

# CORPORATIONS

## CHAPTER 135

HOUSE BILL NO. 1666

(Strinden)

(Approved by the Committee on Delayed Bills)

### SECURITIES ISSUANCE, SALE, AND REGISTRATION

AN ACT to create and enact a new subsection to section 10-04-06 of the North Dakota Century Code, relating to securities transactions exempt from registration requirements; and to amend and reenact subsection 5 of section 10-04-02 and subsections 5 and 9 of section 10-04-06 of the North Dakota Century Code, relating to the issuance and sale of securities.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 5 of section 10-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, shall be deemed an offer to sell the security to be acquired by subscription or conversion. The offer or grant of an option to purchase securities may not be deemed an offer to sell the securities to be purchased if:
  - a. The offer or grant is an offer or grant limited to directors, officers, or employees of the issuer or a parent or subsidiary of the issuer;
  - b. No money or other tangible property is given for the option; and
  - c. The option, by its terms or by the terms of a supplemental agreement, is nontransferable except by will or the laws of descent and distribution.

SECTION 2. AMENDMENT. Subsections 5 and 9 of section 10-04-06 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

5. The Any offer or sale of securities to any a bank, savings bank, savings institution, trust company, insurance company, registered dealer, or any corporation, organization, or association, a principal part of whose business consists of the buying of securities investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer.
  
9. a. Any transaction pursuant to an offer directed by the offeror to not more than twenty-five persons (other than those designated in subsection 5) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:
  - a- (1) The seller reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.
  - b- (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5).
  - e- (3) The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee of one hundred dollars, which fee must accompany the application for approval.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in subdivisions a, b, and e paragraphs 1, 2, and 3 with or without the substitution of a limitation on remuneration.

- b. Any sales by an issuer to not more than twenty persons (other than those designated in subsection 5) in this state during any period of twelve consecutive months, whether or not any of the buyers is then present in this state, if all of the following conditions are met:
  - (1) The issuer reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.

- (2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5), except reasonable and customary commissions paid by the issuer to a dealer or salesman registered under this chapter.
- (3) The issuer is both organized under the laws of this state and has its principal place of business in this state.
- (4) No public advertising matter or general solicitation is used in connection with any offers or sales.
- (5) The issuer has, ten days prior to any sale pursuant to this subdivision, supplied the commissioner with a statement on forms prescribed by the commissioner containing the following information:
- (a) The name and address of the issuer and the date and state of its organization.
  - (b) The number of units, price per unit, and description of the securities to be sold.
  - (c) The amount of commissions to be paid and the persons to whom they will be paid.
  - (d) The names of all officers, directors, and persons owning five percent or more of the equity of the issuer.
  - (e) A brief description of the intended use of the proceeds.
  - (f) A description of all sales of securities made by the issuer in this state preceding the date of filing.
  - (g) A copy of the investment letter, if any, intended to be used in connection with any sale.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of buyers permitted, or waive the conditions in paragraphs 1, 2, and 3 with or without the substitution of a limitation on remuneration.

c. The exemptions provided under subdivisions a and b may not be combined.

SECTION 3. A new subsection to section 10-04-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

Any offer or sale of shares of capital stock issued by a professional corporation which is organized and operated pursuant to chapter 10-31.

Approved April 14, 1987  
Filed April 15, 1987

## CHAPTER 136

HOUSE BILL NO. 1630  
(Tomac, Meyer, Stofferahn)

**FARMLAND CONVEYANCE TO CORPORATION**

AN ACT to amend and reenact subsections 1 and 10 of section 10-06-13 of the North Dakota Century Code, relating to deeds conveying farmland or ranchland to a corporation; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 10 of section 10-06-13 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. The register of deeds shall mail or deliver a copy of every instrument filed or recorded after July 1, 1987, within thirty days of the effective date of this Act or thirty days after the instrument is recorded, whichever is later, to the attorney general if the instrument documents evidence of a lease agreement or purchase agreement pursuant to subsection 6 or 7 or if the instrument conveys the title to farmland or ranchland to a corporation. The attorney general shall commence an action in the district court of the county in which the substantial portion of farmland or ranchland used in violation of this chapter is situated, if the attorney general has reason to believe that any person is violating this chapter. The attorney general shall file for record with the register of deeds of each county in which any portion of the land is located a notice of the pendency of the action. If the court finds that the land in question is being held in violation of this chapter, or that a corporation is conducting the business of farming or ranching in violation of this chapter, the court shall enter an order so declaring. The attorney general shall file any such order for record with the register of deeds of each county in which any portion of the land is located. Thereafter, the corporation shall, within the time set by the court not to exceed one year from the date of the court's final order, divest itself of any farming or ranching land owned or leased by

it in violation of this chapter, and cease all farming and ranching operations. Any corporation that fails to comply with the court's order shall is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved by the secretary of state.

10. Any corporation continuing to violate this chapter shall is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved by the attorney general in accordance with the laws of this state.

