

CORPORATIONS

CHAPTER 80

HOUSE BILL NO. 1219
(Hilleboe)

ELIMINATION OF CORPORATE SEALS

AN ACT to amend and reenact sections 6-08-26, 7-07-02, 10-07-04, 12-39-02, 15-51-07, 21-03-21, 26-10-19, 40-01-02, 40-01-14, 40-04-04, 40-05-13, 40-14-06, subsection 2 of section 40-16-03, sections 40-16-09, 40-22-35, 40-33-18, 40-53.1-05, 43-23-10, 49-12-03, and 61-07-06 of the North Dakota Century Code, relating to deletion of references to corporate seals; and to repeal subsection 1 of section 6-03-02, subsection 2 of section 7-02-01, section 9-06-10, subsection 3 of section 10-19-04, subsection 3 of section 10-24-05, subsection 3 of section 23-11-11, and subsection 2 of section 40-61-03 of the North Dakota Century Code, relating to corporate seals.

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

SECTION 1. AMENDMENT.) Section 6-08-26 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6-08-26. REQUIREMENTS OF FOREIGN BANK OR TRUST COMPANY SERVING AS FIDUCIARY IN STATE.) Before qualifying or serving in this state in any fiduciary capacity, as defined in section 6-08-25, such bank or trust company shall file in the office of the secretary of state a copy of its charter certified by its secretary, and a power of attorney designating the said secretary of state or his successor in office as the person upon whom all notices and processes issued by any court of this state may be served in any action or proceeding relating to any trust, estate, or matter within this state in respect of which such bank or trust company is acting in any fiduciary capacity with like effect as personal service on such bank or trust company. Such power of attorney shall be irrevocable so long as any such liability shall remain outstanding against such bank or trust company in this state. Upon receipt of such notice or process, it shall be the duty of the said secretary of state forthwith to forward the same by registered or certified mail to such bank or trust company at the address stated in the said power of attorney, and such bank or trust company shall comply with the provisions of chapter 6-05, insofar as the provisions of said chapter pertain to banks or trust companies.

SECTION 2. AMENDMENT.) Section 7-07-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

7-07-02. INSTRUMENTS TO BE FILED.) Any foreign corporation as defined in this title, before doing business within this state, shall file in the office of the secretary of state and in the office of the state examiner a duly authenticated copy of its charter, articles of incorporation, or articles of agreement, a copy of its bylaws and other rules and regulations showing the method of conducting its business, and also a statement verified by oath of the president and secretary of such corporation, or by oath of its managing officials if it is other than a corporation, showing:

1. The name of such corporation and the location of its principal office or place of business without this state, and the location of the place of business or principal office within this state;
2. The names and residences of the officers, trustees, or directors;
3. The amount of paid in capital stock or outstanding shares;
4. The amount invested in the state of North Dakota; and
5. The names, addresses, and the total cash credits of all of its stockholders, shareholders, investors, and customers who reside in the state of North Dakota.

A similar statement shall be filed annually thereafter as of December thirty-first with the state examiner within twenty days after December thirty-first of each year.

Such corporation shall file, at the same time and in the same offices, a certificate signed by its president, vice president, or other acting head, and its secretary, if there is one, certifying: that the said corporation has consented to all the license laws and other laws of the state of North Dakota relative to foreign corporations; that it has consented to be sued in the courts in this state upon all causes of action arising against it in this state; that service of process in any action or proceeding brought against it may be made upon the secretary of state of North Dakota, and that such service of process, when so made upon the secretary of state, shall be valid service on the corporation.

SECTION 3. AMENDMENT.) Section 10-07-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-07-04. FORM OF CORPORATION SIGNATURE TO INSTRUMENTS AFFECTING REAL PROPERTY.) The signature of a corporation to

any instrument mentioned in sections 10-07-01 and 10-07-02 may be as follows:

_____	(full name of corporation)
By _____	(some officer or other person authorized by the bylaws of the corporation or resolution of its directors to execute and acknowledge such instrument)
_____	(official title or other designation of person signing)
Attest _____	(signature of officer or person attesting instrument)
_____	(official title or other designation of person attesting).

