

# PROPERTY

## CHAPTER 309

S. B. No. 158  
(Holand)

### TITLES TO PUBLIC WAYS

#### AN ACT

To amend and reenact section 47-1010 of the North Dakota Revised Code of 1943, relating to titles to highways, streets, alleys or public rights-of-way.

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

**§ 1. Amendment.)** Section 47-1010 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**47-1010. Title To Highway, Street, Alley And Public Right-Of-Way; Vacation.)** A transfer of land bounded by a highway, street, alley, or public right-of-way passes the title of the person whose estate is transferred to the soil of the highway, street, alley, or public right-of-way in front to the center thereof unless a different intent appears from the grant. Every conveyance of real estate, which abuts upon a vacated highway, street, alley, or other public right-of-way, shall be construed, unless a contrary intent appears, to include that part of such highway, street, alley or public right-of-way which attaches either by operation or presumption of law, to such abutting real estate upon such vacation.

Approved March 12, 1957.

## CHAPTER 310

H. B. No. 754

(Stockman and Van Sickle)

## PERSONALTY TRANSFERS TO JOINT TENANCY

## AN ACT

To provide that an owner of personal property may transfer the same to himself and others in joint tenancy with right of survivorship without an intermediate transfer through a third person, and declaring valid transfers of personal property heretofore made by an owner to himself and others in joint tenancy with right of survivorship.

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

**§ 1. Transfer Of Personal Property By Owner To Himself And Others In Joint Tenancy.)** Any person, firm or corporation owning an interest either legal or equitable in any personal property may grant, transfer, sell and convey the same to himself, herself, or such firm or corporation and any other person or persons, firm or firms, corporation or corporations, in joint tenancy with right of survivorship without the necessity of any intermediate transfer or grant to or through a third person, where such personal property is tangible and has a situs in this state, where the property is intangible and the transfer or grant is made in this state, and in all other cases where such transfer is subject to the laws of this state.

**§ 2. Validation Of Transfers Of Personal Property By Owner To Himself And Others In Joint Tenancy.)** Any transfer or grant of an interest either legal or equitable in personal property heretofore made by any person, firm or corporation to himself, herself, or such firm or corporation and any other person or persons, firm or firms, corporation or corporations, in joint tenancy with right of survivorship where such transfer is subject to the laws of this state is hereby declared legal and valid.

Approved March 7, 1957.

## CHAPTER 311

H. B. No. 633  
(Baldwin and Stockman)

## NORTH DAKOTA UNIFORM GIFTS TO MINORS ACT

## AN ACT

Relating to gifts of securities and money to minors.

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

**§ 1. Definitions.)** In this Act, unless the context otherwise requires:

1. "Adult" is a person who has attained the age of twenty-one years;
2. "Bank" is a bank, trust company, national banking association, savings bank, industrial bank, or other organization organized under Title 6 of the North Dakota Revised Code of 1943;
3. "Broker" is a person lawfully engaged in the business of effecting transactions in securities for the account of others. The term includes a bank which effects such transactions. The term also includes a person lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business;
4. "Court" means the county court;
5. "The custodial property" includes:
  - a. all securities and money under the supervision of the same custodian for the same minor as a consequence of a gift or gifts made to the minor in a manner prescribed in this Act;
  - b. the income from the custodial property; and
  - c. the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment or other disposition of such securities, money and income.
6. "Custodian" is a person so designated in a manner prescribed in this Act;
7. "Guardian" of a minor includes the general guardian, guardian, tutor or curator of his property, estate or person;

8. "Issuer" is a person who places or authorizes the placing of his name on a security, other than as a transfer agent, to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of any such person;
9. "Legal representative" of a person is his executor or the administrator, general guardian, guardian, committee, conservator, tutor or curator of his property or estate;
10. "Member" of a "minor's family" means any of the minor's parents, grandparents, brothers, sisters, uncles and aunts, whether of the whole blood or the half blood, or by or through legal adoption;
11. "Minor" is a person who has not attained the age of twenty-one years;
12. "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. The term does not include a security of which the donor is the issuer. A security is in "registered form" when it specifies a person entitled to it or to the rights it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer;
13. "Transfer agent" is a person who acts as authenticating trustee, transfer agent, registrar or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrendered securities;
14. "Trust company" is a bank authorized to exercise trust power.

