

AGRICULTURE

CHAPTER 48

HOUSE BILL NO. 1455

(Representatives Rennerfeldt, Nichols, Skarphol)
(Senators Nelson, Tallackson)

OILY WASTE DISPOSAL RESEARCH

AN ACT relating to the acceptance and use of certain grant funds by the Williston research center.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Grant funds - Acceptance - Use. The Williston research center may accept and expend grant funds for the purpose of overseeing research related to the disposal of oily waste on land in this state. The center may collect, store, and distribute data on that research but may not incur expenses in connection with the research, other than expenses reimbursable by the grant funds.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 49

SENATE BILL NO. 2138
(Agriculture Committee)
(At the request of the State Seed Arbitration Board)

SEED ARBITRATION BOARD COMPENSATION

AN ACT to amend and reenact section 4-09-03.1 of the North Dakota Century Code, relating to compensation and expense reimbursement of members of the state seed arbitration board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-03.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-03.1. State seed arbitration board. The state seed arbitration board consists of the commissioner of agriculture, the director of the North Dakota state university extension service, the director of the North Dakota agricultural experiment station, the chair of the North Dakota seed trade committee of the North Dakota agriculture association, and a representative of a major North Dakota farm organization appointed by the commissioner of agriculture, or their authorized designees. Each board member is entitled to receive the same per diem compensation as provided for members of the legislative council under section 54-35-10, and reimbursement of expenses as provided by law for state officers, while attending meetings or performing duties directed by the board, except that no compensation under this section may be paid to any member who receives compensation or salary as a regular state employee or official. Compensation and expenses for board members who do not receive compensation or salary as a regular state employee or official must be paid by the department of agriculture.

Approved March 10, 1993
Filed March 11, 1993

CHAPTER 50

HOUSE BILL NO. 1437
(Representative Nicholas)

SEED LABELING, REPORTS, AND FEES

AN ACT to amend and reenact sections 4-09-14.1, 4-09-14.3, 4-09-14.4, and 4-09-20 of the North Dakota Century Code, relating to seed labeling requirements, penalty for late filing of seed permit reports, and collection of royalty fees.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-09-14.1 of the North Dakota Century Code is amended and reenacted as follows:

4-09-14.1. Seed sales - Seed labeling fee permit - Exception. No person may ~~sell~~ label agricultural, vegetable, flower, or tree or shrub seed within, or for delivery within, this state unless a seed labeling fee permit has been obtained from the seed department and has been issued to the ~~seller~~ labeler pursuant to section 4-09-14.4.

SECTION 2. AMENDMENT. Section 4-09-14.3 of the North Dakota Century Code is amended and reenacted as follows:

4-09-14.3. Fees. The fees required by section 4-09-14.1 shall be pursuant to the following fee schedule:

1. A container containing:

| | |
|-------------------------|-------------|
| 100 to 160 lbs. of seed | eight cents |
| 60 to 99 lbs. of seed | seven cents |
| 30 to 59 lbs. of seed | six cents |
| 15 to 29 lbs. of seed | five cents |
| 1/2 to 14 lbs. of seed | four cents |
2. Cereal grains, per 100 pounds [45.36 kilograms], two cents
Flax, soybeans, edible beans, per 100 pounds
[45.36 kilograms], four cents
3. Seeds sold in bulk, and not specified in subsection 2, per 100 pounds, [45.36 kilograms], six cents.
4. Whenever seed is sold at wholesale or on consignment or commission in packets of eight ounces [226.80 grams] or less, the fee shall be fifty cents per twenty-five dollars of wholesale value, or fraction thereof, of the packets in the lot container.

SECTION 3. AMENDMENT. Section 4-09-14.4 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-14.4. Permit. The commissioner is authorized at the commissioner's discretion, under such rules as may be promulgated, to issue a permit to any person to ~~sell~~ label agricultural, vegetable, flower, and tree and shrub seeds in North

Dakota. The person shall apply to the commissioner for a permit and shall furnish the seed department with periodic statements of all seeds sold in North Dakota when requested by the seed commissioner. Each statement must be itemized to show the number of each class of containers referred to in section 4-09-14.3. Statements that must be furnished for each reporting period, must be delivered to the commissioner not later than ~~thirty~~ thirty-one days after the end of each reporting period, and must be accompanied by the appropriate fee. A penalty fee of ten dollars, or five percent of the total amount due, whichever is greater, will be assessed for reports that are not postmarked within thirty-one days after the end of the reporting period. Any person to whom a permit is granted shall show such information in connection therewith as the commissioner may require as part of the label on all seed sold. The commissioner or the commissioner's authorized agent has the right at all reasonable times to examine the records of any permit holder to verify the correctness of its statements. The commissioner, when requested, may grant a farmer who grows his own seed and sells only his own seed, the right to report annually.

SECTION 4. AMENDMENT. Section 4-09-20 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-09-20. Fees and collections - Disposition. All moneys arising from the collection of fees and other charges under this chapter must be deposited by the commissioner with the state treasurer and credited to the seed department revolving fund, and must be disbursed, within the limits of legislative appropriations, upon vouchers signed by the commissioner and warrant-checks prepared by the office of management and budget. Royalty, research, or patent fees will be collected on protected varieties when necessary by the commissioner and dispersed less cost of collection. The state treasurer shall, at the direction of the commission, provide for the investment of available moneys from the revolving fund. The state treasurer shall deposit twenty percent of the income from the investment of the moneys in the general fund and the remaining eighty percent of the investment income in the seed department revolving fund.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 51

HOUSE BILL NO. 1203
(Agriculture Committee)

(At the request of the Office of Management and Budget)

AGRICULTURAL COMMODITY GROUPS REPORTS AND APPROPRIATIONS

AN ACT to create and enact a new section to chapter 4-24 of the North Dakota Century Code, relating to reports by agricultural commodity groups to the legislative assembly; to amend and reenact sections 4-10.1-09, 4-10.2-08, 4-10.3-08, 4-10.6-10, 4-12.1-03, 4-13.1-05, 4-18.1-12, 4-24-09, and 4-28-08 of the North Dakota Century Code, relating to continuing appropriations for the North Dakota potato council, the North Dakota oilseed council, the North Dakota edible bean council, the North Dakota corn utilization council, the North Dakota beekeepers association, the North Dakota turkey federation, the North Dakota milk stabilization board, and the North Dakota state wheat commission; and to provide continuing appropriations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.1-09 of the North Dakota Century Code is amended and reenacted as follows:

¹ **4-10.1-09. Tax levied - Continuing appropriation.** An assessment at the rate of two cents per hundredweight [45.36 kilograms] must be levied and imposed upon all potatoes grown in the state or sold to a designated handler. The council, in its discretion, may increase the assessment by not more than one-half cent per hundredweight [45.36 kilograms] per year until a maximum assessment of four cents per hundredweight [45.36 kilograms] is reached. This assessment must not be imposed upon any potatoes retained by growers to be used for seed purposes or for consumption by the grower. This assessment is due upon any identifiable lot or quantity of potatoes.

A designated handler of potatoes shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the handler is transacting business within the state, place or places of business, and location of loading and shipping places of agents of the first handler, the names and addresses of the several persons constituting the firm partnership, and, if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any potatoes until it has furnished a certificate as required by this section.

Every designated handler of potatoes shall collect the assessment imposed under this section by charging and collecting from the seller the assessment per

¹ NOTE: Section 4-10.1-09 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

hundredweight [45.36 kilograms] by deducting the assessment from the purchase price of all potatoes subject to the assessment and purchased by the designated handler.

Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw potatoes, which may be examined by the commissioner, or his designee, at all reasonable times. Every designated handler shall report to the council stating the quantity of potatoes received, sold, or shipped by it. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of a special revolving fund designated "spud fund" to be used exclusively to carry out the intent and. All money in the spud fund is appropriated on a continuing basis to the council for carrying out the purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

SECTION 2. AMENDMENT. Section 4-10.2-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

² **4-10.2-08. Assessments levied - Continuing appropriation.** An assessment at the rate of two cents per hundredweight [45.36 kilograms] must be levied and imposed upon all sunflower, safflower, rapeseed or canola, and crambe grown in the state or sold to a first purchaser, and an assessment at the rate of two cents per bushel [35.24 liters] must be levied and imposed upon all flax grown in the state or sold to a first purchaser. This assessment is due upon any identifiable lot or quantity of sunflower, safflower, rapeseed or canola, crambe, or flax.

A first purchaser of sunflower, safflower, rapeseed or canola, crambe, or flax shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the first purchaser is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the first purchaser, the names and addresses of the several persons constituting the firm partnership, and if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the first purchaser. A first purchaser may not sell, process, or ship any sunflower, safflower, rapeseed or canola, crambe, or flax until it has secured a certificate as required by this section.

The first purchaser of sunflower, safflower, rapeseed or canola, crambe, or flax shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate specified in this section by deducting the assessment from the purchase price of all sunflower, safflower, rapeseed or canola, crambe, or flax subject to the assessment and purchased by the first purchaser.

Every first purchaser shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw sunflower, safflower, rapeseed or canola, crambe, or flax, which may be examined by the council at all reasonable

² NOTE: Section 4-10.2-08 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

times. Every first purchaser shall report to the council stating the quantity of sunflower, safflower, rapeseed or canola, crambe, or flax received, sold, or shipped by it. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this chapter must be paid to the council for deposit in the state treasury to the credit of a special revolving account or accounts designated "oilseed fund". All money in the oilseed fund is appropriated on a continuing basis to the council to be used exclusively to carry out the intent and purposes of this chapter. Assessments collected from each crop must be used, for the purposes of this chapter, on each respective crop. However, for flax, emphasis should be given to utilize the assessment, except for that portion of the assessment necessary to administer the flax assessment, for nutritional and therapeutic research. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

SECTION 3. AMENDMENT. Section 4-10.3-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

³ 4-10.3-08. Tax levies - Collection - Reports - Continuing appropriation. Effective July 1, 1977, an assessment at the rate of five cents per hundredweight [45.36 kilograms] must be levied and imposed upon all edible beans grown in the state or sold to a designated handler. This assessment is due upon any identifiable lot or quantity of edible beans.

A designated handler of edible beans shall file an application with the council on forms prescribed and furnished by the council which must contain the name under which the handler is transacting business within the state, the place or places of business, the location of loading and shipping places of agents of the first designated handler, the names and addresses of the several persons constituting the firm partnership, and if a corporation, the corporate name and the names and addresses of its principal officers and agents within the state. The council shall issue a certificate to the designated handler. A designated handler may not sell, process, or ship any edible beans until it has furnished a certificate as required by this section.

The first designated handler in North Dakota of edible beans shall collect the assessment imposed by this section by charging and collecting from the seller the assessment at the rate of five cents per hundredweight [45.36 kilograms] by deducting the assessment from the purchase price of all edible beans subject to the assessment and purchased by the designated handler.

Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of raw edible beans, which may be examined by the council at all reasonable times. Every designated handler shall report to the council stating the quantity in individual and total amounts of edible beans received, sold, or shipped by it. The report must state from whom each individual amount was received. The report must be made at the times and in the manner prescribed by the council. The remittance of the assessment as provided in this section must accompany the report. All moneys levied and collected under this

³ NOTE: Section 4-10.3-08 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

chapter must be paid to the council for deposit in the state treasury to the credit of ~~a~~ a special revolving account or accounts designated "edible bean fund". All money in the edible bean fund is appropriated on a continuing basis to the council to be used exclusively to carry out the intent and purposes of this chapter. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner of agriculture.

SECTION 4. AMENDMENT. Section 4-10.6-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-10.6-10. Records by designated handlers - Continuing appropriation. Every designated handler shall keep as a part of its permanent records a record of all purchases, sales, and shipments of corn which may be examined by the council at all reasonable times. Every designated handler shall report to the council, in a manner and at a time prescribed by the council. The assessments collected by the designated handler must accompany the report. All moneys levied and collected under this chapter must be paid within thirty days of the end of each quarterly period to the council for deposit in the state treasury to the credit of ~~a~~ a special revolving account designated as the corn fund. All money in the corn fund is appropriated on a continuing basis to the council to be used exclusively to carry out this chapter. Quarterly periods end on March thirty-first, June thirtieth, September thirtieth, and December thirty-first of each year. Regular audits of the council's accounts must be conducted in accordance with chapter 54-10 and submitted to the commissioner.

SECTION 5. AMENDMENT. Section 4-12.1-03 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.1-03. Fees - Special fund - Continuing appropriation. The association may charge fees for items sold to promote honey. The state treasurer shall deposit all moneys received under this chapter in a special revolving fund to be known as the honey fund. All moneys deposited in the honey fund must, subject to legislative appropriation, be expended by are appropriated on a continuing basis to the commissioner for use pursuant to this chapter.

SECTION 6. AMENDMENT. Section 4-13.1-05 of the North Dakota Century Code is amended and reenacted as follows:

4-13.1-05. Special fund - Continuing appropriation. The state treasurer shall deposit all moneys received under this chapter in a special revolving fund to be known as the turkey fund. All moneys deposited in the turkey fund must, subject to legislative appropriation, be expended by are appropriated on a continuing basis to the commissioner for use pursuant to this chapter.

SECTION 7. AMENDMENT. Section 4-18.1-12 of the North Dakota Century Code is amended and reenacted as follows:

4-18.1-12. Assessments by the board - Continuing appropriation. In order to obtain funds for the administration and enforcement of the provisions of this chapter, the board shall levy an assessment upon all licensed processors of not more than eight cents per hundredweight [45.36 kilograms] on milk or milk equivalents used for the manufacture of milk products and frozen dairy products processed by such processors. However, this assessment is not applicable to milk products or frozen dairy products sold in other states.

This assessment must be paid quarterly on or before the fifteenth of July, October, January, and April of each year. Each such payment must be equal to the assessment due in connection with milk products and frozen dairy products processed during the calendar quarter which ends on the last day of the preceding month.

All such assessments must be deposited by the board in the state treasury in a special revolving fund to be known as the "milk stabilization fund". All expenses incurred in connection with the enforcement and administration of this chapter, including the salaries of employees and assistants must be paid out of the said "milk stabilization fund" ~~within the limits of legislative appropriations.~~ All money in the milk stabilization fund is appropriated on a continuing basis to the board for carrying out the purposes of this chapter. Regular audits of the board's accounts must be conducted in accordance with chapter 54-10.

SECTION 8. AMENDMENT. Section 4-24-09 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-24-09. Agricultural commodity assessments funds - Investment income allocation. The state treasurer, notwithstanding any other provision of law to the contrary, shall invest in accordance with section 21-10-07 all available moneys in the spud fund, oilseed fund, edible bean fund, barley fund, soybean fund, corn fund, honey fund, turkey fund, milk stabilization fund, dairy promotion commission fund, state wheat commission fund, and the beef commission fund. The investment of moneys must be made in cooperation with the governing body of the respective agricultural commodity entity. The state treasurer, by rule, shall establish, in cooperation with the agricultural commodity organizations, guidelines to be followed regarding the investment of moneys in each fund. The state treasurer shall credit twenty percent of the investment income derived from each fund to the general fund in the state treasury as payment for accounting, printing, data processing, legal, and other services when provided without cost by the state to the agricultural commodity entity. The state treasurer shall credit eighty percent of the investment income derived from each fund to the respective fund. ~~These moneys may be expended only within the limits of legislative appropriation.~~

SECTION 9. A new section to chapter 4-24 of the North Dakota Century Code is created and enacted as follows:

Agricultural commodity promotion groups to report to legislative assembly - Report contents. Between the first and tenth legislative day of each regular legislative session, the North Dakota potato council, the North Dakota oilseed council, the North Dakota edible bean council, the North Dakota barley council, the North Dakota soybean council, the North Dakota corn utilization council, the North Dakota beekeepers association, the North Dakota turkey federation, the North Dakota milk stabilization board, the North Dakota dairy promotion commission, the North Dakota state wheat commission, and the North Dakota beef commission must file a report at a public hearing before the standing agriculture committee of each house of the legislative assembly. The presiding officer of each house of the legislative assembly may direct that the reports be filed with some other standing committee of that house. The report must contain a summarization of the activities of the respective commodity groups during the preceding biennium, and must include a financial statement summarizing the revenues and expenditures of the respective agricultural commodity group for the current biennium and the anticipated revenues and expenditures for the next biennium.

SECTION 10. AMENDMENT. Section 4-28-08 of the North Dakota Century Code is amended and reenacted as follows:

4-28-08. State wheat commission fund - ~~Appropriation~~ Continuing appropriation. Each first purchaser shall make quarterly reports and returns to the commission, on such forms as must be prescribed by the commission, on or before the twentieth day of the month next succeeding each calendar quarterly period, commencing with the calendar quarter ending September 30, 1959, and with each such report and return shall remit to the commission, in the form of a remittance payable to the state treasurer, the tax due. The commission shall transmit all such payments to the state treasurer to be deposited in the state treasury to the credit of a special revolving fund to be known as the "state wheat commission fund". ~~The provisions of section 54-27-10 do not apply to appropriations to or for the wheat commission, nor does any part of such fund and appropriations revert at the expiration of any biennium.~~ All money in the state wheat commission fund is appropriated on a continuing basis to the commission for carrying out the purposes of this chapter. Expenditures from such fund ~~or appropriation~~, may be made upon vouchers duly approved by the commission to carry out the provisions of this chapter. Regular audits of the commission's accounts must be conducted in accordance with chapter 54-10.

Approved April 9, 1993
Filed April 9, 1993

CHAPTER 52

SENATE BILL NO. 2334
(Senator Krauter)
(Representative Belter)

COMMODITY LEVIES AND HANDLERS

AN ACT to amend and reenact subsection 1 of section 4-10.4-08, section 4-28-07, subsection 6 of section 60-02-01, and subsection 6 of section 60-03-01 of the North Dakota Century Code, relating to levies on certain agricultural commodities and to the definition of public warehouseman and roving grain and hay buyer.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4-10.4-08 of the North Dakota Century Code is amended and reenacted as follows:

1. ~~Effective July 1, 1983, a~~ A tax at the rate of five mills per bushel [35.24 liters] must be levied and imposed upon all barley grown in the state ~~and or~~ sold to a first purchaser. This tax is due upon any identifiable lot or quantity of barley.

SECTION 2. AMENDMENT. Section 4-28-07 of the North Dakota Century Code is amended and reenacted as follows:

~~4-28-07. Wheat tax levy. There is hereby levied and imposed, effective July 1, 1983, a~~ A tax of five mills per bushel [35.24 liters] by weight must be levied and imposed upon all wheat grown in this state ~~and or~~ sold through commercial channels by a producer to a first purchaser, ~~such~~. The tax to must be levied and assessed at the time of sale and deducted by the purchaser from the price paid, or in the case of a lien, pledge, or mortgage, deducted from the proceeds of the loan or claim secured, subject to adjustment at the time of settlement in the event the number of bushels [liters] are not accurately determined at the time of the lien, pledge, or mortgage. At the time of sale, the purchaser shall issue and deliver to the producer a record of the transaction in such manner as the commission may prescribe.

Any producer subject to the deduction provided in this chapter may, within sixty days following such deduction or final settlement, make application by personal letter to the wheat commission for a refund application blank. Upon the return of ~~said~~ the blank, properly executed by the producer, accompanied by a record of the deduction by the purchaser, the producer must be refunded the net amount of the deduction collected. If no request for refund has been made within the period prescribed above, then the producer is presumed to have agreed to such deduction. However, a producer, for any reason, having paid the tax more than once on the same wheat, upon furnishing proof of this to the commission, is entitled to a refund of the overpayment.

The commission, to inform the producer, shall develop and disseminate information and instructions relating to the purpose of the wheat tax and manner in

which refunds may be claimed, and to this extent shall cooperate with governmental agencies, state and federal, and private businesses engaged in the purchase of wheat.

SECTION 3. AMENDMENT. Subsection 6 of section 60-02-01 of the North Dakota Century Code is amended and reenacted as follows:

6. "Public warehouseman" means the person operating a public warehouse which that is located or doing business within this state, whether or not such owner or operator resides within this state or not. The term does not include a person who is permitted to sell seed under chapter 4-09, if that person does not store grain for the public and buys grain only for processing and subsequent resale as seed, or an authorized dealer or agent of a seed company holding a permit in accordance with section 4-09-14.4.

¹ **SECTION 4. AMENDMENT.** Subsection 6 of section 60-03-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

6. "Roving grain or hay buyer" means any person, other than a public warehouseman, who is in the business of buying grain or hay from the owner for resale or markets grain or hay on behalf of the owner. ~~"Roving grain or hay buyer"~~ The term does not include any:
 - a. A producer of grain or hay who purchases grain or hay from other producers to complete a carload or truckload in which the greater portion of the load is grain or hay grown by the producer.
 - b. A person who is permitted to sell seed under chapter 4-09, if that person buys grain only for processing and subsequent resale as seed.
 - c. A person who is an authorized dealer or agent of a seed company holding a permit in accordance with section 4-09-14.4.

Approved April 7, 1993
Filed April 8, 1993

¹ NOTE: Subsection 6 of section 60-03-01 was also amended by section 1 of House Bill No. 1134, chapter 587.

CHAPTER 53

HOUSE BILL NO. 1412
(Representatives Holm, Aarsvold, Grumbo)

SOYBEAN COUNCIL ELECTIONS

AN ACT to amend and reenact section 4-10.5-02 of the North Dakota Century Code, relating to North Dakota soybean council elections.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-10.5-02 of the North Dakota Century Code is amended and reenacted as follows:

4-10.5-02. North Dakota soybean council - Membership - Election - Term. ~~There is hereby established a North Dakota soybean council.~~ The North Dakota soybean council must be composed of one participating grower elected from each of the districts established in section 4-10.5-03. The chairman of the council must be a member of the council elected by a majority vote of the council. The commissioner is an ex officio member of the council. Every elected council member must be a ~~citizen of the state and a bona fide~~ resident of and participating grower in the district the member represents. The term of each elected member is three years, beginning on April first of the year of election, except that initially two members must be elected for three-year terms; three members must be elected for two-year terms; and three members must be elected for one-year terms as designated by the commissioner. If at any time during a member's term the member ceases to possess any of the qualifications provided for in this chapter, the member's office is deemed vacant and the council shall, by majority vote, appoint another qualified participating grower for the remainder of the term of the office vacated. The commissioner, or a county agent designated by the commissioner, in cooperation with the cooperative extension service, shall conduct all elections under this section in each district in the manner the commissioner deems fair and reasonable. ~~The first election must be held before August 15, 1985, and all~~ All elections thereafter must be conducted ~~between January fifteenth and no later than~~ April first of each year. No elected member of the council is eligible to serve more than two consecutive three-year terms.

Approved April 7, 1993
Filed April 8, 1993

CHAPTER 54

SENATE BILL NO. 2223
(Senators W. Stenehjem, Langley, Krebsbach)
(Representatives Gorman, Mahoney, Shide)

LIMITED LIABILITY COMPANY REVISIONS

AN ACT to create and enact chapter 10-06.1, subdivisions q and r to subsection 3 of section 10-19.1-10, a new subdivision to subsection 5 of section 10-19.1-10, a new subsection to section 10-19.1-14, a new subsection to section 10-19.1-21, a new subsection to section 10-19.1-22, two new subsections to section 10-19.1-50, sections 10-19.1-61.1, 10-19.1-73.1, a new subsection to section 10-19.1-80, a new subsection to section 10-19.1-91, sections 10-19.1-110.1, 10-19.1-113.1, 10-31-02.1, 10-31-03.1, 10-31-07.2, a new subdivision to subsection 1 of section 39-30-05, a new subsection to section 45-10.1-26, section 47-19-28.1, a new subsection to section 51-17-06, a new section to chapter 57-36, a new section to chapter 57-39.2, a new section to chapter 57-43.1, a new section to chapter 57-43.2, and section 61-13-03.1 of the North Dakota Century Code, relating to limited liability companies; to amend and reenact sections 4-11-03, 10-19.1-01, subsection 4 of section 10-19.1-10, sections 10-19.1-13, 10-19.1-15, 10-19.1-16, 10-19.1-18, subsection 22 of section 10-19.1-26, subsection 2 of section 10-19.1-32, subsection 1 of section 10-19.1-48, subdivision b of subsection 1 of section 10-19.1-51, subsections 3 and 4 of section 10-19.1-61, subdivision b of subsection 1 of section 10-19.1-63, subsection 3 of section 10-19.1-64, subsections 3 and 5 of section 10-19.1-65, subsections 1 and 2 of section 10-19.1-72, subsections 1 and 2 of section 10-19.1-73, section 10-19.1-74, subsection 7 of section 10-19.1-79, subsection 1 of section 10-19.1-80, section 10-19.1-84, subsections 1 and 3 of section 10-19.1-87, section 10-19.1-88, subdivision d of subsection 1 of section 10-19.1-89, subsections 1, 5, and 10 of section 10-19.1-91, subsection 1 of section 10-19.1-93, sections 10-19.1-96, 10-19.1-97, 10-19.1-98, subsection 1 of section 10-19.1-99, sections 10-19.1-100, 10-19.1-101, subsection 1 of section 10-19.1-103, subsection 3 of section 10-19.1-108, subsection 1 of section 10-19.1-109, sections 10-19.1-110, 10-19.1-115, 10-19.1-124, 10-31-01, 10-31-02, 10-31-03, 10-31-04, 10-31-05, 10-31-06, 10-31-07, 10-31-07.1, 10-31-08, 10-31-09, 10-31-10, 10-31-11, 10-31-12, 10-31-13, 10-31-13.1, 10-31-14, 12.1-03-02, 13-02.1-01, 13-03-06, 13-03.1-07, 13-05-03, 15-09-01, subdivision b of subsection 1 of section 21-11-02, subsection 2 of section 26.1-20.1-02, subdivision a of subsection 4 of section 26.1-31.1-02, section 26.1-33-35, subsection 4 of section 28-21-08, section 28-25-10, subsection 1 of section 30.1-29-10, sections 34-09-06, 34-13-03, subsection 1 of section 36-04-04, subsection 5 of section 43-15-35, subsection 2 of section 47-19-14.5, section 47-19-14.6, subdivision a of subsection 17 of section 52-01-01, subsection 4 of section 57-40.3-07, subsection 1 of section 57-43.1-14, section 57-43.1-16, subsection 8 of section 57-43.2-01, section 60-05-02, and subsection 15 of section 65-01-02 of the North Dakota Century Code, relating to limited liability companies; to provide for amendment of 677 sections of the North Dakota Century Code by reference and instructions to the legislative council; to repeal chapter 10-06, sections 10-19.1-49, 10-19.1-111, and 10-19.1-113 of

the North Dakota Century Code, relating to corporations; to provide a penalty; and to provide a contingent effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-11-03 of the North Dakota Century Code is amended and reenacted as follows:

4-11-03. Application for license - Contents. The application for license must be made to the commissioner in writing and under oath, and must set forth:

1. The place or places where the applicant intends to carry on the business for which the license is desired.
2. The estimated amount of business to be done monthly.
3. The amount of business done the preceding year, if any.
4. The full name of the persons constituting the firm if the applicant is a copartnership.
5. The name of the officers of the corporation and where it is incorporated if the applicant is a corporation.
6. The name of the managers of the limited liability company and where it is organized if the applicant is a limited liability company.
7. A financial statement showing in a general way the value and character of the assets and the amount of liabilities of the applicant.
- ~~7.~~ 8. Statements showing the applicant's eligibility for a similar license in other states in which he may have operated or is operating at the time of the application.