SECTION 4. AMENDMENT.) Section 12-39-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12-39-02. FORGERY OF PUBLIC SEALS.) Every person who, with intent to defraud, forges or counterfeits the great seal of this state, the seal of any public office authorized by law, the seal of any court of record, or any public seal authorized or recognized by the laws of this state or of any other state, government, or country, or who falsely makes, forges, or counterfeits any impression, purporting to be the impression of any such seal, is guilty of forgery.

SECTION 5. AMENDMENT.) Section 15-51-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

15-51-07. CORPORATE NAME - POWERS - QUORUM.) The board of education shall be a body corporate in relation to all the powers and duties conferred upon them by this Act, to be styled "The Board of Education of the City of Fargo" and as such shall have power to sue and be sued, to contract and be contracted with, and shall possess all the powers usual and incident to bodies corporate as shall be herein given. A majority of the members of said board shall constitute a quorum for the transaction of business.

SECTION 6. AMENDMENT.) Section 21-03-21 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

21-03-21. EXECUTION OF BONDS.) Municipal bonds shall be executed in the name of and for the municipality issuing them, by its qualified officers, who for that purpose shall sign the same in their official capacities, as follows:

1. For a county, the chairman of the board of county commissioners and the county auditor;
2. For a city, the mayor or president of the board of city commissioners and the city auditor;
3. Repealed by S. L. 1967, Ch. 323, section 285.
4. For any other municipality, the chairman or president of the governing board and the clerk or secretary thereof, or such other officer as the governing body thereof may determine.

The interest coupons attached to such bonds may be executed by the lithographed or engraved facsimile signature of such officers. The validity of every bond so executed shall remain unimpaired by the fact that any subscribing officer shall have ceased to be such officer before delivery to the purchaser. Every bond issued by a municipality having an official seal shall be sealed with such seal.

SECTION 7. AMENDMENT.) Section 26-10-19 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

26-10-19. INSURANCE IN FAVOR OF CORPORATION ON LIFE OF CORPORATE OFFICER OR EMPLOYEE - POWERS OF CORPORATION.) Whenever a domestic corporation shall cause to be insured the life of any director, officer, agent, or employee of the corporation, or whenever such corporation is named as a beneficiary in or assignee of any policy of life insurance, due authority to effect, assign, release, relinquish, convert, or surrender, or to change the beneficiary in, such policy, or to take any other or different action with reference to, such insurance, shall be sufficiently evidenced to the insurance company by a written statement to that effect signed by the president and the secretary or other corresponding officers of such corporation. Such statement shall be binding upon the corporation and shall protect the insurance company concerned in any act done or suffered by it upon the faith thereof without further inquiry into the validity of the corporate authority or the regularity of the corporate proceedings. No person shall be disqualified, by reason of interest in the subject matter, from acting as a director or as a member of the executive committee of the corporation on any corporate act touching such insurance.

SECTION 8. AMENDMENT.) Section 40-01-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-01-02. MUNICIPALITIES ARE BODIES CORPORATE.) Municipalities shall be bodies politic and corporate under the name and style of "city of _____" and under such name, may sue and be sued, contract and be contracted with, acquire and hold real and personal property for corporate purposes, and have an official seal which may be changed at pleasure.

SECTION 9. AMENDMENT.) Section 40-01-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-01-14. OFFICE OF MUNICIPALITY LOCATED IN MORE THAN ONE COUNTY - FORM OF OFFICIAL PROCEEDING - SEAL.) The officers of a municipality which consists of territory located in more than one county may maintain an office for the performance of their duties in any portion of the municipality. All official proceedings shall be headed with the name of the municipality and of each county of which a portion is embraced within such corporate limits and the name of the state. The official seal which may be used by such municipality shall contain all of such names.

SECTION 10. AMENDMENT.) Section 40-04-04 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-04-04. RETURNS AND CANVASS OF ELECTION - CERTIFICATE TO SECRETARY OF STATE - OFFICERS TO CONTINUE UNTIL ELECTION.) The officials of an election held under the provisions of this chapter shall make a return of such election to the governing body of the city and such governing body shall canvass such returns and cause the result of the canvass to be entered upon the records of the city. If a majority of the votes cast at such election shall be for city organization under the commission system, the auditor shall certify the adoption of such form of government and a copy of the proceedings concerning the same to the secretary of state together with the result of any special census taken in such city. The city officers then in office shall exercise the powers conferred upon like officers of a city operating under the commission system of government until their successors are elected and qualified.

