certificates.) The secretary of state shall charge and collect for:

1. Filing articles of incorporation and issuing a certificate of incorporation, sixteen dollars;
2. Filing articles of amendment and issuing a certificate of amendment, twelve dollars;
3. Filing restated articles of incorporation, twelve dollars;
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifteen dollars;
5. Filing an application to reserve a corporate name, five dollars;

6. Filing a notice of transfer of a reserved corporate name, five dollars;
7. Filing a statement of change of address of registered office or change of registered agent, or both, five dollars;
8. Filing a statement of the establishment of a series of shares, eight dollars;
9. Filing a statement of cancellation of shares, eight dollars;
10. Filing a statement of reduction of stated capital, eight dollars;
11. Filing a statement of intent to dissolve, five dollars;
12. Filing a statement of revocation of voluntary dissolution proceedings, five dollars;
13. Filing articles of dissolution, five dollars;
14. Filing an application of a foreign corporation for a certificate of authority to transact business in this state and issuing a certificate of authority, eighteen dollars;
15. Filing an application of a foreign corporation for an amended certificate of authority to transact business in this state and issuing an amended certificate of authority, sixteen dollars;
16. Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this state, eight dollars;
17. Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to transact business in this state, fifteen dollars;
18. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, ten dollars; and
19. Filing annual report of domestic corporation, five dollars; of foreign corporation, ten dollars; any other statement or report of either, two dollars.

§ 126. **Miscellaneous Charges.**) The secretary of state shall charge and collect:

1. For furnishing a certified copy of any document, instrument, or paper relating to a corporation, twenty-five cents per 100-word folio or fraction thereof and two dollars for the certificate and affixing the seal thereto; and
2. At the time of any service of process on him as resident agent of a corporation, five dollars, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action.

§ 127. License Fees Payable By Domestic Corporations.)

The secretary of state shall charge and collect from each domestic corporation license fees, based upon the value of its authorized shares, at the time of:

1. Filing articles of incorporation;
2. Filing articles of amendment increasing the number or value of authorized shares; and
3. Filing articles of merger or consolidation increasing the number or value of authorized shares which the surviving or new corporation, if a domestic corporation, will have authority to issue above the aggregate number or value of shares which the constituent domestic corporations and constituent foreign corporations authorized to transact business in this state had authority to issue.

The license fees shall be the sum of twenty-five dollars for the first \$25,000 of its authorized shares, or fraction thereof, and the sum of fifty dollars for authorized shares in excess of \$25,000 but not exceeding \$50,000, and the further sum of five dollars for every additional \$10,000 of its authorized shares or fraction thereof, in excess of \$50,000.

The license fees payable on an increase in authorized shares shall be imposed only on the additional shares, but the amount of previously authorized shares shall be taken into account in determining the rate applicable to the additional authorized shares.

For the purposes of this section, shares without par value shall be considered worth one hundred dollars per share.

§ 128. License Fees Payable By Foreign Corporation.) The secretary of state shall charge and collect from each foreign corporation at the time of filing an application for a certificate of authority to transact business in this state, the sum of seventy-five dollars as an initial license fee.

Thereafter, the secretary of state shall fix the license fee for each foreign corporation as follows:

1. He shall first ascertain the license fee which a newly organized domestic corporation would be required to pay under the law if it had authorized shares of the same kind and amount as the issued or allotted shares of the reporting foreign corporation shown by its filed report;
2. Said amount shall be multiplied by a fraction, the numerator of which shall be the sum of the value of the property of the corporation located in this state and the gross receipts of the corporation derived from its business transacted within this state, and the denomina-

tor of which shall be the sum of the value of all of its property wherever located and the gross receipts of the corporation derived from its business wherever transacted. The amounts used in determining the numerator and denominator shall be determined from the corporation's filed annual report;

3. From the product of such multiplication, there shall be deducted the aggregate amount of license fee theretofore paid by the corporation, and the remainder, if any, shall be the amount of additional fee to be paid by the corporation.

The secretary of state shall enter the amount of any additional license fee in the records of the corporation in his office and shall mail a notice of the amount of such additional license fee to the corporation at its registered office in this state. The additional license fee shall be paid by the corporation to the secretary of state within thirty days after the mailing of the notice.

§ 129. Penalties Imposed Upon Officers And Directors.)

Each officer and director of a corporation, domestic or foreign, who fails or refuses within the time prescribed by this Act to answer truthfully and fully interrogatories propounded to him by the secretary of state in accordance with the provisions of this Act, or who signs any articles, statement, report, application or other document filed with the secretary of state which is known to such officer or director to be false in any material respect, shall be deemed to be guilty of a misdemeanor, and upon conviction thereof may be fined in any amount not exceeding five hundred dollars.

§ 130. Interrogatories By Secretary Of State.)

The secretary of state may propound to any corporation, domestic or foreign, subject to the provisions of this Act, and to any officer or director thereof, such interrogatories as may be reasonably necessary and proper to enable him to ascertain whether such corporation has complied with all the provisions of this Act applicable to such corporation. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by the secretary of state, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories be directed to an individual they shall be answered by him, and if directed to a corporation they shall be answered by the president, vice president, secretary or assistant secretary thereof. The secretary of state need not file any document to which such interrogatories relate until such interrogatories be answered as herein provided, and not then if the answers thereto disclose that such document is not in conformity with the provisions of this Act. The secretary of

state shall certify to the attorney general, for such action as the attorney general may deem appropriate, all interrogatories and answers thereto which disclose a violation of any of the provisions of this Act.

§ 131. Information Disclosed By Interrogatories.) Interrogatories propounded by the secretary of state and the answers thereto shall not be open to public inspection nor shall the secretary of state disclose any facts or information obtained therefrom except insofar as his official duty may require the same to be made public or in the event such interrogatories or the answers thereto are required for evidence in any criminal proceedings or in any other action by this state.

§ 132. Powers Of Secretary Of State.) The secretary of state shall have the power and authority reasonably necessary to enable him to administer this Act efficiently and to perform the duties therein imposed upon him.

§ 133. Appeal From Secretary Of State.) If the secretary of state shall fail to approve any articles of incorporation, amendment, merger, consolidation or dissolution, or any other document required by this Act to be approved by the secretary of state before the same shall be filed in his office, he shall, within ten days after the delivery thereof to him, give written notice of his disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the district court of the county in which the registered office of such corporation is, or is proposed to be, situated by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed and a copy of the written disapproval thereof by the secretary of state; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

If the secretary of state shall revoke the certificate of authority to transact business in this state of any foreign corporation, pursuant to the provisions of this Act, such foreign corporation may likewise appeal to the district court of the county where the registered office of such corporation in this state is situated, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in this state and a copy of the notice of revocation given by the secretary of state; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the secretary of state or direct him to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the district court under this section in review of any ruling or decision of the secretary of state may be taken as in other civil actions.

§ 134. Certificates And Certified Copies To Be Received In Evidence.) All certificates issued by the secretary of state in accordance with the provisions of this Act, and all copies of documents filed in his office in accordance with the provisions of this Act when certified by him, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the secretary of state under the great seal of this state, as to the existence or nonexistence of the facts relating to corporations which would not appear from a certified copy of any of the foregoing documents or certificates shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

§ 135. Forms To Be Furnished By Secretary Of State.) All reports required by this Act to be filed in the office of the secretary of state shall be made on forms which shall be prescribed and furnished by the secretary of state. Forms for all other documents to be filed in the office of the secretary of state shall be furnished by the secretary of state on request therefor, but the use thereof, unless otherwise specifically prescribed in this Act, shall not be mandatory.

§ 136. Greater Voting Requirements.) Whenever, with respect to any action to be taken by the shareholders of a corporation, the articles of incorporation require the vote or concurrence of the holders of a greater proportion of the shares, or of any class or series thereof, than required by this Act with respect to such action, the provisions of the articles of incorporation shall control.

§ 137. Waiver Of Notice.) Whenever any notice is required to be given to any shareholder or director of a corporation under the provisions of this Act or under the provisions of the articles of incorporation or bylaws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice.

§ 138. Action By Shareholders Without A Meeting.) Any action required by this Act to be taken at a meeting of the shareholders of a corporation, or any action which may be taken at a meeting of the shareholders, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the shareholders entitled to vote with respect to the subject matter thereof.

Such consent shall have the same force and effect as a unanimous vote of shareholders, and may be stated as such in any articles or document filed with the secretary of state under this Act.

§ 139. Unauthorized Assumption Of Corporate Powers.)
All persons who assume to act as a corporation without authority so to do shall be jointly and severally liable for all debts and liabilities incurred or arising as a result thereof.

§ 140. Application and Construction Of Act; Deferred Repeal.)

1. All foreign and domestic corporations for profit are governed by the provisions of this Act with the following exceptions:
 - a. All domestic corporations existing before July 1, 1957 are not subject to this Act until after June 30, 1959, but any such corporation by a majority vote of its stock outstanding may elect to become subject to its provisions at any time;
 - b. All foreign corporations duly admitted to do business in this state before July 1, 1957 are not subject to this Act until after June 30, 1959, but any such corporation by a majority vote of its stock outstanding may elect to become subject to its provisions at any time;
 - c. The existing provisions of chapters 10-01, 10-02, 10-03, 10-05, 10-14, 10-16, and 10-17 of the title Corporations remain in effect until July 1, 1959, but are inapplicable to corporations for profit which are subject to this Act. After June 30, 1959 the existing provisions of chapters 10-01, 10-02, 10-03, 10-05, 10-14, 10-16, and 10-17 of the title Corporations are hereby repealed.
2. This Act shall be construed as being part of Title 10 of the North Dakota Revised Code of 1943 as amended, and after June 30, 1959 as replacing chapters 10-01, 10-02, 10-03, 10-05, 10-14, 10-16, and 10-17 in the Code.
3. Profit corporations governed by special statutes, such as public utility, insurance, banking, cooperative, building and loan, annuity, safe deposit, surety, and trust companies, are subject to the provisions of those special statutes except insofar as reference is made to the general law governing corporations or to provisions of the title Corporations. Where such reference exists, this Act shall govern in that respect.

§ 141. Application To Foreign And Interstate Commerce.)
The provisions of this Act shall apply to commerce with foreign nations and among the several states only insofar as

the same may be permitted under the provisions of the Constitution of the United States.