The fee for the license must accompany the application.

SECTION 2. Chapter 10-06.1 of the North Dakota Century Code is created and enacted as follows:

10-06.1-01. Definitions. For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Farming or ranching" means cultivating land for production of agricultural crops or livestock, or the raising or producing of livestock or livestock products, poultry or poultry products, milk or dairy products, or fruit or horticultural products. It does not include production of timber or forest products, nor does it include a contract whereby a processor or distributor of farm products or supplies provides grain, harvesting, or other farm services.
2. "Farming or ranching corporation" means a farm or ranch corporation, joint stock company, or association which, at all times, complies with the requirements of this chapter.

3. "Farming or ranching limited liability company" means a farm or ranch limited liability company which, at all times, complies with the requirements of this chapter.
4. "Nonprofit organization" means an organization or trust that has tax-exempt status under at least one of the following sections of the Internal Revenue Code:
 - a. An organization that was in existence on December 31, 1984, and that is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals under section 501(c)(3), or is a domestic fraternal organization under section 501(c)(10).
 - b. A charitable, religious, educational, or scientific organization classified as either a private foundation or as a public charity having status as an organization described in section 509(a)(1) or (3).
 - c. A trust described in section 4947 for which a deduction is allowable under section 170.

10-06.1-02. Farming or ranching by corporations and limited liability companies prohibited. All corporations and limited liability companies, except as otherwise provided in this chapter, are prohibited from owning or leasing land used for farming or ranching and from engaging in the business of farming or ranching. A corporation or a limited liability company may be a partner in a partnership that is in the business of farming or ranching only if that corporation or limited liability company complies with this chapter.

10-06.1-03. Retention of mineral interests prohibited. For land and minerals acquired after July 1, 1985, any corporation or limited liability company that acquires mineral interests through foreclosure or in lieu of foreclosure which were not specifically valued at the time the security interest in the minerals was acquired, and which is prohibited from owning or leasing land used in farming or ranching, is prohibited from retaining mineral interests in land used for farming or ranching when the corporation or limited liability company divests itself of the land, and the mineral interests must be passed with the surface estate of the land when the corporation or limited liability company divests itself of the land under this chapter.

10-06.1-04. Conversion of corporations. A business corporation organized under chapter 10-19.1 may convert to a farming or ranching corporation by adopting an amendment to its articles of incorporation which specifies that the corporation elects to be subject to this chapter and by complying with all requirements of this chapter. The amendment must be filed with the secretary of state with the prescribed fee and with the initial report required by section 10-06.1-15. A farming or ranching corporation may convert to a business corporation by adopting an amendment to its articles of incorporation. The amendment must be filed with the secretary of state with the prescribed fee. The amendment must be accompanied by a report outlining the information, as of the date of the amendment, which is required under section 10-06.1-17, and the manner in which the corporation has divested itself of its owned or leased land holdings and its business of farming or ranching.

10-06.1-05. Conversion of limited liability company. A domestic business limited liability company organized under chapter 10-32 may convert to a farming or ranching limited liability company by adopting an amendment to its articles of organization which specifies that the limited liability company elects to be subject to this chapter and by complying with all requirements of this chapter. The amendment must be filed with the secretary of state with the prescribed fee and with the initial report required by section 10-06.1-15. A farming or ranching limited liability company may convert to a domestic business limited liability company by adopting an amendment to its articles of organization. The amendment must be filed with the secretary of state with the prescribed fee. The amendment must be accompanied by a report outlining the information, as of the date of the amendment, which is required under section 10-06.1-17 and the manner in which the limited liability company has divested itself of its owned or leased land holdings and its business of farming or ranching.

10-06.1-06. Surface coal mining - Exception. A corporation or limited liability company not engaged in the business of farming or ranching may own or lease lands used for farming or ranching, when the business of such a corporation or limited liability company is the conducting of surface coal mining operations or related energy conversion, and when the owning or leasing of lands used for farming or ranching is reasonably necessary in the conduct of the business of surface coal mining or related energy conversion. When the necessity for owning or leasing of lands used for farming or ranching no longer exists, the exception provided in this section ceases and the corporation or limited liability company owning or leasing such lands is subject to this chapter.

10-06.1-07. Industrial and business purpose exception. A corporation or limited liability company that is not engaged in the business of farming or ranching may own or lease land used for farming or ranching when the land is necessary for residential or commercial development; the siting of buildings, plants, facilities, industrial parks, or similar business or industrial purposes of the corporation or limited liability company; or for uses supportive of or ancillary to adjacent nonagricultural land for the benefit of both land parcels. The farmland or ranchland while not being immediately used for any purpose of the corporation or limited liability company must be available to be leased by persons who farm or ranch as sole proprietorships or partnerships, or by corporations or limited liability companies allowed to engage in farming or ranching under section 10-06.1-12.

10-06.1-08. Cooperative corporations allowed to engage in the business of farming or ranching - Requirements. This chapter does not prohibit cooperative corporations, seventy-five percent of whose members or shareholders are actual farmers or ranchers residing on farms or ranches or depending principally on farming or ranching for their livelihood, from acquiring real estate and engaging in cooperative farming or ranching.

10-06.1-09. Certain nonprofit organizations or trusts may own or lease land - Certain nonprofit organizations may continue farming or ranching - Restriction on acquisition and ownership of land.

1. A nonprofit organization or a trust for the benefit of an individual or a class of individuals related within the degrees of kinship specified in subsection 2 of section 10-06.1-12 may own or lease farmland or ranchland if that land is leased to a person who farms or ranches the land as a sole

proprietorship or partnership, or a corporation or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.

2. To the extent farming or ranching is essential to a nonprofit organization's charitable purposes, a nonprofit organization actively engaged in the business of farming or ranching in this state on January 1, 1983, may continue to engage in the business of farming or ranching without interruption after January 1, 1983.
3. A nonprofit organization that owned farmland or ranchland for the preservation of unique historical, archaeological, or environmental land before January 1, 1983, may continue ownership of that land without interruption after January 1, 1983. An organization that is holding land for scenic preservation shall either prohibit all hunting, or if any parcel of the land is open to hunting, it must be open to hunting by the general public.

10-06.1-10. Acquisition of certain farmland or ranchland by certain nonprofit organizations. A nonprofit organization may acquire farmland or ranchland only in accordance with the following:

1. Unless it is permitted to own farmland or ranchland under section 10-06.1-09, the nonprofit organization must have been either incorporated in this state or issued a certificate of authority to do business in this state before January 1, 1985.
2. The land may be acquired only for the purpose of conserving natural areas and habitats for biota, and, after acquisition:
 - a. The land must be maintained and managed solely for the purpose of conserving natural area and habitat for biota.
 - b. Any agricultural use of the land is incidental to and in accordance with the management of the land for conservation and the agricultural use is by a sole proprietorship or partnership, or a corporation or limited liability company allowed to engage in farming or ranching under section 10-06.1-12.
 - c. If any parcel of the land is open to hunting, it must be open to hunting by the general public.
3. Before any farmland or ranchland may be purchased by any nonprofit organization for the purpose of conserving natural areas and habitats for biota, the governor must approve the proposed acquisition. A nonprofit organization that desires to purchase farmland or ranchland for the purpose of conserving natural areas and habitats for biota shall first submit a proposed acquisition plan to an advisory committee consisting of the director of the parks and outdoor recreation sites division, the state engineer, the commissioner of agriculture, the state forester, the director of the game and fish department, and the manager of the Garrison Diversion Conservancy District for acquisition plans containing lands within the Garrison Diversion Conservancy District, or their designees. The advisory committee shall review the proposed acquisition plan and shall make recommendations to the governor within thirty days after receipt of the proposed acquisition plan. The governor shall approve or

disapprove any proposed acquisition plan, or any part thereof, within thirty days after receipt of the recommendations from the advisory committee.

4. On failure to qualify to continue ownership under subsection 2, the land must be disposed of within five years of that failure to qualify.

10-06.1-11. Required divestiture of agricultural land. In addition to the divestiture requirements of sections 10-06.1-10 and 10-06.1-24, a nonprofit corporation that acquires land by gift or devise after December 31, 1984, the ownership of which is not permitted under this chapter, shall divest itself of the land within ten years after the acquisition. For purposes of this section, "ownership" means holding either fee or equitable title, unless fee title is held solely as security for payment of the purchase price, or unless fee title does not carry with it the right to immediate possession of the property. If the corporation fails to divest itself of the land within the required time, the attorney general shall take action under section 10-06.1-24.

10-06.1-12. Corporation or limited liability company allowed to engage in the business of farming or ranching - Requirements. This chapter does not prohibit a domestic corporation or a domestic limited liability company from owning real estate and engaging in the business of farming or ranching, if the corporation or limited liability company meets all the requirements of chapter 10-19.1, 10-23, or 10-32 which are not inconsistent with this chapter. The following requirements also apply:

1. If a corporation, the corporation must not have more than fifteen shareholders. If a limited liability company, the limited liability company must not have more than fifteen members.
2. Each shareholder or member must be related to each of the other shareholders or members within one of the following degrees of kinship or affinity: parent, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, first cousin, or the spouse of a person so related.
3. Each shareholder or member must be an individual or one of the following:
 - a. A trust for the benefit of an individual or a class of individuals who are related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.
 - b. An estate of a decedent who was related to every shareholder of the corporation or member of the limited liability company within the degrees of kinship or affinity specified in this section.
4. A trust or an estate may not be a shareholder or member if the beneficiaries of the trust or the estate together with the other shareholders or members are more than fifteen in number.
5. Each individual who is a shareholder or member must be a citizen of the United States or a permanent resident alien of the United States.

6. If a corporation, the officers and directors of the corporation must be shareholders who are actively engaged in operating the farm or ranch and at least one of its shareholders must be an individual residing on or operating the farm or ranch. If a limited liability company, the governors and managers of the limited liability company must be members who are actively engaged in operating the farm or ranch and at least one of its members must be an individual residing on or operating the farm or ranch.
7. An annual average of at least sixty-five percent of the gross income of the corporation or limited liability company over the previous five years, or for each year of its existence, if less than five years, must have been derived from farming or ranching operations.
8. The income of the corporation or limited liability company from nonfarm rent, nonfarm royalties, dividends, interest, and annuities cannot exceed twenty percent of the gross income of the corporation or limited liability company.

10-06.1-13. Applicability of North Dakota Business Corporation Act. Chapters 10-19.1 and 10-23 are applicable to farming or ranching corporations, which have the powers and privileges and are subject to the duties, restrictions, and liabilities of other business corporations except when inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with the provisions of chapters 10-19.1 and 10-23.

10-06.1-14. Applicability of North Dakota Limited Liability Company Act. Chapter 10-32, except those sections which pertain to foreign limited liability companies, is applicable to farming or ranching limited liability companies, which have the powers and privileges and are subject to the duties, restrictions, and liabilities of other business limited liability companies, except when inconsistent with the intent of this chapter. This chapter takes precedence in the event of any conflict with the provisions of chapter 10-32.

10-06.1-15. Initial report - Shareholder and member requirements.

1. Every farming or ranching corporation or limited liability company shall file an initial report with its articles of incorporation. The report must be signed by the incorporators or organizers and must contain the following:
 - a. The name of the corporation or limited liability company.
 - b. The address of the registered office of the corporation or limited liability company in this state and the name of its registered agent in this state at that address.
 - c. With respect to each shareholder or member:
 - (1) The name and address of each, including the names and addresses and relationships of trusts and estates that own shares or membership interests;
 - (2) The number of shares or membership interests or percentage of shares or membership interests owned by each;

10-06.1-17. Annual report - Contents - Filing requirements. Prior to April fifteenth of each year, every corporation engaged in farming or ranching after June 30, 1981, and every limited liability company engaged in farming or ranching shall file with the secretary of state a report executed by its president, a vice president, secretary, or treasurer containing all of the following information with respect to the preceding calendar year:

1. The name of the corporation or limited liability company.
2. The address of the registered office of the corporation or limited liability company in this state and the name of its registered agent in this state at that address.
3. With respect to each shareholder or member:
 - a. The name and address of each, including the names and addresses and relationships of beneficiaries of trusts and estates which own shares or membership interests;
 - b. The number of shares or membership interests or percentage of shares or membership interests owned by each;
 - c. The relationship of each;
 - d. A statement of whether each is a citizen or permanent resident alien of the United States; and
 - e. A statement of whether at least one is an individual residing on or operating the farm or ranch.
4. With respect to management:
 - a. If a corporation, then the names and addresses of the officers and members of the board of directors; or
 - b. If a limited liability company, then the names and addresses of the managers and members of the board of governors.
5. A statement listing the acreage [hectarage] and location listed by section, township, range, and county of all land in the state owned or leased by the corporation or limited liability company and used for farming or ranching. The statement must also designate which, if any, of the acreage [hectarage] is leased from or jointly owned with any shareholder or member and list the name of the shareholder or member with that acreage [hectarage].
6. A statement of the percentage of the annual average gross income of the corporation or limited liability company which has been derived from farming or ranching operations over the previous five years, or for each year of its existence if less than five years.
7. A statement of the percentage of gross income of the corporation or limited liability company derived from nonfarm rent, nonfarm royalties, dividends, interest, and annuities during the period covered by the report.

10-06.1-18. Reports of corporations and limited liability companies not engaged in farming or ranching. Any business or nonprofit corporation and any limited liability company not engaged in the business of farming or ranching which owns or leases a tract of land used for farming or ranching which is larger than twenty acres [8.09 hectares] in size shall file with the attorney general within twelve months of any transaction involving the purchase, sale, or surface leasing of such farmland or ranchland by that corporation or limited liability company, a report containing all of the following information:

1. The name of the corporation or limited liability company and its place of incorporation or organization and, if a nonprofit corporation, a copy of its section 501(c)(3) exemption letter from the internal revenue service.
2. The address of the registered office of the corporation or limited liability company in this state and the name and address of its registered agent in this state.
3. The acreage [hectarage] and location listed by section, township, range, and county of all such land in the state owned or leased by the corporation or limited liability company and used for farming or ranching.
4. The date and method of acquisition or disposal of such farmland or ranchland.

10-06.1-19. Exemption from certain disclosure and other requirements for certain organizations. Sections 10-06.1-12, 10-06.1-15, 10-06.1-17, and 10-06.1-18 do not apply to nonprofit organizations or to corporations or limited liability companies such as banks, trust companies, or foundations serving in a fiduciary capacity as the personal representative or trustee of an estate or trust for an individual described in subsection 2 of section 10-06.1-12.

10-06.1-20. Failure to file report - Penalty. Every corporation or limited liability company which fails to file any report required under this chapter or willfully files false information on any report required under this chapter is guilty of a class A misdemeanor.

10-06.1-21. Secretary of state to transmit information of noncompliance. If the secretary of state finds from the annual report that the corporation or limited liability company is not in compliance with the requirements of section 10-06.1-12, the secretary of state shall transmit such information to the attorney general and the governor.

10-06.1-22. Tax commissioner to compare returns and reports. Each year the tax commissioner shall select at random at least five percent of the income tax returns filed by corporations or limited liability companies which report on income from farming or ranching operations and shall compare such returns with the annual report required to be filed with the secretary of state by section 10-06.1-17 and shall forward any apparent violations to the attorney general and the governor.

10-06.1-23. Attorney general to conduct random compliance program. Each year the attorney general shall select at random at least five percent of the total number of corporations and limited liability companies authorized by this chapter for requests for information to determine compliance with this chapter. For such purpose, the attorney general may request affidavits, share transfer records,

certified copies of marriage licenses, birth certificates, deeds, leases, and such other records and documents necessary to determine compliance.

10-06.1-24. Enforcement - Penalty.

1. The register of deeds shall mail or deliver a copy of every instrument filed or recorded within thirty days after the instrument is recorded, to the attorney general if the instrument documents evidence of a lease agreement or purchase agreement pursuant to subsection 6 or 7 or if the instrument conveys the title to farmland or ranchland to a corporation or limited liability company. The attorney general shall commence an action in the district court of the county in which the substantial portion of farmland or ranchland used in violation of this chapter is situated if the attorney general has reason to believe that any person is violating this chapter. The attorney general shall file for record with the register of deeds of each county in which any portion of the land is located a notice of the pendency of the action. If the court finds that the land in question is being held in violation of this chapter, or that a corporation or limited liability company is conducting the business of farming or ranching in violation of this chapter, the court shall enter an order so declaring. The attorney general shall file any such order for record with the register of deeds of each county in which any portion of the land is located. Thereafter, the corporation or limited liability company shall, within the time set by the court not to exceed one year from the date of the court's final order, divest itself of any farming or ranching land owned or leased by it in violation of this chapter, and cease all farming or ranching operations. Any corporation or limited liability company that fails to comply with the court's order is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved or terminated by the secretary of state.
2. The divestment period is deemed to be a covenant running with the title to the land against any corporate or limited liability company grantee, corporate or limited liability company successor, or corporation or limited liability company assignee of the corporation or limited liability company not authorized to do business under this chapter.
3. Any land not divested within the divestment period prescribed must be sold at public sale in the manner prescribed by law for the foreclosure of real estate mortgage by action. In addition, any prospective or threatened violation may be enjoined by an action brought by the attorney general in the manner provided by law, including enjoining the corporation or limited liability company from completing performance on the remainder of any leasehold which is in violation of this chapter.
4. Subject to the divestiture requirements of subsections 5, 6, and 7, a domestic or foreign corporation or limited liability company may acquire farmland or ranchland as security for indebtedness, by process of law in the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.
5. Unless retention of the farmland or ranchland is permitted under subsection 6 or 7, all farmland or ranchland acquired as security for indebtedness, in the collection of debts, or by the enforcement of a lien

or claim shall be disposed of within three years after acquiring ownership, if the acquisition would otherwise violate this chapter.

6. The disposition requirement does not apply to a corporation or limited liability company that has acquired title to the land through the process of foreclosure of a mortgage, or a deed from a mortgagor instead of a foreclosure, if, by the expiration of one month after what is or what would have been the redemption period of the mortgage if the mortgage had been foreclosed, that corporation or limited liability company leases to the prior mortgagor from whom it was acquired, with an option to purchase, and if documents evidencing the lease agreement have been filed with the register of deeds of each county in which the land is located. A copy of a notice of lease is sufficient evidence. The exemption in this subsection applies for only five years and then only if the property has been appraised in accordance with subsection 8. The annual lease payments required of the tenant may not exceed seven percent of the appraised value.
7. The disposition requirement does not apply to a corporation or limited liability company that has acquired title to the land through the process of foreclosure of a mortgage, or a deed from the mortgagor instead of foreclosure, if, by the expiration of one month after what is or what would have been the redemption period of the mortgage if the mortgage had been foreclosed, that corporation or limited liability company contracts for the sale of the land to the prior mortgagor from whom it was acquired, and if documents evidencing the purchase agreement have been filed with the register of deeds of each county in which the land is located. A copy of a notice of the contract for deed is sufficient evidence. An exemption under this subsection is valid only if an appraisal has been made in accordance with subsection 8, and if it is valid, the exemption is unlimited in duration. The sale price may not exceed the price determined by the appraisers.
8. If an appraisal is required, the appraisal must be made by three independent appraisers, one selected by the corporation or limited liability company, one selected by the prior mortgagor, and the third selected by the first two appraisers.
9. If a corporation or limited liability company holds land pending divestiture, and the holding is not otherwise governed by this section, the land must be leased to persons actually engaged in farming or ranching and a disposal may not be to a corporation or limited liability company unless ownership by that corporation or limited liability company is authorized under this chapter.
10. Any corporation or limited liability company continuing to violate this chapter is subject to a civil penalty not to exceed twenty-five thousand dollars and may be dissolved or terminated by the attorney general in accordance with the laws of this state.

10-06.1-25. Private enforcement. This chapter may be enforced in the same manner as provided in section 10-06.1-24 by any corporation or limited liability company authorized to engage in farming or ranching by this chapter or any resident of legal age of a county in which the land owned or leased by a corporation or

limited liability company in violation of this chapter is located. If such action is successful, all costs of the action must be assessed against the defendant and a reasonable attorney fee must be allowed the plaintiff. If judgment is rendered for the defendant, such costs and a reasonable attorney fee for the defendant must be paid by the plaintiff.

10-06.1-26. Protection of minority shareholders. If a shareholder owns less than fifty percent of the shares of a farming or ranching corporation doing business under this chapter, and if the terms and conditions for the repurchase of those shares by the corporation or by the other shareholders are not set forth in the bylaws or the instrument which transferred the shares to the shareholder, or are not the subject of a shareholders' agreement or an agreement between that shareholder and the corporation, then the disposition of such shares must be determined by this section upon the withdrawal of the shareholder. Any shareholder who desires to withdraw from the corporation shall first offer the shares for sale to the remaining shareholders in proportion to the shares owned by them. In the event not all of the shareholders wish to purchase the shares, any one shareholder may purchase all of the shares of the withdrawing shareholder. In the event no shareholder desires to purchase the shares of a withdrawing shareholder, then the corporation may purchase the shares. If the corporation chooses not to purchase the shares of the withdrawing shareholder, then the withdrawing shareholder may sell the shares to any other person eligible to be a shareholder. If the withdrawing shareholder is unable to sell the shares to any other person eligible to become a shareholder, then the withdrawing shareholder may bring an action in district court to dissolve the corporation. Upon a finding that the withdrawing shareholder cannot sell the shares at a fair price, the court shall enter an order directing that the corporation itself or any or all of the remaining shareholders pro rata or otherwise shall have twelve months from the date of the court's order to purchase the shares of the withdrawing shareholder at a fair price as determined by the court and that if the shares of the withdrawing shareholder are not completely purchased at said price, the corporation shall be dissolved and the assets of the corporation shall be first used to pay all the liabilities of the corporation with the remaining net assets to be distributed pro rata to the shareholders in proportion to their ownership of shares. For the purpose of this section, a "fair" price for the shares of the withdrawing shareholder must be determined as though the shares were being valued for federal gift tax purposes under the Internal Revenue Code.

10-06.1-27. Protection of minority members. If a member owns less than fifty percent of the membership interest of a farming or ranching limited liability company doing business under this chapter, and if the terms and conditions for the repurchase of that membership interest by the limited liability company or by the other members are not set forth in the operating agreement, the instrument which transferred the membership interest to the member, or are not the subject of a business continuation agreement or an agreement between that member and the limited liability company, then the disposition of such membership interest must be determined by this section upon the withdrawal of the member. Any member who desires to withdraw from the limited liability company shall first offer the membership interest for sale to the remaining members in proportion to the membership interests owned by them. If not all of the members wish to purchase the membership interest, any one member can purchase all of the membership interest of the withdrawing member. If no member desires to purchase the membership interest of the withdrawing member, then the limited liability company itself may purchase the membership interest. If the limited liability company chooses not to purchase the

membership interest of the withdrawing member, then the withdrawing member may sell the membership interest to any other person eligible to be a member. In the event the withdrawing member is unable to sell the membership interest to any other person eligible to become a member, then the withdrawing member may bring an action in district court to terminate the limited liability company. Upon a finding that the withdrawing member cannot sell the membership interest at a fair price, the court shall enter an order directing that the limited liability company itself or any of the remaining members pro rata or otherwise, shall have twelve months from the date of the court's order to purchase the membership interest of the withdrawing member at a fair price as determined by the court and that if the membership interest of the withdrawing member is not completely purchased at said price, the limited liability company shall be dissolved and the assets of the limited liability company shall be first used to pay all liabilities of the limited liability company with the remaining net assets to be distributed pro rata to the members in proportion to their membership interest ownership. For the purpose of this section, a "fair" price for the membership interest of the withdrawing member must be determined as though the membership interest was being valued for federal gift tax purposes under the Internal Revenue Code.