SECTION 11. AMENDMENT.) Section 40-05-13 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-05-13. FOREIGN CITY - POWER TO CONVEY REALTY - REGULATIONS GOVERNING.) Any real estate in this state owned by a city situated in another state may be conveyed by a warranty or quitclaim deed executed by and on behalf of such city in its corporate name by its executive officer and city auditor. The deed, when so executed and when acknowledged by the executive officer and city auditor for and on behalf of the city, before an officer competent to take acknowledgments, shall be entitled to record.

SECTION 12. AMENDMENT.) Section 40-14-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-14-06. OFFICERS COMMISSIONED BY WARRANT - CITY AUDITOR TO RECEIVE CERTIFICATE OF APPOINTMENT.) All officers elected or appointed, except the city auditor, aldermen, and mayor,

shall be commissioned by warrant signed by the auditor and the mayor or president of the city council. The mayor shall issue a certificate of appointment to the auditor.

SECTION 13. AMENDMENT.) Subsection 2 of section 40-16-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. RECORDS. To keep all papers and records of the city;

SECTION 14. AMENDMENT.) Section 40-16-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-16-09. COPIES OF BOOKS, RECORDS, AND TRANSCRIPTS OF RECORDS OF CITY AUDITOR AS EVIDENCE.) Copies of any and all books, papers, documents, or instruments duly filed and kept in the office of a city auditor and transcripts from the records of the proceedings of the governing body of a city certified by the city auditor shall be evidence in all courts and places in like manner and with the same force and effect as if the originals were produced.

SECTION 15. AMENDMENT.) Section 40-22-35 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-22-35. EXECUTION AND FILING OF CONTRACT.) All contracts entered into for any work provided for in this chapter shall be entered into in the name of the municipality and shall be executed on the part of the municipality by the executive officer and countersigned by the auditor. After the contract is signed by the contractor, it shall be filed in the office of the city auditor.

SECTION 16. AMENDMENT.) Section 40-33-18 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-33-18. RESOLUTION AUTHORIZING CONTRACT - PAYMENT SOLELY THROUGH NET REVENUE - ISSUANCE OF REVENUE BONDS OR OF CERTIFICATES EVIDENCING INDEBTEDNESS UNDER CONTRACT.) Any such contract shall be authorized by resolution or resolutions duly adopted by the governing body of the city. Such resolutions and contract shall provide that the cost of the plant shall be paid solely out of the net revenue thereof, to be derived from special rates and charges imposed and collected for the service thereof to users of the municipal waterworks system, after payment of the reasonable and current expenses of operation and maintenance of such plant. The governing body may provide for the payment of such cost by the issuance of revenue bonds in accordance with the provisions of chapter 40-35, which bonds may be sold as provided in said chapter or may be delivered to the contractor in payment of the contract price, or it may be provided in said resolutions and contract that such price shall be payable in stated installments over a period not exceeding ten years, with interest at a rate not exceeding eight percent

per annum, payable annually or semiannually. Said payments may be evidenced by certificates executed by the executive and recording officers, and such certificates may have interest coupons attached.

SECTION 17. AMENDMENT.) Section 40-53.1-05 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

40-53.1-05. DISPOSITION OF RECORDS AFTER DISSOLUTION - PENDING BUSINESS.) All public records of the dissolved city shall be deposited with the county auditor.

