

# CORPORATIONS

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## CHAPTER 115

S. B. No. 106  
(Gefreh)

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### ANNUAL REPORTS, FAILURE TO FILE

#### AN ACT

To provide that failure of a business corporation to file annual reports for a period of ten consecutive years shall be deemed a forfeiture of its reserved name and shall authorize the secretary of state to cease keeping records of any kind regarding such corporation.

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

**§ 1. Failure to File Annual Reports—Forfeiture of Reserved Name—Records To Be Destroyed.)** In addition to any other penalties provided by law for the failure to file an annual report, any business corporation which fails to file an annual report for a period of ten consecutive years shall forfeit any right to the reserved name of the corporation, and such name may be assigned by the secretary of state to any corporation applying therefor.

Approved February 23, 1961.

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## CHAPTER 116

H. B. No. 922  
(Fraase, Miller)

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### ISSUE AND SALE OF SECURITIES

#### AN ACT

To amend and reenact subsection 1 of section 10-04-03 of the North Dakota Century Code, relating to administration and supervision of issue and sale of securities.

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

**§ 1. Amendment.)** Subsection 1 of section 10-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-04-03. Appointment of State Securities Commissioner—Qualifications.)** The state securities commissioner shall be

appointed by the governor and confirmed by the senate, and shall hold his office for a term of four years and until his successor has been appointed, confirmed by the senate, and has qualified, unless he is removed sooner as herein provided. However, an interim appointment may be made by the governor if the senate is not in session and such interim appointee may hold office until the senate has had an opportunity to confirm or reject such appointment, and his term of office shall commence on the first day of July in each year next following a national presidential election. The state securities commissioner shall be skilled in securities, and shall not be an incumbent of any other public office in the state, or in any county, municipality, or public institution thereof, and shall not own, hold, or control any stocks, capital, or bonds, or securities, hold the office of trustee, assignee, officer, agent, or employee of any financial institution under his jurisdiction, or of any corporation engaged in the business of guaranteeing or insuring the fidelity or faithful performance of the duties or the solvency of public officers or of public depositaries. The governor may remove from office any state securities commissioner who violates or fails to discharge faithfully the duties of his office or who becomes disqualified under the provisions of this section.

It shall be the prime duty of such commissioner to administer the provisions of this chapter. The commissioner shall receive a salary of such amount as shall be appropriated by the legislative assembly. The commissioner shall use a seal with the words "securities commissioner, North Dakota" and such design as the commissioner may prescribe engraved thereon by which seal the commissioner shall authenticate proceedings and documents used by him in the administration of this chapter. The commissioner shall employ from time to time such clerks and employees as are necessary for the administration of this chapter, and they shall perform such duties as the commissioner shall assign. In the absence or disability of the commissioner, his chief deputy shall administer the provisions of this chapter, as acting commissioner;

Approved March 16, 1961.

## CHAPTER 117

H. B. No. 921  
(Fraase, Miller)

## SECURITIES

## AN ACT

To amend and reenact subsection 3 of section 10-04-03, sections 10-04-04, 10-04-05, 10-04-06, subsection 2 of section 10-04-08, sections 10-04-08.2 and 10-04-10, and to create and enact section 10-04-07.1 and subsection 10 of section 10-04-08.1 of the North Dakota Century Code, relating to the administration, registration and exemption of securities and securities laws.

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

**§ 1. Amendment.)** Subsection 3 of section 10-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. The commissioner, or any person employed by him, shall be paid in addition to their regular compensation, transportation, board, lodging, and other traveling expenses necessary and actually incurred by each of them in the performance of their duties under this chapter. Such traveling expenses shall include the expenses of the commissioner or any person designated by him in attending the annual convention of the North American association of securities administrators, and the annual dues to said North American association shall be paid from appropriated funds; and

**§ 2. Amendment.)** Section 10-04-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-04-04. Registration of Securities.)** It shall be unlawful to sell, or offer for sale, any securities in this state, except those exempt under section 10-04-05 or those sold in transactions exempt under section 10-04-06, or those registered by description under section 10-04-07 or by announcement under section 10-04-07.1, unless such securities shall have been registered by qualifications as hereinafter provided in section 10-04-08.

**§ 3. Amendment.)** Section 10-04-05 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-04-05. Exempt Securities.)** Sections 10-04-04, 10-04-07, 10-04-07.1, and 10-04-08 shall not apply to any of the following securities:

1. Securities issued or guaranteed by the United States of America, or by any state, territory, or insular possession thereof, or by any political subdivision of any such state, territory, or insular possession, or by the District of Columbia, or by any public agency or instrumentality of one or more of any of the foregoing, or payable from assessments for improvements or revenues of publicly owned utilities therein;
2. Securities issued by a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an act of the Congress of the United States of America and supervised by the United States of America, or any agency thereof, or issued by a state bank, trust company, savings bank or savings institution or credit union incorporated under the laws of this state, and subject to supervision by this state or by any agency thereof, and securities of any person subject to examination by the state examiner of North Dakota;
3. Securities issued by a building and loan association subject to supervision by an agency of the state of North Dakota, or policy contracts, including variable or fixed annuity contracts, of an insurance company subject to supervision by an agency of the state of North Dakota;
4. Securities issued or guaranteed as to principal, interest, or dividends, by a corporation owning or operating a railroad or other public service utility, if the corporation is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities by a public service commission, or by a board, body, or official having like powers, of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the Dominion of Canada, or any province thereof, provided, however, that a corporation issuing securities, exempted under this subsection, and who have not filed an application for approval of such securities with the public service commission of the state of North Dakota, shall file with the commissioner a copy of the registration statement with all amendments thereto filed with the securities and exchange commission of the United States, if such a registration statement is made or filed, or a copy of the informative statement made to or filed with any commission, board, or body of the United States or of any state, territory, or insular possession thereof, or of any municipality located therein, or of the District of Columbia, or of the