Approved April 4, 1987  
Filed April 6, 1987

## CHAPTER 137

SENATE BILL NO. 2489  
(Senators Hilken, Tallackson, Reiten)  
(Representatives Martin, Kingsbury, O'Connell)

## COOPERATIVE OFFICERS IMMUNITY

AN ACT to create and enact a new section to chapters 10-13 and 49-21 of the North Dakota Century Code, relating to immunity from civil liability of directors, trustees, officers, and certain managers of electric cooperative corporations and telephone cooperatives; and to amend and reenact subsection 10 of section 10-15-03 and subsection 1 of section 10-15-31 of the North Dakota Century Code, relating to indemnification and immunity from civil liability of directors, officers, agents, or certain managers of cooperative associations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-13 of the North Dakota Century Code is hereby created and enacted to read as follows:

Directors, trustees, officers, and managers - Immunity from civil liability. The directors, trustees, and officers of an electric cooperative, and the manager of an electric cooperative who is the person most responsible for carrying out the policies and directives of the officers, trustees, or the board of directors, are immune from civil liability for any act or omission relating to their service or function as a director, trustee, officer, or manager, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

SECTION 2. AMENDMENT. Subsection 10 of section 10-15-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. Indemnify any present or former director, officer, ~~or~~ agent, or manager against actual expenses necessarily incurred in defense of any proceeding in which he is a party because he is or was ~~sueh~~ a director, officer, ~~or~~ agent, or manager. This subsection does not apply to those proceedings in which he is adjudged liable for gross or willful negligence or gross or willful misconduct in the performance of duty. Such indemnification ~~shall~~ is

not be exclusive of other rights to which he may be entitled. For purposes of this subsection, "manager" means the person who was the most responsible for carrying out the policies and directives of the officers or the board of directors when the act or omission complained of occurred.

**SECTION 3. AMENDMENT.** Subsection 1 of section 10-15-31 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

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, trustees, and officers, and the manager who is the person most responsible for carrying out the policies and directives of the trustees, officers, or board of directors, are immune from civil liability for any act or omission relating to their service or function as a director, trustee, officer, or manager, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

**SECTION 4.** A new section to chapter 49-21 of the North Dakota Century Code is hereby created and enacted to read as follows:

Directors, trustees, officers, and managers - Immunity from civil liability. Directors, trustees, and officers of mutual telephone companies, and the manager of a mutual telephone company who is the person most responsible for carrying out the policies and directives of the trustees, officers, or board of directors, are immune from civil liability for any act or omission relating to their service or function as a director, trustee, officer, or manager, unless the act or omission constitutes gross or willful negligence or gross or willful misconduct.

Approved April 7, 1987  
Filed April 9, 1987



## CHAPTER 138

HOUSE BILL NO. 1364  
(Representatives R. Berg, Whalen, Kloubec)  
(Senators Tennefos, D. Meyer, Adams)

### ALCOHOL OR METHANOL SUBSIDY REPORTS

AN ACT to require certain corporations receiving subsidies from the state to file annual audit reports and to submit to audit upon request.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

SECTION 1. Audit reports and audit of corporations receiving state subsidies for production of alcohol or methanol for combination with gasoline. Any corporation that produces agricultural ethyl alcohol or methanol within this state and which receives a production subsidy from the state, whether in the form of reduced taxes or otherwise, shall submit an annual audit report, prepared by a certified public accountant based on an audit of all records and accounts of the corporation, to the legislative audit and fiscal review committee. The report shall be submitted within ninety days of the close of the corporation's taxable year. Upon request of the legislative audit and fiscal review committee, the state auditor shall conduct an audit of the records and accounts of any corporation required to submit an annual report under this section.

Approved March 20, 1987  
Filed March 23, 1987

## CHAPTER 139

HOUSE BILL NO. 1157  
(Committee on Industry, Business and Labor)  
(At the request of the Secretary of State)

## CORPORATE DOCUMENT DISAPPROVAL

AN ACT to amend and reenact section 10-23-12 of the North Dakota Century Code, relating to notice of failure to approve filing of certain documents of foreign and domestic business corporations; and to repeal section 10-22-11 of the North Dakota Century Code, relating to filing of documents relating to amendment of articles of incorporation of a foreign corporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-23-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-12. 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 chapters 10-19.1, through 10-22, and ~~10-23~~ to be approved by the secretary of state before the same shall be filed in his office, he shall, within ~~ten~~ thirty 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. 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 section 10-22-16, 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. 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.

**SECTION 2. REPEAL.** Section 10-22-11 of the North Dakota Century Code is hereby repealed.

Approved March 12, 1987  
Filed March 16, 1987

## CHAPTER 140

SENATE BILL NO. 2169  
(Committee on Industry, Business and Labor)  
(At the request of the Secretary of State)

## CORPORATE NAMES AND REGULATIONS

AN ACT to create and enact a new section to chapter 10-24 of the North Dakota Century Code, relating to reservation of a corporate name; to amend and reenact sections 10-24-07, 10-24-08, 10-24-09, 10-24-10, 10-24-28, 10-24-36, 10-24-37, 10-27-03, 10-27-06, 10-27-08, 10-27-09, 10-27-10, 10-27-12, 10-27-16, 10-27-17, 10-28-01, 10-28-02, and 10-28-08 of the North Dakota Century Code, relating to nonprofit corporations; and to repeal section 10-27-11 of the North Dakota Century Code, relating to foreign nonprofit corporations' articles of incorporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE  
STATE OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

Reserved name.