SECTION 18. AMENDMENT.) Section 43-23-10 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-23-10. NONRESIDENT BROKERS - RECIPROCITY - CONSENT TO SERVICE.) A nonresident broker regularly engaged in the real estate business as a vocation, or a mortgage broker regularly engaged in the mortgage business as a vocation, and who maintains a definite place of business and is licensed in some other state, which offers the same privileges to the licensed brokers of this state, shall not be required to maintain a place of business within this state. The commission shall recognize the license issued to a real estate broker or mortgage broker by another state as satisfactorily qualifying him for license as a broker, provided that said nonresident broker has qualified for license in his own state and also that said other state permits licenses to be issued to licensed brokers in this state. Every nonresident applicant shall file an irrevocable consent that suits and actions may be commenced against such applicant in the proper court of any county of the state in which a cause of action may arise, in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this state, on any member of the commission, or the secretary-treasurer, said consent stipulating and agreeing that such service of such process or pleading shall be taken and held in all courts to be as valid and binding as if due service had been made upon said applicant in this state. Said consent shall be duly acknowledged. Any service of process or pleading shall be by duplicate copies, one of which shall be filed in the office of the commission and the other immediately forwarded by registered or certified mail to the last known main office of the applicant against whom said process or pleading is directed, and no default in any such proceedings or action shall be taken except upon affidavit or certificate of the commission or the secretary-treasurer, that a copy of said process or pleading was mailed to the defendant as herein required, and no judgment by default shall be taken in any such action or proceeding until after thirty days from the date of mailing of such process or pleading to the nonresident defendant.

SECTION 19. AMENDMENT.) Section 49-12-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

49-12-03. LICENSING RAILROAD TICKET AGENTS - FEE.)

Every railroad corporation shall provide each agent who may be authorized to sell within the state tickets or other evidence entitling the holder thereof to travel upon such railroad, with a certificate setting forth the authority of such agent to make such sales. Such certificate shall be duly attested by any corporate owner of such railroad, and for the information of travelers shall be kept in a conspicuous place in the office of such agent. Within ten days after issuance of such certificate, such agent, or the superintendent or general officer of such railroad corporation shall exhibit the same to the commission and at the same time shall pay to said commission a license fee of five dollars. Such fees shall be turned over to the state treasurer monthly. The commission shall issue to any agent presenting said certificate a license under the seal of the commission, authorizing him to engage in the business of selling transportation tickets of said railroad. Said license also shall be kept posted in a conspicuous place in the office of such agent for the information of travelers and of the public. Whenever any agent so authorized, by reason of death, resignation, or otherwise, shall cease to be such agent, his successor, appointed by the railroad corporation, shall be authorized to sell tickets for said corporation and to act as the agent thereof under the provisions of this chapter.

SECTION 20. AMENDMENT.) Section 61-07-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

61-07-06. CONTRACTS ENTERED INTO BY DISTRICT - CONTRACTS FOR MATERIALS - RESERVATIONS IN CONTRACTS.) All contracts entered into for any work provided for in this chapter shall be entered into in the name of the district, and shall be executed on the part of the district by the chairman of the board of directors and countersigned or attested by the secretary. When the contract is signed by the contractor, it shall be filed in the office of the secretary of the district. Contracts for materials or for construction of any nature shall require the work to be done or the materials to be furnished in accordance with, and pursuant to, plans and specifications on file with the secretary. There shall be reserved in each such contract for construction the right of the board of directors, in case of the improper construction of such work, to suspend work thereon at any time, and to relet the contract therefor, or to order a reconstruction of said work or any part thereof improperly done. Each such contract shall state the time on or before which such work must be completed and shall state how such contract will be paid.

SECTION 21. REPEAL.) Subsection 1 of section 6-03-02, subsection 2 of section 7-02-01, section 9-06-10, subsection 3 of section 10-19-04, subsection 3 of section 10-24-05, subsection 3 of section 23-11-11, and subsection 2 of section 40-61-03 of the North Dakota Century Code are hereby repealed.

Approved March 21, 1973

CHAPTER 81

HOUSE BILL NO. 1278
(Herman)

REGULATION OF SECURITIES TRANSACTIONS

AN ACT to create and enact section 10-04-06.1 of the North Dakota Century Code, relating to suspension and revocation of exemptions; to amend and reenact subsection 12 of section 10-04-02 of the North Dakota Century Code, relating to the definition of security; to amend and reenact subsection 6 of section 10-04-05 of the 1971 Supplement to the North Dakota Century Code, relating to the exemption of certain securities from registration; to amend and reenact subsections 3, 4, 6, 8, and 9 of section 10-04-06 of the 1971 Supplement to the North Dakota Century Code, relating to certain transactional exemptions from registration; to amend and reenact subsections 2 and 3 of section 10-04-07.1 of the 1971 Supplement to the North Dakota Century Code, relating to registration by announcement; and to repeal all of the language following subsection 12 of section 10-04-06 of the 1971 Supplement to the North Dakota Century Code, relating to suspension and revocation of transactional exemptions.