§ 142. Reservation Of Legislative Power.) The legislature shall at all times have power to prescribe such regulations, provisions and limitations as it may deem advisable, which regulations, provisions and limitations shall be binding upon any and all corporations subject to the provisions of this Act, and the legislature shall have power to amend, repeal or modify this Act at pleasure.

Every grant of corporate power is subject to alteration, suspension, or repeal in the discretion of the legislative assembly, and any statute of this state relating to corporations may be repealed or amended, and all corporations organized under this title may be dissolved by the legislative assembly at any time. Such alteration, suspension, amendment, or repeal, or the dissolution of any corporation, shall not take away or impair any remedy given against any such corporation, its stockholders or officers, for any liability which has been previously incurred.

The legislative assembly, or either branch thereof, may examine into the affairs and condition of any corporation in this state at all times. For that purpose, any committee appointed by the said assembly, or either branch thereof, may administer all necessary oaths to the directors, officers, and stockholders of a corporation, and may examine them on oath in relation to its affairs and condition, and may examine the safes, books, papers, and documents belonging to such corporation or pertaining to its affairs and condition, and compel the production of all keys, books, papers, and documents by summary process to be issued on application to any district court or any judge thereof under such rules and regulations as the court may prescribe.

§ 143. Effect Of Repeal Of Prior Acts.) The repeal of a prior Act by this Act shall not affect any right accrued or established, or any liability or penalty incurred, under the provisions of such Act, prior to the repeal thereof.

§ 144. Effect Of Invalidity Of Part Of This Act.) If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section or part of this Act, such judgment or decree shall not affect, impair, invalidate or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, paragraph, section or part of this Act so adjudged to be invalid or unconstitutional.

Approved March 21, 1957.

CHAPTER 103

H. B. No. 538

(Legislative Research Committee)

SPECIAL CORPORATIONS

AN ACT

Relating to special corporations which refer to the general corporation law and amendment of sections 6-0534, 7-0103, 10-0801, 10-0809, 15-1701, 26-0801, 26-0805, 26-1525, 49-0808, and 49-0813 of the North Dakota Revised Code of 1943 as amended.

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

§ 1. Amendment.) Section 6-0534 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

6-0534. Other Code Provisions Applicable To Corporations Doing Business Under This Chapter.) The provisions of chapter 10-08 of the Code as amended and the general law governing profit corporations, and sections 6-0311, 6-0312, 6-0327, 6-0333, 6-0334, 6-0335, 6-0351, 6-0352, 6-0353, 6-0354, 6-0355, 6-0356, 6-0357, 6-0358, 6-0361, 6-0362, 6-0363, 6-0364, 6-0365, 6-0366, 6-0368, 6-0370, 6-0372, 6-0701, 6-0702, 6-0721, 6-0722, 6-0723, 6-0724, 6-0725, 6-0726, 6-0727, 6-0728, 6-0729, 6-0803, 6-0806, 6-0807, 6-0809, 6-0812, 6-0813, 6-0814, 6-0820 shall be applicable to and shall be observed by all corporations organized under this chapter, except as to provisions thereof inconsistent with the provisions of this chapter.

§ 2. Amendment.) Section 7-0103 of the North Dakota Revised Code of 1943, as amended, is hereby amended and reenacted to read as follows:

7-0103. Articles Of Incorporation: Contents.) Whenever any number of persons, not less than nine, shall desire to incorporate a building and loan association, having for their object the conduct and operation of such an association as defined in this title, they shall prepare and file articles of incorporation to that effect in the manner specified in this title. Unless otherwise provided herein the general law governing profit corporations shall apply to such association. The articles of incorporation shall include the following:

1. The name of the association. The name shall not be the same as, nor too closely resemble, that in use by any existing corporation established under the laws of this state. The words, "building and loan association" or

"savings and loan association" shall form a part of the name, and only corporations and associations organized under this chapter shall be entitled to use a name embodying either of said combinations of words. Any association in existence on July 1, 1931, may continue and renew its charter in the name under which it was then operating. Any corporation or association organized or operating under this chapter is authorized to change its name to embody the words "savings and loan association."

2. The principal office, or place of business of the association, which shall be within this state;
3. The territory in which such association proposes to operate;
4. The amount of its authorized capital shares and the number of shares into which the same shall be divided. Such capital shall be divided into shares having a par value of fifty dollars, one hundred dollars, or two hundred dollars;
5. A provision that such association is organized under this chapter for the purpose herein expressed;
6. The name, residence, and occupation of, and a statement of the number of the shares subscribed and the amount of cash paid upon such shares by, each of the persons who subscribed and acknowledged the said articles, a majority of whom shall be citizens of this state and who thereafter shall be called incorporators;
7. The term of corporate existence, which shall not exceed twenty years but which may be extended as provided in this chapter; and
8. The number of directors of the association.

Immediately upon the preparation of such articles of incorporation, and before the same are filed in the office of the secretary of state, four copies thereof shall be filed in the office of the state examiner for the use of the state banking board.

§ 3. **Amendment.**) Section 10-0801 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

10-0801. Formation Of Religious, Educational, And Benevolent Corporations.) A corporation for religious, educational, benevolent, charitable, or scientific purposes, or a commercial or social corporation not organized for profit may be formed in the manner provided by law for profit corporations.

§ 4. Amendment.) Section 10-0809 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

10-0809. Bylaws Of Religious, Educational, And Benevolent Corporations.) In addition to the bylaw provisions allowed for profit corporations, any religious, educational, and benevolent corporation may provide in its bylaws for:

1. The qualification of members, and the mode of election and terms of admission to membership;
2. The admission fees and dues to be paid to its treasury by members;
3. The expulsion and suspension of members for misconduct or nonpayment of dues and for the restoration to membership;
4. The numbers and qualifications of its officers and directors, the time and mode of their election or appointment, their tenure of office, and the qualifications required of members to permit them to vote for officers and directors;
5. Contracting, securing, paying, and limiting the amount of its indebtedness;
6. Other regulations not repugnant to the law of the state and consonant with the objects of the corporation.

Such corporation must provide in its bylaws for the keeping of such records as may be necessary to show the membership of the corporation and its condition at all times, which records shall be open to the inspection of any member or creditor of the corporation.

§ 5. Amendment.) Section 15-1701 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

15-1701. Institutional Holding Associations Authorized.) Nonprofit corporations to be known as institutional holding associations may be formed in the manner, for the purposes, and with the powers, obligations, and limitations prescribed by the applicable provisions of chapter 10-08 in the title Corporations, except as otherwise provided in this chapter.

§ 6. Amendment.) Section 26-0801 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

26-0801. General Powers And Duties Of Domestic Insurance Company.) All insurance companies incorporated or formed by authority of any law of this state, except when otherwise expressly provided, may exercise the powers and

shall be subject to the duties and liabilities provided by this title. The general law governing profit corporations shall apply to all incorporated domestic insurance companies so far as such provisions are pertinent and not in conflict with provisions contained in this title relating to such companies.

§ 7. Amendment.) Section 26-0805 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

26-0805. Articles Of Incorporation: Contents; Filing; Name To Be Used By Company.) The articles of incorporation of a corporation organized under the provisions of this chapter shall set forth, in addition to what is required to be set forth under the general law governing profit corporations, the following information:

1. The kind of insurance proposed to be made;
2. That the company shall operate on the stock plan unless it is organized to engage in the life insurance business, in which case, the articles shall specify whether the company will operate on the stock or mutual plan;
3. The period for the commencement and termination of the company's fiscal year;
4. The period, not exceeding thirty years, for which the company is incorporated;
5. The name of the company, which may be any name not previously in use by an existing corporation authorized to do business in this state, but the words "insurance company", or, if the business specified in the articles is that of life insurance and the business is to be conducted upon the mutual plan, the words "mutual life insurance company" shall constitute a part of such name.

The articles shall be filed in the office of the secretary of state and a certified copy thereof shall be filed with the commissioner of insurance. No certificate shall be granted to the company by the commissioner if, in his judgment, the name adopted too closely resembles the name of an existing corporation or is liable to mislead the public.

§ 8. Amendment.) Section 26-1525 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

26-1525. Articles Of Incorporation And Bylaws Of Reinsurance Company; Contents.) The articles of incorporation of a reinsurance company organized under the provisions of this chapter shall state:

1. The name of the company, which shall include the words "mutual reinsurance company";

2. The purpose for which the company is organized;
3. The location of its principal place of business, which shall be within this state;
4. The number of directors of the company, which shall be not less than five nor more than thirteen;
5. The names and places of residence of the persons who are to serve as directors of the company until the election and qualification of their successors; and
6. The term of its corporate existence, which may be perpetual.

The articles may set forth any other provisions which are permitted under the provisions of the general law governing profit corporations or which are permitted in the case of a county mutual insurance company. The bylaws of the company shall contain such provisions for its government and the conduct of its business as are permitted in the case of a county mutual insurance company.

§ 9. **Amendment.**) Section 49-0808 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

49-0808. Increase In Authorized Shares; Fee Paid By Railroad Corporation.) A railroad corporation incorporated in one or more other states shall pay a fee for an increase in its amount of authorized shares on only such proportion of increase in said railroad corporation's authorized shares as said railroad corporation's mileage in this state bears to the total mileage of said railroad corporation in the several states of its incorporation.

§ 10. **Amendment.**) Section 49-0813 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

49-0813. Additional Powers Of Railroad Corporations.) In addition to the other powers contained in this chapter and the general law governing profit corporations, but subject to the supervisory power of the commission as provided in this title, every corporation formed under this chapter, and every railroad corporation authorized to construct, operate, or maintain a railroad within this state, shall have the following powers:

1. To cause such examination and surveys for its proposed railroad as may be necessary to the selection of the most advantageous route and to enter by its officers or agents and servants upon the lands or waters of any person for such purpose, subject to responsibility for all damages which shall be done thereto;

2. To take and hold such voluntary grants of real estate and other property as may be made to it to aid in the construction, maintenance, and accommodation of its railroads, but the real estate received by voluntary grant shall be held and used for the purposes of such grant only;
3. To acquire by purchase or under the provisions of the chapter on eminent domain, all such real estate and other property as may be necessary for the construction, maintenance, and operation of its railroads and stations, depot grounds, and other accommodations reasonably necessary to accomplish the objects of its incorporation, to hold and use the same, to lease or otherwise dispose of any part or parcel thereof, and to sell the same when not required for railroad uses and no longer necessary to its use;
4. To lay out and construct its road, not exceeding one hundred feet in width, and for the purpose of cuttings and embankments and obtaining gravel and other materials, to take as much land as may be necessary for the proper construction, operation, and security of the road and for the protection of such road from snow, and to cut down any standing trees that may be in danger of falling on the road, making compensation therefor as provided by law for land taken for the use of the corporation;
5. To cross, intersect, join, and unite its railroad with any railroad which shall be constructed at any point on its route and upon the grounds of such railroad corporation, with the necessary turn-outs, sidings, switches, and other conveniences in furtherance of the objects of its connection;
6. To have and use equal room, ground rights, privileges, and conveniences for tracks, switches, sidings, and turn-outs upon any river bank or front, steamboat or other public landing, and upon any street, block, alley, square, or public ground within any village or city, notwithstanding any charter or ordinance of any such village or city to the contrary, and to accomplish this, may adjust with other corporations the grounds to be occupied by each with such tracks, switches, sidings, and turn-outs;
7. To take and convey persons or property over its road by the power or force of steam, or other mechanical power, and to receive compensation therefor, and to do all business incidental to railroad corporations;

8. To erect and maintain all necessary and convenient buildings, stations, fixtures, and machinery for the accommodation and use of its passengers, freight, and business, subject to the statutes in relation thereto;
9. To regulate the time and manner in which passengers and property shall be transported and the compensation to be paid therefor; and
10. To borrow money.