§ 2. **Manner Of Making Gift.**) An adult person may, during his lifetime, make a gift of a security or money to a person who is a minor on the date of the gift:

1. If the subject of the gift is a security in registered form, by registering it in the name of the donor, another adult

person or a trust company, followed, in substance, by the words: "as custodian for.....(name of minor)..... under the North Dakota Uniform Gifts to Minors Act".

2. If the subject of the gift is a security not in registered form, by delivering it to an adult person other than the donor or a trust company, accompanied by a statement of gift in the following form, in substance, signed by the donor and the person designated as custodian:

**"GIFT UNDER THE NORTH DAKOTA UNIFORM  
GIFTS TO MINORS ACT**

I, .....(name of donor)..... hereby deliver to  
.....(name of custodian).....as custodian for  
.....(name of minor).....under the North Dakota  
Uniform Gifts to Minors Act, the following security:  
(insert an appropriate description of the security or  
securities delivered sufficient to identify it or them)  
.....(signature of donor).....  
.....(name of custodian).....hereby acknowledges  
receipt of the above described security as custodian for  
the above minor under the North Dakota Uniform Gifts  
to Minors Act.  
Dated.....(signature of custodian)....."

3. If the subject of the gift is money, by pay or delivering it to a broker or a bank for credit to an account in the name of the donor, another adult person, an adult member of the minor's family, a guardian of the minor, or a bank with trust powers, followed, in substance, by the words: "as custodian for .....(name of minor)..... under the North Dakota Uniform Gifts to Minors Act."

Any gift made in a manner prescribed in this section may be made to only one minor and only one person may be the custodian.

A donor who makes a gift to a minor in a manner prescribed in this section shall promptly do all things within his power to put the subject of the gift in the possession and control of the custodian, but neither the donor's failure to comply with this section, nor his designation of an ineligible person as custodian, nor renunciation by the person designated as custodian affects the consummation of the gift.

**§ 3. Effect Of Gift.)** A gift made in a manner prescribed in this Act is irrevocable and conveys to the minor indefeasibly vested legal title to the security or money given, but no guardian of the minor has any right, power, duty or authority with respect to the custodial property except as provided in this Act.

By making a gift in a manner prescribed in this Act, the donor incorporates in his gift all the provisions of this Act and grants to the custodian, and to any issuer, transfer agent, bank, broker or third person dealing with a person designated as custodian, the respective powers, rights and immunities provided in this Act.

**§ 4. Duties And Powers Of Custodian.)** The custodian shall collect, hold, manage, invest and reinvest the custodial property, and:

1. The custodian shall pay over to the minor for expenditure by him, or expend for the minor's benefit, so much of or all the custodial property as the custodian deems advisable for the support, maintenance, education and benefit of the minor in the manner, at the time or times, and to the extent that the custodian in his discretion deems suitable and proper, with or without court order, with or without regard to the duty of himself or of any other person to support the minor or his ability to do so, and with or without regard to any other income or property of the minor which may be applicable or available for any such purpose;
2. The court, on the petition of a parent or guardian of the minor or of the minor, if he has attained the age of fourteen years, may order the custodian to pay over to the minor for expenditure by him or to expend so much of or all the custodial property as is necessary for the minor's support, maintenance or education;
3. To the extent that the custodial property is not so expended, the custodian shall deliver or pay it over to the minor on his attaining the age of twenty-one years or, if the minor dies before attaining the age of twenty-one years, he shall thereupon deliver or pay it over to the estate of the minor;
4. The custodian, notwithstanding statutes restricting investments by fiduciaries, shall invest and reinvest the custodial property as would a prudent man of discretion and intelligence who is seeking a reasonable income and the preservation of his capital, except that he may, in his discretion and without liability to the minor or his estate, retain a security given to the minor in a manner prescribed in this Act;
5. The custodian may sell, exchange, convert or otherwise dispose of custodial property in the manner, at the time or times, for the price or prices and upon the terms he deems advisable. He may vote in person or by general

or limited proxy a security which is custodial property. He may consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution or liquidation of an issuer, a security of which is custodial property, and to the sale, lease, pledge or mortgage of any property by or to such an issuer, and to any other action by such an issuer. He may execute and deliver any and all instruments in writing which he deems advisable to carry out any of his powers as custodian;