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

SECTION 1.) Section 10-04-06.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-04-06.1. SUSPENSION AND REVOCATION OF EXEMPTIONS.) The commissioner may by order or regulation suspend or revoke any exemption under section 10-04-05 or section 10-04-06 with respect to any specific security or transaction or may require with respect to any specific security or transaction, prior to the making of any offers or sales, such information with respect thereto or the security to be offered or sold thereunder or such reports after the making of such sales, as the commissioner may deem necessary to enable him to determine whether or not he should suspend or revoke the exemption. No such order may be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the commissioner may by order summarily suspend any of the specified exemptions pending final determination of any proceeding under this section. Upon the entry of a summary order, the commissioner shall promptly

notify all interested parties that it has been entered and the reasons therefor and that within fifteen days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested 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 a hearing to all interested parties, may modify or vacate the order or extend it until final determination.

SECTION 2. AMENDMENT.) Subsection 12 of section 10-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

12. "Security" shall mean any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation, certificate of interest in oil, gas, or other mineral rights, collateral trust certificates, pre-organization certificate or subscription, transferable share, investment contract, program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise, voting trust certificate, or beneficial interest in title to property, profits or earnings, or any other instrument commonly known as a security, including any guarantee of, temporary or interim certificate of interest or participation in, or warrant or right to subscribe to, convert into or purchase, any of the foregoing.

SECTION 3. AMENDMENT.) Subsection 6 of section 10-04-05 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

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 or warrants which have been so listed or approved, or warrants or rights to purchase or subscribe to any of the foregoing. The commissioner may by written order approve any stock exchange in addition to those specified in this subsection and any securities quoted on a national quotation service or listed on a federal reserve board regulation "T" list if he finds that it would be in the public interest for securities listed on such exchange or quoted on such national quotation service or listed on a federal reserve board

regulation "T" list to be exempt under this subsection. The commissioner shall have power at any time by written order to withdraw the approval heretofore so granted;

SECTION 4. AMENDMENT.) Subsections 3, 4, 6, 8, and 9 of section 10-04-06 of the 1971 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

3. Any isolated sale of any security made by or on behalf of a bona fide owner for the owner's account, such owner not being an issuer, underwriter, dealer, or salesman and such sale not being made in the course of repeated and successive transactions of a like character. This subsection shall not exempt any dealer or salesman participating in an isolated sale from registering in accordance with section 10-04-10, nor shall this exemption be available in connection with any sale not made in good faith but rather for the purpose of evading the registration requirements imposed under chapter 10-04;
4. Stock dividends or other distributions by a corporation out of its earnings or surplus, 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;
6. Any transaction incident to a vote by stockholders pursuant to the articles of incorporation or the applicable corporation statute on a merger, consolidation, reclassification of securities, or sale of corporate assets in consideration of the issuance of securities of another corporation; or any transaction incident to a judicially-approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash;
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 are limited to issuers organized under the laws of any state or territory or insular possession of the United States; and
 - e. 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. Any transaction pursuant to an offer directed by the offeror to not more than ten persons (other than those designated in subsection 5) in this state during any twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if:
- a. The seller reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment;
 - b. 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); and
 - c. The person who desires to claim the benefit of the exemption provided under this subsection obtains the prior approval of the commissioner in writing as a condition

precedent to the availability of this exemption.

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 and b with or without the substitution of a limitation on remuneration;

SECTION 5. AMENDMENT.) Subsections 2 and 3 of section 10-04-07.1 of the 1971 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

2. Securities entitled to registration by announcement may be registered only by a dealer registered in the office of the commissioner as provided in section 10-04-10 by 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 twenty-five 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 registered dealers 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.

SECTION 6. REPEAL.) All of the language following subsection 12 of section 10-04-06 of the 1971 Supplement to the North Dakota Century Code is hereby repealed.

Approved March 14, 1973

CHAPTER 82

HOUSE BILL NO. 1279
(Herman)

VIOLATIONS OF SECURITIES ACT

AN ACT to amend and reenact section 10-04-16 of the North Dakota Century Code, relating to orders, injunctions, and prosecutions for violations of Securities Act.