Approved March 21, 1957.

CHAPTER 104

H. B. No. 540

(Legislative Research Committee)

NORTH DAKOTA COOPERATIVE ASSOCIATION ACT

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 AN ACT

Relating to cooperative associations, to amend and reenact chapter 10-15 of the North Dakota Revised Code of 1943 as amended, and to repeal chapter 4-07 of the North Dakota Revised Code of 1943 as amended.

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

§ 1. **Amendment.**) Chapter 10-15 of the North Dakota Revised Code of 1943 as amended is hereby amended and reenacted to read as follows:

10-1501. Definitions.) As used in this chapter, unless the context requires otherwise, the term:

1. "Cooperative" means an association incorporated under this chapter;
2. "Foreign cooperative" means an association incorporated under a cooperative law of another state which has members residing within this state and which is operating on the following cooperative basis:
 - a. Either no member of the foreign cooperative who is an individual is allowed more than one vote because of the amount of stock or membership capital he owns therein, or the foreign cooperative does not pay dividends on stock or membership capital in excess of eight percent per annum; and
 - b. The foreign cooperative shall not deal in the products of or for nonmembers to an amount greater in value than such as are handled by it for members; and
 - c. The foreign cooperative distributes its proceeds according to either the law governing cooperatives of this state or the law of the state of its incorporation.
3. "Association" includes both cooperatives and foreign cooperatives;
4. "Corporation" means all corporations not associations;
5. "Member" means a person who has been qualified and accepted for membership in an association.

10-1502. Purposes.) Cooperatives may be organized under this chapter for any lawful purpose except banking, insurance, and building or operating public railroads, but subject to statutes relating to the organization or operation of specified kinds of corporations or associations.

10-1503. General Powers.) Unless otherwise provided by its articles, a cooperative may:

1. Exist perpetually;
2. Sue and be sued;
3. Have a seal;
4. Make contracts, incur liabilities and borrow money; issue certificates representing indebtedness, or representing equity interests in its assets; acquire property; dispose of, mortgage, pledge, lease or otherwise use in any manner any of its property, or any interest therein, wherever situated;
5. Invest its funds, lend money for its purposes, and hold any property as security for repayment;

6. Conduct its business and affairs and have offices and exercise its powers in the United States or in any foreign country;
7. Elect officers and appoint agents, define their duties and fix their compensation;
8. Make and alter bylaws, consistent with its articles and the laws of this state, for the administration and regulation of its affairs;
9. Make donations for charitable, scientific, educational or religious purposes;
10. Indemnify any present or former director, officer or agent against actual expenses necessarily incurred in defense of any proceeding in which he is a party because he is or was such director, officer or agent. This subsection does not apply to those proceedings in which he is adjudged liable for negligence or misconduct in the performance of duty. Such indemnification shall not be exclusive of other rights to which he may be entitled;
11. Cease its activities and surrender its franchise;
12. Exercise all powers necessary or convenient to effect its purposes.

10-1504. Incorporators.) Five or more adults, one of whom must be a resident, may form a cooperative by signing, acknowledging, filing and recording articles of association.

10-1505. Articles; Provisions.) The articles of association shall set forth:

1. The name of the cooperative;
2. The period of existence, unless perpetual. Cooperatives now organized under the provisions of chapter 4-07 or 10-15 of the Code are granted perpetual existence irrespective of the period of existence set forth in articles of incorporation. Any such cooperative may nevertheless amend its articles to provide for a limited period of existence;
3. The purposes for which organized. It is sufficient to state that the cooperative may engage in any activity within the purposes for which cooperatives may be organized, and all such activities shall then be deemed within its purposes, subject to express limitations;
4. Whether the cooperative is organized with or without capital stock;
5. The designation of classes of members, if more than one;
6. The number and par value of shares of each authorized class of stock; if more than one class is authorized, the

- designation, preferences, limitations and relative rights of each class shall also be set forth;
7. Which classes of stock are membership stock;
 8. As to each class of stock, the rate of dividend, or that the rate of dividend may be fixed by the board, or that no dividend will be paid;
 9. Any reservation of a right to acquire or recall any stock;
 10. The basis of distribution of assets in the event of liquidation;
 11. The city, village or town in this state in which the cooperative's principal office is to be located, or the complete address in this state of its registered agent;
 12. The name and address of each incorporator; and
 13. The names and addresses of at least five incorporators who will act as the temporary board.

10-1506. Articles; Scope.) It is not necessary to set forth in the articles of association any of the powers granted by this chapter. The articles may include additional provisions, consistent with law, including provisions which are required or permitted to be set forth in the bylaws. Any provision required or permitted in the bylaws has equal force and effect if stated in the articles. Whenever a provision of the articles is inconsistent with a bylaw, the articles control.

10-1507. Articles; Filing, Recording; Cooperative Existence.) Duplicate originals of the articles of association, duly signed and acknowledged, shall be delivered to the secretary of state for filing and recording. The legal corporate existence of a cooperative begins when the duplicate original articles are so delivered. The secretary of state shall stamp on both originals the date of filing and recording and return one to the cooperative with his certificate of such filing and recording.

10-1508. Certificate Of Association.) Upon receipt of the articles of association and payment of the required fees the secretary of state shall issue a certificate of association. The certificate of association shall be conclusive evidence, except as against the state in a proceeding to cancel or revoke such certificate, that all conditions precedent to corporate existence have been met.

10-1509. Organization Meetings: Temporary Board.) After articles have been filed and recorded, an organization meeting of the temporary board shall be held at the call of a majority of the incorporators or of a majority of the temporary directors for the adoption of bylaws, election of temporary officers, and transaction of other business.

10-1510. Members' First Meeting.) The first meeting of the members shall be called by the temporary president or a majority of the temporary directors. Such meeting shall be held as soon as reasonably possible after the organization meeting of the temporary board, but not later than six months after recording the articles. Failure to hold such meeting within the time specified does not affect the validity of organization.

10-1511. Bylaws.) The initial bylaws of a cooperative may be adopted by the temporary board. Thereafter, bylaws may be adopted and amended only by the members, unless the members adopt a bylaw which permits the board to make and amend specified bylaws. Any bylaw adopted or amended by the board shall be reported at the next regular member meeting. Any such bylaw shall be at any time subject to amendment or repeal by the members. Unless the bylaws provide otherwise, any bylaw may be adopted, amended or repealed by a majority of the members present at a meeting, provided that the members voting must be sufficient in number to constitute a quorum as provided in this chapter or the bylaws.

10-1512. Principal Office; Registered Agent.) A cooperative shall maintain in this state either its principal office or a registered agent.

The board may establish or change the location of the principal office or name and address of the registered agent by causing a statement in writing to be filed and recorded as an amendment to the articles as provided in section 10-1553. Such statement shall set forth the name of the cooperative, and the location of its principal office or the name and address of the registered agent as established or changed. For the purposes of this chapter, the post office address of an existing cooperative becoming subject to this chapter, as set forth in the articles for its business office, shall be considered its registered office and the secretary of the cooperative shall be considered its registered agent unless the articles are amended otherwise.

A registered agent may resign by mailing a written notice to both the secretary of state and the cooperative. The resignation becomes effective when the cooperative names a new registered agent or sixty days after the receipt of notice by the secretary of state, whichever is sooner.

10-1513. Service Of Process.) The registered agent appointed by a cooperative shall be an agent of the cooperative and any nonresident director upon whom any process, notice or demand required or permitted by law to be served upon the cooperative or its directors may be served.

Whenever a cooperative shall fail to appoint or maintain a registered agent in this state, or whenever its registered agent cannot with reasonable diligence be found at the registered office, then the secretary of state shall be an agent of such cooperative upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with him, or with any clerk having charge of the corporation department of his office, duplicate copies of such process, notice or demand. In the event any such process, notice or demand is served on the secretary of state, he shall immediately cause one of the copies thereof to be forwarded by registered or certified mail, addressed to the cooperative at its registered office or to the nonresident director at his filed address, as the case may be. Any service so had on the secretary of state shall be returnable in not less than thirty days.

The secretary of state shall keep a record of all processes, notices and demands served upon him under this section, and shall record therein the time of such service and his action with reference thereto.

Nothing herein contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a cooperative or its directors in any other manner permitted by law.

10-1514. Promotion Expense; Limitation.) No cooperative funds may be used, nor any stock issued, in payment of any promotion expenses in excess of ten percent of the paid-up capital stock or membership fees. No commission or expenses shall be paid on the sale of stock in excess of ten percent of the par value thereof, and the commission or expense shall be added to the selling price of the stock.

10-1515. Membership.) A cooperative may have one or more classes of members. Provisions for qualifications, requirements, method of acceptance, terms, conditions, termination and other incidents of membership shall be set forth in the bylaws. Any person, including a partnership, incorporated or unincorporated association, corporation, or body politic, may become a member in accordance with the bylaws.

10-1516. Voting.) Except as permitted in this section, no person other than a member may vote at any member meeting.