1. The exclusive right to the use of a corporate name permitted by section 10-24-07 may be reserved by any person.
2. The reservation must be made by filing in duplicate original with the secretary of state a request that the name be reserved, with the fees provided in chapter 10-28. If the name is available for use by the applicant, the secretary of state shall reserve the name for the exclusive use of the applicant for a period of twelve months. The reservation may be renewed for successive twelve-month periods.
3. The right to the exclusive use of a corporate name reserved under this section may be transferred to another person by or on behalf of the applicant for whom the name was reserved by filing in duplicate original with the secretary of state a notice of the transfer and specifying

the name and address of the transferee, with the fees provided in chapter 10-28.

**SECTION 2. AMENDMENT.** Section 10-24-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-24-07. Corporate name.** The corporate name:

1. 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.
2. Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any act of this state, or the name of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate name reserved or registered as permitted by the laws of this state, or the name of a limited partnership authorized to do business in this state, or a fictitious name registered with the office of the secretary of state under chapter 45-11, or a trade name registered with the secretary of state under chapter 47-25.
3. Shall be transliterated into letters of the English alphabet, if it is not in English.

**SECTION 3. AMENDMENT.** Section 10-24-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-24-08. Registered office and registered agent.** Each corporation shall have and continuously maintain in this state:

1. A registered office which may or may not be the same as its principal office.
2. A registered agent, which agent may be an individual resident residing in this state whose business office is identical with such registered office, a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state having an office identical with such registered office. Proof of the registered agent's consent to serve in that capacity must be filed in duplicate original with the secretary of state, with the fees provided in chapter 10-28.

**SECTION 4. AMENDMENT.** Section 10-24-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-24-09. 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 office of its registered agent, as changed will be identical.
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 delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed. If the secretary of state finds that such statement conforms to the provisions of chapters 10-24 through 10-28, 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 in care of an officer, who is not the resigning registered agent, at the last known address of such officer. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

**SECTION 5. AMENDMENT.** Section 10-24-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-24-10. Service of process on corporation.** The registered agent so appointed by a corporation 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 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

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 an original and two copies of such process, notice, or demand, along with the fees provided in chapter 10-28. 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. 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.

**SECTION 6. AMENDMENT.** Section 10-24-28 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-24-28. Incorporators.** One or more persons may incorporate a corporation by signing, ~~verifying~~, and delivering articles of incorporation in duplicate original to the secretary of state.

**SECTION 7. AMENDMENT.** Section 10-24-36 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-24-36. 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 chapters 10-24 through 10-28 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.
- 3- ~~Issue a certificate of amendment to which he shall affix the other duplicate original.~~

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

**SECTION 8. AMENDMENT.** Section 10-24-37 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-24-37. Effect of certificate articles of amendment. Upon the issuance filing of the certificate articles of amendment by the secretary of state, the amendment becomes effective and the articles of incorporation are deemed to be amended accordingly.

An amendment does not affect any existing claim for relief in favor of or against such corporation, or any pending action to which such corporation is a party, or the existing rights of persons other than members. If the corporate name is changed by amendment, no action brought by or against such corporation under its former name may be abated for that reason.

SECTION 9. AMENDMENT. Section 10-27-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-27-03. 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 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.
2. Shall not be the same as, or deceptively similar to, the name of any corporation, whether for profit or not for profit, existing under any act of this state, or the name of any foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, or a corporate name reserved or registered as permitted by the laws of this state, or the name of a limited partnership authorized to do business in this state, or a fictitious name registered with the office of the secretary of state under chapter 45-11, or a trade name registered with the secretary of state under chapter 47-25.
3. Shall be transliterated into letters of the English alphabet, if it is not in English.

SECTION 10. AMENDMENT. Section 10-27-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-27-06. 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 certificate of good standing, 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 provided in chapters 10-24 through 10-28:



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~~ good standing certificate.
3. Issue a certificate of authority to conduct affairs 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.

**SECTION 11. AMENDMENT.** Section 10-27-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-27-08. Registered office and registered agent of foreign corporation.** Each foreign corporation authorized to conduct affairs in this state shall have and continuously maintain in this state:

1. A registered office which may or may not be the same as its principal office.
2. A registered agent, which agent may be an individual resident residing in this state whose business office is identical with such registered office, a domestic corporation, whether for profit or not for profit, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state having an office identical with such registered office. Proof of the registered agent's consent to serve in that capacity must be filed in duplicate original with the secretary of state, together with the fees provided in chapter 10-28.

**SECTION 12. AMENDMENT.** Section 10-27-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-27-09. Change of registered office or registered agent of foreign corporation.** A foreign corporation authorized to conduct affairs 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 office of its registered agent, as changed, will be identical.
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 delivered to the secretary of state with proof of the registered agent's consent if the registered agent is changed. If the secretary of state finds that such statement conforms to the provisions of this chapter, 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 in this state appointed by a foreign 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 foreign corporation at its principal office in the state or country under the laws of which it is incorporated. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state.