SECTION 3. AMENDMENT. Section 10-19.1-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-01. Definitions. For the purposes of this chapter, unless the language or context clearly indicates that a different meaning is intended:

1. "Acquiring corporation" means the domestic or foreign corporation that acquires the shares of a corporation in an exchange.
2. "Address" means mailing address. In the case of a registered office or principal executive office, the term means the office address, which may not be a post-office box.
3. "Articles" means, ~~in~~
 - a. In the case of a corporation incorporated under or governed by this chapter, articles of incorporation, articles of amendment, a resolution of election to become governed by this chapter, a demand retaining the two-thirds majority for shareholder approval of certain transactions, a statement of change of registered office, registered agent, or name of registered agent, a statement establishing or fixing the rights and preferences of a class or series of shares, a statement of cancellation of authorized shares, articles of merger, articles of abandonment, and articles of dissolution.
 - b. In the case of a foreign corporation, the term includes all documents serving a similar function required to be filed with the secretary of state or other officer of the corporation's state of incorporation.
4. "Board or board of directors" means the board of directors of a corporation.
5. "Board member" means:
 - a. An individual serving on the board of directors in the case of a corporation; and

- b. An individual serving on the board of governors in the case of a limited liability company.
- ~~6.~~ 6. "Class", when used with reference to shares, means a category of shares that differs in designation or one or more rights or preferences from another category of shares of the corporation.
- ~~7.~~ 7. "Closely held corporation" means a corporation which does not have more than thirty-five shareholders.
- ~~7.~~ 8. "Constituent corporation" means a domestic or foreign corporation that is a party to a merger or exchange.
- ~~8.~~ 9. "Corporation" means a corporation, other than a foreign corporation, organized for profit and incorporated under or governed by this chapter.
- ~~9.~~ 10. "Director" means a member of the board.
- ~~10.~~ 11. "Distribution" means a direct or indirect transfer of money or other property, other than its own shares, with or without consideration, or an incurrence or issuance of indebtedness, by a corporation to any of its shareholders in respect of its shares. A distribution may be in the form of a dividend or a distribution in liquidation, or as consideration for the purchase, redemption, or other acquisition of its shares, or otherwise.
- ~~11.~~ 12. "Filed with the secretary of state" means that a signed original of a document, together with the fees provided in chapter 10-23, has been delivered to the secretary of state and has been determined by the secretary of state to conform to law. The secretary of state shall then endorse on the original the word "filed" and the month, day, and year, and record the document in the office of the secretary of state.
- ~~12.~~ 13. "Foreign corporation" means a corporation organized for profit that is incorporated under laws other than the laws of this state for a purpose for which a corporation may be incorporated under this chapter.
14. "Foreign limited liability company" means a limited liability company organized for profit that is organized under laws other than the laws of this state for a purpose for which a limited liability company may be organized under chapter 10-32.
15. "Good faith" means honesty in fact in the conduct of the act or transaction concerned.
- ~~13.~~ 16. "Intentionally" means that the person referred to either has a purpose to do or fail to do the act or cause the result specified or believes that the act or failure to act, if successful, will cause that result. A person "intentionally" violates a statute if the person intentionally does the act or causes the result prohibited by the statute, or if the person intentionally fails to do the act or cause the result required by the statute, even though the person may not know of the existence or constitutionality of the statute or the scope or meaning of the terms used in the statute.

- 14- 17. A person "knows" or has "knowledge" of a fact when the person has actual knowledge of it. A person does not "know" or have "knowledge" of a fact merely because the person has reason to know of the fact.
- 15- 18. "Legal representative" means a person empowered to act for another person, including an agent, manager, officer, partner, or associate of, an organization; a trustee of a trust; a personal representative; an executor of a will; an administrator of an estate; a trustee in bankruptcy; and a receiver, guardian, custodian, or conservator of the person or estate of a person.
19. "Limited liability company" means a limited liability company, other than a foreign limited liability company, organized under chapter 10-32.
- 16- 20. "Notice" is given by a shareholder of a corporation to the corporation or an officer of the corporation when in writing and mailed or delivered to the corporation or the officer at the registered office or principal executive office of the corporation.
- a. In all other cases, "notice" is given to a person when:
- (1) When mailed to the person at an address designated by the person or at the last known address of the person; or when
 - (2) When handed to the person; or when
 - (3) When left at the office of the person with a clerk or other person in charge of the office; or if
 - (a) If there is no one in charge, when left in a conspicuous place in the office; or if
 - (b) If the office is closed or the person to be notified has no office, when left at the dwelling house or usual place of abode of the person with some person of suitable age and discretion then residing therein.
- b. Notice by mail is given when deposited in the United States mail with sufficient postage affixed.
- c. Notice is deemed received when it is given.
- 17- 21. "Officer" means a person elected, appointed, or otherwise designated as an officer by the board, and any other person deemed elected as an officer pursuant to section 10-19.1-56.
- 18- 22. "Organization" means a domestic or foreign corporation, limited liability company, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.
- 19- 23. "Outstanding shares" means all shares duly issued and not reacquired by a corporation.
24. "Owners" means:

- a. Shareholders in the case of a corporation; and
 - b. Members in the case of a limited liability company.
- ~~25.~~ 26. "Ownership interests" means:
- a. Shares in the case of a corporation; and
 - b. Membership interests in the case of a limited liability company.
- ~~20-~~ 26. "Parent" of a specified corporation means a corporation or limited liability company that directly, or indirectly through related corporations or limited liability companies, owns more than fifty percent of the voting power of the shares entitled to vote for directors of the specified corporation.
- ~~21-~~ 27. "Person" includes an individual and an organization.
- ~~22-~~ 28. "Principal executive office" means an office where the elected or appointed president of a corporation has an office. If the corporation has no elected or appointed president "principal executive office" means the registered office of the corporation.
- ~~23-~~ 29. "Related corporation" of a specified corporation means a parent or subsidiary of the specified corporation or another subsidiary of a parent of the specified corporation.
- ~~24-~~ 30. "Security" has the meaning given it in subsection ~~12~~ 13 of section 10-04-02.
- ~~25-~~ 31. "Series" means a category of shares, within a class of shares authorized or issued by a corporation by or pursuant to its articles, that have some of the same rights and preferences as other shares within the same class, but that differ in designation or one or more rights and preferences from another category of shares within that class.
- ~~26-~~ 32. "Share" means one of the units, however designated, into which the shareholders' proprietary interests in a corporation are divided.
- ~~27-~~ 33. "Shareholder" means a person registered on the books or records of a corporation or its transfer agent or registrar as the owner of whole or fractional shares of the corporation.
- ~~28-~~ 34. "Signed" means that the signature of a person has been placed on a document, as provided in subsection 39 of section 41-01-11, and, with respect to a document required by this chapter to be filed with the secretary of state, means that the document has been signed by a person authorized to do so by this chapter, the articles or bylaws, or a resolution approved by the affirmative vote of the required proportion or number of the directors or the holders of the required proportion or number of the voting power of the shares present and entitled to vote. A signature on a document not required by this chapter to be filed with the secretary of state may be a facsimile affixed, engraved, printed, placed, stamped with indelible ink, or in any other manner reproduced on the document.

- ~~29-~~ 35. "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
- ~~30-~~ 36. "Subsidiary" of a specified corporation means a:
- a. A corporation having more than fifty percent of the voting power of its shares entitled to vote for directors owned directly, or indirectly through related corporations or limited liability companies, by the specified corporation; or
 - b. A limited liability company having more than fifty percent of the voting power of its membership interests entitled to vote for governors owned directly, or indirectly through related limited liability companies or corporations, by the specified limited liability company.
- ~~31-~~ 37. "Surviving corporation" means the domestic or foreign corporation resulting from a merger.
- ~~32-~~ 38. "Vote" includes authorization by written action.
- ~~33-~~ 39. "Written action" means a written document signed by all of the persons required to take the action described. The term also means the counterparts of a written document signed by any of the persons taking the action described. Each counterpart constitutes the action of the person signing it, and all the counterparts, taken together, constitute one written action by all of the persons signing them.

SECTION 4. Subdivisions q and r to subsection 3 of section 10-19.1-10 of the North Dakota Century Code are created and enacted as follows:

- q. Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 3 of section 10-19.1-77.
- r. The board may effect share dividends, divisions, and combinations under certain circumstances without shareholder approval as provided in section 10-19.1-61.1.

SECTION 5. AMENDMENT. Subsection 4 of section 10-19.1-10 of the North Dakota Century Code is amended and reenacted as follows:

4. The following provisions govern a corporation unless modified either in the articles or in the bylaws:
 - a. Directors serve for an indefinite term that expires upon the election and qualification of a successor as provided in section 10-19.1-35.
 - b. The compensation of directors is fixed by the board as provided in section 10-19.1-37.
 - c. The method provided in section 10-19.1-41 must be used for removal of directors.
 - d. The method provided in section 10-19.1-42 must be used for filling board vacancies.

- e. If the board fails to select a place for a board meeting, it must be held at the principal executive office as provided in subsection 1 of section 10-19.1-43.
- f. A director may call a board meeting, and the notice of the meeting need not state the purpose of the meeting as provided in subsection 3 of section 10-19.1-43.
- g. A majority of the board is a quorum for a board meeting as provided in section 10-19.1-45.
- h. A committee must consist of one or more persons, who need not be directors, appointed by affirmative vote of a majority of the directors present as provided in subsection 2 of section 10-19.1-48.
- i. The board may establish a special litigation committee of disinterested persons as provided in section ~~10-19.1-49~~ 10-19.1-48.
- j. Officers may delegate some or all of their duties and powers, if not prohibited by the board from doing so as provided in section 10-19.1-59.
- k. Regular meetings of shareholders need not be held, unless demanded by a shareholder under certain conditions as provided in section 10-19.1-71.
- l. No fewer than ten nor more than fifty days' notice is required for a meeting of shareholders as provided in subsection 2 of section 10-19.1-73.
- m. The number of shares required for a quorum at a shareholders' meeting is a majority of the voting power of the shares entitled to vote at the meeting as provided in section 10-19.1-76.
- n. The board may fix a date up to fifty days before the date of a shareholders' meeting as the date for the determination of the holders of shares entitled to notice of an entitled to vote at the meeting as provided in subsection 1 of section 10-19.1-77.
- o. ~~Each share has one vote unless otherwise provided in the terms of the share as provided in subsection 3 of section 10-19.1-77.~~
- ~~p.~~ Indemnification of certain persons is required as provided in section 10-19.1-91.
- ~~q.~~ p. The board may authorize, and the corporation may make, distributions not prohibited, limited, or restricted by an agreement as provided in subsection 1 of section 10-19.1-92.

SECTION 6. A new subdivision to subsection 5 of section 10-19.1-10 of the North Dakota Century Code is created and enacted as follows:

A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles as provided in section 10-19.1-50.

SECTION 7. AMENDMENT. Section 10-19.1-13 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-13. Corporate name.

1. The corporate name:

- a. Must be in the English language or in any other language expressed in English letters or characters.
- b. Must contain the word "corporation", "incorporated", or "limited", or must contain an abbreviation of one or more of these words, or the word "company" or the abbreviation "Co." but that word or abbreviation may not be immediately preceded by the word "and" or the character "&".
- c. May not contain a word or phrase that indicates or implies that it is incorporated for a purpose other than one or more business purposes for which a corporation may be incorporated under this chapter.
- d. May not be the same as, or deceptively similar to, the name of a domestic or a foreign corporation, limited liability company, or limited partnership, whether profit or nonprofit, authorized to do business in this state, or a name the right to which is, at the time of incorporation, reserved in the manner provided in section 10-19.1-14 or is a fictitious name registered with the office of the secretary of state in the manner provided in chapter 45-11 or is a trade name registered with the office of the secretary of state in the manner provided in chapter 47-25, unless there is filed with the articles:
 - (1) The written consent of the domestic or foreign corporation, limited liability company, limited partnership, or partnership authorized to do business in this state having a deceptively similar name or the holder of a reserved name or registered trade name to use the deceptively similar name; or
 - (2) A certified copy of a judgment of a court in this state establishing the prior right of the applicant to the use of the name in this state.

This subsection does not affect the right of a domestic corporation existing on July 1, 1985, or a foreign corporation authorized to do business in this state on that date to continue the use of its name.

2. The secretary of state shall determine whether a corporate name is "deceptively similar" to another name for purposes of this chapter.
3. This section and section 10-19.1-14 do not abrogate:
 - a. Abrogate or limit ~~the~~:
 - (1) The law of unfair competition or unfair practices, nor ~~chapter~~
 - (2) Chapter 47-25, nor ~~the~~

(3) The laws of the United States with respect to the right to acquire and protect copyrights, trade names, trademarks, service names, service marks, or any

(4) Any other rights to the exclusive use of names or symbols, nor derogate

b. Derogate the common law or the principles of equity.

4. A corporation that is merged with another domestic or foreign corporation, or that is incorporated by the reorganization of one or more domestic or foreign corporations, or that acquires by sale, lease, or other disposition to or exchange with a domestic corporation all or substantially all of the assets of another domestic or foreign corporation including its name, may have the same name as that used in this state by any of the other corporations, if the other corporation was incorporated under the laws of, or is authorized to transact business in, this state.
5. The use of a name by a corporation in violation of this section does not affect or vitiate its corporate existence, but a court in this state may, upon application of the state or of an interested or affected person, enjoin the corporation from doing business under a name assumed in violation of this section, although its articles may have been filed with the secretary of state and a certificate of incorporation issued.
6. A corporation that is involuntarily dissolved by the secretary of state pursuant to section 10-23-02.2 may reacquire the right to use that name by refiling articles of incorporation pursuant to section 10-19.1-11, unless the name has been adopted for use or reserved by another person, in which case the filing will be rejected unless the filing is accompanied by a written consent or judgment pursuant to subdivision d of subsection 1. A corporation which cannot reacquire the use of its corporate name shall adopt a new corporate name which complies with the provisions of this section.

SECTION 8. A new subsection to section 10-19.1-14 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

The right to the exclusive use of a corporate name reserved pursuant to this section may be canceled by or on behalf of the applicant for whom the name was reserved by filing with the secretary of state a notice of the cancellation, together with the fees provided in chapter 10-23.

SECTION 9. AMENDMENT. Section 10-19.1-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-15. Registered office - Registered agent.

1. A corporation shall continuously maintain a registered office in this state. A registered office need not be the same as the principal place of business or the principal executive office of the corporation.
2. A corporation shall designate in its articles a registered agent. The registered agent may be an individual residing in this state, a domestic corporation or limited liability company, or a foreign corporation or or

foreign limited liability company authorized to transact business in this state. The registered agent shall maintain a business office that is identical with the registered office. Proof of the registered agent's consent to serve in that capacity must be filed with the secretary of state, together with the fees provided in chapter 10-23.

SECTION 10. AMENDMENT. Section 10-19.1-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹ **10-19.1-16. Change of registered office or registered agent - Change of name of registered agent.**

1. A corporation may change its registered office, change its registered agent, or state a change in the name of its registered agent by filing with the secretary of state, along with the fees provided in chapter 10-23, a statement containing:
 - a. The name of the corporation.
 - b. ~~The present record address of its registered office.~~
 - c. ~~The name of its registered agent.~~
 - d. If the address of its registered office is to be changed, the new address of its registered office.
 - e. c. If its registered agent is to be changed, the name of its new registered agent.
 - f. d. If the name of its registered agent is to be changed, the name of its registered agent as changed.
 - g. e. A statement that the address of its registered office and the address of the business office of its registered agent, as changed, will be identical.
 - h. f. A statement that the change of registered office or registered agent was authorized by resolution approved by the board.
2. A registered agent of a corporation may resign by filing with the secretary of state a signed written notice of resignation, including a statement that a signed copy of the notice has been given to the corporation at its principal executive office or to a legal representative of the corporation. The appointment of the agent terminates thirty days after the notice is filed with the secretary of state.
3. If the business address or the name of a registered agent changes, the agent shall change the address of the registered office or the name of the registered agent, as the case may be, of each corporation represented by that agent by filing with the secretary of state a statement as required in subsection 1, except that it need be signed only by the registered

¹ NOTE: Section 10-19.1-16 was also amended by section 1 of House Bill No. 1506, chapter 91.

agent, need not be responsive to subdivision e c or h f, and must state that a copy of the statement has been mailed to each of those corporations or to the legal representative of each of those corporations.

SECTION 11. AMENDMENT. Section 10-19.1-18 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-18. Procedure for amendment before issuance of shares. Before the issuance of shares by a corporation, the articles may be amended pursuant to section 10-19.1-30 by the incorporators or by the board. The articles may be amended by the board to change a statement pursuant to subsection 3 of section 10-19.1-61, establishing or fixing the rights and preferences of a class or series of shares before the issuance of any shares of that class or series.

SECTION 12. A new subsection to section 10-19.1-21 of the North Dakota Century Code is created and enacted as follows:

A statement that the amendment has been adopted pursuant to this chapter.

SECTION 13. A new subsection to section 10-19.1-22 of the North Dakota Century Code is created and enacted as follows:

When effective under section 10-19.1.24, an amendment restating the articles in their entirety supersedes the original articles and all amendments to the original articles.

SECTION 14. AMENDMENT. Subsection 22 of section 10-19.1-26 of the North Dakota Century Code is amended and reenacted as follows:

22. A corporation shall indemnify those persons identified in section 10-19.1-91 against certain expenses and liabilities only as provided in section 10-19.1-91 and may indemnify other persons.

SECTION 15. AMENDMENT. Subsection 2 of section 10-19.1-32 of the North Dakota Century Code is amended and reenacted as follows:

2. The holders of the shares entitled to vote for directors of the corporation may, by unanimous affirmative vote, take any action that this chapter requires or permits the board to take ~~or the shareholders to take after action or approval of the board.~~ As to an action taken by the shareholders in that manner:

- a. The directors have no duties, liabilities, or responsibilities as directors under this chapter with respect to or arising from the action.
- b. The shareholders collectively and individually have all of the duties, liabilities, and responsibilities of directors under this chapter with respect to and arising from the action.
- c. If the action relates to a matter required or permitted by this chapter or by any other law to be approved or adopted by the board, either with or without approval or adoption by the shareholders, the action is deemed to have been approved or adopted by the board.

- d. A requirement that an instrument filed with a governmental agency contain a statement that the action has been approved and adopted by the board is satisfied by a statement that the shareholders have taken the action under this subsection.

SECTION 16. AMENDMENT. Subsection 1 of section 10-19.1-48 of the North Dakota Century Code is amended and reenacted as follows:

1. A resolution approved by the affirmative vote of a majority of the board may establish committees having the authority of the board in the management of the business of the corporation only to the extent provided in the resolution. Committees may include a special litigation committee consisting of one or more independent directors or other independent persons to consider legal rights or remedies of the corporation and whether those rights or remedies should be pursued. Committees other than special litigation committees are subject at all times to the direction and control of the board, except as provided in section 10-19.1-49.

SECTION 17. Two new subsections to section 10-19.1-50 of the North Dakota Century Code are created and enacted as follows:

A director's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director may be eliminated or limited in the articles. The articles may not eliminate or limit the liability of a director:

- a. For any breach of the director's duty of loyalty to the corporation or its shareholders;
- b. For acts or omissions not in good faith or that involve intentional misconduct or a knowing violation of law;
- c. Under section 10-19.1-95 or 10-04-17;
- d. For any transaction from which the director derived an improper personal benefit; or
- e. For any act or omission occurring prior to the date when the provision in the articles eliminating or limiting liability becomes effective.

In discharging the duties of the position of director, a director may, in considering the best interests of the corporation, consider the interests of the corporation's employees, customers, suppliers, and creditors, the economy of the state and nation, community and societal considerations, and the long-term as well as the short-term interests of the corporation and its shareholders including the possibility that these interests may be best served by the continued independence of the corporation.

SECTION 18. AMENDMENT. Subdivision b of subsection 1 of section 10-19.1-51 of the North Dakota Century Code is amended and reenacted as follows:

- b. The material facts as to the contract or transaction and as to the director's or directors' interest are fully disclosed or known to the

shareholders and the contract or transaction is approved in good faith by the holders of a majority of the outstanding shares, but shares owned by the interested director or directors shall not be counted in determining the presence of a quorum and shall not be voted:

- (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested director or directors, or
- (2) The unanimous affirmative vote of the holder of all outstanding shares, whether or not entitled to vote;

SECTION 19. AMENDMENT. Subsections 3 and 4 of section 10-19.1-61 of the North Dakota Century Code are amended and reenacted as follows:

3. Subject to any restrictions in the articles, the power granted in subsection 2 may be exercised by a resolution approved by the affirmative vote of a majority of the directors present establishing a class or series, setting forth the designation of the class or series, and fixing the relative rights and preferences of the class or series. Any of the rights and preferences of a class or series:

- a. May be made dependent upon facts ascertainable outside the articles, or outside the resolution or resolutions establishing the class or series, provided that the manner in which the facts operate upon the rights and preferences of the class or series is clearly and expressly set forth in the articles or in the resolution or resolutions establishing the class or series; and
- b. May incorporate by reference some or all of the terms of any agreements, contracts, or other arrangements entered into by the issuing corporation in connection with the establishment of the class or series if the corporation retains at its principal executive office, a copy of the agreements, contracts, or other arrangements or portions incorporated by reference.

4. A statement executed by an officer setting forth the name of the corporation and the text of the resolution and certifying the adoption of the resolution and the date of adoption must be filed ~~in duplicate original~~ with the secretary of state, together with the fees provided in chapter 10-23, before the issuance of any shares for which the resolution creates rights or preferences not set forth in the articles. The resolution is effective when the statement has been filed with the secretary of state unless the statement specifies a later effective date within thirty days of filing the statement with the secretary of state.

SECTION 20. Section 10-19.1-61.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-61.1. Share dividends, divisions, and combinations.

1. A corporation may effect a share dividend or a division or combination of its shares as provided in this section. As used in this section, the terms "division" and "combination" mean dividing or combining shares of

any class or series, whether issued or unissued, into a greater or lesser number of shares of the same class or series.

2. Articles of amendment must be adopted by the board and the shareholders under sections 10-19.1-19 and 10-19.1-20 to effect a division or combination if, as a result of the proposed division or combination:
 - a. The rights or preferences of the holders of outstanding shares of any class or series will be adversely affected; or
 - b. The percentage of authorized shares remaining unissued after the division or combination will exceed the percentage of authorized shares that were unissued before the division or combination.

For purposes of this subsection, an increase or decrease in the relative voting rights of the shares that are the subject of the division or combination that arises solely from the increase or decrease in the number of shares outstanding is not an adverse effect on the outstanding shares of any class or series or any increase in the percentage of authorized shares remaining unissued arising solely from the elimination of fractional shares under section 10-19.1-68 must be disregarded.

3. If a division or combination is effected under this subdivision, articles of amendment must be prepared that contain the information required by section 10-19.1-21.
4. Subject to the restrictions provided in subsections 2 and 3 or any restrictions in the articles, a share dividend, division, or combination may be effected by action of the board alone, without the approval of shareholders under sections 10-19.1-19 and 10-19.1-20. In effecting a division or combination under this subsection, the board may amend the articles to increase or decrease the par value of shares, increase or decrease the number of authorized shares, and make any other change necessary or appropriate to assure that the rights or preferences of the holders of outstanding shares of any class or series will not be adversely affected by the division or combination.
5. If a division or combination that includes an amendment of the articles is effected under subsection 4, then articles of amendment must be prepared that contain the information required by section 10-19.1-21 and a statement that the amendment will not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and will not result in the percentage of authorized shares that remains unissued after the division or combination exceeding the percentage of authorized shares that were unissued before the division or combination.

SECTION 21. AMENDMENT. Subdivision b of subsection 1 of section 10-19.1-63 of the North Dakota Century Code is amended and reenacted as follows:

- b. ~~Upon authorization by resolution approved by the affirmative vote of a majority of the directors present or approved by the affirmative vote of the holders of a majority of the voting power of the shares present in accordance with section 10-19.1-61.1, the corporation may, without any new or additional consideration, issue its own shares in exchange for or in conversion of its outstanding shares, or issue its~~

own shares pro rata to its shareholders or the shareholders of one or more classes or series, to effectuate share dividends ~~or splits, including reverse share splits, divisions, or combinations.~~ No shares of a class or series, shares of which are then outstanding, may be issued to the holders of shares of another class or series, except in exchange for or in conversion of outstanding shares of the other class or series, unless the issuance either is expressly provided for in the articles or is approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all shares of the same class or series as the shares to be issued.

SECTION 22. AMENDMENT. Subsection 3 of section 10-19.1-64 of the North Dakota Century Code is amended and reenacted as follows:

3. A corporation may issue rights to purchase ~~if:~~
 - a. ~~Shares issuable upon the exercise of all outstanding rights to purchase, including the rights to purchase that are to be issued, are authorized under subsection 1 of section 10-19.1-10, and are unissued; and~~
 - b. The after the terms, provisions, and conditions of the rights to purchase to be issued, including the conversion basis or the price at which securities may be purchased or subscribed for, are fixed by the board, subject to any restrictions in the articles.

SECTION 23. AMENDMENT. Subsections 3 and 5 of section 10-19.1-65 of the North Dakota Century Code are amended and reenacted as follows:

3. A shareholder has a preemptive right whenever the corporation proposes to issue new or additional shares or rights to purchase shares of the same class or series as ~~those the series held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder,~~ new or additional securities other than shares, or rights to purchase securities other than shares, that are exchangeable for, convertible into, or carry a right to acquire new or additional shares of the same class or series as those held by the shareholder or, if a class of shares has no series, the same class as the class held by the shareholder.
5. The fraction of the new issue that each shareholder may acquire by exercise of a preemptive right is the ratio that the number of shares of that class or series owned by the shareholder before the new issue bears to the total number of shares of that class or series issued and outstanding before the new issue. ~~For purposes of determining pursuant to this subsection the total number of shares of a class or series issued and outstanding at a particular time, all shares of that class or series issuable upon a conversion or exchange or upon the exercise of rights to purchase are considered issued and outstanding at that time.~~

SECTION 24. AMENDMENT. Subsections 1 and 2 of section 10-19.1-72 of the North Dakota Century Code are amended and reenacted as follows:

1. Special meetings of the shareholders may be called for any purpose or purposes at any time, by:

- a. The president;
 - b. Two or more directors;
 - c. A person authorized in the articles or bylaws to call special meetings; or
 - d. A shareholder or shareholders holding ten percent or more of the voting power of all shares entitled to vote, except that a special meeting for the purpose of considering any action to directly or indirectly facilitate or effect a business combination, including any action to change or otherwise affect the composition of the board of directors for that purpose, must be called by twenty-five percent or more of the voting power of all shares entitled to vote.
2. ~~A shareholder or shareholders holding five percent or more of the voting power of all shares entitled to vote the voting power specified in subdivision d of subsection 1~~ may demand a special meeting of shareholders by written notice of demand given to the president or secretary of the corporation and containing the purposes of the meeting. Within thirty days after receipt by one of those officers of the demand, the board shall cause a special meeting of shareholders to be called and held on notice no later than ninety days after receipt of the demand. If the board fails to cause a special meeting to be called as required by this subsection, the shareholder or shareholders making the demand may call the special meeting by giving notice as required by section 10-19.1-73. All necessary expenses of the notice and the meeting shall be paid by the corporation.