6. The custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed, in substance, by the words: "as custodian for .....(name of minor)..... under the North Dakota Uniform Gifts to Minors Act." The custodian shall hold all money which is custodial property in an account with a broker or in a bank in the name of the custodian, followed, in substance, by the words: "as custodian for .....(name of minor)..... under the North Dakota Uniform Gifts to Minors Act." The custodian shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property;
7. The custodian shall keep records of all transactions with respect to the custodial property and make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor, if he has attained the age of fourteen years;
8. A custodian has and holds as powers in trust, with respect to the custodial property, in addition to the rights and powers provided in this Act, all the rights and powers which a guardian has with respect to property not held as custodial property.

**§ 5. Custodian's Expenses, Compensation, Bond And Liabilities.)** A custodian is entitled to reimbursement from the custodial property for his reasonable expenses incurred in the performance of his duties, and:

1. A custodian may act without compensation for his services;
2. Unless he is a donor, a custodian may receive from the custodial property reasonable compensation for his services determined by one of the following standards in the order stated:
  - a. a direction by the donor when the gift is made;
  - b. a statute of this state applicable to custodians;

- c. the statute of this state applicable to guardians;
  - d. an order of the court.
3. Except as otherwise provided in this Act, a custodian shall not be required to give a bond for the performance of his duties;
  4. A custodian not compensated for his services is not liable for losses to the custodial property unless they result from his bad faith, intentional wrongdoing or gross negligence or from his failure to maintain the standard of prudence in investing the custodial property provided in this Act.

**§ 6. Exemption Of Third Persons From Liability.)** No issuer, transfer agent, bank, broker or other person acting on the instructions of or otherwise dealing with any person purporting to act as a donor or in the capacity of a custodian is responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated or whether any purchase, sale or transfer to or by or any other act of any person purporting to act in the capacity of custodian is in accordance with or authorized by this Act, or is obliged to inquire into the validity or propriety under this Act of any instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, or is bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him.

**§ 7. Resignation, Death Or Removal Of Custodian; Bond; Appointment Of Successor Custodian.)**

1. Only an adult member of the minor's family, a guardian of the minor or a trust company is eligible to become successor custodian. A successor custodian has all the rights, powers, duties and immunities of a custodian designated in a manner prescribed by this Act;
2. A custodian, other than the donor, may resign and designate his successor by:
  - a. executing an instrument of resignation designating the successor custodian; and
  - b. causing each security which is custodial property and in registered form to be registered in the name of the successor custodian followed, in substance, by the words: "as custodian for .....(name of minor)..... under the North Dakota Uniform Gifts to Minors Act"; and



- c. delivering to the successor custodian the instrument of resignation, each security registered in the name of the successor custodian and all other custodial property, together with any additional instruments required for the transfer thereof.
3. A custodian, whether or not a donor, may petition the court for permission to resign and for the designation of a successor custodian;
4. If the person designated as custodian is not eligible, renounces or dies before the minor attains the age of twenty-one years, the guardian of the minor shall be successor custodian. If the minor has no guardian, a donor, his legal representative, the legal representative of the custodian, an adult member of the minor's family, or the minor, if he has attained the age of fourteen years, may petition the court for the designation of a successor custodian;
5. A donor, the legal representative of a donor, an adult member of the minor's family, a guardian of the minor or the minor, if he has attained the age of fourteen years, may petition the court that, for cause shown in the petition, the custodian be removed and a successor custodian be designated or, in the alternative, that the custodian be required to give bond for the performance of his duties.
6. Upon the filing of a petition as provided in this section, the court shall grant an order, directed to the persons and returnable on such notice as the court may require, to show cause why the relief prayed for in the petition should not be granted and, in due course, grant such relief as the court finds to be in the best interests of the minor.