1. A person who has not fully paid for his membership may not vote except as expressly permitted in the bylaws. If the cooperative permits two or more persons to hold one membership, the bylaws may provide how such member vote is to be cast;

2. At any member meeting of a cooperative composed of individual members and member associations, each of such individual member or association member shall be entitled to only one vote. In the case of a cooperative composed only of member associations, such member associations shall have only one vote, except that the articles may permit either or both:
 - a. A member association to cast additional votes not exceeding a number equal to its membership;
 - b. A cooperative whose member-patrons include other associations to base voting in whole or in part on a patronage basis;
3. A member owning membership stock gains no additional vote thereby;
4. Voting by proxy shall not be allowed in any cooperative, except the bylaws may provide for representation of members by delegates apportioned territorially. A delegate shall cast the votes to which members represented by him are entitled;
5. An absent member may submit a signed vote if he has been previously notified in writing of the exact motion or resolution upon which the vote is taken. The bylaws may limit use of signed votes;
6. In the absence of written notice that some person has been designated to represent a member who is other than a natural person, such member may be represented by any of its principal officers. Unless the bylaws provide otherwise, an individual may represent more than one such member, and may also vote as an individual if he is a member;
7. The bylaws may set forth provisions, not inconsistent with this chapter, relating to the methods and procedures for voting;
8. Whenever the articles require the vote of a greater proportion of the members than required by this chapter, the articles control.

10-1517. Member Meetings.)

1. Unless the bylaws provide otherwise, member meetings shall be held at the principal office or such other place as the board may determine.
2. An annual member meeting shall be held at the time fixed in or pursuant to the bylaws. In the absence of a bylaw provision, such meeting shall be held within six months after the close of the fiscal year at the call of the president or board.

3. Special member meetings may be called by the president, board, or members having one-fifth of the votes entitled to be cast at such meeting.
4. Written notice, stating the place, day and hour, and in case of a special member meeting the purposes for which the meeting is called, shall be given not less than ten nor more than thirty days before the meeting at the direction of the person calling the meeting.
5. At any meeting at which members are to be represented by delegates, notice to such members may be given by notifying such delegates and their alternates. Notice may consist of a notice to all members or may be in the form of an announcement at the meeting at which such delegates or alternates were elected.
6. Action without a meeting may be taken pursuant to section 10-1528.

10-1518. Quorum.) A quorum at a member meeting shall be ten percent of the first one hundred members plus five percent of additional members, present in person or represented by delegate. Unless the bylaws fix a larger number of members to constitute a quorum, a quorum shall never be more than fifty members nor less than five members, or a majority of all members, whichever is smaller. Members represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken.

10-1519. Notice; Waiver.) Whenever notice is required by this chapter to be given to any person, such notice shall be given either personally or by mail. If mailed, such notice is given when deposited in the United States mail, with postage prepaid thereon, addressed to such person at his address as it appears on the records of the cooperative.

A signed waiver is equivalent to personal notice to the person so signing.

10-1520. Stock: Authorization, Control, Use, Rights.)

1. A cooperative organized with capital stock may issue the amount of stock stated in its articles. Such stock may be divided into two or more classes with such designations, preferences, limitations, and relative rights as shall be stated in the articles, except that:
 - a. Stock as such has no voting power;
 - b. Stock without par value shall not be authorized or issued;
 - c. The rate of dividends upon stock shall not exceed six percent of its par value for any year, and dividends may not be cumulative.

2. The articles may require that members own one or more shares of membership stock. Such stock shall be issued or transferred only to a person eligible to become a member, and only when such person satisfies other requisites for membership. Unless restricted by the articles, stock other than membership stock may be issued or transferred to any person.
3. Unless the articles provide otherwise, a cooperative may acquire, recall, exchange, redeem, and reissue its own stock. Provisions in the articles and on the stock certificate may reserve to the cooperative a prior right to acquire any stock offered for sale, or a right to recall the stock of any stockholder, or both of said rights. The consideration paid for stock recalled by the cooperative shall be its par value and accrued unpaid dividends, provided that if the book value of such stock is less than the par value, the consideration shall be such book value. The cooperative may set off obligations of the stockholder to it. If the remaining assets would be less than the aggregate amount payable to creditors and persons holding stock with preferential rights upon liquidation, no stock shall be acquired, recalled, exchanged or redeemed for a consideration other than stock or certificates of equity interest of equal or subordinate rank.
4. When stock is acquired, recalled, exchanged, or redeemed by the cooperative, such stock is restored to the status of authorized but unissued stock.
5. Stockholders as such have no preemptive right to purchase additional stock.

10-1521. Stock Certificates.) No stock certificate may be issued except upon payment of the par value of the stock it represents. No cooperative shall issue stock or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. If payment for stock is not in money, the value of the consideration shall be determined by the board and such determination, if made in good faith, shall be conclusive.

Each certificate for stock shall bear the manual or facsimile signature of a principal officer and shall state:

1. The name of the cooperative, the number, par value and class of the shares represented by the certificate, and whether or not it is membership stock.
2. Any restrictions on the issuance or transfer of such stock, including those provided by law and the articles.
3. If more than one class of stock is authorized, the designation of the several classes, and their respective prefer-

ences, limitations and relative rights. In lieu of the full statement, this information may be given in summary form, or the certificate may state that the cooperative will, upon request, furnish the information required by this subsection.

10-1522. Stock Subscriptions; Liability.) A subscription for stock of a cooperative is irrevocable for six months unless otherwise provided by the subscription agreement, or unless all subscribers consent to the revocation.

A stockholder or subscriber is under no obligation to any person with respect to his stock or subscription other than the obligation to pay to the cooperative the full consideration for which such stock was to be issued.

10-1523. Missing Securities Or Records.)

1. When a security issued by a cooperative is missing, the cooperative shall issue a duplicate security if the owner so requests and furnishes an indemnity acceptable to the cooperative.
2. When records showing ownership of securities or apportionment of equity interest in the assets are missing and the information therein contained is necessary to a proposed redemption of the interest, the cooperative may give notice and redeem as follows:
 - a. The cooperative shall set aside an amount equal to the value of the interests to be redeemed;
 - b. The cooperative shall give notice of such redemption to all owners of interests of which the cooperative has knowledge;
 - c. If there are interests, the ownership of which is unknown to the cooperative, it shall publish notice of the redemption at least once a month for four months both in a publication circulated among members of cooperatives in the area, if any, and in a newspaper of general circulation in the area;
 - d. Any unclaimed outstanding interest represented by the missing records may then be terminated in accordance with section 10-1534.

10-1524. Liability Of Cooperative For Wrongful Transfers Of Its Securities.)

1. A cooperative is not liable for acting upon wrongful transfers of its securities unless it has notice that the certificate was not transferred by a proper person or has notice that the transfer was wrongful.
2. As used in this section:

- a. "Proper person" means the registered owner or last prior transferee, whether or not described as fiduciary for another, or his authorized agent, legal representative, or successor to his interest by operation of law.
- b. "Wrongful transfer" means a transfer which is in excess of the authorization or capacity of the transferor, or which is made in breach of the transferor's fiduciary duty.
- c. "Transfer" includes a redemption or recall of stock.

10-1525. Directors: Number, Election, Removal, And Vacancies.)

1. The business and affairs of a cooperative shall be managed by a board of directors. Every director shall be a member or a representative of a member who is other than a natural person. The bylaws shall prescribe any other qualifications for directors and may provide that directors be from specified territorial districts.
2. The number of directors shall not be less than five, provided that in a cooperative with less than fifty members, the number of directors shall not be less than three. Subject to such limitation, the number shall be fixed in the articles, or if the articles so provide, in the bylaws.
3. The directors constituting the temporary board, named in the articles, shall hold office until the first member meeting. At that meeting and thereafter, directors shall be elected by the members at a member meeting in the manner and for the terms provided in the bylaws. If the bylaws provide that directors be from specified territorial districts, the articles may limit voting for any director to members from within the territorial district from which such director is to be elected. Unless the bylaws provide otherwise, a director's term of office shall be one year. Each director shall hold office for the term for which elected and until his successor takes office. The bylaws may permit selection of alternates to take the place of directors absent at a meeting of the board.
4. Unless the bylaws provide otherwise, a director may be removed upon a majority vote of all members.
5. Unless the bylaws provide otherwise, any vacancy existing in the board may be filled until the next annual meeting by appointment by a majority vote of the directors then in office.

10-1526. Directors: Meetings, Quorum, And Waiver Of Notice.)

1. Meetings of the board shall be held at such place and upon such notice as is prescribed in or pursuant to the bylaws.
2. Unless a greater number is required in the bylaws, a majority of the directors in office shall constitute a quorum for transaction of business. Unless a greater number is required in the bylaws, an act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the board.
3. A signed waiver of notice of a board meeting is equivalent to personal notice to the person so signing. Attendance at a meeting is a waiver of notice of such meeting, except when a director attends the meeting and objects thereat to the transaction of business because the meeting was not lawfully convened.
4. Unless the bylaws provide otherwise, the purposes of any meeting of the board need not be specified in the notice or waiver of notice of such meeting.

10-1527. Executive Committee.) If the bylaws so provide, the board may elect an executive committee to consist of three or more directors. When the board is not in session, such committee shall have all powers of the board except in respect to:

1. Powers reserved by the board to itself;
2. Apportionment or distribution of proceeds;
3. Election of officers;
4. Filling of vacancies in the board; and
5. Amendments to the bylaws.

The board may elect other directors as alternates for members of the executive committee.

10-1528. Action Without Meeting By Directors Or Members.) Any action which may be taken at a member meeting, may be taken without a meeting if a writing setting forth and approving the action taken shall be signed by a majority of the members entitled to vote on such action. Any action which may be taken at a meeting of the directors or executive committee may be taken without a meeting if a writing setting forth and approving the action taken shall be signed by all of the directors or executive committee members entitled to vote on such action. In such cases, such consent shall have the same force and effect as if a meeting had been held.

10-1529. Officers.)

1. The principal officers of a cooperative are a president, one or more vice presidents as prescribed in the bylaws, a secretary and a treasurer. They shall be elected annually by the board at such time and in such manner as the bylaws provide. Each principal officer except the secretary and the treasurer must be a director of the cooperative. The offices of secretary and treasurer may be combined in one person.
2. Any other officer may be chosen by the board or as provided in the bylaws.
3. All officers shall have such authority and perform such duties as the bylaws provide, or as the board may determine not inconsistent with the bylaws. Any officer may be removed by the board whenever in its judgment the best interests of the cooperative will be served thereby. Election or appointment shall not of itself create contract rights.

10-1530. Compensation And Benefits To Directors, Officers And Employees.)