SECTION 25. AMENDMENT. Subsections 1 and 2 of section 10-19.1-73 of the North Dakota Century Code are amended and reenacted as follows:

1. ~~Notice~~ Except as otherwise provided in this chapter, notice of all meetings of shareholders must be given to every holder of shares entitled to vote, except where the meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment unless:
 - a. The meeting is an adjourned meeting and the date, time, and place of the meeting were announced at the time of adjournment; or
 - b. The following have been mailed by first-class mail to a shareholder at the address in the corporate records and returned nondeliverable:
 - (1) Two consecutive annual meeting notices and notices of any special meetings held during the period between the two annual meetings; or
 - (2) All payments of dividends, provided there were at least two sent during a twelve-month period.

An action or meeting that is taken or held without notice under subdivision b has the same force and effect as if notice was given. If the shareholder delivers a written notice of the shareholder's current address to the corporation, the notice requirement is reinstated.

2. The If a specific minimum notice period has not otherwise been fixed by law, the notice must be given at least ten days before the date of the meeting, or a shorter time provided in the articles or bylaws, and not more than fifty days before the date of the meeting.

SECTION 26. Section 10-19.1-73.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-73.1. Electronic communications.

1. A conference among the shareholders by any means of communication through which the shareholders may simultaneously hear each other during the conference constitutes a regular or special meeting of shareholders:
 - a. If the same notice is given of the conference to every holder of shares entitled to vote as would be required by this chapter for a meeting; and
 - b. If the number of shares held by the shareholders participating in the conference would be sufficient to constitute a quorum at a meeting.

Participation in a conference by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-19.1-80 are met.

2. A shareholder may participate in a regular or special meeting of shareholders not described in subsection 1 by any means of communication through which the shareholder, other shareholders so participating, and all shareholders physically present at the meeting may simultaneously hear each other during the meeting. Participation in a meeting by that means constitutes presence at the meeting in person or by proxy if all the other requirements of section 10-19.1-80 are met.
3. Waiver of notice of a meeting by means of communication described in subsections 1 and 2 may be given in the manner provided in subsection 4 of section 10-19.1-73. Participation in a meeting by means of communications described in subsections 1 and 2 is a waiver of notice of that meeting, except where the shareholder objects at the beginning of the meeting to the transaction of business because the meeting is not lawfully called or convened, or objects before a vote on an item of business because the item may not lawfully be considered at the meeting and does not participate in the consideration of the item at that meeting.

SECTION 27. AMENDMENT. Section 10-19.1-74 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-74. Act of the shareholders.

1. The shareholders shall take action by the affirmative vote of the holders of a majority of the voting power of the shares present and entitled to vote, except where this chapter or the articles require a larger proportion or number the greater of:
 - a. A majority of the voting power of the shares present and entitled to vote on that item of business; or

b. A majority of the voting power of the minimum number of shares entitled to vote that would constitute a quorum for the transaction of business at the meeting, except where this chapter or the articles require a larger proportion or number.

If the articles require a larger proportion or number than is required by this chapter for a particular action, the articles control.

2. In any case where a class or series of shares is entitled by this chapter, the articles, the bylaws, or the terms of the shares to vote as a class or series, the matter being voted upon must also receive the affirmative vote of the holders of the same proportion of the shares present of that class or series as is required pursuant to subsection 1, unless the articles require a larger proportion. Unless otherwise stated in the articles or bylaws in the case of voting as a class, the minimum percentage of the number of shares of the class or series which must be present shall be equal to the minimum percentage of all outstanding shares entitled to vote required to be present under section 10-19.1-76.

SECTION 28. AMENDMENT. Subsection 7 of section 10-19.1-79 of the North Dakota Century Code is amended and reenacted as follows:

7. A shareholder whose shares are pledged may vote those shares until the shares are registered in the name of the pledgee. If the corporation pledges its own shares under subsection 1 of section 10-19.1-93, the corporation shall not be entitled to vote the shares at a meeting or otherwise.

SECTION 29. AMENDMENT. Subsection 1 of section 10-19.1-80 of the North Dakota Century Code is amended and reenacted as follows:

1. A shareholder may cast or authorize the casting of a vote by filing a written appointment of a proxy with an officer of the corporation at or before the meeting at which the appointment is to be effective. A written appointment of a proxy may be signed by the shareholder or authorized by the shareholder by transmission of a telegraph, cablegram, or other means of electronic transmission. However, the telegram, cablegram, or other means of electronic transmission must set forth or be submitted with information from which it can be determined that the telegram, cablegram, or other electronic transmission was authorized by the shareholder. Any reproduction of the writing or transmission may be substituted or used in lieu of the original writing or transmission for any purpose for which the original transmission could be used, provided that the copy, facsimile, telecommunication, or other reproduction is a complete and legible reproduction of the entire original writing or transmission. An appointment of a proxy for shares held jointly by two or more shareholders is valid if signed by any one of them, unless the corporation receives from any one of those shareholders written notice either denying the authority of that person to appoint a proxy or appointing a different proxy.

SECTION 30. A new subsection to section 10-19.1-80 of the North Dakota Century Code is created and enacted as follows:

If a proxy is given authority by a shareholder to vote on less than all items of business considered at a meeting of shareholders, the shareholder is considered to be present and entitled to vote by the proxy for purposes of subsection 1 of section 10-19.1-74, only with respect to those items of business for which the proxy has authority to vote. A proxy who is given authority by a shareholder who abstains with respect to an item of business is considered to have authority to vote on the item of business for purposes of this subsection.

SECTION 31. AMENDMENT. Section 10-19.1-84 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-84. Books and records - Inspection.

1. A corporation shall keep at its principal executive office, or at another place or places within the United States determined by the board, a share register not more than one year old, containing the names and addresses of the shareholders and the number and classes of shares held by each shareholder. A corporation shall also keep, at its principal executive office, or at another place or places within the United States determined by the board, a record of the dates on which certificates were issued.
2. A corporation shall keep at its principal executive office, or, if its principal executive office is outside of this state, shall make available at its registered office within ten days after receipt by an officer of the corporation of a written demand for them made by a person described in subsection 4 or 5 originals or copies of:
 - a. Records of all proceedings of shareholders for the last three years;
 - b. Records of all proceedings of the board for the last three years;
 - c. Its articles and all amendments currently in effect;
 - d. Its bylaws and all amendments currently in effect;
 - e. Financial statements required by section 10-19.1-85 and the financial statement for the most recent interim period prepared in the course of the operation of the corporation for distribution to the shareholders or to a governmental agency as a matter of public record;
 - f. Reports made to shareholders generally within the last three years;
 - g. A statement of the names and usual business addresses of its directors and principal officers;
 - h. Voting trust agreements described in section 10-19.1-81; ~~and~~
 - i. Shareholder control agreements described in section 10-19.1-83; and
 - j. A copy of agreements, contracts, or other arrangements or portions of them incorporated by reference under subsection 3 of section 10-19.1-61.
3. A corporation shall keep appropriate and complete financial records.

4. A shareholder or a holder of a voting trust certificate of a corporation that is not a publicly held corporation has an absolute right, upon written demand, to examine and copy, in person or by a legal representative, at any reasonable time:
 - a. The share register; and
 - b. All documents referred to in subsection 2.
5. ~~A shareholder for at least six months immediately preceding the shareholder's demand or who is the holder of record of at least five percent of all the outstanding shares of the corporation~~ of a corporation that is not a publicly held corporation has a right, upon written demand, to examine and copy, in person or by a legal representative, other corporate records at any reasonable time only if the shareholder, beneficial owner, or holder of a voting trust certificate demonstrates a proper purpose for the examination. ~~A "proper purpose" is one reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation.~~
6. A shareholder, beneficial owner, or holder of a voting trust certificate of a publicly held corporation has, upon written demand stating the purpose and acknowledged or verified in the manner provided in chapter 44-06, a right at any reasonable time to examine and copy the corporation's share register and other corporate records reasonably related to the stated purpose and described with reasonable particularity in the written demand upon demonstrating the stated purpose to be a proper purpose. The acknowledged or verified demand must be directed to the corporation at its registered office in this state or at its principal place of business.
7. For purposes of subsections 5 and 6, a "proper purpose" is one reasonably related to the person's interest as a shareholder, beneficial owner, or holder of a voting trust certificate of the corporation.
8. On application of the corporation, a court in this state may issue a protective order permitting the corporation to withhold portions of the records of proceedings of the board for a reasonable period of time, not to exceed twelve months, in order to prevent premature disclosure of confidential information which would be likely to cause competitive injury to the corporation. A protective order may be renewed for successive reasonable periods of time, each not to exceed twelve months and in total not to exceed thirty-six months, for good cause shown. If a protective order is issued, the statute of limitations for any action which the shareholder, beneficial owner, or holder of a voting trust certificate might bring as a result of information withheld automatically extends for the period of delay. If the court does not issue a protective order with respect to any portion of the records of proceedings as requested by the corporation, it shall award reasonable expenses, including attorney's fees and disbursements, to the shareholder, beneficial owner, or holder of a voting trust certificate. This subsection does not limit the right of a court to grant other protective orders or impose other reasonable restrictions on the nature of the corporate records that may be copied or

examined under this subsection and subsection 9 or the use or distribution of the records by the demanding shareholder, beneficial owner, or holder of a voting trust certificate.

- ~~9.~~ A shareholder, beneficial owner, or holder of a voting trust certificate who has gained access under subsection 8 to any corporate record including the share register may not use, or furnish to another for use, the corporate record or a portion of the contents for any purpose other than a proper purpose. Upon application of the corporation, a court may issue a protective order or order other relief as may be necessary to enforce the provisions of this subsection.
- ~~7- 10.~~ Copies of the share register and all documents referred to in subsection 2, if required to be furnished under this section, must be furnished at the expense of the corporation. ~~A copy of the most recently generated share register must be furnished at the expense of the corporation if the requesting party shows a proper purpose.~~ In all other cases, the corporation may charge the requesting party a reasonable fee to cover the expenses of providing the copy.
- ~~8- 11.~~ The records maintained by a corporation, including its share register, financial records, and minute books, may utilize any information storage technique, including, for example, punched holes, printed or magnetized spots, or microimages, even though that makes them illegible visually, if the records can be converted accurately and within a reasonable time, into a form that is legible visually and whose contents are assembled by related subject matter to permit convenient use by people in the normal course of business. A corporation shall convert any of the records referred to in subsection 4 upon the request of a person entitled to inspect them, and the expense of the conversion shall be borne by the person who bears the expense of copying pursuant to subsection ~~7~~ 10. A copy of the conversion is admissible in evidence, and must be accepted for all other purposes, to the same extent as the existing or original records would be if they were legible visually.

SECTION 32. AMENDMENT. Subsections 1 and 3 of section 10-19.1-87 of the North Dakota Century Code are amended and reenacted as follows:

1. A shareholder of a corporation may dissent from, and obtain payment for the fair value of the shareholder's shares in the event of, any of the following corporate actions:
 - a. An amendment of the articles that materially and adversely affects the rights or preferences of the shares of a dissenting shareholder in that it:
 - (1) Alters or abolishes a preferential right of the shares;
 - (2) Creates, alters, or abolishes a right in respect of the redemption of the shares, including a provision respecting a sinking fund for the redemption or repurchase of shares;
 - (3) Alters or abolishes a preemptive right of the holder of the shares to acquire shares, securities other than shares, or rights to purchase shares or securities other than shares; or

(4) Excludes or limits the right of a shareholder to vote on a matter, or to accumulate votes, except as the right may be excluded or limited through the authorization or issuance of securities of an existing or new class or series with similar or different voting rights;

- b. A sale, lease, transfer, or other disposition of all or substantially all of the property and assets of the corporation not made in the usual or regular course of its business, but not including a disposition in dissolution described in subsection 2 of section 10-19.1-109 or a disposition pursuant to an order of a court, or a disposition for cash on terms requiring that all or substantially all of the net proceeds of disposition be distributed to the shareholders in accordance with their respective interests within one year after the date of disposition;
 - ~~b-~~ c. A plan of merger to which the corporation is a party, except as provided in subsection 3;
 - ~~c-~~ d. A plan of exchange pursuant to which the shares of the corporation are to be acquired, whether under this chapter or under chapter 10-32, to which the corporation is a party as the corporation whose shares will be acquired by the acquiring corporation, if the shares of the shareholder are entitled to vote on the plan; or
 - ~~d-~~ e. Any other corporate action taken pursuant to a shareholder vote with respect to which the articles, the bylaws, or a resolution approved by the board directs that dissenting shareholders may obtain payment for their shares.
3. The right to obtain payment under this section does not apply to the shareholders of the surviving corporation in a merger or of the acquiring corporation in an exchange, if a vote of the shareholders of the corporation is not necessary to authorize the merger or exchange if the shares of the shareholder are not entitled to be voted on the merger.

SECTION 33. AMENDMENT. Section 10-19.1-88 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-88. Procedures for asserting dissenters' rights.

- ~~1. If a corporation calls a shareholder meeting at which any action described in subsection 1 of section 10-19.1-87 is to be voted upon, the notice of the meeting must inform each shareholder of the right to dissent and must include a copy of section 10-19.1-87 and this section.~~
- ~~2. The shareholder of a corporation which is a party to an action described in subsection 1 of section 10-19.1-87 shall file with the corporation, prior to or at the meeting of shareholders at which the action is submitted to a vote, a written objection to the action and may not vote in favor of the action.~~
- ~~3. The shareholder, within ten days after the date on which the vote was taken, shall make written demand on the corporation for payment of the fair value of the shares as of the day prior to the day on which the vote~~

~~was taken approving the action. The demand must state the number and class of shares owned by the dissenting shareholder. Any shareholder failing to make demand within the ten day period is bound by the action.~~

- ~~4. If the action is effected, the corporation shall pay to the shareholder, upon surrender of the shareholder's certificate or certificates representing the shares, the fair value of the shares.~~
- ~~5. Within ten days after the action is effected, the corporation shall give notice of the action to each dissenting shareholder who has made demand as provided in this section.~~
- ~~6. If within thirty days after the date on which the action was effected, the value of the shares is agreed upon between the dissenting shareholder and the corporation, payment for the shares must be made within ninety days after the date on which the action was effected, upon the surrender of the shareholder's certificate or certificates representing the shares. Upon payment of the agreed value, the dissenting shareholder shall cease to have any interest in the shares or in the corporation.~~
- ~~7. If within the period of thirty days the shareholder and the corporation do not agree on the value of the shares, then the dissenting shareholder may, within sixty days after the expiration of the thirty day period, bring an action in any court of competent jurisdiction asking for a finding and determination of the fair value of the shares and is entitled to judgment against the corporation for the amount of the fair value as of the day prior to the day on which the vote was taken approving the action, together with interest to the date of the judgment. The judgment is payable only upon and simultaneously with the surrender to the corporation of the certificate or certificates representing the shares. Upon payment of the judgment, the dissenting shareholder ceases to have any interest in these shares or in the corporation. Unless the dissenting shareholder files the petition within the time permitted the shareholder and all persons claiming under the shareholder are bound by the action.~~

1. For purposes of this section, the terms defined in this subsection have the meanings given them.
 - a. "Corporation" means the issuer of the shares held by a dissenter before the corporate action referred to in subsection 1 of section 10-19.1-87 or the successor by merger of that issuer.
 - b. "Fair value of the shares" means the value of the shares of a corporation immediately before the effective date of a corporate action referred to in subsection 1 of section 10-19.1-87.
 - c. "Interest" means interest commencing five days after the effective date of the corporate action referred to in subsection 1 of section 10-19.1-87, up to and including the date of payment, calculated at the rate provided in section 28-20-34 for interest on verdicts and judgments.
2. If a corporation calls a shareholder meeting at which any action described in subsection 1 of section 10-19.1-87 is to be voted upon, the notice of

- the meeting shall inform each shareholder of the right to dissent and shall include a copy of section 10-19.1-87 and this section.
3. If the proposed action must be approved by the shareholders, a shareholder who wishes to exercise dissenter's rights must file with the corporation before the vote on the proposed action a written notice of intent to demand the fair value of the shares owned by the shareholder and must not vote the shares in favor of the proposed action.
 4. After the proposed action has been approved by the board and, if necessary, the shareholders, the corporation shall send to all shareholders who have complied with subsection 3 and to all shareholders entitled to dissent if no shareholder vote was required, a notice that contains:
 - a. The address to which a demand for payment and share certificates must be sent in order to obtain payment and the date by which they must be received;
 - b. A form to be used to certify the date on which the shareholder, or the beneficial owner on whose behalf the shareholder dissents, acquired the shares or an interest in them and to demand payment; and
 - c. A copy of section 10-19.1-87 and this section.
 5. In order to receive the fair value of shares, a dissenting shareholder must demand payment and deposit certificated shares within thirty days after the notice was given, but the dissenter retains all other rights of a shareholder until the proposed action takes effect.
 6. After the corporate action takes effect, or after the corporation receives a valid demand for payment, whichever is later, the corporation shall remit to each dissenting shareholder who has complied with subsections 3, 4, and 5, the amount the corporation estimates to be the fair value of the shares, plus interest, accompanied by:
 - a. The corporation's closing balance sheet and statement of income for a fiscal year ending not more than sixteen months before the effective date of the corporate action, together with the latest available interim financial statements;
 - b. An estimate by the corporation of the fair value of the shares and a brief description of the method used to reach the estimate; and
 - c. A copy of section 10-19.1-87 and this section.
 7. The corporation may withhold the remittance described in subsection 6 from a person who was not a shareholder on the date the action dissented from was first announced to the public or who is dissenting on behalf of a person who was not a beneficial owner on that date. If the dissenter has complied with subsections 3, 4, and 5, the corporation shall forward to the dissenter the materials described in subsection 6, a statement of the reason for withholding the remittance, and an offer to pay to the dissenter the amount listed in the materials if the dissenter agrees to accept the amount in full satisfaction. The dissenter may decline the

offer and demand payment under subsection 9. Failure to do so entitles the dissenter only to the amount offered. If the dissenter makes demand, subsections 10 and 11 apply.

8. If the corporation fails to remit within sixty days of the deposit of certificates, it shall return all deposited certificates. However, the corporation may again give notice under subsections 4 and 5 and require deposit at a later time.
9. If a dissenter believes that the amount remitted under subsections 6, 7, and 8 is less than the fair value of the shares plus interest, the dissenter may give written notice to the corporation of the dissenter's own estimate of the fair value of the shares plus interest, within thirty days after the corporation mails the remittance under subsections 6, 7, and 8, and demand payment of the difference. Otherwise, a dissenter is entitled only to the amount remitted by the corporation.
10. If the corporation receives a demand under subsection 9, it shall, within sixty days after receiving the demand, either pay to the dissenter the amount demanded or agreed to by the dissenter after a discussion with the corporation or file in court a petition requesting that the court determine the fair value of the shares plus interest. The petition shall be filed in the county in which the registered office of the corporation is located, except that a surviving foreign corporation that receives a demand relating to the shares of a constituent corporation shall file the petition in the county in this state in which the last registered office of the constituent corporation was located. The petition shall name as parties all dissenters who have demanded payment under subsection 9 and who have not reached agreement with the corporation. The jurisdiction of the court is plenary and exclusive. The court may appoint appraisers, with powers and authorities the court deems proper, to receive evidence on and recommend the amount of the fair value of the shares. The court shall determine whether the shareholder or other shareholders in question have fully complied with the requirements of this section, and shall determine the fair value of the shares, taking into account any and all factors the court finds relevant, computed by any method or combination of methods that the court, in its discretion, sees fit to use, whether or not used by the corporation or by a dissenter. The fair value of the shares as determined by the court is binding on all shareholders, wherever located. A dissenter is entitled to judgment for the amount by which the fair value of the shares as determined by the court, plus interest, exceeds the amount, if any, remitted under subsections 6, 7, and 8, but shall not be liable to the corporation for the amount, if any, by which the amount, if any, remitted to the dissenter under subsections 6, 7, and 8 exceeds the fair value of the shares as determined by the court, plus interest.
11. The court shall determine the costs and expenses of a proceeding under subsection 10, including the reasonable expenses in compensation of any appraisers appointed by the court, and shall assess those costs and expenses against the corporation, except that the court may assess part or all of those costs and expenses against a dissenter whose action in demanding payment under subsection 9 is found to be arbitrary, vexatious, or not in good faith.

12. If the court finds that the corporation has failed to comply substantially with this section, the court may assess all fees and expenses of any experts or attorneys as the court deems equitable. These fees and expenses may also be assessed against a person who has acted arbitrarily, vexatiously, or not in good faith in bringing the proceeding, and may be awarded to a party injured by those actions.
13. The court may award, in its discretion, fees and expenses to an attorney for the dissenters out of the amount awarded to the dissenters, if any.

SECTION 34. AMENDMENT. Subdivision d of subsection 1 of section 10-19.1-89 of the North Dakota Century Code is amended and reenacted as follows:

- d. ~~Has been approved by the affirmative vote of the holders of two-thirds of the outstanding shares;~~
- (1) The holders of two-thirds of the voting power of the shares entitled to vote which are owned by persons other than the interested person or persons; or
- (2) The unanimous affirmative vote of the holders of all outstanding shares, whether or not entitled to vote.

SECTION 35. AMENDMENT. Subsections 1, 5, and 10 of section 10-19.1-91 of the North Dakota Century Code are amended and reenacted as follows:

1. For purposes of this section, the terms defined in this subsection have the meanings given them.
- a. "Corporation" includes a domestic or foreign corporation that was the predecessor of the corporation referred to in this section in a merger or other transaction in which the predecessor's existence ceased upon consummation of the transaction.
- b. "Official capacity" means:
- (1) With respect to a director, the position of director in a corporation;
- (2) With respect to a person other than a director, the elective or appointive office or position held by an officer, member of a committee of the board, or the employment ~~or agency~~ relationship undertaken by an employee ~~or agent~~ of the corporation; and
- (3) With respect to a director, officer, or employee, ~~or agent~~ of the corporation who, while a director, officer, or employee, ~~or agent~~ of the corporation, is or was serving at the request of the corporation or whose duties in that position involve or involved service as a director, governor, officer, manager, partner, trustee, or agent employee of another organization or employee benefit plan, the position of that person as a director, governor, officer, manager, partner, trustee, or employee, ~~or agent,~~ as the case may be, of the other organization or employee benefit plan.

- c. "Proceeding" means a threatened, pending, or completed civil, criminal, administrative, arbitration, or investigative proceeding, including a proceeding by or in the right of the corporation.
- d. "Special legal counsel" means counsel who has not represented the corporation or a related corporation, or a director, officer, member of a committee of the board, or employee, or agent whose indemnification is in issue.
5. The articles or bylaws either may prohibit indemnification or advances of expenses otherwise required by this section or may impose conditions on indemnification or advances of expenses in addition to the conditions contained in subsections 2, 3, and 4 including, without limitation, monetary limits on indemnification or advances for expenses, if the conditions apply equally to all persons or to all persons within a given class. A prohibition or limit on indemnification or advances may not apply to or affect the right of a person to indemnification or advances of expenses with respect to any acts or omissions of the person occurring prior to the effective date of a provision in the articles or the date of adoption of a provision in the bylaws establishing the prohibition or limit on indemnification or advances.
10. A corporation that indemnifies or advances expenses to a person in accordance with this section in connection with a proceeding by or on behalf of the corporation shall report to the shareholders in writing the amount of the indemnification or advance and to whom and on whose behalf it was paid as part of the annual financial statements furnished to shareholders pursuant to section 10-19.1-85 covering the period when the indemnification or advance was paid or accrued under the accounting method of the corporation reflected in the financial statements not later than the next meeting of shareholders.

SECTION 36. A new subsection to section 10-19.1-91 of the North Dakota Century Code is created and enacted as follows:

Nothing in this section may be construed to limit the power of the corporation to indemnify other persons by contract or otherwise.

SECTION 37. AMENDMENT. Subsection 1 of section 10-19.1-93 of the North Dakota Century Code is amended and reenacted as follows:

1. A corporation may acquire its own shares, subject to section 10-19.1-92. If the corporation pledges the shares to secure payment of the redemption price thereof, then the corporation shall not be deemed to have acquired the shares for the purposes of this subsection until the pledge is released. Shares so acquired constitute authorized but unissued shares of the corporation, unless the articles provide that they may not be reissued, in which case the number of authorized shares is reduced by the number of shares acquired.

SECTION 38. AMENDMENT. Section 10-19.1-96 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-96. Merger - Exchange - Transfer.

1. Any two or more corporations may merge, resulting in a single corporation, with or without a business purpose, pursuant to a plan of merger approved in the manner provided in sections 10-19.1-97 through 10-19.1-103.
2. ~~The shares of one or more classes or series of a corporation may be exchanged for shares of the same or a different class or series of one or more other corporations pursuant to a plan of exchange approved in the manner provided in sections 10-19.1-97, 10-19.1-98, 10-19.1-101, 10-19.1-102, and 10-19.1-103. A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation pursuant to a plan of exchange approved in the manner provided in sections 10-19.1-97 through 10-19.1-99 and sections 10-19.1-101 through 10-19.1-103.~~
3. A corporation may sell, lease, transfer, or otherwise dispose of all or substantially all of its property and assets in the manner provided in section 10-19.1-104.
4. A corporation may participate in a merger or exchange with a domestic limited liability company pursuant to chapter 10-32. The dissenter's rights for shareholders of a corporation are governed by this chapter.

SECTION 39. AMENDMENT. Section 10-19.1-97 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-97. Plan of merger or exchange.

1. A plan of merger or exchange must contain:
 - a. The names of the corporations proposing to merge or participate in an exchange and:
 - (1) In the case of a merger, the name of the surviving corporation;
 - (2) In the case of an exchange, the name of the acquiring corporation;
 - b. The terms and conditions of the proposed merger or exchange;
 - c. ~~In the case of a merger, the manner and basis of converting the shares of the constituent corporations into securities of the surviving corporation or of any other corporation, or, in whole or in part, into money or other property; or in the case of an exchange, the manner and basis of exchanging the shares of other constituent corporations for shares of the acquiring corporation~~ With respect to the manner and basis of conversion or exchange:
 - (1) In the case of a merger, the manner and basis of converting the shares of the constituent corporations into securities of the surviving corporation or of any other corporation or, in whole or in part, into money or other property; or
 - (2) In the case of an exchange, the manner and basis of exchanging the shares to be acquired for securities of the acquiring corporation or any other corporation or, in whole or in part, into money or other property;

- d. In the case of a merger, a statement of any amendments to the articles of the surviving corporation proposed as part of the merger; and
 - e. Any other provisions with respect to the proposed merger or exchange that are deemed necessary or desirable.
2. The procedure authorized by this section does not limit the power of a corporation to acquire ~~for money or property other than its shares all or part of the shares of a class or series of another corporation by a negotiated agreement with the shareholders of the other corporation all or part of the shares of one or more classes or series of another corporation through a negotiated agreement with the shareholders or otherwise.~~

SECTION 40. AMENDMENT. Section 10-19.1-98 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-98. Plan approval.