Dominion of Canada, or any province thereof, by which said corporation is subject to regulation or supervision either as to its rates and charges or as to the issue of its securities, and shall pay a filing fee of twenty-five dollars;

5. Securities issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, or reformatory purposes and not for pecuniary profit;
6. Securities fully listed or regularly approved for full listing upon the issuance thereof, upon the New York stock exchange, the midwest stock exchange, the American stock exchange, or any other stock exchange approved by the commissioner as hereinafter provided, and all securities senior or equal in rank to any securities so listed or approved, or represented by subscription rights which have been so listed or approved. The commissioner may by written order approve any stock exchange in addition to those specified in this subsection if he finds that it would be in the public interest for securities listed on such exchange to be exempt under this subsection. The commissioner shall have power at any time by written order to withdraw the approval theretofore so granted;
7. Commercial paper maturing in not more than twelve months from date of issue;
8. Securities, other than common stock, providing for a fixed return, which have been outstanding and in the hands of the public for not less than five years and upon which no default has occurred during the five years next preceding the date of sale. The exemptions herein specified must be proved by any person who may legally offer such securities for sale in the state of North Dakota by filing with the commissioner evidence in such form as he may require for each issue of securities for which exemption is provided herein and paying a filing fee of ten dollars.
9. Securities issued by any association, corporation, or co-operative formed under the statutes of the state of North Dakota, whose earnings are distributed to its members, stockholders, or patrons according to patronage;
10. Any equipment security based on a chattel mortgage, lease, or agreement for the conditional sale of cars, motive power, or other rolling stock mortgaged, leased, sold to or furnished for the use of a railroad or other public service utility corporation, and any equipment

security where the ownership of or title to such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state thereof, or of the Dominion of Canada, to secure the payments of such equipment security whether it be an equipment trust certificate, bond, or note; and

11. Any bond, note, or other evidence of debt issued by a holding corporation and secured by collateral consisting of any of the securities described in subsections 4 and 10 of this section, if the collateral securities equal in fair value at least one hundred twenty-five percent of the par value of the bonds, notes, or other evidences of debts secured thereby. Before any security described in this subsection is offered for sale, the person intending to offer it shall file with the commissioner descriptive circulars of the collateral securities, and pay a filing fee to the commissioner of twenty-five dollars, and unless the commissioner makes his order within three days after the receipt of such circulars requiring the securities to be qualified by application under this chapter, the securities shall be exempt.
12. The execution of orders for purchase of securities by a registered dealer, provided such dealer acts as agent for the purchaser, has made no solicitation of the order to purchase such securities, has no direct material interest in the sale or distribution of the securities ordered, receives no commission, profit or other compensation other than the commissions involved in the purchase and sale of the securities and delivery to the purchaser written confirmation of the order which clearly itemizes the commissions paid to the registered dealer. Clear and complete records of all transactions exempted under this subsection shall be maintained by the registered dealer or broker.

§ 4. **Amendment.)** Section 10-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-04-06. Exempt Transactions.)** Except as hereinafter in this section expressly provided, sections 10-04-04, 10-04-07, 10-04-07.1, 10-04-08, and 10-04-10 shall not apply to any of the following transactions:

1. Any judicial, executor's, administrator's, guardian's, or conservator's sale or any sale by a receiver or trustee in insolvency or bankruptcy;
2. The sale in good faith and not for the purpose of avoiding the provisions of this chapter by a pledgee of secur-

ities pledged for a bona fide debt, provided that the amount of such securities does not exceed two percent of the entire issue of each issue of such securities outstanding, and provided further that before proceeding to sell such pledged securities the pledgee shall notify the commissioner and obtain his permission to such sale, unless such securities are exempted under section 10-04-05;

3. Any isolated sale of a security by the issuer or owner thereof or by any agent for the account of such issuer or owner. A sale shall be deemed to be an isolated sale within the meaning of this exemption only if there shall not have been more than two other sales of securities of the same issue by such issuer or owner or by an agent for the account of such issuer or owner within this state within the twelve month period immediately prior to the date of such sale. This subsection shall not exempt any dealer or his agent participating in an isolated sale from registering as hereinafter provided in section 10-04-10;
4. Stock dividends or other distributions by a corporation out of its earnings or surplus, or the issuance of securities to existing security holders or creditors of a corporation in a bona fide reorganization, merger, or consolidation of such corporation, carried out under the supervision or direction of a court of competent jurisdiction either in exchange for the securities or claim of such security holders or creditors, or partly in exchange therefor and partly for cash, or the sale or distribution of additional capital stock of a corporation to or among its own stockholders, where no commission or other remuneration is paid or given for soliciting or effecting such sale or distribution to stockholders;
5. The sale of securities to any bank, savings bank, savings institution, trust company, insurance company, corporation, or dealer, or to any organization or association, a principal part of whose business consists of the buying of securities;
6.
  - a. The issuance and delivery of securities of one corporation to the security holders of another corporation in exchange for all or substantially all of the assets of such other corporation; or
  - b. In connection with a consolidation or merger of such corporation, when such exchange of assets or the issuance and delivery of such securities is under the supervision or direction of a court of competent jurisdiction;
7. The issuance and delivery of any securities in exchange for any other securities of the same issuer pursuant to a