1. Unless the bylaws provide otherwise, only the members may establish compensation or other benefits for a director, not available generally to officers and employees, for services as a director.
2. Unless the bylaws provide otherwise, for prior or future services of any officer or employee, the board may provide reasonable compensation, pension, bonuses or other benefits to such officer or employee, and pension or other benefits to a member of his family or his beneficiaries. No officer or employee who is a director may take part in the vote on his salary for services rendered the cooperative.

10-1531. Liability Of Directors And Members.)

1. Directors who negligently or in bad faith vote for any distribution of assets contrary to this chapter or the articles are jointly and severally liable to the cooperative for the value of assets distributed in excess of the amount which could have been distributed without violating this chapter or the articles.
2. Members, stockholders and patrons of a cooperative are neither obligated to pay, nor liable upon, any cooperative obligation.

10-1532. Disposition Of Assets; Right To Secure Debts.)

1. Except as authorized by the members, the board may not dispose of all or substantially all of a cooperative's

fixed assets. At any meeting the members may authorize the disposition of all or substantially all of a cooperative's fixed assets if:

- a. Notice that such disposition will be considered at such meeting has been given to all persons entitled to vote thereon; and
 - b. Such disposition has been approved by three-fourths of those voting at the meeting.
2. Unless the bylaws provide otherwise, the board may secure payment of a cooperative's debts by mortgaging the cooperative's rights, privileges, authority and franchises, revenues and other property.

10-1533. Apportionment And Distribution Of Proceeds.)

At least once annually the directors shall determine and distribute net proceeds as follows:

1. There shall be deducted from total proceeds:
 - a. All operating expenses and costs;
 - b. The cost of supplies, commodities, equipment and other property or services procured or sold for patrons;
 - c. The cost of services performed for patrons;
 - d. All taxes and all other expenses;
 - e. Reasonable and necessary reserves for depreciation, depletion and obsolescence of physical property, doubtful accounts and other valuation reserves, all of which shall be established in accordance with usual and customary accounting practices.
2. The remainder of the total proceeds are net proceeds and shall be distributed and paid as follows:
 - a. An amount not to exceed five percent thereof may be set aside as an educational fund to be used in teaching or promoting cooperative organization or principles when approved by a majority of the members voting at any annual meeting. Such funds shall for all purposes except the computation of net proceeds be deemed an expense of operation of the cooperative. Such funds shall not be used in any political activity. Such educational funds shall not be paid to any other cooperative, mutual aid corporation or other general farm organization unless such cooperative, mutual aid corporation or general farm organization receiving such funds provides in its bylaws or articles that officers and directors shall be elected by secret ballot and that only bona fide farmers and ranchers are eligible to vote for such position.

- b. A share of the net proceeds may be set aside for or paid to employees. Such amount shall for all purposes except the computation of net proceeds be deemed an expense of operation of the cooperative.
 - c. In a cooperative organized with capital stock such dividend may be paid upon capital stock as is authorized by the articles. No dividend may be paid if the capital is impaired or if payment of such dividend would result in an impairment of capital.
 3. Unless the articles or bylaws otherwise expressly provide, none of the remainder of the net proceeds shall constitute income of the cooperative but all thereof shall be distributed and paid to patrons, whether members or not, as follows:
 - a. Reasonable reserves for necessary purposes may be created, which shall be credited to patrons in accordance with the ratio which their patronage bears to total patronage.
 - b. All the remainder of the net proceeds shall be distributed and paid to patrons in accordance with the ratio which their patronage bears to total patronage.
 - c. There shall be no distinction between the persons entitled thereto, but such reserves and distribution may be based upon business done with particular departments or in particular commodities, supplies or services, or upon classification of business according to the type or nature thereof.
 4. If the articles or bylaws so provide:
 - a. Any of the net proceeds may be credited to allocated or unallocated surplus or reserves of the cooperative.
 - b. None of the remainder shall constitute income to the cooperative, but all thereof shall be distributed and paid in accordance with the ratio which individual patronage bears to total patronage, either to all patrons, to member patrons only, or to all patrons with nonmembers receiving a lower proportion than members, as the bylaws may provide. There shall be no other distinction between members and nonmembers, but distribution may be based on business done with particular departments, or in particular commodities, supplies or services, or upon classification of business according to type or nature thereof.
 5. The distribution and payment of net proceeds under subsections 3 and 4 may be in cash, credits, stock, certificates or interest, revolving fund certificates, letters of advice, or other certificates or securities of the coopera-

tive or of other associations or corporations, in other property, or in any combination thereof.

6. All or any part of the net proceeds may be applied to losses incurred in prior years, and the bylaws may also include any reasonable provisions for the apportionment of losses.
7. When authorized by a majority of the members voting at any annual meeting the directors may provide for the deduction from patronage dividends of membership dues in any other cooperative, mutual aid corporation or other general farm organization.

10-1534. Unclaimed Distributions, Redemptions Or Payments.)

1. Any distribution of proceeds, redemption of or payment based upon any security by a cooperative which remains unclaimed six years after the date authorized for retirement or payment in cash or other property may be forfeited by the board. Any amount forfeited may revert to the cooperative, if, at least six months prior to the declared date of forfeiture, notice that such payment is available has been mailed to the last known address of the person shown by the records to be entitled thereto, or if the address is unknown, is published under section 10-1523.
2. This section applies to all such payments authorized before or after the effective date of this section, except this section does not authorize the forfeiture prior to July 1, 1957 of any right to any such amount which would not otherwise have been barred prior to such date.

10-1535. Books And Records; Penalty For Refusal To Produce.)

1. A cooperative shall keep correct and complete books and records of account, and shall also keep minutes of the proceedings of meetings of its members, board and executive committee. The cooperative shall keep at its principal office records of the names and addresses of all members and stockholders with the amount of stock held by each, and of ownership of equity interests. At any reasonable time, any member or stockholder, or his agent or attorney, upon written notice stating the purposes thereof, delivered or sent to the cooperative at least one week in advance, may examine for a proper purpose any books or records pertinent to the purpose specified in such notice.

2. In any proceedings, or upon petition for such purpose any court of record may, upon notice and after hearing at which proper cause is shown, and upon suitable terms, order any of the cooperative's books or records, and any other pertinent documents in its possession, or duly authenticated copies thereof, to be brought within this state. Such documents shall be kept at such place and for such time and purposes as the order designates. Any cooperative failing to comply with the order is subject to dissolution, and its directors and officers are liable for contempt of court.

10-1536. Annual Reports: Filing Thereof; Fees; Penalties.)

1. A cooperative shall file an annual report signed by a principal officer or the general manager setting forth:
 - a. Its name and complete address.
 - b. The names and addresses of its directors and principal officers.
 - c. A statement, by class and par value, of the amount of stock which it has authority to issue, and the amount issued.
 - d. A statement as to the general type of business engaged in during the prior year.
2. Such annual report shall be made on forms furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report. Each December the secretary of state shall forward report blanks to each cooperative in good standing required to make an annual report.
3. The annual report shall be delivered to the secretary of state between January 1 and March 31 of each year following incorporation. A fee of five dollars shall be paid to the secretary of state for filing the report. If the report does not conform to requirements, it shall be returned to the cooperative for necessary corrections. The penalties for failure to file such report shall not apply if it is corrected and returned within thirty days after receipt thereof.
4. Any report filed after March 31 may be filed only upon payment to the secretary of state of the following fees:
 - a. If filed prior to May 1, ten dollars.
 - b. If filed thereafter but not later than the following December 31, fifteen dollars.
5. If the report is not filed before the following January 1, the cooperative is not in good standing. Until restored to good standing, the secretary of state may not accept for filing any document respecting such cooperative except those incident to its dissolution.

6. The cooperative may be restored to good standing by delivering to the secretary of state a current annual report and by paying fifteen dollars for each calendar year or part thereof during which it was not in good standing, not exceeding a total of one hundred fifty dollars.

10-1537. Amendments To Articles.) At any member meeting a cooperative may adopt any amendment to its articles which is lawful under section 10-1505, if a statement of the nature of the amendment was contained in the notice of the meeting.

An amendment is adopted when approved by members holding a majority of the member votes cast thereon.

10-1538. Filing And Recording Amendments; Limitation Of Action.)

1. Amendments to articles shall be signed by the president or a vice president and the secretary or an assistant secretary, shall be sealed with the cooperative's seal, and shall set forth:
 - a. The name of the cooperative;
 - b. The amendment and date of adoption;
 - c. The number of members; and
 - d. The number of members voting for and against such amendment.
2. One copy of such amendment shall be retained in the records of the association, and one copy shall be filed and recorded in the office of the secretary of state, who shall issue a certificate of amendment thereon.
3. No amendment may affect any existing cause of action or proceeding to which the cooperative is a party, or existing rights of persons other than members or stockholders.
4. No action may be maintained to invalidate any amendment because of the manner of its adoption unless commenced within two years after the date of recording.

10-1539. Restated Articles.) A cooperative may, by action taken in the manner required for an amendment, adopt restated articles which shall state they supersede existing articles and amendments. Restated articles shall meet all requirements of original articles except:

1. Incorporators constituting the temporary board and the names and addresses of the incorporators may be omitted; and

2. The location of the principal office, or the complete address of the present registered agent, shall be set forth as of the time of adoption of the restated articles. The name and address of a new registered agent may be set forth in lieu thereof.

10-1540. Amendments By Bankruptcy Court.) Certified copies of any order of a court of the United States, in proceedings under the bankruptcy laws, shall be filed and recorded as an amendment if the order effects an amendment to the articles. The principal officers of a cooperative shall cause each order to be promptly filed and recorded after it becomes final.

10-1541. Merger And Consolidation.) If otherwise lawful, any two or more associations may merge or consolidate under this chapter or under the law of the state where the surviving or new association will exist. Before a cooperative may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board or by a committee selected by the board or the members for that purpose. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on all members and stockholders of the cooperative. In case of consolidation, the plan shall also contain the articles of the new association. The members shall approve the plan in the manner provided in section 10-1537 for amendments to the articles.

10-1542. Articles Of Merger Or Consolidation; Effect.)

1. Articles of merger or consolidation shall set forth the approved plan and such other information as is required by section 10-1538. They shall be signed by two principal officers of each association merging or consolidating, sealed with the seal of each such association, filed and recorded as an amendment to the articles. Unless otherwise specified in the plan, the merger or consolidation is effective when the articles are so recorded.
2. After the effective date, the associations which are parties to the plan become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases.
3. The surviving or new association possesses all the rights and all the property of each of the individual associations, and is responsible for all their obligations. Title to any property is vested in the surviving or new associ-

ation with no reversion or impairment thereof caused by the merger or consolidation. No right of any creditor may be impaired by the merger or consolidation without his consent.