1. A resolution containing the plan of merger or exchange must be approved by the affirmative vote of a majority of the directors present at a meeting of the board of each constituent corporation and must then be submitted at a regular or special meeting to the shareholders of each constituent corporation ~~at a regular or a special meeting. Written:~~
 - a. Each constituent corporation, in the case of a plan of merger; and
 - b. The corporation whose shares will be acquired by the acquiring corporation in the exchange, in the case of a plan of exchange.

If shareholders holding any class or series of stock of the corporation are entitled to vote on the plan of merger or exchange pursuant to this subsection, written notice must be given to every shareholder, whether or not entitled to vote at the meeting, no fewer than fourteen days nor more than sixty days before the meeting, in the manner provided in section 10-19.1-73 for notice of meetings of shareholders. The written notice must state that a purpose of the meeting is to consider the proposed plan of merger or exchange. A copy or short description of the plan of merger or exchange must be included in or enclosed with the notice.

2. At the meeting a vote of the shareholders must be taken on the proposed plan. The plan of merger or exchange is adopted when approved by the affirmative vote of the holders of a majority of the voting power of all shares entitled to vote. A Except as provided in subsection 3, a class or series of shares of the corporation is entitled to vote as a class or series if any provision of the plan would, if contained in a proposed amendment to the articles, entitle the class or series of shares to vote as a class or series and, in the case of an exchange, if the class or series is affected by the plan of included in the exchange.
3. A class or series of shares of the corporation is not entitled to vote as a class or series solely because the plan of merger or exchange affects a cancellation of shares of the class or series if the plan of merger or exchange affects a cancellation of all shares of the corporation of all classes and series that are outstanding immediately prior to the merger or

exchange and shareholders of shares of that class or series are entitled to obtain payment for the fair value of their shares under section 10-19.1-87 in the event of the merger or exchange.

4. Notwithstanding subsections 1 and 2, submission of a plan of merger or exchange to a vote at a meeting of shareholders of a surviving or acquiring corporation is not required if:
- a. The articles of the corporation will not be amended in the transaction;
 - b. Each holder of shares of the corporation that were outstanding immediately before the effective date of the transaction will hold the same number of shares with identical rights immediately thereafter;
 - c. The number of shares of the corporation entitled to vote immediately after the merger or exchange, plus the number of shares of the corporation entitled to vote issuable on conversion ~~or exchange~~ of securities other than shares or on the exercise of rights to purchase securities issued by virtue of the terms of the transaction, will not exceed by more than twenty percent, ~~or, in the case of an exchange, a larger or smaller proportion provided in or pursuant to the articles,~~ the number of shares of the corporation entitled to vote immediately before the transaction; and
 - d. The number of participating shares of the corporation immediately after the ~~transaction merger~~, plus the number of participating shares of the corporation issuable on conversion ~~or exchange~~ of, or on the exercise of rights to purchase, securities issued in the ~~transaction merger~~, will not exceed by more than twenty percent, ~~or, in the case of an exchange, a larger or smaller proportion provided in or pursuant to the articles,~~ the number of participating shares of the corporation immediately before the ~~transaction merger~~. "Participating shares" are outstanding shares of the corporation that entitle their holders to participate without limitation in distributions by the corporation.

SECTION 41. AMENDMENT. Subsection 1 of section 10-19.1-99 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Upon receiving the approval required by section 10-19.1-98, articles of merger must be prepared that contain:
 - a. The plan of merger; and
 - b. ~~For each corporation either:~~
 - (1) ~~A statement that the plan has been approved by a vote of the shareholders pursuant to subsection 2 of section 10-19.1-98; or~~
 - (2) ~~A statement that a vote of the shareholders is not required by virtue of subsection 3 of section 10-19.1-98~~

A statement that the plan has been approved by each corporation pursuant to chapter 10-19.1.

SECTION 42. AMENDMENT. Section 10-19.1-100 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-100. Merger of subsidiary into parent.

1. A parent owning at least ninety percent of the outstanding shares of each class and series of a subsidiary directly, or indirectly through related corporations, may merge the subsidiary into itself or into any other subsidiary at least ninety percent of the outstanding shares of each class and series of which is owned by the parent directly, or indirectly through related corporations, without a vote of the shareholders of either ~~corporation~~ itself or any subsidiary or may merge itself, or itself and one or more subsidiaries into one of the subsidiaries under this section. A resolution approved by the affirmative vote of a majority of the directors of the parent present must set forth a plan of merger that contains:
 - a. The name of the subsidiary or subsidiaries, and the name of the parent, and the name of the surviving corporation; and
 - b. The manner and basis of converting the shares of the subsidiary or subsidiaries or parent into securities of the parent, subsidiary, or of another corporation or, in whole or in part, into money or other property;
 - c. If the parent is a constituent corporation but is not the surviving corporation in the merger, a provision for the pro rata issuance of shares of the surviving corporation to the holders of shares of the parent on surrender of any certificates for shares of the parent; and
 - d. If the surviving corporation is a subsidiary, a statement of any amendments to the articles of the surviving corporation that will be part of the merger.

If the parent is a constituent corporation but is not the surviving corporation in a merger, the resolution is not effective unless it is also approved by the affirmative vote of the holders of a majority of the voting power of all shares of the parent entitled to vote at a regular or special meeting held in accordance with section 10-19.1-98 if the parent is a domestic corporation or in accordance with the laws under which it is incorporated if the parent is a foreign corporation.

2. A copy of the plan of merger must be mailed to each shareholder, other than the parent and any subsidiary, of ~~the~~ each subsidiary that is a constituent corporation in the merger.
3. Articles of merger must be prepared that contain:
 - a. The plan of merger;
 - b. The number of outstanding shares of each class and series of the subsidiary that is a constituent corporation in the merger and the number of shares of each class and series owned by the parent directly, or indirectly through related corporations; and

- c. The date a copy of the plan of merger was mailed to shareholders, other than the parent or a subsidiary, of the each subsidiary that is a constituent corporation in the merger; and
 - d. A statement that the plan of merger has been approved by the parent under this section.
4. Within thirty days after a copy of the plan of merger is mailed to shareholders of the each subsidiary that is a constituent corporation to the merger, or upon waiver of the mailing by the holders of all outstanding shares of each subsidiary that is a constituent corporation to the merger, the articles of merger must be signed on behalf of the parent and filed with the secretary of state, along with the fees provided in chapter 10-23.
 5. The secretary of state shall issue a certificate of merger to the parent or its legal representative or, if the parent is a constituent corporation but is not the surviving corporation in a merger, to the surviving corporation or its legal representative. The certificate must contain the effective date of the merger.
 6. If all of the stock of one or more domestic subsidiaries of the parent that is a constituent party to a merger under this section is not owned by the parent directly, or indirectly through related corporations, immediately prior to the merger, the shareholders of each domestic subsidiary have dissenter's rights under section 10-19.1-87, without regard to subsection 3 of section 10-19.1-87 and section 10-19.1-88. If the parent is a constituent corporation but is not the surviving corporation in the merger, and the articles of incorporation of the surviving corporation immediately after the merger differ from the articles of incorporation of the parent immediately prior to the merger in a manner that would entitle a shareholder of the parent to dissenter's rights under subdivision a of subsection 1 of section 10-19.1-87, if the articles of incorporation of the surviving corporation constituted an amendment to the articles of the corporation of the parent, that shareholder of the parent has dissenter's rights as provided under sections 10-19.1-87 and 10-19.1-88. Except as provided in this subsection, sections 10-19.1-87 and 10-19.1-88 do not apply to any merger affected under this section.
 7. A merger among a parent and one or more subsidiaries or among two or more subsidiaries of a parent may be accomplished under sections 10-19.1-97 through 10-19.1-99 instead of this section, in which case this section does not apply.

SECTION 43. AMENDMENT. Section 10-19.1-101 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-19.1-101. Abandonment of plan of merger or exchange.

1. After a plan of merger or exchange has been approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all voting shares of each constituent corporation by the shareholders entitled to vote on the approval of the plan as provided in section 10-19.1-98 and before the effective date of the plan, it may be abandoned:

- a. ~~If the shareholders of each of the constituent corporations have considered abandoning the plan and the abandonment has been approved at a meeting by the affirmative vote of the holders of a majority of the voting power of all voting shares of each constituent corporation entitled to vote on the approval of the plan as provided in section 10-19.1-98 have approved the abandonment at a meeting by the affirmative vote of the holders of a majority of the voting power of the shares entitled to vote and, if the shareholders of a constituent corporation are not entitled to vote on the approval of the plan under section 10-19.1-98, the board of directors of the constituent corporation has approved the abandonment by the affirmative vote of a majority of the directors present;~~
 - b. If the plan itself provides for abandonment and all conditions for abandonment set forth in the plan are met; or
 - c. Pursuant to subsection 2.
2. If articles of merger have not been filed with the secretary of state and the plan is to be abandoned, or if a plan of exchange is to be abandoned, a resolution abandoning the plan of merger or exchange may be approved by the affirmative vote of a majority of the directors present, subject to the contract rights of any other person under the plan. If articles of merger have been filed with the secretary of state, the board shall file with the secretary of state, together with the fees provided in chapter 10-23, articles of abandonment that contain:
- a. The name of the ~~corporation~~ constituent corporations;
 - b. The provision of this section under which the plan is abandoned; and
 - c. The text of the resolution approved by the affirmative vote of a majority of the directors present abandoning the plan.

If the certificate of merger has been issued, the board shall surrender the certificate to the secretary of state upon filing the articles of abandonment.

SECTION 44. AMENDMENT. Subsection 1 of section 10-19.1-103 of the North Dakota Century Code is amended and reenacted as follows:

1. A domestic corporation may merge with or participate in an exchange with a foreign corporation by following the procedures set forth in this section, ~~if the merger or exchange is permitted by the laws of the state under which the foreign corporation is incorporated;~~
 - a. With respect to a merger, the merger is permitted by the laws of the state under which the foreign corporation is incorporated; and
 - b. With respect to an exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not the exchange is permitted by the laws of the state under which the foreign corporation is incorporated.

SECTION 45. AMENDMENT. Subsection 3 of section 10-19.1-108 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. The filing with the secretary of state of a notice of intent to dissolve does not affect any remedy in favor of the corporation or any remedy against it or its directors, officers, or shareholders in those capacities, except as provided in ~~section~~ sections 10-19.1-110, 10-19.1-110.1, and 10-19.1-124.

SECTION 46. AMENDMENT. Subsection 1 of section 10-19.1-109 of the North Dakota Century Code is amended and reenacted as follows:

1. When a notice of intent to dissolve has been filed with the secretary of state, the board, or the officers acting under the direction of the board, shall proceed as soon as possible:
 - a. To collect or make provisions for the collection of all known debts due or owing to the corporation, including unpaid subscriptions for shares; ~~and~~
 - b. ~~To Except as provided in sections 10-19.1-100, 10-19.1-110.1, and 10-19.1-124, to pay or make provision for the payment of all known~~ debts, obligations, and liabilities of the corporation according to their priorities; ~~and~~
 - c. To give notice to creditors and claimants under section 10-19.1-110 or to proceed under section 10-19.1-100.1.

SECTION 47. AMENDMENT. Section 10-19.1-110 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-110. Notice Dissolution procedure for corporations that give notice to creditors and claimants.

1. When a notice of intent to dissolve has been filed with the secretary of state, the corporation may give notice of the filing to each known creditor of and claimant against the corporation ~~at the last known address of each known present, future, or contingent creditor and claimant. The corporation may give published notice to known creditors or claimants whose address is unknown and to unknown present, future, or contingent creditors and claimants, known or unknown, present or future, and contingent or noncontingent. If notice to creditors and claimants is given, it must be given by publishing the notice once each week for four successive weeks in an official newspaper, as defined in chapter 46-06, in the county or counties where the registered office and the principal executive office of the corporation are located and by giving written notice to known creditors and claimants pursuant to subsection 20 of section 10-19.1-01.~~
2. The notice to creditors and claimants must contain:
 - a. A statement that the corporation is in the process of dissolving;
 - b. A statement that the corporation has filed with the secretary of state a notice of intent to dissolve;
 - c. The date of filing the notice of intent to dissolve;

- d. The address of the office to which written claims against the corporation must be presented; and
 - e. The date by which all the claims must be received, which must be the later of ninety days after ~~the notice of intent to dissolve was filed with the secretary of state~~ published notice or, with respect to a particular known creditor or claimant, ninety days after the date on which written notice was given to that creditor or claimant. Published notice is deemed given on the date of first publication for the purpose of determining this date.
3. With respect to claims against corporations that give notice:
- a. A corporation that gives notice to creditors and claimants has thirty days from the receipt of each claim filed according to the procedures set forth by the corporation on or before the date set forth in the notice to accept or reject the claim by giving written notice to the person submitting it. A claim not expressly rejected in this manner is deemed accepted.
 - b. A creditor or claimant to whom notice is given and whose claim is rejected by the corporation has:
 - (1) Sixty days from the date of rejection;
 - (2) One hundred eighty days from the date the corporation filed with the secretary of state the notice of intent to dissolve; or
 - (3) Ninety days after the date on which notice was given to the creditor or claimant,whichever is longer, to pursue any other remedies with respect to the claim.
 - c. A creditor or claimant to whom notice is given who fails to file a claim according to the procedures set forth by the corporation on or before the date set forth in the notice is barred from suing on that claim or otherwise realizing upon it or enforcing it, except as provided in section 10-19.1-124.
 - d. A creditor or claimant whose claim is rejected by the corporation under subdivision b is barred from suing on that claim or otherwise realizing upon or enforcing it, if the creditor or claimant does not initiate legal, administrative, or arbitration proceedings with respect to the claim within the time provided in subdivision b.
4. Articles of dissolution for a corporation that has given notice to creditors and claimants under this section must be filed with the secretary of state after:
- a. The ninety-day period in subdivision e of subsection 2 has expired and the payment of claims of all creditors and claimants filing a claim within that period has been made or provided for; or
 - b. The longest of the periods described in subdivision b of subsection 3 has expired and there are no pending legal, administrative, or

arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3.

5. The articles of dissolution must state:
 - a. The last date on which the notice was given and:
 - (1) That the payment of all creditors and claimants filing a claim within the ninety-day period in subdivision e of subsection 2 has been made or provided for; or
 - (2) The date on which the longest of the periods described in subdivision b of subsection 3 expired;
 - b. That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with subsection 5 of section 10-19.1-92, or that adequate provision has been made for that distribution; and
 - c. That there are no pending legal, administrative, or arbitration proceedings by or against the corporation commenced within the time provided in subdivision b of subsection 3, or that adequate provision has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

SECTION 48. Section 10-19.1-110.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-110.1. Dissolution procedure for corporations that do not give notice.

1. Articles of dissolution for a corporation that have not given notice to creditors and claimants in the manner provided in section 10-19.1-110 must be filed with the secretary of state after:
 - a. The payment of claims of all known creditors and claimants has been made or provided for; or
 - b. At least two years have elapsed from the date of filing the notice of intent to dissolve.
2. The articles of dissolution must state:
 - a. If the articles of dissolution are being filed pursuant to subdivision a of subsection 1, that all known debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made for payment or discharge;
 - b. That the remaining property, assets, and claims of the corporation have been distributed among its shareholders in accordance with subsection 5 of section 10-19.1-92, or that adequate provision has been made for that distribution; and
 - c. That there are no pending legal, administrative, or arbitration proceedings by or against the corporation, or that adequate provision

has been made for the satisfaction of any judgment, order, or decree that may be entered against it in a pending proceeding.

3. With respect to claims against corporations that do not give notice:
 - a. If a corporation has paid or provided for all known creditors or claimants at the time articles of dissolution are filed, a creditor or claimant who does not file a claim or pursue a remedy, in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it.
 - b. If the corporation has not paid or provided for all known creditors and claimants at the time articles of dissolution are filed, a person who does not file a claim or pursue a remedy in a legal, administrative, or arbitration proceeding within two years after the date of filing the notice of intent to dissolve is barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in section 10-19.1-124.

SECTION 49. Section 10-19.1-113.1 of the North Dakota Century Code is created and enacted as follows:

10-19.1-113.1. Filing of articles of dissolution - Effective date of dissolution - Certificate.

1. An original of the articles of dissolution must be filed with the secretary of state. If the secretary of state finds that the articles of dissolution conform to law and that all fees have been paid under chapter 10-23, the secretary of state shall issue a certificate of dissolution.
2. When the certificate of dissolution has been issued by the secretary of state, the corporation is dissolved.
3. The secretary of state shall issue to the dissolved corporation, or its legal representative, a certificate of dissolution that contains:
 - a. The name of the corporation;
 - b. The date the articles of dissolution were filed with the secretary of state; and
 - c. A statement that the corporation was dissolved.

SECTION 50. AMENDMENT. Section 10-19.1-115 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-115. Involuntary dissolution.

1. A court may grant any equitable relief it deems just and reasonable in the circumstances or may dissolve a corporation and liquidate its assets and business:
 - a. In a supervised voluntary dissolution pursuant to section 10-19.1-114;
 - b. In an action by a shareholder when it is established that:

- (1) The directors or the persons having the authority otherwise vested in the board are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock;
 - (2) The directors or those in control of the corporation have acted fraudulently, illegally, or in a manner unfairly prejudicial toward one or more shareholders in their capacities as shareholders, directors, or officers, or as employees of a closely held corporation;
 - (3) The shareholders of the corporation are so divided in voting power that, for a period that includes the time when two consecutive regular meetings were held, they have failed to elect successors to directors whose terms have expired or would have expired upon the election and qualification of their successors;
 - (4) The corporate assets are being misapplied or wasted; or
 - (5) The period of duration as provided in the articles has expired and has not been extended as provided in section 10-19.1-124.
- c. In an action by a creditor when:
- (1) The claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied; or
 - (2) The corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is unable to pay its debts in the ordinary course of business; or
- d. In an action by the attorney general to dissolve the corporation in accordance with section 10-19.1-118 when it is established that a decree of dissolution is appropriate.
2. In determining whether to order equitable relief or dissolution, the court shall take into consideration the financial condition of the corporation but may not refuse to order equitable relief or dissolution solely on the ground that the corporation has accumulated or current operating profits.
 3. In determining whether to order equitable relief or dissolution, the court shall take into consideration the duty which all shareholders in a closely held corporation owe one another to act in an honest, fair, and reasonable manner in the operation of the corporation and the reasonable expectations of the shareholders as they exist at the inception and develop during the course of the shareholders' relationship with the corporation and with each other.
 4. In deciding whether to order dissolution, the court shall consider whether lesser relief suggested by one or more parties, such as any form of equitable relief, a buyout, or a partial liquidation, would be adequate to permanently relieve the circumstances established under subdivision b or c of subsection 1. Lesser relief may be ordered in any case where it would be appropriate under all the facts and circumstances of the case.

5. If the court finds that a party to a proceeding brought under this section has acted arbitrarily, vexatiously, or otherwise not in good faith, it may in its discretion award reasonable expenses, including attorneys' fees and disbursements, to any of the other parties.
- 5- 6. Proceedings under this section must be brought in a court within the county in which the registered office of the corporation is located. It is not necessary to make shareholders parties to the action or proceeding unless relief is sought against them personally.

SECTION 51. AMENDMENT. Section 10-19.1-124 of the North Dakota Century Code is amended and reenacted as follows:

10-19.1-124. Claims barred - Exceptions.

1. ~~A person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, who does not file a claim or pursue a remedy in a legal proceeding within the time provided in section 10-19.1-111, 10-19.1-114, 10-19.1-115, or 10-19.1-119, or has not initiated a legal proceeding before the commencement of the dissolution proceedings, and all those claiming through or under the creditor or claimant, are forever barred from suing on that claim or otherwise realizing upon or enforcing it, except as provided in this section. Except as provided in this section, a creditor or claimant whose claims are barred under section 10-19.1-110, 10-19.1-110.1, or 10-19.1-119 includes a person who is or becomes a creditor or claimant at any time before, during, or following the conclusion of dissolution proceedings, and all those claiming through or under the creditor or claimant.~~
2. At any time within one year after articles of dissolution have been filed with the secretary of state, or a decree of dissolution has been entered, a creditor or claimant who shows good cause for not having previously filed the claim may apply to a court in this state to allow a claim:
 - a. Against the corporation to the extent of undistributed assets; or
 - b. If the undistributed assets are not sufficient to satisfy the claim, against a shareholder, whose liability is limited to a portion of the claim that is equal to the portion of the distributions to shareholders in liquidation or dissolution received by the shareholder, but in no event may a shareholder's liability exceed the amount which that shareholder actually received in the dissolution.
3. All known contractual debts, obligations, and liabilities incurred during dissolution proceedings in the course of winding up the corporation's affairs shall be paid by the corporation before the distribution of assets to a shareholder. A person to whom this kind of debt, obligation, or liability is owed but not paid may pursue any remedy against the officers, and directors, and shareholders of the corporation before the expiration of the applicable statute of limitations who are responsible for, but who fail to cause the corporation to pay or make provision for, payment of the debts, obligations, and liabilities, or against shareholders to the extent permitted under section 10-19.1-94. This

subsection does not apply to dissolution under the supervision or order of a court.

SECTION 52. AMENDMENT. Section 10-31-01 of the North Dakota Century Code is amended and reenacted as follows:

10-31-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Foreign professional association" means a professional association that is incorporated or organized under laws other than the laws of this state for purposes for which a professional association may be organized under this chapter.
2. "Professional association" or "association" means:
 - a. A professional corporation that is incorporated under this chapter; or
 - b. A professional limited liability company that is organized under this chapter.
3. "Professional corporation" or "corporation" means a corporation which is organized incorporated under this chapter for the sole and specific purpose of rendering professional service and which has as its shareholders only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the corporation or nonlicensed employees as provided in section 10-31-07.1.
4. "Professional limited liability company" or "limited liability company" means a limited liability company which is organized under this chapter for the sole and specific purpose of rendering professional service and which has as its members only individuals who themselves are duly licensed or otherwise legally authorized within this state to render the same professional service as the association or nonlicensed employees as provided in section 10-31-07.2.
- 2- 5. "Professional service" means the personal service to the public which requires a license as a condition precedent to the rendering of such service and which prior to the passage of this chapter could not be performed by a corporation or limited liability company.

SECTION 53. AMENDMENT. Section 10-31-02 of the North Dakota Century Code is amended and reenacted as follows:

10-31-02. Articles of incorporation. One or more individuals may incorporate a professional association in the form of a corporation for the practice of a profession by filing articles of incorporation with the secretary of state. Such articles of incorporation shall meet the requirements of ~~the Business Corporation Act~~ chapter 10-19.1 and, in addition thereto, contain the following:

1. The profession to be practiced through the professional corporation.
2. The names and residence addresses of all of the original shareholders, directors, and officers of the professional corporation.

At the time such articles of incorporation are filed with the secretary of state, there shall also be filed a certificate by the regulating board of the profession involved that each of the directors and shareholders of voting ~~stock~~ shares, if any, is duly licensed to practice such profession.

SECTION 54. Section 10-31-02.1 of the North Dakota Century Code is created and enacted as follows:

10-31-02.1. Articles of organization. Two or more individuals may organize a professional association in the form of a limited liability company for the practice of a profession by filing articles of organization with the secretary of state. Such articles of organization shall meet the requirements of chapter 10-32, and, in addition thereto, contain the following:

1. The profession to be practiced through the professional limited liability company;
2. The names and residence addresses of all of the original members, governors, and managers of the professional limited liability company.

At the time such articles of organization are filed with the secretary of state, there shall also be filed a certificate by the regulating board of the profession involved that each of the governors and members, if any, is duly licensed to practice such profession.

SECTION 55. AMENDMENT. Section 10-31-03 of the North Dakota Century Code is amended and reenacted as follows:

10-31-03. Applicability of North Dakota Business Corporation Act. The North Dakota Business Corporation Act shall be applicable to professional associations which are organized in the form of corporations and they which shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other corporations except where inconsistent with the letter and purpose of this chapter. This chapter shall take precedence in the event of any conflict with the provisions of the North Dakota Business Corporation Act.

SECTION 56. Section 10-31-03.1 of the North Dakota Century Code is created and enacted as follows:

10-31-03.1. Applicability of North Dakota Limited Liability Company Act. The North Dakota Limited Liability Company Act shall be applicable to professional associations which are organized in the form of a limited liability company and which shall enjoy the powers and privileges and be subject to the duties, restrictions, and liabilities of other limited liability companies except where inconsistent with the letter and purpose of this chapter. This chapter shall take precedence in the event of any conflict with the provisions of the North Dakota Limited Liability Company Act.

SECTION 57. AMENDMENT. Section 10-31-04 of the North Dakota Century Code is amended and reenacted as follows:

10-31-04. Purpose for which incorporated or organized. A professional corporation association may be incorporated or organized pursuant to the provisions of this chapter only for the purpose of rendering one specific type of professional service and services ancillary thereto and shall not engage in any business other

than rendering the professional service for which it was incorporated or organized to render; ~~provided, however, that.~~ However, a professional ~~corporation~~ association may own real and personal property necessary or appropriate for rendering the type of professional services it was incorporated or organized to render and may invest its funds in real estate mortgages, stocks, bonds, membership interests, and any other type of investment. This statute shall not preclude a ~~corporation~~ an association incorporated or organized pursuant to the provisions of chapter 10-31 from rendering more than one specific type of professional service if the services rendered are such as are set forth in chapters 43-03 and 43-19.1.

SECTION 58. AMENDMENT. Section 10-31-05 of the North Dakota Century Code is amended and reenacted as follows:

10-31-05. ~~Corporate name~~ Name.