**SECTION 13. AMENDMENT.** Section 10-27-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-27-10. Service of process on foreign corporation.** The registered agent so appointed by a foreign corporation authorized to conduct affairs 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 conduct affairs 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 an original and two 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.

**SECTION 14. AMENDMENT.** Section 10-27-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-27-12. Merger of foreign corporation authorized to conduct affairs in this state.** Whenever a foreign corporation authorized to conduct affairs 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~~ the corporation shall be is not the surviving corporation, ~~it~~ the surviving corporation shall, within thirty days after such merger becomes effective, file with the secretary of state a ~~copy~~ certified statement 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. It shall not be necessary for ~~such a surviving~~ corporation to procure either a new or amended certificate of authority to conduct affairs 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 pursue in this state.

**SECTION 15. AMENDMENT.** Section 10-27-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-27-16. Revocation of certificate of authority.**

1. The certificate of authority of a foreign corporation to conduct affairs in this state may be revoked by the secretary of state upon any of the following conditions:
  - a. The corporation has failed to pay any fees or penalties when they have become due and payable.
  - b. The corporation has failed to appoint and maintain a registered agent in this state as required by chapter 10-24.
  - c. The corporation has failed, after change of its registered agent, to file in the office of the secretary of state a statement of such change as required by chapter 10-24.

- d. 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 an application for an amended certificate of authority when the corporation changed its name or purposes within the time prescribed by this chapter.
  - e. The certificate of authority of the corporation was procured through fraud practiced upon the state.
  - f. The corporation has continued to exceed or abuse the authority conferred upon it by chapters 10-24 through 10-28.
  - g. A misrepresentation has been made of any material matter in any application, report, affidavit, or other document submitted by such corporation pursuant to chapters 10-24 through 10-28.
2. No certificate of authority of a foreign corporation shall be revoked by the secretary of state unless:
    - a. He shall have given the corporation not less than sixty days' notice thereof by mail addressed to its registered office in this state, and
    - b. The corporation shall fail prior to revocation to pay such fees or penalties, or file the required statement of change of registered agent, or file such articles of amendment application for amended certificate of authority or articles certified statement of merger, or correct such misrepresentation.

**SECTION 16. AMENDMENT.** Section 10-27-17 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-27-17. Issuance of certificate notice of revocation.** Upon revoking any such certificate of authority, the secretary of state shall:

1. Issue a certificate notice of revocation in duplicate.
2. File one of such certificates notices in his office.
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 notice of revocation, the authority of the corporation to conduct affairs in this state shall cease.

**SECTION 17. AMENDMENT.** Section 10-28-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-28-01. 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, twenty thirty dollars.
2. Filing articles of amendment and issuing a certificate of amendment, or filing restated articles of incorporation, twenty dollars.
3. Filing articles of merger or consolidation and issuing a certificate of merger or consolidation, twenty thirty dollars.
4. Filing a statement of change of address of registered office or change of registered agent, or both, five restated articles of incorporation, thirty dollars.
5. Filing articles of dissolution, five twenty dollars.
6. Filing an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, twenty-five a statement of change of address of registered office or change of registered agent, or both, ten dollars.
7. Filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this state and issuing an amended certificate of authority, twenty-five a registered agent's consent to serve in that capacity, ten dollars.
8. Filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this state resignation as registered agent, ten dollars.
9. Filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state an application to reserve a corporate name, ten dollars.
10. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal a notice of transfer of a reserved corporate name, ten dollars.
11. Filing any other statement or report of a domestic or foreign corporation, five an application of a foreign corporation for a certificate of authority to conduct affairs in this state and issuing a certificate of authority, forty dollars.

12. Filing an application of a foreign corporation for an amended certificate of authority, forty dollars.
13. Filing a certified statement of merger of a foreign corporation holding a certificate of authority to conduct affairs in this state, twenty dollars.
14. Filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal, twenty dollars.
15. Filing any other statement or report of a domestic or foreign corporation, twenty dollars.

SECTION 18. AMENDMENT. Section 10-28-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-28-02. **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, one dollar for every four pages or fraction thereof and ~~two~~ ten dollars for the certificate and affixing the seal thereto.
2. At the time of any service of process on him as resident agent of a corporation, ~~five~~ twenty 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.

SECTION 19. AMENDMENT. Section 10-28-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-28-08. **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 chapters 10-24 through 10-28 to be approved by the secretary of state before the same shall be filed in his office, he shall, within ~~ten~~ thirty 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. 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 conduct affairs in this state of any foreign

corporation, pursuant to the provisions of chapter 10-27, 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 conduct affairs in this state and a copy of the notice of revocation given by the secretary of state. 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.