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

SECTION 1. AMENDMENT.) Section 10-04-16 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-16. ORDERS, INJUNCTIONS, AND PROSECUTIONS FOR VIOLATIONS.) Whenever it shall appear to the commissioner, either upon complaint or otherwise, that any person has engaged in, or is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter or by any order of the commissioner issued pursuant to any section of this chapter or which is declared to be illegal in this chapter, the commissioner may, in his discretion:

1. Issue any order, including but not limited to cease and desist, stop, and suspension orders, which he deems necessary or appropriate in the public interest or for the protection of investors; provided, however, that any person aggrieved by an order issued pursuant to this subsection may request a hearing before the commissioner if such request is made within ten days after receipt of the order. The provisions of subsections 2, 3, 4, and 5 of section 10-04-12 shall apply to any hearing conducted hereunder. If, after a hearing, the commissioner shall sustain an order previously issued, the sustaining order shall be subject to appeal to the district court of Burleigh County by serving on the commissioner within twenty days after the date of entry of the sustaining order a written notice of appeal signed by the appellant stating:
 - a. The order of the commissioner from which the appeal is taken;
 - b. The grounds upon which a reversal or modification of such order is sought; and
 - c. A demand for a certified transcript of the

record of such order.

The provisions of subdivisions 1 and 2 of section 10-04-13 shall apply to an appeal hereunder. Application to the board of review shall not be a condition precedent to an appeal to the district court under this subsection, any provision in section 10-04-12.1 to the contrary notwithstanding.

2. Apply to the district court of any county in this state for an injunction restraining such person and his agents, employees, partners, officers, and directors, from continuing such act, practice, or transaction or engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts may warrant. In any proceeding for an injunction, the commissioner may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendant and his agents, employees, partners, officers, or directors, and the production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant. The court may not require the commissioner to post a bond.
3. Refer such evidence as may be available concerning such act, practice, or transaction to the attorney general or the proper state's attorney who may, with or without such a reference, institute the necessary criminal proceedings. In any criminal proceeding, the attorney general or the state's attorney may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendant and his agents, employees, partners, officers, and directors, and the production of such documents, books, and records as may appear necessary for the prosecution of such criminal proceedings. The court may impose upon any defendant convicted of any of the offenses described in this section such penalty, in accord with the provisions of section 10-04-18, as the facts may warrant.

Approved March 11, 1973

CHAPTER 83

SENATE BILL NO. 2294
(Goldberg)

CORPORATE DIVIDENDS

AN ACT to amend and reenact section 10-19-44 of the North Dakota Century Code, relating to corporate dividends, and declaring an emergency.

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

SECTION 1. AMENDMENT.) Section 10-19-44 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-19-44. DIVIDENDS.) The board of directors of a corporation may, from time to time, declare and the corporation may pay dividends in cash, property, or its own shares, except when the corporation is insolvent or when the payment thereof would render the corporation insolvent or when the declaration or payment thereof would be contrary to any restrictions contained in the articles of incorporation, subject to the following provisions:

1. Dividends may be declared and paid in cash or property only out of the unreserved and unrestricted earned surplus of the corporation, except as otherwise provided in this section;
2. If the articles of incorporation of a corporation engaged in the business of exploiting natural resources so provide, dividends may be declared and paid in cash out of the depletion reserves, but each such dividend shall be identified as a distribution of such reserves and the amount per share paid from such reserves shall be disclosed to the shareholders receiving the same concurrently with the distribution thereof;
3. Dividends may be declared and paid in its own shares out of any treasury shares that have been reacquired out of surplus of the corporation;
4. Dividends may be declared and paid in its own authorized but unissued shares out of any unreserved and unrestricted surplus of the corporation upon the following conditions:

- a. If a dividend is payable in its own shares having a par value, such shares shall be issued at not less than the par value thereof and there shall be transferred to stated capital at the time such dividend is paid an amount at least equal to the aggregate par value of the shares to be issued as a dividend;
 - b. If a dividend is payable in its own shares without par value, such shares shall be issued at such stated value as shall be fixed by the board of directors by resolution adopted at the time such dividend is declared, and there shall be transferred to stated capital at the time such dividend is paid an amount of surplus equal to the aggregate stated value so fixed in respect of such shares; and the amount per share transferred to stated capital shall be disclosed to the shareholders receiving such dividend concurrently with the payment thereof; and
5. No dividend payable in shares of any class shall be paid to the holders of shares of any other class unless the articles of incorporation so provide or such payment is authorized by the affirmative vote or the written consent of the holders of at least a majority of the outstanding shares of the class in which the payment is to be made.