1. The ~~corporate name of a corporation~~ professional association:
 - a. In the form of a corporation organized under this chapter shall contain the word "chartered", "limited" or the abbreviation "Ltd.", or "professional corporation" or the abbreviation "P.C.".
 - b. In the form of a limited liability company organized under this chapter shall contain the word "professional limited liability company", or the abbreviation "P.L.C.".
2. The use of the word "company", "corporation", ~~or "incorporated",~~ "limited liability company", or any other word, abbreviation, affix, or prefix indicating that it is a corporation, ~~or limited liability company~~ in the ~~corporate name of a corporation~~ an association incorporated or organized under this chapter, other than the word "chartered", "limited", or "professional corporation" or the abbreviations "Ltd." or "P.C." words and abbreviations set forth in subsection 1, is specifically prohibited.

SECTION 59. AMENDMENT. Section 10-31-06 of the North Dakota Century Code is amended and reenacted as follows:

10-31-06. ~~Officers, directors, and shareholders, managers, governors, and members.~~

1. No person may be simultaneously a director ~~or~~ shareholder, governor, or member of more than one professional ~~corporation~~ association.
2. A professional association in the form of a corporation which has only one shareholder need have only one director, who shall be such shareholder. He That person 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.~~
3. A retired person may not continue as a director, officer, ~~or~~ shareholder, governor, manager, or member of a professional corporation.

SECTION 60. AMENDMENT. Section 10-31-07 of the North Dakota Century Code is amended and reenacted as follows:

10-31-07. Issuance and transfer of shares. A professional association in the form of a corporation may issue the its shares of its capital stock only to persons who are duly licensed to render the same specific professional services as those for which the corporation was ~~organized~~ incorporated or as provided by section 10-31-07.1. A shareholder may voluntarily transfer shares in a professional corporation only to the corporation or a person owning or eligible to own the same type of ~~stock shares~~ as the person making the transfer. Any shares issued in violation of this section are null and void. The voluntary transfer of any shares transferred in violation of this section is null and void. No shares may be transferred upon the books of the professional corporation or issued by the professional corporation until there is presented to and filed with the corporation a certificate by the regulating board stating that the person to whom the transfer is to be made or the shares issued is duly licensed to render the same specific professional services as those for which the corporation was organized.

SECTION 61. AMENDMENT. Section 10-31-07.1 of the North Dakota Century Code is amended and reenacted as follows:

10-31-07.1. Retirement plan trust - Voting and nonvoting stock. A professional corporation may establish a retirement plan trust which allows the corporation to contribute nonvoting shares ~~of its common stock~~ for nonlicensed employees and voting shares ~~of its common stock~~ for licensed employees.

SECTION 62. Section 10-31-07.2 of the North Dakota Century Code is created and enacted as follows:

10-31-07.2. Issuance and transfer of membership interests. A professional association in the form of a limited liability company may issue membership interests only to persons who are duly licensed to render the same specific professional services as those for which the company was organized. A member may voluntarily transfer membership interests in a professional limited liability company only to the professional limited liability company or a person owning or eligible to own a membership interest. Any membership interests issued in violation of this section are null and void. The voluntary transfer of any membership interests transferred in violation of this section is null and void. No membership interests may be transferred upon the books of the professional limited liability company or issued by the professional limited liability company until there is presented to and filed with the limited liability company a certificate by the regulating board stating that the person to whom the transfer is to be made or the membership interests issued is duly licensed to render the same specific professional services as those for which the limited liability company was organized.

SECTION 63. AMENDMENT. Section 10-31-08 of the North Dakota Century Code is amended and reenacted as follows:

10-31-08. Professional services through officers, managers, employees, agents. No ~~corporation~~ association organized ~~and~~ or incorporated under this chapter may render professional services except through its officers, managers, employees, and agents who are duly licensed to render such professional services in this state; ~~provided, however, that.~~ However, this provision shall not be

interpreted to include in the term "employee", as used herein, clerks, secretaries, bookkeepers, nurses, technicians, or other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required in connection with the profession practiced by a particular professional ~~corporation~~ association.

SECTION 64. AMENDMENT. Section 10-31-09 of the North Dakota Century Code is amended and reenacted as follows:

10-31-09. Professional relationship preserved - Liability of shareholders and members - Professional regulation. This chapter does not modify any law applicable to the relationship between a person furnishing professional service and a person receiving such service, including liability arising out of such professional service, and including the confidential relationship between the person rendering the professional service and the person receiving such professional service, if any, and all confidential relationships previously enjoyed under the laws of this state or hereinafter enacted shall remain inviolate. Subject to the foregoing provisions, nothing contained herein shall render a director, officer, shareholder, governor, manager, member, or employee of a professional ~~corporation~~ association personally liable in tort for any act in which ~~he~~ that person has not personally participated or in contract for any contract which ~~he~~ that person executes on behalf of a professional ~~corporation~~ association within the limits of ~~his~~ that person's authority. Nothing in this chapter shall restrict or limit in any manner the authority and duty of the regulating boards for the licensing of individual persons rendering professional services. No professional ~~corporation~~ association may do any act which is prohibited to be done by any individual person licensed to practice the profession which the professional ~~corporation~~ association is incorporated or organized to render.

SECTION 65. AMENDMENT. Section 10-31-10 of the North Dakota Century Code is amended and reenacted as follows:

10-31-10. Legal disqualification. If any officer, director, ~~or~~ shareholder, manager, governor, or member of a professional ~~corporation~~ association becomes legally disqualified to render a professional service within this state or accepts employment or is elected to a public office that, pursuant to existing law, is a restriction or limitation upon rendering of professional service, ~~he~~ that person shall sever all employment with or financial interest in such professional ~~corporation~~ association forthwith. A professional ~~corporation's~~ association's failure to comply or require compliance with this provision shall be a ground for the forfeiture of its right to render professional service as a professional ~~corporation~~ association pursuant to the provisions of this chapter.

SECTION 66. AMENDMENT. Section 10-31-11 of the North Dakota Century Code is amended and reenacted as follows:

10-31-11. Disposition of shares on death or disqualification.

1. With respect to a professional association in the form of a corporation:

- a. The articles of incorporation may provide for the purchase or redemption of the shares of any shareholder upon the death or disqualification of such shareholder, or the same may be provided for in the bylaws or by private agreement. In the absence of a provision

for the same in the articles of incorporation or the bylaws or by private agreement, the ~~professional~~ corporation shall have an option to purchase the shares of a deceased shareholder or a shareholder no longer qualified to own shares in such corporation within six months after the death or disqualification of the shareholder, as the case may be.

- b. The option price for such shares shall be the book value as of the end of the month immediately preceding the death or disqualification of the shareholder unless otherwise specified in the articles of incorporation, bylaws, or by private agreement. Book value shall be determined from the books and records of the professional corporation in accordance with the regular method of accounting used by such corporation.
- c. In the event the ~~professional~~ corporation fails to exercise such option, the ~~stock~~ shares of the deceased or disqualified shareholder may be sold to any person duly licensed or otherwise legally authorized to render the same professional service as that for which the ~~professional~~ corporation was organized.
- d. A disqualified shareholder, or the estate of a deceased shareholder, may continue to hold shares of the ~~professional~~ corporation during said option period and for a reasonable period thereafter, pending transfer to another duly licensed or otherwise legally authorized person, but shall not be authorized to participate in any decisions concerning the performance of professional service.

2. With respect to a professional association in the form of a limited liability company:

- a. The articles of organization may provide for the purchase or redemption of the membership interest of any member upon the death or disqualification of such member, or the same may be provided for in the operating agreement or member-control agreement. In the absence of a provision for the same in the articles of organization, the operating agreement or member-control agreement, the limited liability company shall have an option to purchase the membership interest of a deceased member or a member no longer qualified to own a membership interest in such limited liability company within six months after the death or disqualification of the member, as the case may be.
- b. The option price for such membership interest shall be the book value as of the end of the month immediately preceding the death or disqualification of the member unless otherwise specified in the articles of organization, operating agreement, or member-control agreement. Book value shall be determined from the books and records of the limited liability company in accordance with the regular method of accounting used by such limited liability company.
- c. In the event the limited liability company fails to exercise such option, the membership interest of the deceased or disqualified member may be sold to any person duly licensed or otherwise legally

authorized to render the same professional service as that for which the limited liability company was organized.

- d. A disqualified member, or the estate of a deceased member, may continue to hold membership interests of the limited liability company during said option period and for a reasonable period thereafter, pending transfer to another duly licensed or otherwise legally authorized person, but shall not be authorized to participate in any decisions concerning the performance of professional service.

SECTION 67. AMENDMENT. Section 10-31-12 of the North Dakota Century Code is amended and reenacted as follows:

10-31-12. Death of last or only shareholder - Amendment of articles of incorporation - Involuntary dissolution.

1. In the event of the death of the last or only shareholder of a professional corporation whose shares ~~of stock~~ pass to heirs by intestate succession, to ~~legatees~~ devisees under a last will and testament, or otherwise pass by operation of law to a person or persons not legally qualified to render the professional services which the professional corporation was organized to perform, the heirs, ~~legatees~~ devisees, or personal representative of such deceased shareholder, within six months after the date of death of such last or only shareholder, may amend the articles of incorporation to provide that such corporation shall continue as a general corporation under the North Dakota Business Corporation Act.
2. The death of the last or only shareholder of a professional corporation and the failure of the heirs, ~~legatees~~ devisees, or personal representative to make such amendment within six months after such death shall be a ground for the involuntary dissolution of the professional corporation.
3. When notified of such facts are ~~brought to the attention of~~, the secretary of state ~~he~~ shall forthwith certify such facts to the attorney general who shall immediately take appropriate action to dissolve the professional corporation.

SECTION 68. AMENDMENT. Section 10-31-13 of the North Dakota Century Code is amended and reenacted as follows:

10-31-13. Annual reports.

1. With respect to a professional association in the form of a corporation:
 - a. Each ~~professional~~ corporation ~~organized incorporated~~ 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 North Dakota 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.
 - b. Attached to this report shall be a form certifying that all of such directors and shareholders of voting ~~stock~~ shares 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 twenty dollars payable to the secretary of state. No other fees shall be charged therefor.

- c. 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.
- d. 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 twenty dollars per person so certified to be duly licensed by such regulating board.

2. With respect to a professional association in the form of a limited liability company:

- a. Each limited liability company 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 North Dakota Limited Liability Company Act giving the name and residence address of all managers, governors, and members of such association as of the thirtieth day of June next preceding the filing of such report.
- b. Attached to this report shall be a form certifying that all such governors and members holding voting membership interests are duly licensed to render the same specific professional services as those for which the limited liability company 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 and attested by the secretary of the limited liability company, and sworn before a notary public by the persons executing the certificate and accompanied by a filing fee of fifty dollars payable to the secretary of state. No other fees shall be charged therefor.
- c. A copy of such certificate shall be filed at the same time with the regulatory board which licenses the members described in the certificate and no filing fee shall be charged by the regulatory board for such filing.
- d. The regulatory boards issuing the licenses described in section 10-31-01 are authorized and directed to issue the certificates required by section 10-31-02. Such certificates shall be on forms prescribed and furnished by the secretary of state. The regulatory boards may charge and collect a fee not to exceed twenty dollars per person so certified to be duly licensed by the regulatory board.

SECTION 69. AMENDMENT. Section 10-31-13.1 of the North Dakota Century Code is amended and reenacted as follows:

10-31-13.1. Foreign professional ~~corporations~~ associations - Practice in North Dakota.

1. A foreign professional ~~corporation~~ association may practice a profession in this state only through shareholders, directors, officers, ~~members, governors, managers,~~ 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~~ association apply to a foreign professional ~~corporation~~ association.
2. The certificate of authority of a foreign professional ~~corporation~~ association may be revoked by the secretary of state as provided for in this chapter, if the foreign professional ~~corporation~~ association fails to comply with any provisions of this chapter.
3. 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, ~~member, governor, manager,~~ employee, or agent of a foreign professional ~~corporation~~ association, if the individual could lawfully practice the profession in this state in the absence of any relationship to a foreign professional ~~corporation~~ association.
4. This ~~provision~~ section shall apply regardless of whether or not the foreign professional ~~corporation~~ association is authorized to practice a profession in this state.

SECTION 70. AMENDMENT. Section 10-31-14 of the North Dakota Century Code is amended and reenacted as follows:

10-31-14. Citation - Construction. This chapter shall be known and may be cited as the North Dakota Professional Corporation Association Act, and shall be so construed as to effectuate its general purpose of making available to professional persons the benefits of the corporate form and the benefits of the limited liability company form.

SECTION 71. AMENDMENT. Section 12.1-03-02 of the North Dakota Century Code is amended and reenacted as follows:

12.1-03-02. Corporate and limited liability company criminal responsibility.

1. A corporation or a limited liability company may be convicted of:
 - a. Any offense committed by an agent of the corporation or limited liability company within the scope of ~~his~~ the agent's employment on the basis of conduct authorized, requested, or commanded, by any of the following or a combination of them:
 - (1) The board of directors or the board of governors.
 - (2) An executive officer, executive manager, or any other agent in a position of comparable authority with respect to the formulation of ~~corporate~~ policy or the supervision in a managerial capacity of subordinate employees.

- (3) Any person, whether or not an officer of the corporation, who controls the corporation or is responsibly involved in forming its policy.
 - (4) Any person, whether or not a manager of the limited liability company, who controls the limited liability company or is responsibly involved in forming its policy.
 - (5) Any other person for whose act or omission the statute defining the offense provides corporate or limited liability company responsibility for offenses.
- b. Any offense consisting of an omission to discharge a specific duty of affirmative conduct imposed on a corporation or a limited liability company by law.
 - c. Any misdemeanor committed by an agent of the corporation or the limited liability company within the scope of ~~his~~ the agent's employment.
 - d. Any offense for which an individual may be convicted without proof of culpability, committed by an agent of the corporation or the limited liability company within the scope of ~~his~~ the agent's employment.
2. It is no defense that an individual upon whose conduct liability of the corporation or the limited liability company for an offense is based has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense, is immune from prosecution, or is otherwise not subject to justice.

SECTION 72. AMENDMENT. Section 13-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

13-02.1-01. Definitions. As used in this chapter:

1. "Affiliate" means:
 - a. A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities as a fiduciary or agent without sole discretionary power to vote the securities or solely to secure a debt, if the person has not exercised the power to vote;
 - b. A corporation or a limited liability company twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by a person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities as a fiduciary or agent without sole power to vote the securities or solely to secure a debt, if the person has not in fact exercised the power to vote;

- c. A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or
 - d. A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.
2. "Asset" means property of a debtor, excluding property to the extent it is encumbered by a valid lien, property to the extent it is generally exempt under nonbankruptcy law, or an interest in property held in tenancy by the entirety to the extent it is not subject to process by a creditor holding a claim against only one tenant.
 3. "Claim" means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.
 4. "Creditor" means a person who has a claim.
 5. "Debt" means liability on a claim.
 6. "Debtor" means a person who is liable on a claim.
 7. "Insider" means:
 - a. If the debtor is an individual, an "insider" includes a relative of the debtor or of a general partner of the debtor, a partnership in which the debtor is a general partner, a general partner in a partnership in which the debtor is a general partner, ~~or~~ a corporation of which the debtor is a director, officer, or person in control, or a limited liability company of which the debtor is a governor, manager, or person in control.
 - b. If the debtor is a corporation, an "insider" includes a director of the debtor, an officer of the debtor, a person in control of the debtor, a partnership in which the debtor is a general partner, a general partner in a partnership in which the debtor is a general partner, or a relative of a general partner, director, officer, or person in control of the debtor.
 - c. If the debtor is a partnership, an "insider" includes a general partner in the debtor, a relative of a general partner in, of a general partner of, or of a person in control of the debtor, another partnership in which the debtor is a general partner, a general partner in a partnership in which the debtor is a general partner, or a person in control of the debtor.
 - d. If the debtor is a limited liability company, an "insider" includes a governor of the debtor, a manager of the debtor, a person in control of the debtor, a partnership in which the debtor is a general partner, a general partner in a partnership in which the debtor is a general partner or a relative of a general partner, governor, manager, or person in control of the debtor.

- e. An "insider" also includes an affiliate, or an insider of an affiliate as if the affiliate were the debtor, and a managing agent of the debtor.
8. "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien, a common-law lien, or a statutory lien.
 9. "Person" means an individual, partnership, corporation, limited liability company, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.
 10. "Property" means anything that may be the subject of ownership.
 11. "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.
 12. "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.
 13. "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by legal process or proceedings.

SECTION 73. AMENDMENT. Section 13-03-06 of the North Dakota Century Code is amended and reenacted as follows:

13-03-06. Posting of license - Continuing license - Annual fee.

1. Each license must state the address at which the business is to be conducted and must state fully the name of the licensee, and if the licensee is a copartnership or association, the name of the members thereof, and if a corporation, the date and place of incorporation, and if a limited liability company, the date and place of organization. Each license must be kept posted in the licensed place of business and is not transferable or assignable.
2. Each license remains in full force and effect until surrendered, revoked, or suspended, provided that on or before the tenth day of June of each year the licensee shall pay to the commissioner of banking and financial institutions the sum of one hundred dollars for each license held by him, as a license fee for the succeeding fiscal year, and at the same time he shall file with the commissioner a bond in the same amount and in the same character as is required by subdivision c of subsection 2 of section 13-03-05.

SECTION 74. AMENDMENT. Section 13-03.1-07 of the North Dakota Century Code is amended and reenacted as follows:

13-03.1-07. Posting of license - Continuing license - Annual fee.

1. Each license must state the address at which the business is to be conducted and must state fully the name of the licensee, and if the licensee is a copartnership or association, the name of the members thereof, and if a corporation, the date and place of incorporation, and if a limited liability company, the date and place of organization. Each license must be kept posted in the licensed place of business and is not transferable or assignable.
2. Each license must remain in full force and effect until surrendered, revoked, or suspended; provided, that on or before the tenth day of June of each year the licensee shall pay to the administrator the sum of one hundred dollars for each license held by him, as a license fee for the succeeding fiscal year.

SECTION 75. AMENDMENT. Section 13-05-03 of the North Dakota Century Code is amended and reenacted as follows:

13-05-03. Application for collection agency license. Every application for collection agency license, or for a renewal thereof, must be made upon blanks furnished by the department of banking and financial institutions and must contain the following information:

1. The full name and proposed business name of the applicant.
2. The address where the business is to be conducted.
3. The names and addresses of the applicant and those associated with him. If the applicant is a corporation, the application must contain the names of the officers of the corporation. If the applicant is a limited liability company, the application must contain the names of the managers of the limited liability company.
4. Such additional information which the department of banking and financial institutions shall require.

SECTION 76. AMENDMENT. Section 15-09-01 of the North Dakota Century Code is amended and reenacted as follows:

15-09-01. Public lands - Application to acquire for public or quasi-public purpose. The state of North Dakota or any person, firm, limited liability company, or public or private corporation, desiring to acquire any school or institution lands of the state for:

1. Townsite purposes;
2. Schoolhouse sites;
3. Church sites;
4. Cemetery sites;
5. Sites for other educational or charitable institutions;
6. Sites for public parks;
7. Sites for fairgrounds;

8. Public highway purposes;
9. Fish hatcheries;
10. Airports;
11. Railroad right of way or other railroad uses and purposes;
12. Reservoirs for the storage of water for irrigation;
13. Drainage ditches;
14. Irrigation ditches; or
15. Any of the other purposes for which the right of eminent domain may be exercised under the constitution and laws of the state,

may make written application to the board of university and school lands therefor. Such application shall state briefly the purposes for which the land is required, describe the land as accurately as practicable, and shall be accompanied by a map showing the land desired. The application shall be verified by the applicant, or, if the applicant is a public or private corporation, by some officer thereof, or, if the applicant is a limited liability company, by some manager thereof, or, if the applicant is the state of North Dakota, by an officer of the commission, board, or department desiring to acquire the land.

SECTION 77. AMENDMENT. Subdivision b of subsection 1 of section 21-11-02 of the North Dakota Century Code is amended and reenacted as follows:

- b. Applicants who are residents of North Dakota, or private or cooperative enterprises incorporated under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person ~~or~~, corporation, or limited liability company owns part or all of the stock of the applicant or limited liability companies organized under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person, limited liability company, or corporation owns part or all of the membership interests of the applicant, or is engaged in a partnership or joint enterprise with the applicant.

SECTION 78. AMENDMENT. Subsection 2 of section 26.1-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

2. The commissioner shall issue or renew a license if the commissioner finds that the person to be licensed:
 - a. Is competent and trustworthy and intends to act in good faith in the financing of insurance premiums;
 - b. Has a good business reputation and has had experience, training, or education qualifying the person to finance insurance premiums; and
 - c. If a corporation, is incorporated under the laws of this state or is a foreign corporation authorized to transact business in this state or if a limited liability company, is organized under the laws of this

state or is a foreign limited liability company authorized to transact business in this state.

SECTION 79. AMENDMENT. Subdivision a of subsection 4 of section 26.1-31.1-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. The commissioner may issue a reinsurance intermediary license to any person, firm, association, ~~or~~ corporation, or limited liability company who has complied with the requirements of this chapter. Any such license issued to a firm or association will authorize all the members of the firm or association and any designated employees to act as reinsurance intermediaries under the license, and all such persons must be named in the application and any supplements thereto. Any such license issued to a corporation must authorize all of the officers and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of the corporation, and all such persons must be named in the application and any supplements thereto. Any such license issued to a limited liability company must authorize all of the managers and any designated employees and governors thereof to act as reinsurance intermediaries on behalf of the limited liability company, and all such persons must be named in the application and any supplements thereto.

SECTION 80. AMENDMENT. Section 26.1-33-35 of the North Dakota Century Code is amended and reenacted as follows:

26.1-33-35. Insurance in favor of corporation or limited liability company on life of corporate officer or employee or limited liability company manager or employee - Powers of corporation or limited liability company. Whenever a domestic corporation or limited liability company causes to be insured the life of any director, officer, agent, or employee of the corporation or on the life of any governor, manager, agent, or employee of the limited liability company, or whenever a domestic corporation or limited liability company is named as a beneficiary in or assignee of any life insurance policy, due authority to effect, assign, release, relinquish, convert, or surrender, or to change the beneficiary in, the policy, or to take any other or different action with reference to, the insurance, is 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 the corporation or limited liability company. The statement is binding upon the corporation or limited liability company and protects the insurance company in any act done or suffered by it upon the faith of the notice without further inquiry into the validity of the corporate authority or the regularity of the corporate proceedings. No person may 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 the insurance or from acting as a governor or as a member of the executive committee of the limited liability company or any limited liability company act touching the insurance.

SECTION 81. AMENDMENT. Subsection 4 of section 28-21-08 of the North Dakota Century Code is amended and reenacted as follows:

4. On other personal property, the sheriff shall leave a copy of the execution and a notice of levy under an execution with the person holding the property or, ~~if:~~
 - a. If the property consists of a right or share in the stock of a corporation or interest or profits thereon, with the president or other head of the corporation, or the secretary, cashier, or managing agent thereof.
 - b. If the property consists of membership interests in a limited liability company or interest or profits thereon, with the president or other head of the limited liability company or the secretary, treasurer, or managing agent thereof.

SECTION 82. AMENDMENT. Section 28-25-10 of the North Dakota Century Code is amended and reenacted as follows:

28-25-10. Answers on oath - Referee reports to court. All examinations and answers before a judge or referee under this chapter must be on oath, except that when a corporation answers, the answer must be on the oath of an officer ~~thereof~~ of the corporation and that when a limited liability company answers, the answer must be on the oath of a manager of the limited liability company. If the examination is before a referee, it must be taken by ~~him~~ the referee and certified to the judge appointing ~~him~~ who appointed the referee.

SECTION 83. AMENDMENT. Subsection 1 of section 30.1-29-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The court may appoint an individual, ~~or a limited liability company,~~ association, corporation, or other entity with general power to serve as trustee, as conservator of the estate of a protected person.

SECTION 84. AMENDMENT. Section 34-09-06 of the North Dakota Century Code is amended and reenacted as follows:

34-09-06. Contracts between union and employer. Any contract entered into between the employer and a labor union must be executed on behalf of the employer in his or its true name and signed by the employer, or in case of a corporation by the proper officers authorized by law and the bylaws of such corporation to execute valid and binding contracts on behalf of the corporation, or in the case of a limited liability company by the proper managers authorized by law and the operating agreement of such limited liability company to execute valid and binding contracts on behalf of the limited liability company, and any such contract must be executed on behalf of the labor union in the name of the labor union by the president or secretary or other duly authorized officer of such labor union. Such contract is equally binding as to all its terms and conditions against both the employer and the labor union.

SECTION 85. AMENDMENT. Section 34-13-03 of the North Dakota Century Code is amended and reenacted as follows:

34-13-03. License application - Schedule of fees - License issuance and revocation. On or before July first of each year, every applicant for a license shall file with the commissioner a written application stating the name and address of the applicant, the kind of license desired, the street and number of the building

in which the employment agency is to be maintained, the name of the person who is to have the general management of the office, the name under which the business of the office is to be carried on, whether or not the applicant is pecuniarily interested in any other business of a like nature, and if so, where. Such application must also state whether the applicant is the only person pecuniarily interested in the business to be carried on under the license, and must be signed by the applicant and sworn to before a notary public. If the applicant is a corporation, the application must state the names and addresses of the officers and directors of the corporation, and must be signed and sworn to by the president and treasurer thereof. If the applicant is a limited liability company, the application must state the names and addresses of the managers and governors of the limited liability company and must be signed and sworn to by the president and treasurer thereof. If the applicant is a partnership, the application must also state the names and addresses of all partners therein, and must be signed and sworn to by all of them. The application must also state whether or not the applicant is, at the time of making application, or has at any previous time been, engaged or interested in, or employed by anyone engaged in, the business of conducting an employment agency, either in this state or any other, and if so, when and where. The application must also give as reference the names and addresses of at least three persons of reputed business or professional integrity, located in the city or town where such applicant intends to conduct his business. Every applicant for a license to engage in the business of an employment agent shall, at the time of making application for said license, file with the commissioner a schedule of the fees or charges to be collected by such employment agent for any services rendered, together with all rules and regulations that may in any way affect the fees charged or to be charged for any service. Such fees and such rules or regulations may thereafter be changed by filing an amended or supplemental schedule showing such charges, with the commissioner. It is unlawful for any employment agent to charge, demand, collect, or receive a greater compensation for any service performed by him than is specified in such schedule filed with the commissioner.