#### **§ 8. Accounting By Custodian.)**

1. The minor, if he has attained the age of fourteen years, or the legal representative of the minor, an adult member of the minor's family, or a donor or his legal representative may petition the court for an accounting by the custodian or his legal representative.
2. The court, in a proceeding under this Act or otherwise, may require or permit the custodian or his legal representative to account and, if the custodian is removed, shall so require and order delivery of all custodial property to the successor custodian and the execution of all instruments required for the transfer thereof.

**§ 9. Construction.)**

1. This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it; but
2. Shall not be construed as providing an exclusive method for making gifts to minors.

**§ 10. Short Title.)** This Act may be cited as the "North Dakota Uniform Gifts to Minors Act."

Approved March 13, 1957.

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**CHAPTER 312**

S. B. No. 114

(Brooks, Erickstad, Garaas, Holand, Knudson, Longmire, Wartner)

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**MARKETABLE RECORD TITLE****AN ACT**

To amend and reenact section 47-19A01, subsection 1 of section 47-19A02, and sections 47-19A03, 47-19A07 and 47-19A10 of the 1953 Supplement of the North Dakota Revised Code of 1943, relating to marketable record title to real property and to the definite period of time within which notices of claim of interest and affidavits of possession are required to be filed and recorded; and providing for an effective date.

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

**§ 1. Amendment.)** Section 47-19A01 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**47-19A01. What Constitutes Marketable Title.)** Any person having the legal capacity to own real estate in this state, who has an unbroken chain of title to any interest in real estate by himself and his immediate or remote grantors under a deed of conveyance which has been recorded for a period of twenty years or longer, and is in possession of such real estate, shall be deemed to have a marketable record title to such interest, subject only to such claims thereto and defects of title as are not extinguished or barred by the application of the provisions of this chapter, instruments which have been recorded less than twenty years, and any encumbrances of record not barred by the statute of limitations.



**§ 2. Amendment.)** Subsection 1 of section 47-19A02 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

1. A person shall be deemed to have the unbroken chain of title to an interest in real estate when the official public records of the county wherein such land is situated disclose a conveyance or other title transaction dated and recorded twenty years or more prior thereto, which conveyance or other title transaction purports to create such interest in such person or his immediate or remote grantors, with nothing appearing of record purporting to divest such person and his immediate or remote grantors of such purported interest.

**§ 3. Amendment.)** Section 47-19A03 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**47-19A03. Notice Of Claim Of Interest Filed.)** Such marketable title shall be held by such person and shall be taken by his successors in interest free and clear of all interest, claims, any charges whatever, the existence of which depends in whole or in part upon any act, transaction, event, or omission that occurred twenty years or more prior thereto, whether such claim or charge be evidenced by a recorded instrument or otherwise, and all such interests, claims, and charges affecting such interest in real estate shall be barred and not enforceable at law or equity, unless any person making such claim or asserting such interest or charge, shall, on or before twenty years from the date of recording of deed of conveyance under which title is claimed, or within one year from the effective date of this Act, whichever event is the latest in point of time, file for record a notice in writing, duly verified by oath, setting forth the nature of his claim, interest or charge; and no disability nor lack of knowledge of any kind on the part of anyone shall operate to extend the time for filing such claims after the expiration of twenty years from the recording of such deed of conveyance or one year after the effective date of this Act, whichever event is the latest in point of time.

**§ 4. Amendment.)** Section 47-19A07 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**14-19A07. Evidence Of Possession Recorded.)** For the purpose of this chapter, the fact of possession of real estate referred to in section 47-19A01 may be shown of record by one or more affidavits which shall contain the legal description of the real estate referred to and show that the record titleholder is upon the date thereof in possession of such real

estate. The register of deeds shall record such affidavits in the miscellaneous records of his county and index the same against the real estate. No such affidavits of possession shall be filed as to any real estate before the expiration of twenty years from the recording of deed of conveyance under which title is claimed, or before one year after the effective date of this Act, whichever event is the latest in point of time, as to any real estate as to which a claim under the provisions of section 47-19A05 shall have been filed.