- right of conversion entitling the holder of the securities surrendered in exchange to make such conversion;
8. The sale by a registered dealer, acting either as principal or agent, of securities theretofore sold and distributed to the public, provided that:
    - a. Such securities are sold at prices reasonably related to the current market price thereof at the time of sale and, if such registered dealer is acting as agent, the commission collected by such registered dealer on account of the sale thereof is not in excess of usual and customary commissions collected with respect to securities and transactions having comparable characteristics; and
    - b. Such securities do not constitute an unsold allotment to or subscription by such dealer as a participant in the distribution of such securities by the issuer, its officers or directors or by or through an underwriter; and
    - c. Either Moody's, Fitch's, or Standard and Poor's securities manuals, or other recognized securities manuals approved by the commissioner contain the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than eighteen months prior to the date of such sale, and a profit and loss statement of the issuer for either the fiscal year preceding that date or the most recent year of operations; and
    - d. Such securities would qualify for registration by description pursuant to the provisions of section 10-04-07; and
    - e. Such securities are limited to issuers organized under the laws of any state or territory or insular possession of the United States; and
    - f. Provided, however, that even though the foregoing conditions might all be met, the exemption would not apply to the securities of open-end management companies, mutual funds, unit investment trusts, contractual plans and face amount certificate companies.
  9. Subscription for shares of the capital stock of a corporation prior to the incorporation thereof, when no commission or other remuneration is paid or given for or in connection with the subscription and,
    - a. The number of subscribers does not exceed fifteen; or
    - b. The amount raised by such subscription does not exceed twenty-five thousand dollars;

provided that no money shall be received by the solicitor prior to incorporation or registration of said securities with the securities commissioner.

The commissioner may, by written order or regulation suspend or wholly revoke the exempt status of any sales or class of sales with respect to any specific security exempted by this section or may require with respect to any specific security, prior to the making of any such sales or class of sales, such information with respect thereto or the security to be sold thereunder, or such reports after the making of such sale, as the commissioner may deem necessary to enable him to determine whether or not he should suspend or revoke the exempt status of such sales or class of sales with respect to any specific security. No such revoking order may be entered without appropriate prior notice to all interested parties and until an opportunity for hearing is provided, except that the commissioner may by order summarily suspend any of the specified exemptions with respect to any specific security pending final determination of proceedings herein provided for. Notice shall be served upon the interested party personally, or by registered or certified mail, at least twenty days before the time specified for hearing thereof, unless the service of such order is waived by the party proceeded against, or unless the parties agree upon a definite time and place for hearing thereof. If no hearing is requested by interested parties and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to all interested persons, may modify or vacate the order or extend it until final determination.

§ 5. **Amendment.**) Section 10-04-07.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

**10-04-07.1. Registration by Announcement — Secondary.)**

1. Securities that have been outstanding and in the hands of the public for not less than one year as the result of prior original registration in North Dakota or through Securities and Exchange Commission registration, by the issuer, or by the underwriter on behalf of an issuer, shall be entitled to registration by announcement in the manner and subject to the conditions provided by this section.

2. Securities entitled to registration by announcement can be registered only by a dealer registered in the office of the commissioner as provided in section 10-04-10 or by each such dealer filing in the office of the commissioner a written announcement of intention to trade in the securities, which announcement may be given by telegram sent to the commissioner by the dealer, containing the following:

- a. Name of issuer and location of the headquarters or principal office;
- b. A brief description of the security, including price and current earnings;
- c. A statement that the securities have been outstanding and in the hands of the public not less than one year as aforesaid;
- d. Statement that balance sheet not more than twelve months old has been or will be mailed to commissioner;
- e. Statement that security has been registered in North Dakota or by Securities and Exchange Commission.

3. The filing of such announcement in the office of the commissioner shall constitute the registration of the security, unless advised to the contrary within forty-eight hours or advised to furnish additional information, and such dealer shall pay to the commissioner a filing fee of ten dollars within thirty-six hours after the time of such filing. Upon registration, such securities may be sold in this state for a period of one year from date of registration by said registered dealer at a price or prices reasonably related to the current market price of such security at the time of sale, subject, however, to any and all rights and authority granted the commissioner and to any person or purchaser under chapter 10-04, in respect of securities registered in the office of the commissioner by description or qualification. No security registered under this section shall be sold directly or indirectly for the benefit of the issuer, or an underwriter of such securities, or for the promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter; provided, that no security, the registration of which has been revoked by the commissioner, or application for registration of which has been denied by said commissioner, or withdrawn by the applicant, shall be registered under this section.

4. Nothing in this section shall be held or construed to require registration of securities under this section after said securities have been registered by description or qualification as provided in section 10-04-07 or section 10-04-08 for one year after registration. Securities registered pursuant to section 10-04-07 or 10-04-08 become eligible for trading in the secondary market at current market prices upon completion of the original offering when said securities are outstanding and in the hands of the public and remain so until end of registration year when renewal for secondary is permissible. Notification of completion of initial offering should be sent to the commissioner when said offering is completed requesting change to secondary.