It is the duty of the commissioner, and he has the power, jurisdiction, and authority to issue licenses to employment agents, and to refuse to issue such license whenever, after due investigation, he finds that the character of the applicant makes him unfit to be an employment agent, or when the premises for conducting the business of an employment agent are found upon investigation to be unfit for such use. Any such license granted by the commissioner may also be revoked by him upon due notice to the holder of said license, and upon due cause shown. Failure to comply with the duties, terms, conditions, or provisions of this chapter, or any lawful orders of the commissioner is deemed due cause to revoke such license.

SECTION 86. AMENDMENT. Subsection 1 of section 36-04-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Before entering into a business of a kind described in this chapter and annually, on or before July first, each dealer shall file an application for a license to transact such business with the department on a form prescribed by it. The application must show:
 - a. The nature of the business for which a license is desired and whether it is for the business of buying livestock or wool, or for both such businesses.

- b. The name or names of the persons applying for the license.
- c. The full name of each member thereof if the applicant is a firm, association, or partnership, ~~or~~ the names of the officers thereof if the applicant is a corporation, or the names of the managers thereof if the applicant is a limited liability company.
- d. The name of the agent or agents of the applicant.
- e. The post-office address and the principal place of business of the applicant.
- f. If the applicant is a foreign corporation, its principal place of business without this state, the name of the state in which it is incorporated, and that it has complied with the laws of this state relating to foreign corporations.
- g. If the applicant is a foreign limited liability company, its principal place of business without this state, the name of the state in which it is organized, and that it has complied with the laws of this state relating to foreign limited liability companies.
- h. Such other facts as the department may prescribe.

SECTION 87. A new subdivision to subsection 1 of section 39-30-05 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

Ordering the surrender of the certificate of organization of a limited liability company organized under the laws of the state or the revocation of a certificate authorizing a foreign limited liability company to conduct business within the state upon finding that the board of governors or a managerial agent acting on behalf of the limited liability company, in conducting the affairs of the limited liability company, has authorized or engaged in conduct made unlawful by this chapter and that, for the prevention of future criminal conduct, the public interest requires that the certificate of organization of the limited liability company be surrendered and the limited liability company dissolved or the certificate revoked.

² **SECTION 88. AMENDMENT.** Subsection 5 of section 43-15-35 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. The applicant for such permit is qualified to conduct the pharmacy, and is a registered pharmacist in good standing or is a partnership, each active member of which is a registered pharmacist in good standing, ~~or~~ a corporation or association, the majority stock in which is owned by registered pharmacists in good standing, or a limited liability company, the majority membership interests in which is owned by registered pharmacists in good standing, actively and regularly employed in and

² NOTE: Section 43-15-35 was also amended by section 31 of Senate Bill No. 2213, chapter 422.

responsible for the management, supervision, and operation of such pharmacy.

SECTION 89. A new subsection to section 45-10.1-26 of the 1991 Supplement to the North Dakota Century Code is created and enacted as follows:

In the case of a general partner that is a limited liability company, the filing of articles of termination, or its equivalent, for the limited liability company or the revocation of its certificate of organization.

SECTION 90. AMENDMENT. Subsection 2 of section 47-19-14.5 of the North Dakota Century Code is amended and reenacted as follows:

2. That, in the case of:

- a. A corporation, the officer or agent acknowledged ~~that he held~~ holding the position or title set forth in the instrument and certificate; ~~that he signed~~ signing the instrument on behalf of the corporation by proper authority; and that the instrument was the act of the corporation;
- b. A limited liability company, the manager or agent acknowledged holding the position or title set forth in the instrument and certificate; signing the instrument on behalf of the limited liability company by proper authority; and that the instrument was the act of the limited liability company;
- c. A partnership, the partner or agent acknowledged ~~that he signed~~ signing the instrument on behalf of the partnership by proper authority and that the instrument was the act of the partnership;
- ~~e.~~ d. A person acknowledging as attorney in fact for a principal, ~~that he signed~~ signing the instrument by proper authority as the act of the principal;
- ~~d.~~ e. A person acknowledging as a public officer, trustee, administrator, guardian, or other representative, ~~that he signed~~ signing the instrument by proper authority and in the capacity stated in the instrument; and

SECTION 91. AMENDMENT. Section 47-19-14.6 of the North Dakota Century Code is amended and reenacted as follows:

47-19-14.6. Short forms of acknowledgment. The forms of acknowledgment set forth in this section may be used and are sufficient for their respective purposes under any law or regulation of this state. The forms shall be known as the "statutory short forms of acknowledgment", and may be referred to by that name. The authorization of the forms provided in this section does not preclude the use of other forms:

1. For an individual acting in his own right:

State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledging).

(Signature of person taking acknowledgment)
 (Title or rank)
 (Serial number, if any)

2. For a corporation:
 State of _____
 County of _____

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent and title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of person taking acknowledgment)
 (Title or rank)
 (Serial number, if any)

3. For a limited liability company:
State of _____
County of _____

The foregoing instrument was acknowledged before me this (date) by (name of manager or agent and title of manager or agent) of (name of limited liability company acknowledging), a (state or place of organization) limited liability company, on behalf of the limited liability company.

(Signature of person taking acknowledgment)
(Title or rank)
(Serial number, if any)

4. For a partnership:
 State of _____
 County of _____

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent), on behalf of (name of partnership), a partnership.

(Signature of person taking acknowledgment)
 (Title or rank)
 (Serial number, if any)

- ~~4.~~ 5. For an individual acting as attorney in fact for a principal:
 State of _____
 County of _____

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

(Signature of person taking acknowledgment)
 (Title or rank)
 (Serial number, if any)

- ~~5.~~ 6. For a public officer, trustee, guardian, personal representative, or other representative:
 State of _____
 County of _____

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of person taking acknowledgment)

(Title or rank)

(Serial number, if any)

SECTION 92. Section 47-19-28.1 of the North Dakota Century Code is created and enacted as follows:

47-19-28.1. Certificate of acknowledgment executed by a limited liability company. The certificate of acknowledgment of an instrument executed by a limited liability company must be substantially in the following form:

STATE OF NORTH DAKOTA)
County of _____)

On this _____ day of _____, in the year _____ before me (here insert the name and quality of the manager), personally appeared _____, known to me (or proved to me on oath of _____) to be the president (or other manager or person) of the limited liability company that is described in and that executed the within instrument, and acknowledged to me that such limited liability company executed the same.

SECTION 93. A new subsection to section 51-17-06 of the North Dakota Century Code is created and enacted as follows:

The limited liability company and each manager and governor thereof, if the applicant is a limited liability company.

SECTION 94. AMENDMENT. Subdivision a of subsection 17 of section 52-01-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- a. Any service performed prior to January 1, 1972, which was employment as defined in this subsection prior to such date, and subject to the other provisions of this subsection, service performed after December 31, 1971, including service in interstate commerce, by:
 - (1) Any officer of a corporation. If a corporate officer is employed by a corporation in which one-fourth or more of the ownership interest, however designated, is owned or controlled by the officer or by the officer's parent, child, or spouse, or by any combination of them, the corporation with the concurrence of the officer may exclude that officer's service from employment as of the first day of January of any calendar year if, during January of that year, the corporation files a written application to exclude the officer's service from employment.
 - (2) Any manager of a limited liability company. If a limited liability company manager is employed by the limited liability company in which one-fourth or more of the ownership interest, however designated, is owned or controlled by the manager or by the manager's parent, child, spouse, or by any combination of them, the limited liability company with the concurrence of the manager may exclude that manager's service from employment as of the first day of January of any calendar year if, during January

of that year, the limited liability company files a written application to exclude the manager's service from employment.

- (3) Any individual who, under the provisions of subdivision e, has the status of an employee.
- ~~(3)~~ (4) Any individual other than an individual who is an employee under ~~paragraph~~ paragraphs 1 ~~or~~, 2, or 3 who performs services for remuneration for any person:
- (a) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for ~~his~~ the person's principal.
- (b) As a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, ~~his~~ the person's principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

For purposes of this paragraph, the term "employment" includes services described in either subparagraph a or b performed after December 31, 1971, only if the contract of service contemplates that substantially all of the services are to be performed personally by such individual; the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than in facilities for transportation); and the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

SECTION 95. A new section to chapter 57-36 of the North Dakota Century Code is created and enacted as follows:

Governor and manager liability. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.

SECTION 96. A new section to chapter 57-39.2 of the North Dakota Century Code is created and enacted as follows:

Governor and manager liability. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments, is

personally liable for such failure. The dissolution of a limited liability company does not discharge a manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.

SECTION 97. AMENDMENT. Subsection 4 of section 57-40.3-07 of the North Dakota Century Code is amended and reenacted as follows:

4. For vehicles which have been previously licensed and are transferred between a member of a general or limited partnership and the partnership at the time the partnership is established or terminated, ~~or~~ between a stockholder of a corporation and the corporation at the time the corporation is organized or liquidated, or between a member of a limited liability company and the limited liability company at the time the limited liability company is organized or terminated.

SECTION 98. AMENDMENT. Subsection 1 of section 57-43.1-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. To procure a license as a dealer in motor vehicle fuel, an applicant shall file with the commissioner an application upon a form prescribed and furnished by the commissioner. Such application must contain:
 - a. The name under which the applicant intends to transact business.
 - b. If a partnership, the name and address of each of the several persons constituting the firm.
 - c. If a domestic corporation, the corporate name, the date of incorporation, and the names of the directors and corporate officers.
 - d. If a foreign corporation, the corporate name, the state where and the time when incorporated, the name of the resident agent, the location of each place of business, and the date on which the business was established.
 - e. If a domestic limited liability company, the limited liability company name, the date of formation, and the names of the governors and managers.
 - f. If a foreign limited liability company, the limited liability company name, the state where and the time when formed, the name of the resident agent, the location of each place of business, and the date on which the business was established.
 - g. Any other information the commissioner may require. The application must be signed and verified by the owner of the business, if an individual, partnership, or unincorporated association, ~~and~~ by any authorized officer, if a corporation, and by any authorized manager, if a limited liability company.

SECTION 99. AMENDMENT. Section 57-43.1-16 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

57-43.1-16. Report by dealer to commissioner. Each dealer in motor vehicle fuel who engages in the sale or use of motor vehicle fuel in this state shall render

to the commissioner, not later than the twenty-fifth day of each calendar month, on the form prescribed, prepared, and furnished by the commissioner, a statement of the number of gallons [liters] of motor vehicle fuel sold, used, received, and delivered by that dealer during the preceding calendar month. If the commissioner deems it necessary to ensure the payment of the tax imposed by this chapter, the commissioner may require returns and payment of the tax to be made for periods other than monthly periods. If the dealer is a domestic corporation, the statement must be signed by the president or secretary, and if a foreign corporation, by the resident general agent, attorney in fact, or by a chief accountant or officer. If the dealer is a domestic limited liability company, the statement must be signed by the president or treasurer, and if a foreign limited liability company, by the resident agent, president, or treasurer. If the dealer is a firm, or an association of individuals, the statement must be made by the managing agent or owner. The report must contain a statement of the quantities of motor vehicle fuel sold, used, received, and delivered within this state from the dealer's place of business. If any motor vehicle fuel has been sold and delivered by the dealer to customers in the original package, whether in tank car, barrel, or other package, and in the form and condition in which the same was imported, the statement must show the amount of motor vehicle fuel so sold and delivered, and the names and addresses of the persons to whom it was sold and delivered.

SECTION 100. A new section to chapter 57-43.1 of the North Dakota Century Code is created and enacted as follows:

Governor and manager liability. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected under the provisions of this chapter.

SECTION 101. AMENDMENT. Subsection 8 of section 57-43.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

8. "Person" includes every natural person, fiduciary, association, ~~or~~ corporation, or limited liability company. Whenever used in any cause prescribing and imposing a fine or imprisonment, or both, the term "person" as applied to an association means and includes the partners or members thereof, ~~and~~ as applied to corporations, the officers thereof, and as applied to limited liability companies, the managers thereof.

SECTION 102. A new section to chapter 57-43.2 of the North Dakota Century Code is created and enacted as follows:

Governor and manager liability. If a limited liability company is an employer and fails for any reason to file the required returns or to pay the taxes due under this chapter, the governor or manager, jointly or severally charged with the responsibility of supervising the preparation of such returns and payments, is personally liable for such failure. The dissolution of a limited liability company does not discharge a manager's liability for a prior failure of the limited liability company to file a return or remit the tax due. The taxes, penalty, and interest may be assessed and collected pursuant to the provisions of this chapter.

SECTION 103. AMENDMENT. Section 60-05-02 of the North Dakota Century Code is amended and reenacted as follows:

60-05-02. Examination of financial accounts of elevator or warehouse by competent examiner - Request by percentage of stockholders. The commission may install, and whenever requested by not less than fifteen percent of the partners, stockholders, or members of any association, copartnership, ~~or~~ corporation, or limited liability company conducting such public elevator or warehouse, shall install, the uniform system of accounting mentioned in section 60-05-01. The commission on its own motion may, or on request of the required percentage of partners, stockholders, or members, the commission shall, send a competent examiner to examine the books and financial accounts of such elevator or warehouse. Whenever a request for the examination of the accounts of any association, copartnership, ~~or~~ corporation, or limited liability company has been made to the commission, as provided for in this section, an examination thereafter shall be made at least once every year until the commission shall be requested to discontinue such examination by resolution adopted by the partners, stockholders, or members at any annual meeting. When such examination has been made, the examiner shall report immediately the results thereof to the president and the secretary of such association, copartnership, ~~or~~ corporation, or limited liability company and to the commission.

SECTION 104. Section 61-13-03.1 of the North Dakota Century Code is created and enacted as follows:

61-13-03.1. Articles of organization or operating agreement may restrict sales to members - When membership interest to become appurtenant to land - Sale of water to others. Any limited liability company organized for irrigation purposes may provide in its articles of organization or operating agreement that water shall be sold, distributed, supplied, or delivered only to owners of its membership interests and that such membership interests shall be appurtenant to the land described in the document evidencing such membership interests. When a copy of such articles of organization or operating agreement is recorded in the office of the register of deeds of the county in which such lands are situated, such membership interests shall become appurtenant to said lands and shall be transferred only with the sale or transfer of such lands, except in the event of sale or forfeiture of such membership interests for delinquent assessments thereon as provided in section 61-13-04. Notwithstanding such provision in its articles of organization or operating agreement, any limited liability company organized for irrigation purposes may sell water to an irrigation district, this state, or any department or agency thereof, and to the United States, or any department or agency thereof, at the same rates as to holders of membership interests of such limited liability company. In the event lands to which any such membership interest is appurtenant are acquired by the state, the United States, or any department or agency thereof, such membership interest shall be canceled by the limited liability company, which shall be reissued to any persons subsequently acquiring title to such land.

³ **SECTION 105. AMENDMENT.** Subsection 15 of section 65-01-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

³ NOTE: Subsection 15 of section 65-01-02 was also amended by section 1 of Senate Bill No. 2396, chapter 615.

15. "Employer" means:

- a. The state and all political subdivisions thereof.
- b. All public and quasi-public corporations in this state.
- c. Every person, partnership, limited liability company, association, and private corporation, including a public service corporation.
- d. The legal representative of any deceased employer.
- e. The receiver or trustee of any person, partnership, limited liability company, association, or corporation, having one or more employees as herein defined.
- f. The president, vice presidents, secretary, or treasurer of a business corporation.
- g. The managers of a limited liability company.

*** SECTION 106.** Statutory references to harmonize provisions relating to corporations and partnerships with the provisions of this Act relating to limited liability companies.

1. The legislative council may insert appropriate references in the sections of law listed in this section, consistent with usages contained in this bill. References inserted may be adjusted to suit the context and grammar of the sections listed in this section and must be inserted so as to harmonize existing law with regard to partnerships and corporations with the powers, documents, officers and employees, rights, and duties of a limited liability company. The following are examples of references contained in existing law and the reference that may be inserted with relation to that reference:
 - a. "Limited liability company" may be inserted with regard to laws that apply to a "corporation".
 - b. "Articles of organization" may be inserted in relation to references to "articles of incorporation" of a corporation.
 - c. "Manager" or "governor" of a limited liability company may be inserted in relation to references to a corporate "officer" or "director".
 - d. "Membership interests" of a limited liability company may be inserted in relation to references to "capital stock" of a corporation.
 - e. Appropriate references to limited liability companies may be inserted in relation to references to "domestic", "foreign", "professional", "professional service", "parent", or similar references describing a corporation.
 - f. "Member in a limited liability company" may be inserted in relation to references to a "partner in a partnership".
 - g. "Operating agreement" may be inserted in relation to references to "bylaws" of a corporation.

- h. "Organized" may be inserted in relation to references to "incorporated" regarding a corporation.
- i. References to "chapter 10-32" may be inserted in relation to references to incorporation under "chapter 10-22".
- j. "Members" may be inserted in relation to references to "stockholders".
- k. "President" may be inserted in relation to "principal executive officer", or similar terms regarding corporations.
- l. "Limited liability company" may be inserted in relation to references in tax laws to "partnership".
- m. References to appropriate sections of chapter 10-06.1 may be substituted for references to sections of chapter 10-06.
- n. Other appropriate changes, including deletions of existing statutory language, may be made when appropriate and in harmony with the apparent intent of this bill.
2. The sections of the North Dakota Century Code to which the authority of subsection 1 applies are sections 1-01-45, 1-02-29, 1-04-02, 1-08-08, 2-03-11, 2-04-01, 2-06-01, 2-08-01, 2-08-03, 2-08-04, 4-01-17.1, 4-02-02, 4-02.1-03, 4-02.1-12, 4-09-01, 4-10-01, 4-10.1-03, 4-10.1-08, 4-10.1-09, 4-10.2-02, 4-10.2-08, 4-10.3-02, 4-10.3-08, 4-10.4-01, 4-10.5-01, 4-10.5-07, 4-10.6-07, 4-11-01, 4-12.1-01, 4-13.2-06, 4-14-01, 4-14-05, 4-14-09, 4-18.1-03, 4-21.1-01, 4-22-02, 4-23-01, 4-25-01, 4-27-03, 4-28-02, 4-28-06, 4-30-01, 4-30-15, 4-30-22, 4-30-26, 4-30-45, 4-32-01, 4-33-01, 4-34-02, 4-35-05, 4-35-12, 4-36-12, 5-04-01, 6-01-02, 6-03-38, 6-06-06, 6-08-08.1, 6-08.1-01, 6-09.2-03, 6-09.8-01, 6-09.10-01, 6-09.11-01, 6-09.13-01, 6-09.14-01, 6-10-01, 6-10-07, 7-01-02, 9-14-01, 10-04-02, 10-04-05, 10-04-06, 10-04-07, 10-04-08, 10-04-08.1, 10-04-10, 10-04-10.1, 10-04-11, 10-12-02, 10-13-01, 10-13-03, 10-15-33, 10-18.1-01, 10-18.1-08, 10-19.1-02, 10-19.1-03, 10-22-03, 10-24-05, 10-24-39, 10-30-04, 10-30-12, 10-30.1-01, 10-30.1-06, 10-30.2-01, 10-30.2-11, 10-30.2-12, 10-30.2-14, 10-30.3-01, 10-30.3-02, 10-30.3-05, 10-30.4-01, 10-30.4-05, 11-11-14, 11-18-01, 11-18-16, 11-18-20, 11-21-01, 11-22-05, 11-28-05, 11-28-16, 11-33.2-15, 12.1-01-04, 12.1-03-04, 12.1-06.1-01, 12.1-23-10, 12.1-27.1-01, 12.1-27.2-04.2, 13-03-01, 13-03.1-01, 13-06-01, 14-02.4-02, 14-09-09.10, 14-10.1-01, 14-10.2-01, 14-15-01, 15-10-17, 15-11-27, 15-11-29, 15-12-25, 15-20.4-01, 15-29-08, 15-43-01, 15-43-02, 15-43-03, 15-43-05, 15-52-08, 15-54-03, 15-54-05, 15-55-02.1, 15-59.3-02, 15-60-08, 15-67-04, 16.1-08-01, 16.1-08-02, 16.1-08-04, 16.1-08.1-01, 18-08-10, 19-01-01, 19-02.1-01, 19-02.1-05, 19-02.1-10, 19-03.1-01, 19-06.1-01, 19-08-02, 19-08-05, 19-13.1-02, 19-16.1-02, 19-16.1-10, 19-17-01, 19-18-02, 19-21-01, 19-22-02, 19-22.1-01, 20.1-01-02, 20.1-06-10, 20.1-06-11, 20.1-06-13, 20.1-07-02, 21-10-02, 23-09.3-01, 23-09.3-05, 23-09.3-11, 23-10-01, 23-12-04, 23-13-01, 23-13-02.1, 23-13-08, 23-15-01, 23-15.1-02, 23-16-01, 23-16-12, 23-17-01, 23-17-02, 23-17-03, 23-17.1-01, 23-17.1-02, 23-17.1-07, 23-17.2-02, 23-17.2-09, 23-17.3-01, 23-18.2-11, 23-19-01, 23-20.1-01, 23-20.2-02, 23-20.2-09, 23-20.3-02, 23-21-01, 23-21-17, 23-21-20, 23-21-21, 23-21-22, 23-21.1-07, 23-21.1-10, 23-25-01, 23-26-08, 23-29-03, 24-01-01.1, 24-01-12, 24-01-39.

24-03-06, 24-07-17, 24-09-12, 26.1-06-02, 26.1-06.1-27, 26.1-10-10.1,
26.1-11-06, 26.1-11-11, 26.1-11-18, 26.1-12-02, 26.1-12-15, 26.1-12-27,
26.1-14-04, 26.1-14-11, 26.1-15.1-05, 26.1-15.1-08, 26.1-15.1-34,
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26.1-26.3-01, 26.1-26.3-02, 26.1-26.3-03, 26.1-27-01, 26.1-29-09.1,
26.1-31.1-01, 26.1-31.1-02, 26.1-31.1-05, 26.1-31.1-08, 26.1-34-10,
26.1-35-05, 26.1-38.1-02, 26.1-38.1-07, 26.1-42-08, 26.1-46-01, 27-02-24,
27-08.1-01, 27-10-05, 27-11-24, 28-04-04, 28-20-15, 28-21-08, 28-22-13,
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30.1-29-22, 30.1-29-24, 30.1-31-03, 30.1-32-05, 32-03-39, 32-06-08,
32-08.1-03, 32-08.1-08, 32-09.1-01, 32-09.1-09, 32-10-01, 32-13-03,
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38-14.2-02, 38-14.2-04, 38-15-02, 38-16-01, 38-16-03, 39-01-01,
39-05-17.1, 39-13-08, 39-18-01, 39-22-02, 39-22.1-01, 39-22.3-01,
39-24-01, 39-25-01, 39-30-01, 40-05-01, 40-05-02.2, 40-05-05, 40-05.1-06,
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40-60-01, 40-60-02, 40-61-03, 41-01-11, 41-03-05, 41-03-10, 41-03-29,
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46-06-03, 47-10-05.1, 47-10-23, 47-10.1-02, 47-10.1-04, 47-10.1-05,
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47-25.1-01, 47-30.1-01, 49-01-01, 49-02-02, 49-02-22, 49-03-01.5,
49-03-02, 49-03.1-02, 49-03.1-05, 49-03.1-08, 49-04-06, 49-04-07,
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50-11-06.6, 50-11.1-03, 50-11.1-13, 50-12-01, 50-12-11.1, 50-12-16,
50-19-02, 50-19-03, 50-22-01, 50-22-02.1, 51-04-01, 51-04-06, 51-05.1-04,
51-06-02, 51-07-01, 51-07-01.1, 51-07-03, 51-08.1-01, 51-09-01, 51-09-04,
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⁴ **SECTION 107. REPEAL.** Chapter 10-06, sections 10-19.1-49, 10-19.1-111, and 10-19.1-113 of the North Dakota Century Code are repealed.

SECTION 108. EFFECTIVE DATE. This Act becomes effective August 1, 1993, if Senate Bill No. 2222 as approved by the Fifty-third Legislative Assembly becomes effective on or before that date.

Approved April 12, 1993
 Filed April 12, 1993

⁴ NOTE: Section 10-06-04.3 was also amended by section 2 of House Bill No. 1400, chapter 80.

* NOTE: SECTION 106 was affected as follows:

Section 4-10.1-09 was also amended by section 1 of House Bill No. 1203, chapter 51.

Section 4-10.2-08 was also amended by section 2 of House Bill No. 1203, chapter 51.

Section 4-10.3-08 was also amended by section 3 of House Bill No. 1203, chapter 51.

Section 4-30-01 was also amended by section 1 of House Bill No. 1182, chapter 57.

Section 4-30-15 was also amended by section 11 of House Bill No. 1182, chapter 57.

Section 4-30-45 was also repealed by section 36 of House Bill No. 1182, chapter 57.

Section 4-35-12 was also amended by section 1 of Senate Bill No. 2139, chapter 59.

Section 6-01-02 was also amended by section 1 of House Bill No. 1175, chapter 66 and by section 1 of Senate Bill No. 2227, chapter 67.

Section 6-03-38 was also amended by section 1 of Senate Bill No. 2449, chapter 72.

Section 6-08-08.1 was also amended by section 1 of House Bill No. 1152, chapter 77.

Section 10-30.1-01 was also amended by section 6 of Senate Bill No. 2021, chapter 42.

Section 10-30.4-01 was also amended by section 10 of Senate Bill No. 2021, chapter 42.

Section 12.1-23-10 was also amended by section 1 of House Bill No. 1345, chapter 123.

Section 15-12-25 was also amended by section 14 of Senate Bill No. 2021, chapter 42.

Section 15-20.4-01 was also amended by section 8 of House Bill No. 1156, chapter 62.

Section 15-59.3-02 was also amended by section 13 of House Bill No. 1183, chapter 205.