§ 5. **Amendment.**) Section 47-19A10 of the 1953 Supplement to the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**47-19A10. Purpose Of Chapter.)** This chapter shall be construed to effect the legislative purpose of simplifying and facilitating real estate title transactions by allowing persons to deal with the record title owner as defined herein and to rely upon the record title covering a period of twenty years or more subsequent to the recording of deed of conveyance as set out in section 47-19A01, and to that end to bar all claims that affect or may affect the interest thus dealt with, the existence of which claims arises out of or depends upon any act, transaction, event, or omission occurring before the recording of such deed of conveyance, unless a notice of such claim, as provided in section 47-19A05, shall have been duly filed for record. The claims hereby barred shall mean any and all interest of any nature whatever, however denominated, whether such claims are asserted by a person sui juris or under disability, whether such person is or has been within or without the state, and whether such person is natural, corporate, private, or governmental.

§ 6. **Effective Date.)** This Act shall become effective January 1, 1958.

Approved March 13, 1957.



## CHAPTER 313

S. B. No. 107

(Brooks, Erickstad, Garaas, Holand, Knudson, Longmire, Wartner)

## NOTICE OF UNRECORDED INSTRUMENTS

## AN ACT

To amend and reenact section 47-1946 of the North Dakota Revised Code of 1943, relating to validity of unrecorded instruments and knowledge of record of instruments out of the chain of title.

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

**§ 1. Amendment.)** Section 47-1946 of the North Dakota Revised Code of 1943 is hereby amended and reenacted to read as follows:

**47-1946. Unrecorded Instrument Valid Between Parties: Knowledge Of Instruments Out Of Chain Of Title.)** An unrecorded instrument is valid as between the parties thereto and those who have notice thereof. Knowledge of the record of an instrument out of the chain of title does not constitute such notice, provided, however, that the record of a mortgage, deed, or other conveyance prior to the recording of a deed or other conveyance vesting title of record in the mortgagor or grantor, shall not be considered out of the chain of title after the recording of a deed or other conveyance vesting title in the mortgagor or grantor in such first recorded mortgage, deed or other conveyance.

Approved March 13, 1957.

## CHAPTER 314

H. B. No. 622

(Schuler, Fitch and Goebel)

(By request of the Secretary of State)

## TRADE-MARKS

## AN ACT

To provide for the registration and protection of trade-marks and repeal chapter 47-22 of the North Dakota Revised Code of 1943.

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

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

1. "Trade-mark" means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods made or sold by him and to distinguish them from goods made or sold by others.
2. "Person" means any individual, firm, partnership, corporation, association, union or other organization.
3. "Applicant" embraces the person filing an application for registration of a trade-mark under this Act, his legal representatives, successors or assigns.
4. "Registrant" embraces the person to whom the registration of a trade-mark under this Act is issued, his legal representatives, successors or assigns.

For the purposes of this Act, a trade-mark shall be deemed to be "used" in this state when it is placed in any manner on the goods or their containers or on the tags or labels affixed thereto and such goods are sold or otherwise distributed in this state.

**§ 2. Registrability.)** A trade-mark by which the goods of any applicant for registration may be distinguished from the goods of others shall not be registered if it

1. Consists of or comprises immoral, deceptive or scandalous matter; or
2. Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute; or

3. Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof; or
4. Consists of or comprises the name, signature or portrait of any living individual, except with his written consent; or
5. Consists of a mark which;
  - a. when applied to the goods of the applicant, is merely descriptive or deceptively mis-descriptive of them; or
  - b. when applied to the goods of the applicant is primarily geographically descriptive or deceptively mis-descriptive of them; or
  - c. is primarily merely a surname provided, however, that nothing in this subsection shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods, proof of continuous use thereof as a mark by the applicant in this state or elsewhere for the five years next preceding the date of the filing of the application for registration; or
6. Consists of or comprises a trade-mark which so resembles a trade-mark registered in this state or a trade-mark or trade name previously used in this state by another and not abandoned, as to be likely, when applied to the goods of the applicant, to cause confusion or mistake or to deceive.