**§ 6. Amendment.)** Subsection 2 of section 10-04-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. a. Payment of a filing fee of fifteen dollars and a registration fee of one-tenth of one percent of the aggregate offering price of securities to be sold in this state, but in no case shall such registration fee be less than twenty-five dollars or more than five hundred dollars. If the application for registration is denied such registration fee less the actual cost to the state of processing and investigating as determined by the commissioner shall be returned to the applicant.

b. (1) Open-end management companies, mutual funds, investment trusts, unit investment trusts, contractual plans and face amount certificates will pay a filing fee of fifteen dollars and a registration fee computed as follows:

One-tenth of one percent of the first \$250,000 of dollar value, at offering prices, or maturity value of face amount certificates, plus one-twentieth of one percent of the next \$500,000 of dollar value, at offering price or maturity value of face amount certificates, plus one-fortieth of one percent of the remaining dollar value at offering price or maturity value of face amount certificates.

(2) Provided, further, that all registration prior to July 1, 1961, considered by the commissioner to be excessive in relation to past sales, may not be renewed and will terminate one year from date of registration or renewal.

(3) Provided, also that on application to register more than \$250,000, the commissioner may prescribe a maximum amount of securities to be registered at any time by any such issuer described in paragraph (1) of subdivision 2b of this section. Provided, further, that any applicant wishing to register additional securities under this same paragraph before the expiration of one year from the date of the registration certificate may do so at the same reduced fee as if the additional shares had been included in the other registrations of that year, registration year and not calendar year.

(4) Provided, further, that those issuers of several classes of such securities may not combine the registration of several classes for the purpose of benefiting from the graduated scale of fees.

**§ 7. Amendment.)** Subsection 10 of section 10-04-08.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

10. The commissioner shall have the authority to disapprove an application for registration of any security when it is established that one or more of the promoters are not of good business reputation or character.

**§ 8. Amendment.)** Section 10-04-08.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-04-08.2. Advertising Matter—Regulations.)** 1. No circular, prospectus, advertisement, printed matter, document, pamphlet, leaflet, or other matter, hereinafter referred to as advertising matter, pertaining to any securities which have been registered in compliance with the provisions of this chapter, or rendering advice with relation thereto, shall be published, circulated, distributed, or caused to be published, circulated, or distributed, in any manner unless and until such advertising matter shall have been submitted in duplicate to the commissioner and approved by him. The commissioner shall not approve advertising matter relating to securities not registered or exempted under the provisions of this chapter. The commissioner shall have power to disapprove any such advertising matter which he deems in conflict with the purposes of this chapter.

The provisions of the foregoing part of this section shall not apply to securities exempted under section 10-04-05 of this chapter nor to sales of securities made in a manner exempted under section 10-04-06 of this chapter. All such advertising, whether exempt or not, shall carry the name and address of the issuer, or dealer, or other person, circulating, publishing or distributing same and shall make no reference to registration of the securities or the issuance of a license.

2. Nothing in subsection 1 above or section 10-04-04 shall be construed to prohibit the publication or distribution to the public of preliminary prospectuses, or preliminary summary prospectuses, under the Securities Act of 1933, as amended, provided no solicitation is made or order or conditional order accepted prior to registration in this state, and provided also that the following legend appears on each such prospectus, or preliminary prospectus:

“A registration statement relating to these securities has been filed with the Securities and Exchange Commission but has not yet become effective. Information contained herein is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time

the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such state.”

**§ 9. Amendment.)** Section 10-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-04-10. Registration of Dealers, Salesmen, and Investment Counsel.)** No dealer or salesman shall offer for sale or sell any securities within or from this state, except in transactions exempt under section 10-04-06, unless he is registered as a dealer or salesman pursuant to the provisions of this section.

1. **Dealers.** Application for registration as a dealer may be made by any person. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant, duly verified by oath, shall be filed in the office of the commissioner, and shall contain the following information:
  - a. The name of the applicant.
  - b. The address of the principal place of business of the applicant and the addresses of all branch offices, if any, of the applicant in this state.
  - c. The form of business organization and the date of organization of the applicant.
  - d. The names and business addresses of all members, partners, officers, directors, trustees, or managers of the applicant; a statement of the limitations, if any, of the liability of any partner, member, manager, or trustee; and a statement setting forth in chronological order the occupational activities of each such partner, member, officer, director, trustee, or manager during the preceding ten years.
  - e. A brief description of the general character of the business conducted or proposed to be conducted by the applicant.
  - f. A list of any other states in which the applicant is registered as a dealer, and, if registration of the applicant as a dealer has ever been refused, canceled, suspended, or withdrawn in any state, full details with respect thereto.
  - g. Whether the applicant is registered as a dealer under the Securities Exchange Act of 1934 or any act adopted in amendment thereof and whether any such

- registration of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension by the securities and exchange commission.
- h. The names of all organizations of dealers or brokers of which the applicant is a member or before which any application for membership on the part of the applicant is then pending, and whether any such membership of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
  - i. The names of any securities exchange of which the applicant or any of its partners, officers, directors, trustees, members, managers, or employees is a member, and whether any such membership has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.
  - j. A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant, or by a responsible officer or member of said applicant as the commissioner may require.
  - k. Whether applicant or any officer, director, partner, member, trustee, or manager of the applicant, has ever been convicted of a felony or any misdemeanor other than minor highway traffic offenses and, if so, all pertinent information with respect to any such conviction.
  - l. Any other information, which the commissioner may by rule or order require.