**SECTION 20. REPEAL.** Section 10-27-11 of the North Dakota Century Code is hereby repealed.

Approved March 20, 1987  
Filed March 23, 1987

## CHAPTER 141

HOUSE BILL NO. 1633  
(Representative Strinden)  
(Senator Olson)

## VENTURE CAPITAL CORPORATION

AN ACT to provide for the establishment of a North Dakota venture capital corporation; to create and enact a new subsection to section 7-02-10, a new subsection to section 10-04-05, a new subsection to section 10-04-06, a new subdivision to subsection 1 of section 57-38-01.2, and a new subdivision to subsection 1 of section 57-38-01.3 of the North Dakota Century Code, relating to legal investments of savings and loan associations, exempt securities and transactions, and adjustments to taxable income for income tax purposes; to amend and reenact sections 6-03-38 and 6-09.2-01, subsection 1 of section 6-09.2-03, sections 6-09.2-04, 6-09.2-05, 6-09.2-07, 6-09.2-08, 6-09.2-09, 6-09.2-10, 6-09.2-11, and 10-30.1-05, subsection 14 of section 15-03-04 as amended by section 1 of House Bill No. 1031, as approved by the fiftieth legislative assembly, subsection 14 of section 21-10-07, and subsection 30 of section 26.1-05-19 of the North Dakota Century Code, relating to the industrial development revenue bond guarantee program, venture capital corporations, and legal investments of banks, the board of university and school lands, the state investment board, and insurance companies; and to repeal section 6-09.2-06 of the North Dakota Century Code, relating to the industrial development revenue bond fund.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF NORTH DAKOTA:

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

1. "Board of directors" means the board of directors of the corporation.
2. "Corporation" means the corporation established by section 2 of this Act.
3. "North Dakota business" means a business owned by a North Dakota resident, a partnership, association, or



corporation domiciled in North Dakota, or a corporation, including a wholly owned subsidiary of a foreign corporation, that does business primarily in North Dakota or does substantially all of its production in North Dakota.

4. "Professional investor" means any bank, bank holding company, savings institution, trust company, credit union, insurance company, or any person, partnership, or other entity whose principal business is making venture capital investments.
5. "Shareholder" means a registered owner of shares in the corporation.

SECTION 2. Public corporation established - Corporate purpose. A committee comprised of three representatives of the business sector appointed by the industrial commission and three members of the economic development commission shall establish under the Business Corporation Act a public corporation known as the "Myron G. Nelson Fund, Incorporated" and file articles of incorporation for the corporation with the secretary of state. The committee shall also adopt the initial bylaws of the corporation. The purpose of the corporation is to organize and manage an investment fund capitalized through the sale of shares of the corporation to the Bank of North Dakota and other public and private investors to provide a source of investment capital for the establishment, expansion, and rehabilitation of North Dakota businesses.

SECTION 3. Powers of corporation. The corporation shall have the powers and privileges conferred upon domestic corporations under the Business Corporation Act, to the extent not limited by this Act, including the power to:

1. Make contracts and execute all instruments necessary for the exercise of its powers and functions.
2. Coordinate and cooperate with state agencies and the state's political subdivisions, colleges, universities, and other academic and research sources, both private and public, agencies and organizations of the federal government, and all public or private entities.
3. Receive appropriations from the legislative assembly and other public moneys, as well as contributions from other public agencies, private individuals, companies, and other contributors.
4. Review cooperative funding agreements with federal and state loan and grant programs and commercially funded projects.

5. Administer an industrial development revenue bond guarantee program as provided in chapter 6-09.2.

SECTION 4. Capitalization - Payment of dividends. The funds deposited in the industrial development revenue bond fund pursuant to former section 6-09.2-06 and all accumulated earnings from the investment of the fund shall be used by the Bank of North Dakota to purchase shares of the corporation upon the issuance of the certificate of incorporation. Beginning on July 1, 1987, the Bank of North Dakota may purchase annually shares of the corporation in an amount to be determined by the industrial commission. In determining the annual investment to be made in the corporation by the Bank of North Dakota, the industrial commission shall consider the level of private investment in the corporation and attempt to match the private investment on a dollar-for-dollar basis. The corporation may issue shares to other public and private entities or persons when authorized by the board of directors.

SECTION 5. Board of directors. A board of directors, elected by the shareholders pursuant to initial bylaws adopted by the incorporators pursuant to section 2 of this Act, shall direct the business and affairs of the corporation. There must be representation on the board of directors from the economic development commission, investors, and the business sectors of the North Dakota economy. The business sector and investors must constitute a majority of the board.

SECTION 6. Professional investor to manage corporate funds - Investment policy. The board of directors shall contract with a professional investor, determined by the board of directors to be experienced in making successful venture capital investments, for the purpose of managing the corporation's investment fund. The management contract may provide that the professional investor take an active role in the management of any entity in which an equity interest is purchased. The board of directors shall annually review the investment performance of the professional investor. It shall be the policy of the corporation to invest primarily in North Dakota businesses. The corporation's investment in any one entity may not exceed a maximum of forty percent of the entity's capital. This percentage limitation does not apply to co-venture investments made on behalf of the corporation in conjunction with one or more additional professional investors. The board of directors may prescribe in the management contract that a percentage of the corporation's investment fund be made available for investment outside the state.