**§ 3. Application For Registration.)** Subject to the limitations set forth in this Act, any person who adopts and uses a trade-mark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that trade-mark setting forth, but not limited to, the following information:

1. The name and business address of the person applying for such registration; and, if a corporation, the state of incorporation;
2. The goods in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods and the class in which such goods fall:

3. The date when the trade-mark was first used anywhere and the date when it was first used in this state by the applicant or his predecessor in business; and
4. A statement that the applicant is the owner of the trade-mark and that no other person has the right to use such trade-mark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor.

The application shall be signed and verified by the applicant or by a member of the firm or an officer of the corporation or association applying.

The application shall be accompanied by a specimen or facsimile of such trade-mark in triplicate.

The application for registration shall be accompanied by a filing fee of twenty dollars, payable to the secretary of state.

**§ 4. Certificate Of Registration.)** Upon compliance by the applicant with the requirements of this Act, the secretary of state shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state, and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the trade-mark, the date claimed for the first use of the trade-mark anywhere and the date claimed for the first use of the trade-mark in this state, the class of goods and a description of the goods on which the trade-mark is used, a reproduction of the trade-mark, the registration date and the term of the registration.

Any certificate of registration issued by the secretary of state under the provisions hereof or a copy thereof duly certified by the secretary of state shall be admissible in evidence as competent and sufficient proof of the registration of such trade-mark in any action or judicial proceedings in any court of this state.

**§ 5. Duration And Renewal.)** Registration of a trade-mark hereunder shall be effective for a term of ten years from the date of registration and, upon application filed within six months prior to the expiration of such term, on a form to be furnished by the secretary of state, the registration may be renewed for a like term. A renewal fee of twenty dollars, payable to the secretary of state, shall accompany the application for renewal of the registration.

A trade-mark registration may be renewed for successive periods of ten years in like manner.



The secretary of state shall notify registrants of trade-marks hereunder of the necessity of renewal within the year next preceding the expiration of the ten years from the date of registration by writing to the last known address of the registrants.

Any registration in force on the date on which this Act shall become effective shall expire ten years from the date of the registration or of the last renewal thereof or one year after the effective date of this Act, whichever is later, and may be renewed by filing an application with the secretary of state on a form furnished by him and paying the aforementioned renewal fee therefor within six months prior to the expiration of the registration.

The secretary of state shall within six months after the effective date of this Act notify all registrants of trade-marks under previous acts of the date of expiration of such registrations unless renewed in accordance with the provisions of this Act by writing to the last known address of the registrants.

**§ 6. Assignment.)** Any trade-mark and its registration hereunder shall be assignable with the good will of the business in which the trade-mark is used, or with that part of the good will of the business connected with the use of and symbolized by the trade-mark. Assignment shall be by instruments in writing duly executed and may be recorded with the secretary of state upon the payment of a fee of five dollars payable to the secretary of state who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this Act shall be void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state within three months after the date thereof or prior to such subsequent purchase.

**§ 7. Records.)** The secretary of state shall keep for public examination a record of all trade-marks registered or renewed under this Act.

**§ 8. Cancellation.)** The secretary of state shall cancel from the register:

1. After one year from the effective date of this Act, all registrations under prior acts which are more than ten years old and not renewed in accordance with this Act;
2. Any registration concerning which the secretary of state shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;

3. All registrations granted under this Act and not renewed in accordance with the provisions hereof;
4. Any registration concerning which a state district court shall find
  - a. that the registered trade-mark has been abandoned,
  - b. that the registrant is not the owner of the trade-mark,
  - c. that the registration was granted improperly,
  - d. that the registration was obtained fraudulently,
  - e. that the registered trade-mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a trade-mark registered by another person in the United States Patent Office, prior to the date of the filing of the application for registration by the registrant hereunder, and not abandoned; provided, however, that should the registrant prove that he is the owner of a concurrent registration of his trade-mark in the United States Patent Office covering an area including this state, the registration hereunder shall not be canceled,
5. When a state district court shall order cancellation of a registration on any ground.