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

There shall be filed with such application a written consent to the service of process upon the commissioner in actions against such dealer, conforming to the requirements of section 10-04-14 and payment of the prescribed registration fee, which shall be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection the commissioner may register such applicant as a dealer unless he shall find that the applicant is not

of good business reputation, or is not solvent, or does not appear qualified by training or experience to act as a dealer in securities.

The commissioner shall require an indemnity bond or a deposit of cash or other properties approved by the commissioner running to the state of North Dakota conditioned for the faithful compliance by the dealer, his agents, and his salesmen with all the provisions of this law and for the faithful performance and payment of all obligations of the dealer and his agents and salesmen.

The bond or deposit shall be of such type as may be approved by the commissioner and shall be in such an amount as he shall deem necessary to protect purchasers when there is taken into consideration the volume of business engaged in by the applicant and the number of salesmen employed by the applicant. Any such bond shall have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a dealer he shall notify the applicant of such registration.

**2. Salesmen.** Application for registration as a salesman may be made by any individual. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant and by the registered dealer or issuer employing or proposing to employ such applicant, duly verified by oath, shall be filed in the office of the commissioner and shall contain the following information:

- a. Name and residence and business address of the applicant.
- b. Name of the dealer or issuer employing or proposing to employ the applicant, unless the applicant is to be self-employed.
- c. Names and addresses of three persons of whom the commissioner may inquire as to the character and business reputation of the applicant.
- d. Applicant's age and education.
- e. The nature of employment and names and addresses of employers of the applicant for the period of ten years immediately preceding the date of application.
- f. Other state or federal laws under which the applicant has ever been registered as a dealer or salesman of securities, and, if any such registration has ever been refused, canceled, suspended or revoked, full details with respect thereto.
- g. Whether applicant has ever been convicted of a felony or misdemeanor other than minor highway traffic offenses, and if so, all pertinent information with respect to any such conviction.

The commissioner shall require as a condition of registration that the applicant, and, in the case of a corporation or partnership, all officers, directors or partners doing securities business in this state, pass a written examination as evidence of knowledge of the securities business; provided, that not more than two officers of an issuer may be registered as a salesman for a particular original offering of the issuer's securities without being required to pass such written examination; and provided, further, that no such officer may again register within five years as such salesman for this or any other issuer without passing the written examination; that all salesmen currently registered on June 30, 1961, who have been continuously registered as securities salesmen in the state of North Dakota since July 1, 1958, may have their registrations renewed without being required to pass such written examination. Such examination shall be given once each month in the capital city and at least once each quarter in other locations in the state; the time and place of such examination to be designated by the securities commissioner.

The commissioner may also require such additional information as to the applicant's previous business experience as he may deem necessary to determine whether or not the applicant should be registered as a salesman under the provisions of this law. If a salesman proposes to be self-employed he shall specifically state the particular security or securities he proposes to sell in this state in his application, and if said security or securities are exempt under section 10-04-05 of this chapter or have been registered by description under section 10-04-07, or have been registered by announcement under section 10-04-07.1, or have been registered by qualification under section 10-04-08, then the commissioner shall require, that said self-employed salesman file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed salesman with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond shall be in a form approved and in the amount required by the commissioner. There shall be filed with such application payment of the prescribed registration fee, which shall be returned if registration is refused.

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

Every registered dealer or issuer shall promptly notify the commissioner of the termination of the employment by him of a registered salesman; and the registration of such salesman shall automatically be suspended from the time of termination of such employment until such time as he shall notify the commissioner of his employment by another registered dealer or issuer.

**3. Investment counsel.** Application for registration as an investment counsel may be made by any person. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant, duly verified by oath and shall be filed in the office of the commissioner and shall contain the following information:

- a. Name, residence, and business address of the applicant.
- b. If the applicant is a corporation or association, give full information as to agents, partners, and managing officers.
- c. Statement showing each individual named is of good repute and possesses essential experience and education.
- d. The plan and character of business, and the proposed method of operation.
- e. Such other information as may be required.

If the applicant is a foreign corporation or association, it shall file with its application:

1. A copy of its articles.
2. Certificate showing authorization to transact business.

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

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

There shall be filed with such application:

- a. A written consent to the service of process upon the commissioner in actions against such investment counsel conforming to the requirements of section 10-04-14, and
- b. Payment of the prescribed registration fee, which shall be returned if registration is refused, and
- c. A financial statement or balance sheet, prepared in accordance with standard accounting practice showing

the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant or by a responsible officer or member of said applicant.

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

No investment counsel may be granted a dealer's or salesmen's registration.

An investment counsel shall not take, hold or exercise any power of attorney on behalf of its clients, either to purchase or sell securities, or to collect or pay any consideration for securities of its clients.

An investment counsel shall not receive or hold any securities of its clients or receive or hold any consideration for such securities of its clients. He shall be limited to giving advice to buy or sell securities, but shall take no part, directly or indirectly, in consummating the purchase or sale of securities of its clients. A registrant as investment counsel shall notify the commissioner of any change of address.

**4. Refusal of registration.** If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-04-12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, he shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order shall be mailed to the applicant at his business address, and if the application is for registration as a salesman, to the registered dealer or issuer who proposed to employ such applicant. If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a dealer's, salesman's, or investment counsel's registration under section 10-04-11, such act or omission may constitute a sufficient ground for a finding by the commissioner that such applicant is not of "good business reputation."