SECTION 7. Confidentiality of corporation records. The following records of the corporation are confidential:

1. Commercial or financial information, whether obtained by the corporation directly or indirectly, of any entity in which an equity interest is purchased or considered for purchase pursuant to this Act.

2. Internal or interagency memorandums or letters which would not be available by law to a party other than in litigation with the corporation.

SECTION 8. Guarantee of industrial revenue bonds. The board of directors may authorize that a portion of the corporation's investment fund be made available to guarantee industrial revenue bonds pursuant to chapter 6-09.2.

SECTION 9. Annual audit. The board of directors shall contract with a certified public accounting firm to audit annually the financial statements of the corporation in accordance with generally accepted auditing standards. The cost of the audit must be borne by the corporation.

SECTION 10. Annual report. The corporation shall prepare and publish an annual report of its activities for the information of the governor, the legislative assembly, and the public which must include audited financial statements of the corporation for the fiscal year covered by the report and must specify:

1. The manner in which the purpose of the corporation as described in section 2 of this Act has been carried out.
2. The total investments made annually by the corporation in North Dakota businesses.
3. An estimate of jobs created and jobs preserved by investments of the corporation in North Dakota businesses.
4. An estimate of the multiplier effect on the North Dakota economy of investments by the corporation in North Dakota businesses.
5. An analysis of the targeting of scarce resources by the corporation by size, sector, and location to enterprises of particular need and opportunity.

SECTION 11. Tax credits for investment in stock of corporation by banks, savings and loan associations, and insurance companies. A bank, savings and loan association, or insurance company that invests in stock issued by the corporation is entitled, subject to section 13 of this Act, to a credit in an amount equal to twenty-five percent of the total amount invested in the stock against the tax liability imposed against the taxpayer pursuant to sections 26.1-03-17, 57-35-02, 57-35.1-02, and 57-35.2-02, if applicable. In any one taxable year, the amount of the credit allowed for deduction from the taxpayer's tax liability may not exceed twenty-five percent of the total amount of the credit, and in no case may the amount exceed twenty-five percent of the taxpayer's tax liability in that year. The amount of any remaining unused credit may be carried forward until the total amount of the credit is used. The amount by which that portion of the credit allowed by this section to be claimed in any one taxable year exceeds twenty-

five percent of the taxpayer's tax liability in that year may be carried back for not more than three taxable years or carried forward until the total amount of the credit is used.

SECTION 12. Income tax credits for investment in stock of corporation. A taxpayer that invests in stock issued by the corporation is entitled, subject to section 13 of this Act, to a credit in the amount equal to twenty-five percent of the total amount invested in the stock against any state income tax liability imposed against the taxpayer. In any one taxable year, the amount of the credit allowed for deduction from the taxpayer's tax liability may not exceed twenty-five percent of the total amount of the credit, and in no case may the amount exceed twenty-five percent of the taxpayer's liability in that year. The amount of any remaining unused credit may be carried forward until the total amount of the credit is used. The amount by which that portion of the credit allowed by this section to be claimed in any one taxable year exceeds twenty-five percent of the taxpayer's tax liability in that year may be carried back for not more than three taxable years or carried forward until the total amount of the credit is used. No taxpayer claiming a credit under this section is eligible to claim a credit for the same investment under chapter 10-30.1.

SECTION 13. Limitation on tax credits. The state tax commissioner shall allow tax credits pursuant to sections 11 and 12 of this Act which are attributable to not more than the first five million dollars of total investment in the corporation.

SECTION 14. State immunity from liability. The state of North Dakota is not liable for any damage incurred by an investor in the corporation.

SECTION 15. AMENDMENT. Section 6-03-38 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-03-38. Assets not to be used in other business - Exceptions - Penalty. No bank, except as otherwise authorized in this title, shall employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor shall it employ or invest any of its assets or funds in the stock of any corporation, bank, partnership, firm, or association, provided, however, that a state bank may to the extent that banks subject to the laws of the federal government are permitted to do so, purchase voting common stock of Myron G. Nelson Fund, Incorporated, pursuant to section 4 of this Act, or purchase shares of stocks in small business investment companies organized under Public Law No. 85-699, 85th Congress, known as the Small Business Investment Act of 1958, and any amendments thereto, or chapter 10-30 of the North Dakota Century Code, but in no event shall any state bank hold shares in small business investment companies in an amount aggregating more than two percent of the bank's capital and surplus, nor in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it shall be lawful for a bank to make advances for grain or other

products in store or in transit to market, and to invest in stocks of subsidiary corporations, when the activities of such corporations are incidental to banking activities, with the specific approval of the state banking board for each such subsidiary. The state banking board shall have the same power to make rules and regulations for the subsidiary corporations, and to examine its records and affairs, as it has for other financial corporations under the provisions of section 6-01-04. In the event that the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, it may direct the bank to divest itself of such subsidiary investments. In addition to the above, the state banking board shall have power to authorize state banks to engage in any banking activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this Code. Any officer, director, or employee of any bank who shall invest or use its funds contrary to the provisions of this title shall be guilty of a class A misdemeanor.