4. The articles of the surviving association are deemed amended to the extent provided in the plan of merger.

10-1543. Division Of A Cooperative.)

1. Any cooperative may divide itself into two or more cooperatives under this chapter. A written plan of division shall be prepared by the board or by a committee selected by the board for that purpose. Such plan shall set forth all the terms of the division and the proposed effect thereof on all members and stockholders of the cooperative. The plan shall also contain the articles of each new cooperative being formed and any amendments to the articles of the remaining cooperative.
2. The members shall approve the plan in the manner provided in section 10-1537 for amendments to articles.
3. Articles of division shall set forth the approved plan and such other information as is required by section 10-1538 and shall be filed and recorded as an amendment to the articles. Each part of the plan which contains the articles of a new cooperative shall be separately filed and recorded as articles of association for such new cooperative.

10-1544. Conversion Of Corporation.) A corporation may convert itself into a cooperative by adopting an amendment to its articles by which it elects to become subject to this chapter, together with changes in its articles required by this chapter and other desirable changes permitted by this chapter. Such amendment shall be adopted, filed, and recorded in the manner provided by the law then applicable to the corporation.

10-1545. Voluntary Dissolution.)

1. At any member meeting, whether or not a quorum is present, a cooperative may dissolve if:
 - a. Notice that a resolution for dissolution will be considered and acted upon has been given to all members and to all other persons entitled by the articles to vote thereon; and
 - b. Such resolution is adopted by members holding three-fourths of the member votes cast thereon. The articles may permit stockholders to vote on the resolution for dissolution.

2. When the resolution is adopted, either a committee designated by the resolution or the board shall liquidate all assets and pay the net proceeds of such liquidation available for distribution to all persons entitled to the same by law, the articles and the bylaws.
3. Articles of dissolution shall be signed by a majority of directors or of committee members and shall be sealed with the cooperative's seal, if any. They shall set forth:
 - a. The name of the cooperative;
 - b. The name and address of each director or committee member;
 - c. The date of adoption of the resolution of dissolution;
 - d. A statement that all liquidation activities have been completed.
4. The articles of dissolution shall be filed and recorded as provided in section 10-1553, and thereupon the existence of the cooperative ceases.

10-1546. Involuntary Dissolution.)

1. A cooperative may be dissolved involuntarily by a decree of the district court where the principal office or registered agent is located in an action commenced by the attorney general when it is established that:
 - a. The cooperative failed to file its annual report as required by this chapter; or
 - b. The cooperative's certificate of association was procured through fraud; or
 - c. The cooperative has continued to exceed or abuse the authority conferred upon it by this chapter; or
 - d. The cooperative failed to comply with a court order for the production of books, records or other documents of the cooperative as provided in section 10-1535.
2. If the cooperative cures its defaults other than those under subsections 1(b) and 1(c) prior to the entry of the court's final decree and pays all penalties and court costs that have accrued, the cause of action with respect to the defaults so cured will abate.

10-1547. Liquidation Under Court Supervision.)

1. The district court of the county where the principal office or registered agent of the cooperative is located may liquidate the assets and business of such cooperative when an action for that purpose is filed by or on behalf of:

- a. A majority of the designated committee or directors when a resolution is adopted pursuant to section 10-1545.
 - b. The attorney general when a decree of dissolution has been obtained pursuant to section 10-1546.
 - c. A judgment creditor whose execution is returned unsatisfied when it is established that the cooperative is unable to pay its debts as they become due in the usual course of its business.
 - d. Any creditor when it is established that the cooperative is dissolving pursuant to section 10-1545 without making adequate provision for payment of all creditors.
2. Upon filing of any such action, the court acquires exclusive jurisdiction of all matter pertaining to the liquidation of such cooperative and the distribution of its assets to persons entitled thereto and may determine and order paid the expense of such liquidation proceedings. The court has power to issue injunctions, appoint receivers with such duties and powers as the court may direct, and take any other action necessary to the cooperative's liquidation. A receiver appointed in such proceeding has authority to sue and be sued as receiver for the cooperative.
 3. The court shall fix the time within which creditors may file claims and shall prescribe the notice to be given to interested persons. Creditors who do not file their claims within the time limit may not participate in any distribution thereafter made, unless the court upon good cause shown extends their time for filing.
 4. When the court approves the final distribution of a cooperative's assets, it shall enter a decree in the nature of articles of dissolution which shall be filed and recorded in the secretary of state's office.
 5. The filing of an action under this section operates as a stay of all other proceedings against the cooperative until such time as the court issues its final judgment or directs otherwise.
 6. The court upon proper cause shown may at any time order the proceedings dismissed upon such terms and conditions as the court may impose.

10-1548. Property Omitted From Final Distribution.)

1. Upon filing and recording the articles or decree of dissolution, title to any property omitted from the final

distribution vests in the surviving directors or committee members who signed the articles, as trustees. They have all the powers of the cooperative with respect to such property and shall distribute the property or its proceeds to the persons beneficially entitled thereto.

2. When no trustee can be found, the district court of the county where the property is located has power to appoint trustees upon application of any person having an interest in such property or its disposition.
3. Any trustee may at any time make application to the proper district court for supervision of liquidation pursuant to section 10-1547.

10-1549. Amounts Due Unknown Persons.) Upon liquidation of a cooperative, the assets distributable to persons who are unknown or cannot be found may be reduced to cash and deposited with the state treasury. If claimed within ten years thereafter such funds shall be paid without interest to persons entitled thereto upon proof satisfactory to the state treasurer of their right thereto. If not claimed within ten years, such funds shall become the property of the state to be deposited in the general fund of the state treasury.

10-1550. Survival Of Remedy After Dissolution.) Except as provided in section 10-1547, the dissolution of a cooperative does not impair any remedy available to or against such cooperative, its directors, stockholders, or members for any claim existing or any liability incurred prior to such dissolution if a proceeding thereon is commenced within two years after the date of recording the articles or decree of dissolution.

10-1551. Admission Of Foreign Cooperatives.) A foreign cooperative is authorized to do business in this state upon issuance of a certificate of authority to that effect by the secretary of state. In order to procure such certificate, it shall make application therefor to the secretary of state, which application shall set forth:

1. The name of the cooperative and the state or country under the laws of which it is incorporated;
2. The date of incorporation and the period of duration of the corporation;
3. The address of the principal office of the cooperative in the state or country under the laws of which it is incorporated;

4. The address of the proposed registered office of the cooperative in this state, and the name of its proposed registered agent in this state at such address;
5. The purpose or purposes of the cooperative which it proposes to pursue in the transaction of business in this state;
6. The names and respective addresses of the directors and officers of the cooperative;
7. A statement of its aggregate number of members, and of the number of members by classes, if any;
8. A statement of the aggregate amount of authorized and issued capital stock itemized by classes, par value of stock, stock without par value, and series, if any, within a class; and
9. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine whether such cooperative is entitled to a certificate of authority to transact business in this state and to determine and assess fees payable.

Such application shall be made on forms prescribed and furnished by the secretary of state and shall be executed in duplicate by the cooperative by its president or a vice president and by its secretary or an assistant secretary, and verified by one of the officers signing such application.

10-1552. Foreign Cooperative Authority.) Upon issuance of the secretary of state's certificate of authority a foreign cooperative is entitled to all rights, exemptions and privileges of a cooperative organized for the same purposes under the laws of this state.

10-1553. Filing And Recording Documents; Penalty For False Document.)

1. When any document is to be filed and recorded, duplicate originals shall be delivered to the secretary of state. He shall stamp on both the date of filing and return one to the cooperative with his certificate of filing.
2. Any document is recorded when left for record in the proper office with all required fees paid.
3. Whoever causes any document to be filed or recorded, knowing such to be false in any material respect, may be fined not more than one thousand dollars or imprisoned not more than three years, or both.

10-1554. Fees.) No document may be filed or recorded nor any certificate issued until all fees therefor have been paid. Any fee or penalty due under this chapter may be recovered in a suit brought by the attorney general in the name of the state. The secretary of state shall charge and collect from any association for:

1. Filing articles of association and issuing a certificate of association, sixteen dollars;
2. Filing articles of amendment and issuing a certificate of amendment, twelve dollars;
3. Filing restated articles of association, twelve dollars;
4. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, fifteen dollars;
5. Filing articles or decree of dissolution, five dollars;
6. Receiving service of any process, notice or demand, five dollars;
7. Filing an application of a foreign cooperative for a certificate of authority to do business in this state and issuing a certificate therefor, eighteen dollars; and
8. Filing any other document or statement, or issuing any other certificate, five dollars.

10-1555. Defense Of Ultra Vires.) No act and no transfer of property to or by a cooperative is invalid because made in excess of the cooperative's power, except that such lack of power may be asserted in a proceeding by:

1. A member, stockholder or director against the cooperative to enjoin any act or any transfer of property to or by the cooperative;
2. The cooperative or its legal representative against any present or former officer or director;
3. The attorney general against the cooperative in an action to dissolve the cooperative or to enjoin it from the transaction of unauthorized business.

10-1556. Member Or Stockholder Derivative Actions.)

1. No action may be instituted or maintained in the right of any association by a member or stockholder unless he:
 - a. Alleges in his complaint that he was a member or registered stockholder when any part of the transaction of which he complains took place, or that his

- stock thereafter devolved upon him by operation of law from a stockholder at such time;
- b. Alleges in his complaint with particularity his efforts to secure from the board such action as he desires. He shall allege further that he has either informed the association or board in writing of the ultimate facts of each cause of action against each director or that he has delivered to the association or board a copy of the complaint which he proposes to file. He shall state the reasons for his failure to obtain such action or the reasons for not making such effort.
2. The action shall not be dismissed or compromised without the approval of the court.
 3. If anything is recovered or obtained as the result of the action, whether by means of a compromise and settlement or by a judgment, the court may, out of the proceeds of the action, award the plaintiff the reasonable expenses of maintaining the action, including reasonable attorneys' fees, and may direct the plaintiff to account to the association for the remainder of such proceeds.
 4. In any action brought in the right of an association by less than three percent of the members or by holders of less than three percent of any class of stock outstanding, the defendants may require the plaintiff to give security for the reasonable expenses of defending such action, including attorneys' fees. The amount of such security may thereafter be increased or decreased in the discretion of the court upon showing that the security provided is or may be inadequate or is excessive.