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

SECTION 2. EMERGENCY.) This Act is hereby declared to be an emergency measure and shall be in full force and effect from and after its passage and approval.

Approved March 12, 1973

CHAPTER 84

SENATE BILL NO. 2083
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

PROFESSIONAL CORPORATIONS

AN ACT to amend and reenact sections 10-31-06 and 10-31-13 of the North Dakota Century Code, relating to simultaneous officeholding in professional corporations, and the contents and filing of the annual reports of professional corporations.

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

SECTION 1. AMENDMENT.) Section 10-31-06 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-31-06. OFFICERS, DIRECTORS, AND SHAREHOLDERS.) No person may be simultaneously a director or shareholder of more than one professional corporation. A professional corporation which has only one shareholder need have only one director, who shall be such shareholder. He shall also serve as the president and treasurer of the corporation. The other officers of the corporation need not be licensed or otherwise legally authorized in the same field of endeavor as the president. A professional corporation which has only two shareholders need have only two directors, who shall be such shareholders. The two shareholders shall fill all of the general offices of the corporation between them. A retired person may not continue as a director, officer, or shareholder of a professional corporation.

SECTION 2. AMENDMENT.) Section 10-31-13 of the 1971 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-31-13. ANNUAL REPORTS.) Each professional corporation organized under this chapter shall file with the secretary of state an annual report at the time specified for the filing of such reports by the Business Corporation Act giving the name and residence addresses of all officers, directors, and shareholders of such professional corporation as of the thirtieth day of June next preceding the filing of such report. Attached to this report shall be a form certifying that all of such directors and shareholders are duly licensed to render the same specific professional services as those for which the corporation was organized. This

certificate shall be made on such form as shall be prescribed and furnished by the secretary of state, shall be signed by the president or vice president and attested by the secretary or assistant secretary of the professional corporation, and sworn to before a notary public by the persons executing the certificate and accompanied by a filing fee of five dollars payable to the secretary of state. No other fees shall be charged therefor. A duplicate original copy of such certificate shall be filed at the same time with the regulatory board which licenses the shareholders described in the certificate and no filing fee shall be charged by the regulatory board for such filing. The regulatory boards issuing the licenses described in section 10-31-01 are hereby authorized and directed to issue the certificates required by section 10-31-02. Such certificates shall be on forms as prescribed and furnished by the secretary of state. The regulatory boards may charge and collect a fee not to exceed five dollars per person so certified to be duly licensed by such regulating board.

Approved March 3, 1973

CHAPTER 85

HOUSE BILL NO. 1487
(Winkjer)

FOREIGN PROFESSIONAL CORPORATIONS

AN ACT to create and enact section 10-31-13.1 of the North Dakota Century Code, providing that foreign professional corporations may practice in North Dakota under certain circumstances.

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

SECTION 1.) Section 10-31-13.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-31-13.1. FOREIGN PROFESSIONAL CORPORATIONS - PRACTICE IN NORTH DAKOTA.) A foreign professional corporation may practice a profession in this state only through shareholders, directors, officers, employees, and agents who are licensed to practice the profession in this state. The provisions of this chapter with respect to the practice of a profession by a professional corporation apply to a foreign professional corporation.

The certificate of authority of a foreign professional corporation may be revoked by the secretary of state as provided for in the North Dakota Professional Corporation Act, if the foreign professional corporation fails to comply with any provisions of this chapter.

This chapter shall not be construed to prohibit the practice of a profession in this state by an individual who is a shareholder, director, officer, employee, or agent of a foreign professional corporation, if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional corporation. This provision shall apply regardless of whether or not the foreign professional corporation is authorized to practice a profession in this state.

Approved March 11, 1973