**SECTION 16. AMENDMENT.** Section 6-09.2-01 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-01. Industrial development revenue bond guarantee program - Administration. The ~~economic development commission~~ corporation shall administer an industrial development revenue bond guarantee program as provided in this chapter.

**SECTION 17. AMENDMENT.** Subsection 1 of section 6-09.2-03 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. "~~Commission~~" "Corporation" means the ~~economic development commission~~ corporation established by section 2 of this Act.

**SECTION 18. AMENDMENT.** Section 6-09.2-04 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-04. Powers. In carrying out the provisions of this chapter, the ~~commission~~ corporation is authorized and empowered:

1. To guarantee the payment of debt service on evidence of indebtedness secured by security interests in an industrial development project consistent with the terms and limitations expressed in this chapter.
2. To accept from a federal agency or North Dakota, its agencies and instrumentalities, loans or grants for use in carrying out its purposes, and to enter into agreements with such agency or North Dakota, its agencies and instrumentalities, respecting any such loans or grants.

3. To enter into agreements with prospective bondholders and issuers for the purpose of financing industrial development projects and require as a condition of guarantee that the Bank of North Dakota be the designated trustee, paying agency, and depository of all funds and accounts of all guaranteed evidence of indebtedness of the program.
4. To acquire, purchase, manage and operate, and hold and dispose of, real and personal property, to take assignments of rentals and leases, and make and enter into all contracts, leases, agreements, and arrangements necessary or incidental to the performance of its duties.
5. When in the opinion of the emmission corporation it is necessary or advisable, in order to further the purposes of this chapter or to safeguard the bond guarantee fund, to purchase, acquire, attach, seize, accept, or take title to any industrial development project, by conveyance or, when any guaranteed evidence of indebtedness has been redeemed in whole or in part exercise with the consent of the bondholder any of the bondholder's rights under any of the covenants of issuance including but not limited to foreclosure, sale, lease, or rent an industrial development project for a use specified in subsection 4 of section 6-09.2-03, or for any other use.

SECTION 19. AMENDMENT. Section 6-09.2-05 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-05. Default by issuer. When an issuer's project lessee does not make debt service payments guaranteed by the emmission's bond guarantee fund corporation, the emmission corporation for the purpose of maintaining income from industrial development projects on which bonds have been guaranteed by the emmission and for the purpose of safeguarding the bond guarantee fund corporation, may grant the issuer permission to lease or rent the property to a tenant for a use other than that specified in subsection 4 of section 6-09.2-03, such lease or rental to be temporary in nature and subject to such conditions as the emmission corporation may prescribe; provided, however, no lease shall in any manner conflict with the provisions of chapter 40-57 or in the opinion of bond counsel issuing the opinion on the evidence of indebtedness in any way jeopardize the income tax exempt status of the interest on the bonds.

SECTION 20. AMENDMENT. Section 6-09.2-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-07. Guarantee of bonds. The emmission, as the administrator of the fund created in this chapter, corporation is authorized, upon application of the proposed issuer, to guarantee

debt service payments required by evidence of indebtedness on any industrial development project, or part thereof, upon such terms and conditions as the commission corporation may prescribe, and subject to the limitations of this chapter, provided the aggregate amount of the unpaid principal balance of all obligations of all evidence of indebtedness so guaranteed outstanding at any one time shall not exceed twenty times the unencumbered balance in the fund debt service guarantee account of the fund made available by the corporation. To be eligible for guarantee under the provisions of this chapter bonds shall:

1. Be issued by a municipality as defined in chapter 40-57.
2. Involve a principal obligation, including initial service charges and appraisal, inspection, and other fees approved by the commission corporation.
3. Have a maturity date satisfactory to the commission corporation, but in no case later than forty years from the date of issuance for any project.
4. Contain complete amortization provisions satisfactory to the commission corporation requiring periodic payments, costs of local property taxes and assessments, land lease rentals, if any, and hazard insurance on the property and such bond guarantee fees as are required under section 6-09.2-08, all as the commission corporation shall from time to time prescribe or approve.
5. Be in such form and contain such terms and provisions, with respect to property, insurance, repairs, alterations, payment of taxes and assessments, restrictions as to location of machinery and equipment, default reserves, delinquency charges, default remedies, anticipation of maturity, additional and secondary liens, and other matters as the commission corporation may prescribe.

**SECTION 21. AMENDMENT.** Section 6-09.2-08 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

**6-09.2-08. Bond guarantee fees.** The commission corporation shall charge ~~three~~ two percent of the principal obligation of the evidence of indebtedness as a fee for guarantee of debt service payments on evidence of indebtedness guaranteed by the fund debt service guarantee account corporation. The commission shall deposit the fee in the fund debt service guarantee account. The commission corporation shall charge an annual administrative fee of three-eighths of one percent of the outstanding principal obligation of all evidence of indebtedness guaranteed by the fund debt service guarantee account corporation. The issuer's project lessee shall pay the fee in the manner the commission corporation prescribes. Earnings on bond-funded reserve accounts and debt service accounts must be deposited in that bond's debt service account for the

payment of principal and interest on the bonds. Other earnings on the investment of any accounts held by the fund must be first deposited in the fund administration account. Any moneys declared by the commission to be surplus and not essential to the administration of this chapter may be transferred on order of the commission to the fund debt service guarantee account.