**5. Record and renewal of registrations.** The names and addresses of all persons who have been registered as dealers, salesmen, or investment counsels, and all orders with respect thereto, shall be recorded in a register of dealers, salesmen, and investment counsels in the office of the commissioner. Every registration under this section shall expire on the first day of May in each year, and all registrations in effect

December 31, shall be extended from December 31, 1961 to May 1, 1962. Registration of dealers, salesmen, and investment counsels may be renewed each year, at any time not less than fifteen and not more than sixty days before expiration thereof, by (1) the payment of the proper registration fee and (2) in the case of dealer, the filing of a financial statement, prepared in accordance with standard accounting practice and certified to by an independent certified public accountant or by a responsible officer or member, showing the financial condition of such dealer as of the most recent practicable date. Upon any change in the proprietors, partners, officers, or directors of a registered dealer or investment counsel, such registered dealer or investment counsel shall promptly notify the commissioner in writing of such changes. The commissioner shall record such changes, without fee, in the register of dealers, salesmen, and investment counsels.

**6. Fees.** The fee for registration and for each annual renewal thereof shall be:

- |  |          |
|--|----------|
| a. For each dealer employing not more than three salesmen in this state .....                    | \$ 50.00 |
| b. For each dealer employing more than three, but not more than five salesmen in this state .... | 75.00    |
| c. For each dealer employing more than five salesmen in this state .....                         | 100.00   |
| d. For each salesman   |          |
| Examination fee .....  | 5.00     |
| Registration fee .....   | 10.00    |
| Renewal fee .....  | 7.50     |
| e. For each investment counsel .....   | 25.00    |

Approved March 17, 1961.

## CHAPTER 118

## S. B. No. 118

(Miller, Trenbeath, Erickstad, Wartner, Kee.)  
(Wadeson, Mutch, Lips, Longmire, Becker, Saumur)

## GENERATION OR TRANSMISSION COOPERATIVES

## AN ACT

To amend and reenact subsections 1, 8, and 9 and to create and enact subsection 10 of section 10-13-03 of the North Dakota Century Code, and to amend and reenact section 10-15-18 of the North Dakota Century Code, relating to electric cooperatives and their authority to own and operate electric generation or transmission cooperatives.

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

**§ 1. Amendment.)** Subsections 1, 8, and 9 of section 10-13-03 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. To generate, manufacture, purchase, acquire, and accumulate electrical energy and to transmit, distribute, sell, furnish, and dispose of such electrical energy to its members, and to other persons not in excess of ten percent of the number of its members, provided, however, that a cooperative which acquires existing electrical facilities may continue service to persons, not in excess of twenty percent of the number of its members, who are already receiving service from such facilities without requiring such persons to become members but such persons may become members upon such terms as may be prescribed in the bylaws. An electric generation or transmission cooperative providing electric energy to other cooperatives, public utilities, municipalities, or any department or agency of the state or federal government shall not be limited to the ten percent and twenty percent limitation on the transmission, distribution, sale, furnishing, and disposal of electric energy as provided in this subsection;
8. To fix, regulate, and collect rates, fees, rents, or other charges for electrical energy and other facilities, supplies, equipment, or services furnished by it;
9. To make contracts with other cooperatives, with public utilities, with municipalities, or with any department or agency of the state or federal government, for the sale at wholesale to, or interchange of electric energy with, such cooperatives, public utilities, municipalities,

or department or agency of the state or federal government, and, notwithstanding any provisions of this chapter, such cooperatives, public utilities, municipalities, or department or agency of the state or federal government shall be eligible to membership in cooperatives organized under this chapter; and

§ 2.) Subsection 10 of section 10-13-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

10. To establish and operate by itself or with any one or more electric cooperatives an electric generation or transmission cooperative for the purpose of providing electric energy to other cooperatives, public utilities, municipalities, or any department or agency of the state or federal government.

§ 3. **Amendment.)** Section 10-15-18 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-15-18. Quorum.)** A quorum at a member meeting shall be ten percent of the first one hundred members plus five percent of additional members, present in person or represented by delegates. Unless the bylaws fix a larger number of members to constitute a quorum, a quorum shall never be more than fifty members nor less than five members, or a majority of all members, whichever is smaller. Members represented by signed vote may be counted in computing a quorum only on those questions as to which the signed vote is taken. The provisions of this section shall not apply to an electric generation or transmission cooperative as provided in subsection 10 of section 10-13-03 and a quorum for such cooperative at a meeting of its membership shall be as provided in its bylaws.

§ 4.) Subsection 5 of section 10-13-01 of the North Dakota Century Code is hereby created and enacted to read as follows:

5. The establishment and operation by itself or with any one or more electric cooperatives of an electric generation or transmission cooperative for the purpose of providing electric energy to other cooperatives, public utilities, municipalities, or any department or agency of the state or federal government.

Approved March 3, 1961.

## CHAPTER 119

H. B. No. 821  
(Boe, Aamoth)

## TRANSFER OF SHARES OF STOCK BY FIDUCIARY

## AN ACT

To create and enact chapter 10-18.1 and to amend and reenact section 10-18-02.3 of the North Dakota Century Code, relating to the transfer of shares of stock by a fiduciary, and to repeal sections 10-18-02.1 and 10-18-02.2 of the North Dakota Century Code, relating to the transfer of shares of stock by a fiduciary.