10-1557. Forms To Be Furnished By Secretary Of State.)

The secretary of state may provide forms for any document to be filed in his office under this chapter.

10-1558. Use Of Term "Cooperative"; Penalty For Improper Use.)

1. The term "cooperative", or any variation thereof, may be used either by any association organized under this chapter or under other laws of this state relating to cooperative corporations.
2. No other person may use the term "cooperative", or any variation thereof, as part of his corporate or other business name or title, nor may any other person in any other manner represent himself to be a cooperative. Whoever violates this subsection may be fined not more

than one hundred dollars. Each day of improper use constitutes a separate offense.

3. Any cooperative may obtain an injunction againsts acts prohibited by subsection 2 without showing any damage to itself.

10-1559. Associations Not In Restraint Of Trade.) No association organized under this chapter shall be deemed to be a combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily. The marketing contracts or agreements between any such association and its members, or any agreements authorized in this chapter, shall not be considered illegal nor in restraint of trade.

10-1560. Application Of Act.) All foreign and domestic cooperatives are governed by the provisions of this chapter with the following exceptions:

1. All domestic cooperatives existing before July 1, 1957 are not subject to this Act until after June 30, 1959, but any such cooperative may elect to become subject to this Act before July 1, 1959 by adopting an amendment to its articles making such election;
2. All foreign cooperatives admitted to do business in this state before July 1, 1957 are not subject to this Act until after June 30, 1959 but any such cooperative may elect to become subject to the provisions hereof at any time by making application to the secretary of state for issuance of an amended certificate of authority to that effect;
3. Application of this Act to associations existing before its enactment does not affect property rights of stockholders or members in such associations which were accrued or established at the time of such enactment, nor does it affect any liability enforceable at such time, nor does it affect the validity or enforceability of contracts existing before such enactment;
4. The provisions of this Act shall not apply to cooperatives governed by title 26 or by chapters 6-06, 10-12, 10-13, 36-08, or 49-21 of the Code, except where the laws governing such associations clearly adopt or refer to any provisions of chapter 10-15 or refer to provisions of the general law governing cooperatives.

10-1561. Short Title.) Chapter 10-15 of the North Dakota Revised Code of 1943 as amended from time to time may be cited as the "North Dakota Cooperative Association Act".

§ 2. Deferred Repeal.) Chapter 4-07 of the North Dakota Revised Code of 1943, as amended, is hereby repealed, effective July 1, 1959.

Approved March 22, 1957.

CHAPTER 105

H. B. No. 541

(Legislative Research Committee)

SPECIAL COOPERATIVES

AN ACT

Relating to special types of cooperatives, amending and reenacting chapters 10-12, 10-13, and 36-08, and subsection 3 of section 49-2101 of the North Dakota Revised Code of 1943, as amended, and providing for deferred application of amendments to existing cooperatives.

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

§ 1. Amendment.) Chapter 10-12 of the North Dakota Revised Code of 1943, as amended, is hereby amended and reenacted to read as follows:

10-1201. Mutual Aid Cooperatives.) Nonprofit cooperatives may be organized for the purpose of effectuating any plan for rural rehabilitation, subsistence farming, housing, or for the purpose of effectuating any plan or program of any state or federal department or agency or of any other agency or corporation for giving assistance, financial or otherwise, in such endeavors or in cooperative endeavors of any nature or description, or for the purpose of engaging in such endeavors with or without such assistance.

10-1202. Special Requirements And Powers.) Mutual aid cooperatives are subject to the general law governing cooperatives, but shall also state in their articles the territory to be served by the cooperative, and shall have power to act as the agent or representative of any state, federal, or other agency or corporation giving assistance to rural rehabilitation, subsistence farming, housing, or cooperative endeavors of any nature; any cooperative organized under this chapter shall be known as a "mutual aid cooperative" and such three words shall form a part of the name of each cooperative so organized.

10-1203. Personal Property Of Rural Rehabilitation Corporation Exempt From Taxation: Real Property Taxable.) All

funds made available to the North Dakota rural rehabilitation corporation by any state or federal agency or instrumentality, and all personal property purchased with such funds or held by the corporation, and any payments received by the corporation on loans made by or through it or as the proceeds from the sale of property, shall be exempt from all taxation by this state and the political subdivisions thereof. All lands held by the North Dakota rural rehabilitation corporation shall be subject to taxation.

10-1204. Industrial Commission To Receive Assets Of North Dakota Rural Rehabilitation Corporation Upon Dissolution.) That the industrial commission of North Dakota be and it hereby is designated the agency of the state to receive the assets of the North Dakota rural rehabilitation corporation in the event such corporation is dissolved, including all properties that have been returned or may be returned to the North Dakota rural rehabilitation corporation by the secretary of agriculture upon the application of the corporation pursuant to the provisions of Public Law 499 of the 81st Congress, dated April 3, 1950, including also such assets as have again been transferred or may hereafter be transferred to the secretary of agriculture for administration pursuant to agreement between the North Dakota rural rehabilitation corporation and the secretary of agriculture under the provisions of said Public Law 499 of the 81st Congress, dated April 3, 1950; and the said industrial commission of North Dakota is hereby authorized to enter into any agreement with the secretary of agriculture that may be required with respect to the administration of the assets they so receive.

§ 2. Amendment.) Chapter 10-13 of the North Dakota Revised Code of 1943, as amended, is hereby amended and reenacted to read as follows:

10-1301. Purposes Of Electric Cooperatives.) A cooperative may be organized and operated as an electric cooperative under the general law governing cooperatives and this chapter for the purpose of engaging in rural electrification by any one or more of the following methods:

1. The furnishing of electric energy to persons in rural areas who are not receiving central station service;
2. The furnishing of assistance in the wiring of the premises of persons in rural areas or in the acquisition, supply, or installation of electrical or plumbing equipment therein;
3. The furnishing of electrical energy, wiring facilities, electrical or plumbing equipment or services to any

other corporation or cooperative organized under this chapter or to the members thereof; or

4. The operation and maintenance of electrical cold storage and electrical processing plants.

10-1302. Name Of Electric Cooperative.) The name of an electric cooperative shall include the words "electric cooperative". The name shall be such as to distinguish it from any other cooperative organized and existing under the laws of this state, or authorized to do business herein. Only a cooperative organized subject to this chapter or authorized to do business under this chapter may use the words "electric cooperative" in its name.

10-1303. Powers Of Electric Cooperatives.) In addition to the powers granted by the general law governing cooperatives, electric cooperatives have the power:

1. To generate, manufacture, purchase, acquire, and accumulate electrical energy and to transmit, distribute, sell, furnish, and dispose of such electrical energy to its members, and to other persons not in excess of ten per centum of the number of its members, provided, however, that a cooperative which acquires existing electrical facilities may continue service to persons, not in excess of twenty per centum of the number of its members, who are already receiving service from such facilities without requiring such persons to become members but such persons may become members upon such terms as may be prescribed in the bylaws;
2. To establish, maintain, and operate electrical cold storage and electrical processing plants;
3. To construct, erect, purchase, lease as lessee and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange, and mortgage plants, buildings, works, machinery, supplies, equipment, apparatus, and transmission and distribution lines or systems necessary and proper for the operation of its business;
4. To assist only its members to wire their premises and install therein electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character, and in connection therewith and for such purposes, to purchase, acquire, lease, sell, distribute, install, and repair electrical and plumbing fixtures, machinery, supplies, apparatus, and equipment of any and all kinds and character, and to receive, acquire, endorse, pledge, hypothecate, and dispose of notes, bonds, and other evidences of indebtedness;

5. To furnish to other corporations or cooperatives organized under this chapter, or to the members thereof, electrical energy, wiring facilities, electrical and plumbing equipment, and services;
6. To use any highway, right-of-way, easement, or other similar property right owned or held by the state or any political subdivision thereof in connection with the acquisition, construction, improvement, operation, or maintenance of its lines, with the consent of the local authorities having control of the street or highway proposed to be used for such purpose;
7. To have and exercise the power of eminent domain to acquire private property for its use, such right to be paramount except as to property of the state or any political subdivision thereof;
8. To fix, regulate, and collect rates, fees, rents, or other charges for electrical energy and other facilities, supplies, equipment, or services furnished by it; and
9. To make contracts with other cooperatives, with public utilities, with municipalities, or with any department or agency of the state or federal government, for the sale at wholesale to, or interchange of electric energy with, such cooperatives, public utilities, municipalities, or department or agency of the state or federal government, and, notwithstanding any provisions of this chapter, such cooperatives, public utilities, municipalities, or department or agency of the state or federal government shall be eligible to membership in cooperatives organized under this chapter.

10-1304. Members Of Electric Cooperatives.) All persons who are not receiving central station service and who reside in rural areas proposed to be served by a cooperative organized under this chapter, shall be eligible to membership in the cooperative. No person other than the incorporators shall be, become, or remain a member of a cooperative unless such person shall use or agree to use electrical energy or the facilities, supplies, equipment, and services furnished by a cooperative.

“Rural area” means any area not included within the boundaries of an incorporated or unincorporated city or village having a population in excess of twenty-five hundred inhabitants at the time a corporation or cooperative commences to operate electric facilities or to furnish electric energy in such an area, and includes both the farm and nonfarm population thereof; and no change thereafter in the population of a rural area, as defined herein, regardless of the reason for such

change, shall operate to affect in any way its status as a rural area for the purposes of this chapter and of chapter 57-33.

An electric cooperative organized under this chapter may become a member of another such electric cooperative and may avail itself fully of the facilities and services thereof.

10-1305. Nonprofit Basis; Rate And Fees.) Each electric cooperative shall be operated without profit to its members, but the rates, fees, rents, or other charges for electrical energy and for any other facilities, supplies, equipment, or services furnished by the cooperative shall be sufficient at all times:

1. To pay all the operating and maintenance expenses necessary or desirable for the prudent conduct of its business and the principal and interest on the obligations issued or assumed by the cooperative in the performance of the purpose for which it was organized; and
2. For the creation of reserves.