SECTION 22. AMENDMENT. Section 6-09.2-09 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-09. Expenses. The commission corporation may expend out of the fund administration account such moneys as may be necessary for any expenses of the commission corporation in carrying out the provisions of this chapter.

SECTION 23. AMENDMENT. Section 6-09.2-10 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-10. Bonds eligible for investment. Evidence of indebtedness bonds guaranteed by the commission corporation under this chapter are legal investments for all trust companies, banks, investment companies, savings banks, credit unions, savings and loan associations, executors, administrators, guardians, conservators, trustees and other fiduciaries, pension, profit-sharing, and retirement funds to the extent limited by law.

SECTION 24. AMENDMENT. Section 6-09.2-11 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-09.2-11. Limitation - Credit of commission and state not pledged. Nothing in this chapter shall be construed to authorize or permit the commission corporation or any officer thereof to create any indebtedness of the commission corporation or of North Dakota, or to incur any obligation of any kind or nature, except such as shall be payable solely from the fund created in made available by the corporation pursuant to this chapter and the revenues appropriated and accumulated therein.

SECTION 25. A new subsection to section 7-02-10 of the North Dakota Century Code is hereby created and enacted to read as follows:

In voting common stock of Myron G. Nelson Fund, Incorporated, purchased pursuant to section 4 of this Act.

SECTION 26. A new subsection to section 10-04-05 of the North Dakota Century Code is hereby created and enacted to read as follows:

Securities issued by Myron G. Nelson Fund, Incorporated, pursuant to section 4 of this Act.



SECTION 27. A new subsection to section 10-04-06 of the North Dakota Century Code is hereby created and enacted to read as follows:

The offer or sale of a security issued by Myron G. Nelson Fund, Incorporated, pursuant to section 4 of this Act.

SECTION 28. AMENDMENT. Section 10-30.1-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-05. Tax credit.

1. Subject to sections 10-30.1-06, 10-30.1-07, and 10-30.1-08, a taxpayer is entitled to a credit against any state income tax liability which may be imposed on the taxpayer for a particular taxable year that begins after December 31, 1984, if the taxpayer makes an investment in a venture capital corporation. Investments by Myron G. Nelson Fund, Incorporated, in a venture capital corporation do not qualify for the tax credit provided by this chapter. Tax credits under this chapter are not subject to payment of interest as provided in section 57-38-35.1.
2. The state tax commissioner shall administer sections 10-30.1-05 through 10-30.1-10. The state tax commissioner may adopt rules, in accordance with chapter 28-32, consistent with and necessary for the administration of sections 10-30.1-05 through 10-30.1-10.

SECTION 29. AMENDMENT. If House Bill No. 1031 of the fiftieth legislative assembly becomes effective, subsection 14 of section 15-03-04 of the North Dakota Century Code, as amended by House Bill No. 1031, is hereby amended and reenacted to read as follows:

14. Common or preferred stocks of any corporation organized under the laws of any state, including nonvoting preferred stock of Myron G. Nelson Fund, Incorporated, issued pursuant to section 4 of this Act but not more than twenty percent of the assets of each fund may be invested in common and preferred stocks.

SECTION 30. AMENDMENT. If House Bill No. 1031 of the fiftieth legislative assembly does not become effective, subsection 14 of section 21-10-07 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

14. Common or preferred stocks of any corporation organized under the laws of any state, including nonvoting preferred stock of Myron G. Nelson Fund, Incorporated, issued pursuant to section 4 of this Act but not more than twenty

percent of the assets of each fund may be invested in common and preferred stocks.

**SECTION 31. AMENDMENT.** Subsection 30 of section 26.1-05-19 of the 1985 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

30. Loans, securities, or investments in addition to those permitted in this section, including voting common stock of Myron G. Nelson Fund, Incorporated, issued pursuant to section 4 of this Act whether or not the loans, securities, or investments qualify or are permitted as legal investments under its charter, or under other provisions of this section or under other provisions of the laws of this state. The aggregate of such company's investments under this subsection may not exceed either five percent of the company's admitted assets, or the amount equal to the company's unassigned surplus, whichever is less.

**SECTION 32.** A new subdivision to subsection 1 of section 57-38-01.2 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Reduced by any dividends received from stock issued by Myron G. Nelson Fund, Incorporated, pursuant to section 4 of this Act to the extent the dividends are included in taxable income.

**SECTION 33.** A new subdivision to subsection 1 of section 57-38-01.3 of the 1985 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Reduced by any dividends received from stock issued by Myron G. Nelson Fund, Incorporated, pursuant to section 4 of this Act to the extent the dividends are included in taxable income.

**SECTION 34. REPEAL.** Section 6-09.2-06 of the 1985 Supplement to the North Dakota Century Code is hereby repealed.

Approved April 14, 1987  
Filed April 15, 1987