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

§ 1.) Chapter 10-18.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

**Chapter 10-18.1****Uniform Act for Simplification of  
Fiduciary Security Transfers**

**10-18.1-01. Definitions.)** In this chapter, unless the context or subject matter otherwise requires:

1. "Assignment" includes any written stock power, bond power, bill of sale, deed, declaration of trust or other instrument of transfer;
2. "Claim of beneficial interest" includes a claim of any interest by a decedent's legatee, distributee, heir or creditor, a beneficiary under a trust, a ward, a beneficial owner of a security registered in the name of a nominee, or a minor owner of a security registered in the name of a custodian, or a claim of any similar interest, whether the claim is asserted by the claimant or by a fiduciary or by any other authorized person on his behalf, and includes a claim that the transfer would be in breach of fiduciary duties;
3. "Corporation" means a private or public corporation, association or trust issuing a security;
4. "Fiduciary" means an executor, administrator, trustee, guardian, committee, conservator, curator, tutor, custodian or nominee;
5. "Person" includes an individual, a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or

- more persons having a joint or common interest, or any other legal or commercial entity;
6. "Security" includes any share of stock, bond, debenture, note or other security issued by a corporation which is registered as to ownership on the books of the corporation;
  7. "Transfer" means a change on the books of a corporation in the registered ownership of a security;
  8. "Transfer agent" means a person employed or authorized by a corporation to transfer securities issued by the corporation.

**10-18.1-02. Registration in the Name of a Fiduciary.)** A corporation or transfer agent registering a security in the name of a person who is a fiduciary or who is described as a fiduciary is not bound to inquire into the existence, extent, or correct description of the fiduciary relationship, and thereafter the corporation and its transfer agent may assume without inquiry that the newly registered owner continues to be the fiduciary until the corporation or transfer agent received written notice that the fiduciary is no longer acting as such with respect to the particular security.

**10-18.1-03. Assignment by a Fiduciary.)** Except as otherwise provided in this chapter, a corporation or transfer agent making a transfer of a security pursuant to an assignment by a fiduciary:

1. May assume without inquiry that the assignment, even though to the fiduciary himself or to his nominee, is within his authority and capacity and is not in breach of his fiduciary duties;

2. May assume without inquiry that the fiduciary has complied with any controlling instrument and with the law of the jurisdiction governing the fiduciary relationship, including any law requiring the fiduciary to obtain court approval of the transfer; and

3. Is not charged with notice of and is not bound to obtain or examine any court record or any recorded or unrecorded document relating to the fiduciary relationship or the assignment, even though the record or document is in its possession.

**10-18.1-04. Evidence of Appointment or Incumbency.)** A corporation or transfer agent making a transfer pursuant to an assignment by a fiduciary who is not the registered owner shall obtain the following evidence of appointment or incumbency;

1. In the case of a fiduciary appointed or qualified by a court, a certificate issued by or under the direction or supervision of that court or an officer thereof and dated within sixty days before the transfer; or

2. In any other case, a copy of a document showing the appointment or a certificate issued by or on behalf of a person reasonably believed by the corporation or transfer agent to be responsible or, in the absence of such a document or certificate, other evidence reasonably deemed by the corporation or transfer agent to be appropriate. Corporations and transfer agents may adopt standards with respect to evidence of appointment or incumbency under this subsection, provided such standards are not manifestly unreasonable. Neither the corporation nor transfer agent is charged with notice of the contents of any document obtained pursuant to this subsection except to the extent that the contents relate directly to the appointment or incumbency.

**10-18.1-05. Adverse Claims.)** 1. A person asserting a claim of beneficial interest adverse to the transfer of a security pursuant to an assignment by a fiduciary may give the corporation or transfer agent written notice of the claim. The corporation or transfer agent is not put on notice unless the written notice identifies the claimant, the registered owner and the issue of which the security is a part, provides an address for communications directed to the claimant and is received before the transfer. Nothing in this chapter relieves the corporation or transfer agent of any liability for making or refusing to make the transfer after it is so put on notice, unless it proceeds in the manner authorized in subsection 2 of this section.

2. As soon as practicable after the presentation of a security for transfer pursuant to an assignment by a fiduciary, a corporation or transfer agent which has received notice of a claim of beneficial interest adverse to the transfer may send notice of the presentation by registered or certified mail to the claimant at the address given by him. If the corporation or transfer agent so mails such a notice it shall withhold the transfer for thirty days after the mailing and shall then make the transfer unless restrained by a court order.

**10-18.1-06. Nonliability of Corporation and Transfer Agent.)** A corporation or transfer agent incurs no liability to any person by making a transfer or otherwise acting in a manner authorized by this chapter.

**10-18.1-07. Nonliability of Third Persons.)** 1. No person who participates in the acquisition, disposition, assignment or transfer of a security by or to a fiduciary including a person who guarantees the signature of the fiduciary, is liable for

participation in any breach of fiduciary duty by reason of failure to inquire whether the transaction involves such a breach unless it is shown that he acted with actual knowledge that the proceeds of the transaction were being or were to be used wrongfully for the individual benefit of the fiduciary or that the transaction was otherwise in breach of duty.

2. If a corporation or transfer agent makes a transfer pursuant to an assignment by a fiduciary, a person who guaranteed the signature of the fiduciary is not liable on the guarantee to any person to whom the corporation or transfer agent by reason of this act incurs no liability.

3. This section does not impose any liability upon the corporation or its transfer agent.

**10-18.1-08. Territorial Application.)** 1. The rights and duties of a corporation and its transfer agents in registering a security in the name of a fiduciary or in making a transfer of a security pursuant to an assignment by a fiduciary are governed by the law of the jurisdiction under whose laws the corporation is organized.