10-1306. Use Of Revenue; Dividends.) The revenues of an electric cooperative shall be devoted first to the payment of operating and maintenance expenses and the principal and interest on outstanding obligations, and thereafter, to such reserves for improvement, new construction, depreciation, and contingencies as the board of directors from time to time may prescribe. Revenues not required for the purposes set forth in this section shall be returned from time to time to the members of the cooperative in cash, in abatement of current charges for electrical energy, or otherwise as the board of directors may determine on a pro rata basis according to the amount of business done with each during the period. Such return may be made by way of general rate reduction to the members if the board of directors so elects.

10-1307. Excise Tax Exemption; License Fee.) In addition to the fees payable under the general law governing cooperatives, electric cooperatives subject to this chapter shall pay annually, on or before July first, to the secretary of state a fee of ten dollars for each one hundred members or fraction thereof, but shall be exempt from all other excise taxes except as provided in chapter 33 of the title Taxation.

10-1308. Exemption From Securities Law.) The provisions of chapter 4 of this title shall not apply to the issuance of membership certificates in electric cooperatives organized under this chapter nor to obligations issued by any such cooperative to secure the repayment of moneys borrowed by the cooperative from or allotted to it by any federal agency.

§ 3. **Amendment.**) Chapter 36-08 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

36-0801. Definitions.) In this chapter, unless the context or subject matter otherwise requires:

1. "Association" means a cooperative grazing association;
2. "District" means a cooperative grazing district;
3. "Subdivision" means any portion or block of land situated within the outside boundaries of a district;
4. "Grazing area" means any area of land consisting of fifty thousand acres or more, situated in any one or more counties in this state, which has been or may be acquired by the United States, or any of its departments, corporations, or agencies, and which may be leased by an association for grazing purposes. This provision, however, shall not preclude the organization of a group with a smaller acreage, down to a minimum of five thousand acres, as provided in section 36-0809 when circumstances require;
5. "Cooperative grazing association" means a corporation or cooperative association mutually operated for the purpose of aiding in the conservation, restoration, improvement, development, and utilization of natural forage resources within any county or counties where a grazing area has been acquired for joint use by its members and for aiding in the restoration, conservation, improvement, development, and utilization of lands which may be leased from the United States or from any of its departments, corporations, or agencies, or from this state or from any of its departments, boards, or agencies, or from any county or political subdivision in this state, or from any other person;
6. "Cooperative grazing district" means and includes lands leased by a cooperative grazing association and utilized by its members for grazing purposes under such definite restrictions, regulations, and limitations by the association as shall contribute to the conservation, restoration, improvement, and development of the forage resources of such land;
7. "Animal unit" means a cow, a bull, or a steer, or five sheep over six months of age on the first day of May of the year in which the age is being determined. Two horses shall be equivalent to three animal units. Animals not more than six months old on the first day of May

of the year in which the age is being determined, and which are the natural increase of the permitted livestock, shall not be counted.

36-0802. Powers Of Grazing Associations.) A nonprofit cooperative grazing association may be organized and operated under the general law governing cooperatives and this chapter, with the following additional power to:

1. Lease from the United States or any of its departments, corporations, or agencies, or from this state or any of its departments or agencies, or from any county or political subdivision therein, or from any other person or association, lands for grazing purposes and for the purpose of raising forage crops;
2. Apportion to members grazing rights within its district on such terms, conditions, and limitations, not in conflict with any of the provisions contained in any lease or leases made by the association with the county, state, or federal government, or any of its departments, boards, or agencies, as may be specified by the board of directors of the association;
3. Issue grazing permits to nonmembers;
4. Act as agent of, and cooperate with, the federal and state government or any department or agency thereof, in the conservation, restoration, improvement, development, and utilization of the forage resources in this state or for any other purpose, and to accept and use any funds provided by the federal or state government or any department or agency thereof.

36-0803. Grazing Association Name.) The name of any cooperative grazing association organized and operating under this chapter or authorized to do business hereunder shall include the words "grazing association", and no other association shall use such words in its name.

36-0804. Members.) Any person may become a member of a cooperative grazing association if he:

1. Is an owner or lessee of land within the proposed boundaries or resides on the border of the grazing area within or without the county;
2. Has been dependent upon the land within the area of the district;
3. Is engaged in the raising of livestock within the grazing area;

4. Pays the membership fee;
5. Subscribes to the bylaws; and
6. Complies with the rules, regulations, and limitations determined by the board of directors of the association.

Any entrance, organization, or membership fee established by a grazing association shall not exceed the sum of five dollars, and the amount which a member may be required to pay annually to assist in carrying on the business of the association shall not exceed the sum of five dollars.

When any member disposes of land owned or leased by him and upon which his membership in the association and the grazing rights in the district are based, he ceases to be a member of such association. If any member disposes of all or part of the land owned or leased by him so that another individual or other individuals, by the purchase and ownership or transfer of the lease to such land, acquires a right to membership and to grazing rights, the rights and interests involved and the grazing rights of all the parties shall be determined by the board of directors.

No member shall be liable for the debts of the association in an amount exceeding the sum remaining unpaid on his membership fee, except for debts lawfully contracted between him and the association.

36-0805. Directors.) One director of the association shall be elected from each congressional township in the district by the majority vote of the members in such township who are eligible to vote. However, in a small acreage group, all of the directors may be elected from any one or more congressional townships.

36-0806. Articles.) Articles of association for grazing associations are subject to the general law governing cooperatives, and shall also set forth whether the property and grazing rights and interests of each member of the association shall be equal or unequal, and if unequal, the general rule or rules applicable to all members by which:

1. The property and grazing rights and interests of each member shall be determined and fixed;
2. New members may be admitted by the association; and
3. Such new members shall be entitled to share in the property of the association with the old members.

36-0807. Animal Units Grazed.) No member of a cooperative grazing association shall be permitted to graze more than

five hundred animal units during a full twelve-month period in any one year. He may be permitted, however, to graze a correspondingly larger number for a shorter grazing period during each year.

36-0808. Powers Of Directors.) Directors of a grazing association are subject to the general law governing directors of cooperatives, and may also:

1. Make such regulations for the management and control of the affairs of the association and of the manner of utilization of grazing within its district not inconsistent with the terms, conditions, and limitations of leases covering lands contained therein;
2. Apportion grazing rights within the district to members and in doing so it shall consider the following factors:
 - a. The amount of winter feed that the member can raise on land owned or leased by him situated in the district or on land situated within two miles of the outside boundary of the district;
 - b. The dependence of the member on the grazing in the district;
 - c. The amount of stock previously grazed by the member in the area where the district is located; and
 - d. The amount of grass that will be available for the stock of all the members of the association;
3. Create subdivisions in the district and specify the kind and number of stock that may be permitted to graze in such subdivisions;
4. Determine the length of time during which the stock of any member may graze in the district or in any subdivision thereof;
5. Determine grazing fees to be imposed on members or nonmembers on a per head basis for grazing rights;
6. Grant to nonmembers grazing permits within such district when the amount of forage therein is greater than the needs of the members, but no such permits shall be granted when such use shall be inconsistent with the terms of leases of county, state, or federal lands within the district or with a safe policy of forage conservation therein;
7. Enter into leases on behalf of the association with any county or counties in which the district is located or with the state or federal government, or any departments or agencies thereof, or with other persons, for tracts of land within or contiguous to such district;

8. Specify the breeds, quality, and number of male breeding animals which each member shall furnish when stock is grazed in a common pasture within the grazing district or in any subdivision thereof;
9. Make rules and regulations governing the treatment, care, or removal of diseased animals and to prevent the spreading of any disease among the stock ranging in the district or in any subdivision thereof;
10. Suspend or expel any member for failure or refusal to pay his membership or grazing fees or to abide by or conform to the rules and regulations of the association or of its board of directors;
11. Make rules and regulations governing the automatic suspension of the right of a member when he ceases to be eligible to membership in the association, the manner of assignment and transfer of the interests of members, and the condition upon which, and the time when, membership of any member shall cease;
12. Set up such reserve for contingencies as in its judgment is advisable, after paying all costs, lease rentals, and other expenses;
13. Enter into agreements, conform to regulations, or act in conjunction with the state or federal government or any department or agency thereof to bring about the conservation, restoration, improvement, development, and utilization of the forage resources in the district.

36-0809. Grazing District Map.) Any cooperative grazing association organized under the provisions of this chapter, upon completion of its organization and incorporation, shall file with the register of deeds of the county and with the dean of the school of agriculture of the agricultural college, a map or plat of the grazing district proposed to be created and the subdivisions therein. Whenever any incorporated grazing association shall enlarge or reduce the area included within its district, or change or modify its boundaries or subdivisions, it shall file with the register of deeds and the dean of the school of agriculture of the agricultural college a map or plat indicating such changed boundaries.

§ 4. Amendment.) Subsection 3 of section 49-2101 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

3. "Mutual telephone company" means a telephone cooperative organized and operating subject to the provisions of this chapter, and such a cooperative shall also be subject to the general law governing cooperatives, ex-

cept where such general law is in conflict with this chapter.

§ 5. Application Of Act To Existing Cooperatives.) The amendments provided in this Act are not applicable until July 1, 1959, for any cooperative organized or doing business in this state under the provisions of chapter 10-12, 10-13, 36-08, or 49-21 before July 1, 1957, unless such a cooperative adopts an amendment to its articles electing to become subject hereto or applies for an amended certificate of authority electing to become subject hereto, earlier than July 1, 1959.

Until July 1, 1959, or until filing the necessary amendment electing to earlier become subject hereto, such existing cooperatives continue to be governed by the provisions of chapter 10-12, 10-13, 36-08, or 49-21, as the case may be, as though these amendments had not been made.

Approved March 22, 1957.

CHAPTER 106

S. B. No. 226
(Brooks)

RELIGIOUS AND CHARITABLE REALTY

AN ACT

To amend and reenact section 10-0807 of the 1953 Supplement to the North Dakota Revised Code of 1943 as amended by chapter 104 of the Session Laws of 1955, relating to real estate holdings of religious and charitable corporations.

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

§ 1. Amendment.) Section 10-0807 of the 1953 Supplement to the North Dakota Revised Code of 1943 as amended by chapter 104 of the Session Laws of 1955 is hereby amended and reenacted to read as follows:

10-0807. Real Estate Holdings Of Religious And Charitable Corporations Limited; Excess Property Escheats.) No corporations or association organized for religious or charitable purposes shall acquire or hold real estate in this state of a greater value than five hundred thousand dollars. This provision shall not apply to the property of corporations or associations actually used for educational, hospital, charitable or religious purposes. All real estate acquired or held contrary to the provisions of this section shall be forfeited and shall escheat to the state.

Approved March 15, 1957.