§ 9. **Classification.**) The following general classes of goods are established for convenience of administration of this Act, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a trade-mark may include any or all goods upon which the trade-mark is actually being used comprised in a single class, but in no event shall a single application include goods upon which the trade-mark is being used which fall within different classes of goods.

The said classes are as follows:

1. Raw or partly prepared materials
2. Receptacles
3. Baggage, animal equipment, portfolios, and pocketbooks
4. Abrasives and polishing materials
5. Adhesives
6. Chemicals and chemical compositions
7. Cordage
8. Smokers' articles, not including tobacco products
9. Explosives, firearms, equipments, and projectiles
10. Fertilizers
11. Inks and inking materials
12. Construction materials

13. Hardware and plumbing and steam-fitting supplies
14. Metals and metal castings and forgings
15. Oils and greases
16. Paints and painters' materials
17. Tobacco products
18. Medicines and pharmaceutical preparations
19. Vehicles
20. Linoleum and oiled cloth
21. Electrical apparatus, machines, and supplies
22. Games, toys, and sporting goods
23. Cutlery, machinery, and tools, and parts thereof
24. Laundry appliances and machines
25. Locks and safes
26. Measuring and scientific appliances
27. Horological instruments
28. Jewelry and precious-metal ware
29. Brooms, brushes, and dusters
30. Crockery, earthenware, and porcelain
31. Filters and refrigerators
32. Furniture and upholstery
33. Glassware
34. Heating, lighting, and ventilating apparatus
35. Belting, hose, machinery packing, and non-metallic tires
36. Musical instruments and supplies
37. Paper and stationery
38. Prints and publications
39. Clothing
40. Fancy goods, furnishings, and notions
41. Canes, parasols, and umbrellas
42. Knitted, netted and textile fabrics, and substitutes therefor
43. Thread and yarn
44. Dental, medical, and surgical appliances
45. Soft drinks and carbonated waters
46. Foods and ingredients of foods
47. Wines
48. Malt beverages and liquors
49. Distilled alcoholic liquors
50. Merchandise not otherwise classified
51. Cosmetics and toilet preparations
52. Detergents and soaps

**§ 10. Fraudulent Registration.)** Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any trade-mark in the office of the secretary of state under the provisions hereof, by knowingly making any false or fraudulent representation or declaration, verbally or in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured thereby in any court of competent jurisdiction.

**§ 11. Infringement.)** Subject to the provisions of section 13 hereof any person who shall

1. Use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a trade-mark registered under this Act in connection with the sale, offering for sale, or advertising of any goods on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source of origin of such goods; or
2. Reproduce, counterfeit, copy or colorably imitate any such trade-mark and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in connection with the sale or other distribution in this state of such goods;

shall be liable to a civil action by the owner of such registered trade-mark for any or all of the remedies provided in section 12 hereof, except that under subsection 2 hereof the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such trade-mark is intended to be used to cause confusion or mistake or to deceive.

**§ 12. Remedies.)** Any owner of a trade-mark registered under this Act may proceed by suit to enjoin the manufacture, use, display or sale of any counterfeits or imitations thereof and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display or sale as may be by the said court deemed just and reasonable, and may require the defendants to pay to such owner all profits derived from or all damages suffered by reason of such wrongful manufacture, use, display or sale, or either, and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case, be delivered to an officer of the court, or to the complainant, to be destroyed.



The enumeration of any right or remedy herein shall not affect a registrant's right to prosecute under any penal law of this state.

**§ 13. Common Law Rights.)** Nothing herein shall adversely affect the rights or the enforcement of rights in trade-marks acquired in good faith at any time at common law.

**§ 14. Repeal; Construction.)** Chapter 47-22 of the North Dakota Revised Code of 1943 is hereby repealed. This Act shall be construed as replacing chapter 47-22 in the North Dakota Revised Code of 1943, and shall be numbered accordingly when published.

Approved March 4, 1957.