2. This chapter applies to the rights and duties of a person other than the corporation and its transfer agents with regard to acts and omissions in this state in connection with the acquisition, disposition, assignment or transfer of a security by or to a fiduciary and of a person who guarantees in this state the signature of a fiduciary in connection with such a transaction.

**10-18.1-09. Tax Obligations.)** This chapter does not affect any obligation of a corporation or transfer agent with respect to estate, inheritance, succession or other taxes imposed by the laws of this state.

**10-18.1-10. Uniformity of Interpretation.)** This Act shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

**10-18.1-11. Short Title.)** This Act may be cited as the "Uniform Act for Simplification of Fiduciary Security Transfers".

**§ 2. Amendment.)** Section 10-18-02.3 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-18-02.3. Nominee.)** A corporation acting as one of two or more fiduciaries, with the consent of its co-fiduciary or co-fiduciaries, who are hereby authorized to give such consent, may register a security held by said fiduciaries in the name of its nominee, subject in all respects to the requirements, provisions, and liabilities set forth in chapter 10-18.1.

§ 3. **Repeal.)** Sections 10-18-02.1 and 10-18-02.2 of the North Dakota Century Code are hereby repealed.

Approved March 11, 1961.

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CHAPTER 120

H. B. No. 878

(Knudsen of LaMoure, Lynch, Bier)

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ADMISSION OF FOREIGN CORPORATIONS

AN ACT

To amend and reenact section 10-22-01 of the North Dakota Century Code, relating to admission of foreign corporations.

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

§ 1. **Amendment.)** Section 10-22-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-22-01. Admission of Foreign Corporation.)** No foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this chapter to transact in this state any business which a corporation organized under chapters 10-19 through 10-23 is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in chapters 10-19 through 10-23 shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation. Any corporation which submits a bid or offer to construct any part or portion of a public or private building, road, airport, or other installation, shall file a notice of intention to do business in the state with the secretary of state.

Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of chapters 10-19 through 10-23 only, by reason of carrying on in this state any one or more of the following activities:

1. Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting

- the settlement thereof or the settlement of claims or disputes;
2. Holding meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;
  3. Maintaining bank accounts;
  4. Maintaining offices or agencies for the transfer, exchange, and registration of its securities, or appointing and maintaining trustees or depositaries with relation to its securities;
  5. Effecting sales through independent contractors;
  6. Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;
  7. Creating evidences of debt, mortgages, or liens on real or personal property;
  8. Securing or collecting debts or enforcing any rights in property securing the same;
  9. Transacting any business in interstate commerce; or
  10. Conducting an isolated transaction completed within a period of thirty days and not in the course of a number of repeated transactions of like nature.

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

Approved March 17, 1961.

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## CHAPTER 121

S. B. No. 160  
(Gefreh, Holand, Wartner)

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### NONPROFIT CORPORATION OFFICERS

#### AN ACT

To amend and reenact section 10-24-23 of the North Dakota Century Code, relating to officers of a nonprofit corporation.

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

**§ 1. Amendment.)** Section 10-24-23 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-24-23. Officers.)** The officers of a corporation shall consist of a president, one or more vice-presidents, a secretary, a

treasurer, and such other officers and assistant officers as may be deemed necessary, each of whom shall be elected or appointed at such time and in such manner and for such terms not exceeding three years as may be prescribed in the articles of incorporation or the bylaws. In the absence of any such provision, all officers shall be elected or appointed annually by the board of directors. If the bylaws so provide, any two or more offices may be held by the same person, except the offices of president and secretary.

The articles of incorporation or the bylaws may provide that any one or more officers of the corporation shall be ex officio members of the board of directors.

The officers of a corporation may be designated by such additional titles as may be provided in the articles of incorporation or the bylaws.

The three-year limitation of the term of officers as provided herein shall not apply to corporations of such bodies whose rules and regulations provide that their superintendent, presiding elder, bishop, pastor, or head is ex officio a member and an officer of the board of directors of any congregation or agency of such bodies which may be incorporated under chapter 10-24.

Approved March 4, 1961.

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## CHAPTER 122

S. B. No. 142  
(Lips, Gefreh, Mutch)

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### FRATERNAL CORPORATIONS

#### AN ACT

To amend and reenact section 10-28-22 of the North Dakota Century Code, relating to special provisions regarding fraternal corporations.

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

§ 1. **Amendment.**) Section 10-28-22 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

**10-28-22. Special Provisions Regarding Fraternal Corporations.)** In addition to the provisions of chapters 10-24 through 10-28 every fraternal corporation organized or operating under

the provisions of chapters 10-24 through 10-28 shall be subject to the following provisions:

1. The total indebtedness of any fraternal corporation shall not exceed in amount the value of its corporate property actually owned by the corporation;
2. The property of a fraternal association which is designated a corporation by this chapter shall be liable for the debts thereof. This section shall not apply to the properties or paraphernalia used in the initiatory or degree work of any such lodge, chapter, post, encampment, council, commandery, consistory, or other similar organization, nor to the rituals and other books pertaining to the written or unwritten work thereof;
3. In addition to the other provisions of chapters 10-24 through 10-28 which will cause the cessation of a fraternal corporation, the corporation shall also cease to exist if the supreme, grand, or sovereign lodge or other superior body under which it is working shall revoke or suspend the charter which has been granted to it.

Approved March 3, 1961.