Section 15-60-08 was also repealed by section 11 of House Bill No. 1193, chapter 186.

Section 16.1-08-02 was also amended by section 1 of Senate Bill No. 2443, chapter 211 and by section 1 of Senate Bill No. 2470, chapter 212.

Section 23-09.3-01 was also amended by section 1 of House Bill No. 1031, chapter 256.

Section 23-16-01 was also amended by section 1 of Senate Bill No. 2164, chapter 262.

Section 23-17.2-02 was also amended by sections 10 and 11 of House Bill No. 1002, chapter 2.

Section 23-25-01 was also amended by section 1 of House Bill No. 1116, chapter 265.

Section 23-29-03 was also amended by section 3 of House Bill No. 1057, chapter 111.

Section 26.1-17-05 was also amended by section 2 of Senate Bill No. 2456, chapter 290.

Section 26.1-26-08 was also amended by section 2 of House Bill No. 1167, chapter 287.

Section 26.1-26.3-01 was also amended by section 19 of Senate Bill No. 2231, chapter 292.

Section 26.1-26.3-03 was also amended by section 21 of Senate Bill No. 2231, chapter 292.

Section 26.1-31.1-01 was also amended by section 25 of Senate Bill No. 2231, chapter 292.

Section 26.1-38.1-02 was also amended by section 1 of House Bill No. 1511, chapter 312.

Section 27-10-05 was also amended by section 32 of House Bill No. 1077, chapter 89.

Section 34-06-01 was also amended by section 1 of Senate Bill No. 2097, chapter 348.

Section 34-07-01 was also amended by section 1 of House Bill No. 1436, chapter 351.

Section 34-07-02 was also amended by section 2 of House Bill No. 1436, chapter 351.

Section 34-07-03 was also amended by section 3 of House Bill No. 1436, chapter 351.

Section 34-07-05 was also amended by section 4 of House Bill No. 1436, chapter 351.

Section 38-12.1-03 was also amended by section 1 of House Bill No. 1112, chapter 369.

Section 38-14.2-04 was also amended by section 2 of Senate Bill No. 2193, chapter 373.

Section 43-01-10 was also amended by section 1 of Senate Bill No. 2415, chapter 415.

Section 43-07-10 was also amended by section 2 of Senate Bill No. 2474, chapter 418.

Section 43-18-10 was also amended by section 2 of Senate Bill No. 2082, chapter 430.

Section 43-18-11 was also amended by section 3 of Senate Bill No. 2082, chapter 430.

Section 43-23-13 was also amended by section 1 of Senate Bill No. 2073, chapter 433.

Section 45-10.1-52 was also amended by section 3 of House Bill No. 1509, chapter 445.

Section 45-11-01 was also amended by section 17 of House Bill No. 1211, chapter 75.

Section 47-22-03 was also amended by section 1 of House Bill No. 1507, chapter 452.

Section 49-02-02 was also amended by section 29 of House Bill No. 1001, chapter 1.

Section 49-22-03 was also amended by section 5 of Senate Bill No. 2458, chapter 341.

Section 50-11-01 was also amended by section 3 of House Bill No. 1179, chapter 472.

Section 50-11-06.6 was also amended by section 20 of House Bill No. 1179, chapter 472.

Section 52-06-04 was also amended by section 1 of Senate Bill No. 2108, chapter 496.

Section 53-06.1-01 was also amended by section 1 of House Bill No. 1416, chapter 499.

Section 54-05.1-03 was also amended by section 18 of House Bill No. 1211, chapter 75.

Section 54-52-25 was repealed effective June 29, 1993, by section 13 of 1989 Senate Bill No. 2030, chapter 667 of the 1989 Session Laws.

Section 57-36-32 was also amended by section 5 of House Bill No. 1516, chapter 501.

Section 60-07-01 was also amended by section 1 of House Bill No. 1162, chapter 588.

Section 63-01.1-02 was also amended by section 1 of Senate Bill No. 2523, chapter 610.

CHAPTER 55

SENATE BILL NO. 2320
 (Senators Bowman, Andrist, Kinnoin)
 (Representatives Skarphol, Wanzek)

BEEES

AN ACT to create and enact two new sections to chapter 4-12.2 of the North Dakota Century Code, relating to Africanized honeybees; to amend and reenact section 4-12.2-01, subsection 2 of section 4-12.2-04, sections 4-12.2-06, 4-12.2-07, 4-12.2-16, 4-12.2-18, 4-12.2-20, 4-12.2-21, and 4-12.2-23 of the North Dakota Century Code, relating to beekeeping; to repeal sections 4-12.2-03, 4-12.2-17, and 4-12.2-19 of the North Dakota Century Code, relating to the issuance of emergency orders and rules regarding beekeeping, the maintenance of bees in movable frames, and the sale or exposure of infected bees and equipment; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-12.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Apiary" means any place where one or more colonies of bees are kept.
2. ~~"Apparently disease free" means being within accepted tolerance levels as established by rule.~~
- 3- "Beekeeper" means any person who owns and maintains or leases and maintains one or more colonies of bees and maintains the bees in this state.
- 4- 3. "Bees" means honey producing insects of the genus *Apis*, including all life stages of such insects. The term is not limited to the common ~~honey-bee~~ honeybee but includes Africanized bees.
4. "Certificate of health" means a certificate issued upon the request of a beekeeper to verify normal standards of health set by the destination state.
5. "Certified breeder queen" means a queen bee whose progeny can be certified as being European by use of the fast Africanized bee identification system, the universal system for the detection of Africanized honeybees, or any other identification procedure approved by the animal and plant health inspection service.
6. "Certified production queen" means a queen bee with larvae obtained from a certified breeder queen. The term includes the queen emerging from a certified queen cell.

7. "Certified queen cell" means a cell containing the immature stage from a certified breeder queen.
- 5- 8. "Colony" means the hive and its equipment including bees, comb and honey, and brood.
- 6- 9. "Commissioner" means the commissioner of agriculture, or the commissioner's authorized representative.
- 7- 10. "Department" means the department of agriculture.
- 8- ~~"Disease" means American foulbrood or European foulbrood, sacbrood, bee paralysis, or any disease, parasite, or pest that affects bees or brood.~~
- 9- 11. "Equipment" means hives, supers, frames, veils, gloves, or any apparatus, tools, machines, or other devices used in the handling and manipulation of bees, honey, wax, and hives.
12. "Normal standards of health" include the percentages of American foulbrood and varroasis incidents.
- 10- 13. "Property owner" means the person, including a lessee, who has actual use and exclusive possession of the land.

SECTION 2. AMENDMENT. Subsection 2 of section 4-12.2-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Each application for license must include the applicant's name, address, and telephone number, the total number of colonies to be maintained in this state, ~~the name of the owner of the bees,~~ and the name and address of all persons, other than the applicant, who are responsible for maintaining the bees within the state. The application must be signed by the applicant, ~~the owner of the bees,~~ and all persons responsible for maintaining the bees within this state. If the applicant does not own the bees, the application must disclose the nature of the relationship between the owner and the applicant. ~~If the applicant is leasing the bees from the owner, a copy of the lease agreement must be submitted with the application.~~

SECTION 3. AMENDMENT. Section 4-12.2-06 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

~~4-12.2-06. Prevention of disease — Assessment of fees.~~ In addition to the license fee required by section 4-12.2-05, an applicant for a license must submit ~~thirty~~ fifteen cents per colony for each colony maintained in this state.

SECTION 4. AMENDMENT. Section 4-12.2-07 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-07. Registration of an apiary.

1. Each beekeeper shall ~~apply for registration of~~ register all apiaries that are or will be maintained by the beekeeper within the state at the same time an application for license is made. The application forms for registration must be furnished by the department. The applicant shall provide the following information on the form provided:

- a. The location of each apiary to the nearest section, quarter section, township, and range, and, if within the corporate limits of a city, the number or name of the lot, block, and addition in the city.
 - b. The name of the property owner on whose property the apiary is located; where the registrant is not the property owner, a copy of the written lease or other document from the property owner granting the applicant permission to maintain an apiary at that location. The written lease or other document is adequate for subsequent registrations if the parties to the agreement remain the same.
 - c. ~~Any other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and the beekeeping industry.~~
2. ~~New apiaries may be submitted for registration~~ registered with the department at any time.
 3. ~~A beekeeper may maintain or establish an apiary only after application is made and registration of the apiary is approved by the department.~~

SECTION 5. AMENDMENT. Section 4-12.2-16 of the North Dakota Century Code is amended and reenacted as follows:

4-12.2-16. Bee inspector - Duties - Powers.

1. ~~The bee inspector shall inspect apiaries, bees, and equipment within this state as required by this chapter.~~
2. ~~Any apiary, bees, and equipment may be inspected for the purpose of ascertaining the existence of any disease, for the treatment or destruction of such disease of bees or brood, or for the purpose of enforcing this chapter.~~
3. ~~The inspector or any deputy inspector may enter upon private property during reasonable hours for the purpose of inspection. Access may not be denied or hindered by any person while the inspector or the inspector's deputy is acting in an official capacity.~~
4. ~~The beekeeper shall follow the instruction and supervision of the inspector or deputy inspector for the treatment, control, and eradication of any disease found in or on an apiary, equipment, or bees.~~
5. ~~If the beekeeper does not comply with the instructions given by the inspector or the deputy inspector, the inspector may cause the specified treatment to be applied or, if necessary, may cause the infected colonies to be destroyed. A beekeeper may not recover damages or compensation for the loss of any diseased colonies or equipment destroyed or damaged pursuant to this chapter or any rules adopted pursuant to this chapter.~~
6. ~~After the inspection or handling of any diseased apiary, bees, equipment, or building, the inspector or deputy inspector shall take those measures which are necessary to prevent the spread of any bee disease. Upon request, the bee inspector shall provide inspection services to beekeepers, provide assistance in the location of bee colonies for pollination purposes, facilitate the interstate movement of bees, promote~~

improvements in apicultural practices, and work with institutions of higher education to promote the apiary industry. If the bee inspector or a deputy inspector receives a complaint from a beekeeper, aerial sprayer, or farmer, the inspector may enter private property during reasonable hours to make an external inspection for the purpose of identifying a colony.

SECTION 6. AMENDMENT. Section 4-12.2-18 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-18. Certificate of health - Issuance. If a certificate of health is required for the interstate movement of bees and equipment, the ~~beekeeper shall request the state bee inspector to~~ shall make an official inspection for that purpose. ~~If the inspector finds that the bees and equipment are apparently disease free, and if all fees and civil or criminal penalties have been paid, the state bee inspector shall and issue a certificate of health.~~ If for any reason an additional inspection is required prior to the issuance of a certificate of health, the beekeeper shall submit to the commissioner a fee set by the commissioner to cover the costs of the additional inspection.

SECTION 7. A new section to chapter 4-12.2 of the North Dakota Century Code is created and enacted as follows:

Africanized honeybees - Regulated areas. If a swarm of bees is captured, positively identified as being Africanized honeybees, and determined to be present as a result of natural migration, rather than human intervention, the commissioner may designate a limited geographic area as an Africanized honeybee area. The commissioner shall allow beekeepers to transport managed colonies out of the Africanized honeybee area for a period of three months from the date of designation. Thereafter, the commissioner shall allow managed colonies to be transported out of the designated area only if the queens were marked or clipped prior to the date of designation, or if the colonies have been requeened with certified breeder queens, certified production queens, or certified queen cells. A beekeeper may not use a swarm of honeybees positively identified as being Africanized in a beekeeping operation.

SECTION 8. A new section to chapter 4-12.2 of the North Dakota Century Code is created and enacted as follows:

Africanized honeybees. The department in cooperation with the North Dakota beekeeper's association shall develop a voluntary certification plan consistent with the model state Africanized honeybee management plan developed at the United States department of agriculture and national association of state departments of agriculture meeting in St. Louis, Missouri, in October 1991.

SECTION 9. AMENDMENT. Section 4-12.2-20 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-20. Shipment into state - Permit - Fees. Before any person transports any bees or used equipment into this state, that person must obtain an entrance permit from the bee inspector. ~~The applicant for an entrance permit shall:~~

- ~~1. Possess a North Dakota certificate of health issued within the past twelve months for all colonies for which an entrance permit is requested, or obtain a certificate of health from the state bee inspector or from an~~

~~equivalent official in another state or country, certifying that the bees and equipment have been inspected within the last ninety days and have been found to be apparently disease free;~~

- ~~2. Submit a complete description of the shipment; and~~
- ~~3. Submit any other information required by rule.~~

Entrance permits for applicants whose applications are received after March first are effective sixty days after the date of the application for a license. ~~For purposes of the 1991 season, the due date for license applications is May first.~~ Immediately upon the arrival in this state of any bees or equipment, the beekeeper shall comply with this chapter. Upon showing of good cause, the commissioner may on a case-by-case basis waive the sixty-day waiting period.

SECTION 10. AMENDMENT. Section 4-12.2-21 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-21. Abandoned apiary and abandoned equipment - Seizure, destruction, or sale. Any apiary, equipment, or bees not regularly maintained and attended in accordance with this chapter or any rules adopted pursuant to this chapter or which comprises a hazard or threat to ~~disease control~~ in the beekeeping industry may be considered abandoned and will be subject to seizure by the state bee inspector. Any bees not properly hived, or hives or equipment not properly stored, ~~so as to prevent possible spread of disease~~ may be considered abandoned bees or equipment. Any ~~diseased~~ bees and equipment which have been seized may, when necessary, be immediately burned or otherwise destroyed and any bees or equipment not destroyed may be sold at public auction. The proceeds, after the cost of sale and all costs resulting from the action are deducted, must be returned to the former owner or the former owner's estate; provided, however, that before causing the bees or equipment to be sold, the bee inspector shall give the beekeeper or agent a written notice at least five days prior to the date on which the property will be sold. This notice is to be given by registered mail or by personal service upon the owner, or person in charge, of such property.

SECTION 11. AMENDMENT. Section 4-12.2-23 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-12.2-23. Confiscation and disposal. Any bees or equipment found to be transported or maintained in violation of the beekeeping laws of this chapter may be confiscated by the state bee inspector or the sheriff of any county where the offense may have occurred and must be disposed of pursuant to court order or an administrative order issued by the commissioner after a hearing held under chapter 28-32, unless the bees or equipment are disposed of under section 4-12.2-21 ~~or subsection 5 of section 4-12.2-16.~~

SECTION 12. REPEAL. Section 4-12.2-17 of the North Dakota Century Code and sections 4-12.2-03 and 4-12.2-19 of the 1991 Supplement to the North Dakota Century Code are repealed.

SECTION 13. EMERGENCY. This Act is declared to be an emergency measure.

Approved April 15, 1993
Filed April 15, 1993

CHAPTER 56

SENATE BILL NO. 2414
(Senators Nelson, Tallackson)
(Representative Belter)

NORTHERN CROPS INSTITUTE AND COUNCIL

AN ACT to amend and reenact section 4-14.2-01 and subsection 1 of section 4-14.2-02 of the North Dakota Century Code, relating to the northern crops institute and the northern crops council.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-14.2-01 of the North Dakota Century Code is amended and reenacted as follows:

4-14.2-01. Northern crops institute - Establishment - Director.

1. A northern crops institute is ~~hereby~~ established to be administered by and in conjunction with North Dakota state university.
2. A director must be appointed by the ~~university~~ northern crops council in consultation with the ~~northern crops council~~ president of North Dakota state university. The director shall manage the institute, hire and compensate necessary personnel within the limits of legislative appropriations, prepare a biennial budget, and serve as executive secretary to the northern crops council. The ~~university~~ council shall fix the salary of the director, within the limits of legislative appropriations, and may remove the director for cause in consultation with the ~~council~~ president of North Dakota state university.
3. The council shall provide the president of North Dakota state university with an opportunity to participate in the hiring of a director for the institute, including serving on search committees, advertising, interviewing candidates, and negotiating with potential candidates.

SECTION 2. AMENDMENT. Subsection 1 of section 4-14.2-02 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The northern crops council is ~~hereby~~ established. The council shall establish policies for the operation of the northern crops institute. The council consists of:
 - a. The president of North Dakota state university of agriculture and applied science or the president's designee.
 - b. A ~~member of~~ representative selected by the North Dakota wheat commission ~~selected by that commission~~.
 - c. A ~~member of~~ representative selected by the North Dakota oilseed council ~~selected by that council~~.

- d. A ~~member of~~ representative selected by the North Dakota barley council ~~selected by that council.~~
- e. A ~~member of~~ representative selected by the North Dakota soybean council ~~selected by that council.~~
- f. The commissioner of agriculture or the commissioner's designee.
- g. Four to five producers of northern crops selected by the members designated in subdivisions a through f.
- h. Up to two representatives of industries ~~which~~ that process northern crops selected by the members designated in subdivisions a through f.

Approved March 22, 1993

Filed March 23, 1993

CHAPTER 57

HOUSE BILL NO. 1182
(Agriculture Committee)

(At the request of the Commissioner of Agriculture)

DAIRY PRODUCTS LAWS

AN ACT to create and enact four new sections to chapter 4-30 of the North Dakota Century Code, relating to complaint investigation under dairy products laws, inspections, the grade A pasteurized milk ordinance, and labeling standards; to amend and reenact sections 4-30-01, 4-30-02, 4-30-03.9, 4-30-05, 4-30-06, 4-30-09, 4-30-10, 4-30-11, 4-30-12, 4-30-15, 4-30-23, 4-30-24, 4-30-27, 4-30-28, 4-30-29, 4-30-30, 4-30-31, 4-30-32, 4-30-33, 4-30-34, 4-30-35, 4-30-36, 4-30-37, 4-30-38, 4-30-39, 4-30-42, 4-30-48, 4-30-49, 4-30-52, and 4-30-53 of the North Dakota Century Code, relating to dairy products laws; to repeal chapter 4-29, sections 4-30-06.1, 4-30-13, 4-30-14, 4-30-16, 4-30-17, 4-30-41.1, 4-30-45, and 4-30-51 of the North Dakota Century Code, relating to the dairy department, personal notice to file claims, complaints upon violation, place of hearing, witness subpoenas, court review, prohibitions against sales of imitation milk and filled dairy products, labeling of milk and milk products for retail sale and complaint investigation; to provide penalties; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-30-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

¹ **4-30-01. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. ~~"Adulterated milk or adulterated milk products" means any milk or cream to which water has been added, or any milk or milk product which contains any unwholesome substance, or any other inhibitors, or which, if defined by state law or by the rules of the dairy department, does not conform with its definition.~~
2. ~~"Agent" means a person authorized to act on behalf of another person in dealing with a third person.~~
3. "Approved laboratory" means a laboratory in which the entire facilities and equipment have been approved by the dairy commissioner department as being adequate to perform the necessary official tests in accordance with the North Dakota laws and the rules of the dairy department.

¹ NOTE: Section 4-30-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

4. ~~"Butter" means that product usually known by that name which is manufactured exclusively from milk, cream, or both, with or without common salt, with or without additional coloring matter.~~
5. ~~"Buttermilk" means a fluid product resulting from the churning of milk or cream.~~
6. ~~"C.I.P." means a method of cleaning, commonly called "cleaned in place" whereby equipment is cleaned by circulating washing solutions and sanitizers through it and thereby eliminating the necessity of dismantling the equipment.~~
7. ~~"Canned milk" means milk sealed in metal cans for sale to consumers. It is commonly a sweetened, condensed and sterile fluid or evaporated milk.~~
8. ~~"Cheese" means that product which is usually known by that name which is the sound, solid and ripened product of milk and cream made by coagulating the casein thereof with rennet or lactic acid, with or without the addition of ripening ferments and seasoning.~~
9. 2. "Cheese factory" means a place where cheese is made for commercial purposes.
10. ~~"Commercial carrier" means a person or business which is subject to regulation by state or federal authorities.~~
11. 3. "Commissioner" means the dairy commissioner of agriculture or the commissioner's designee.
12. 4. "Composite sample" means a mixture of single samples of milk or milk products taken from different lots or deliveries, the amount taken each time being in proportion to the amount of milk or milk products delivered. Composite samples are usually taken for determining the butterfat content of a product and are tested at a frequency of not less than once every fifteen days. Preservatives may be added.
13. ~~"Concentrated milk" means a fluid product, unsterilized and unsweetened, resulting from the removal of a considerable portion of the water from milk. When recombined with water, in accordance with instructions printed on the container, the resulting product conforms with the standards for milkfat and solids not fat of milk.~~
14. ~~"Concentrated milk products" means and includes homogenized concentrated milk, vitamin D concentrated milk, concentrated skim milk, concentrated flavored milk, concentrated flavored drink, and similar concentrated products made from concentrated milk or concentrated skim milk, as the case may be, and which, when recombined with water in accordance with instructions printed on the container, conform with the standards of the corresponding milk products.~~
15. ~~"Condensed milk or evaporated milk" means milk which has been concentrated by removing water with or without the addition of sugar.~~
16. 5. "Condensery" means a place where condensed or evaporated milk is produced or where milk is changed to a thick liquid by evaporation of a part of the water.

- 17- ~~"Cottage cheese" means the soft uncured cheese prepared from the curd obtained by adding harmless, lactic acid-producing bacteria, with or without enzymatic action, to pasteurized skim milk or pasteurized reconstituted skim milk.~~
- 18- ~~"Cream" means the fatty liquid or semiliquid separated from milk, with or without the addition thereto of milk or skim milk.~~
- 19- 6. "Cream station" means any place other than a creamery where deliveries of cream are weighed, graded, sampled, tested, or collected for purchase.
- 20- ~~"Creamed cottage cheese" means the soft uncured cheese which is prepared by mixing cottage cheese with pasteurized cream, or with a pasteurized mixture of cream and milk or skim milk.~~
- 21- 7. "Creamery" means a place where butter is made for commercial purposes.
- 22- ~~"Cultured buttermilk" means a fluid product resulting from the souring or treatment, by a lactic acid or other culture, of pasteurized skim milk or pasteurized reconstituted skim milk.~~
- 23- ~~"Cultured milk" means a fluid or semifluid product resulting from the souring or treatment, by a lactic acid or other culture, of pasteurized milk, pasteurized reconstituted milk, or pasteurized concentrated milk.~~
- 24- 8. "Dairy animal" means any mammal maintained for the commercial production of milk to be offered for sale for use in the processing or manufacturing of milk or dairy products.
- 25- 9. "Dairy or dairy farm" means a place where one or more dairy animals are kept, a part or all of the milk or milk products from which is sold or offered for sale.
- 26- 10. "Department" means the dairy department of agriculture.
- 27- 11. "Distributor" means a person who purchases milk or milk products and transports them to a retail dealer or a consumer.
- 28- ~~"Dry buttermilk powder or dry buttermilk" means buttermilk dehydrated to dryness.~~
- 29- ~~"Dry milk products or powdered milk products" means milk or milk products dehydrated by evaporation.~~
- 30- 12. "Drying plant" means a place which manufactures dry milk products obtained by the removal of water from milk or milk products.
- 31- 13. "Filled dairy products" means any milk, cream, or skimmed milk, or any combination thereof, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured therefrom, to which has been added, or which has been blended or compounded with, any fat or oil other than milkfat so that the resulting product is in imitation or semblance of any dairy product, including but not limited to milk, cream, sour cream, butter cream, skimmed milk, ice cream, whipped cream, flavored milk or skim milk drink, dried or powdered milk, cheese, cream cheese, cottage cheese, creamed

cottage cheese, ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk; provided, however, that this term shall not be construed to mean or include:

- a. Any distinctive proprietary food compound not readily mistaken for a dairy product, where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;
 - b. Any dairy product flavored with chocolate or cocoa, or the vitamin content of which has been increased, or both, where the fats or oils other than milkfat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used and the food oil, not in excess of one-hundredths per centum of the weight of the finished product, used as a carrier of such vitamins; or
 - c. Oleomargarine.
- ~~32. "Flavored drink or flavored dairy drink" means a beverage or confection consisting of skim milk to which has been added a syrup or flavor made from wholesome ingredients.~~
 - ~~33. "Flavored milk" means a beverage or confection consisting of milk to which has been added a syrup or flavor made from wholesome ingredients.~~
 - ~~34. "Flavored reconstituted drink or flavored reconstituted dairy drink" means a flavored drink made from reconstituted skim milk.~~
 - ~~35. "Flavored reconstituted milk" means a flavored milk made from reconstituted milk.~~
 - ~~36. "Fortified milk and milk products" means milk to which has been added vitamins or minerals in an approved method.~~
 - ~~37. "Frozen milk" means milk which has been processed by freezing.~~
 - 38- 14. "Grading" means the examination of milk or milk products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating the quality of the product.
 - ~~39. "Half and half" means a product consisting of a mixture of milk and cream.~~
 - ~~40. "Homogenized milk" means milk which has been treated in such a manner as to ensure breakup of the fat globules to such an extent that, after forty eight hours of quiescent storage, no visible cream separation occurs on the milk, and the fat percentage of the top one hundred milliliters of milk in a quart bottle, or of proportionate volumes in containers of other sizes, does not differ by more than ten percent of itself from the fat percentage of the remaining milk as determined after thorough mixing. The word "milk" must be interpreted to include homogenized milk.~~
 41. "Ice cream" means the pure, clean, frozen product made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring, and with or without edible gelatin or

~~vegetable stabilizer; and in the manufacture of which freezing has been accompanied by agitation of the ingredients.~~

42. ~~"Ice cream and ice milk mix" means and includes any frozen, or unfrozen substance, mixture, or compound which is not ice cream, milk sherbet, ice, or frozen or frosted malted milk as the same are defined by the department, regardless of the name under which it is sold or offered for sale:~~
- ~~a. If the freezing of such substance, mixture, or compound is accompanied by agitation of the ingredients thereof;~~
 - ~~b. If such substance, mixture, or compound is made in imitation or semblance of ice cream;~~
 - ~~c. If such substance, mixture, or compound is prepared or frozen in the same manner as ice cream is customarily prepared or frozen.~~
43. ~~"Ice cream mix" means the mix from which ice cream is frozen, made from a combination of milk products and one or more of the following ingredients: eggs, sugar, dextrose, corn syrup in liquid or dry form, and honey, with or without flavoring and coloring, and with or without edible gelatin or vegetable stabilizer.~~
- 44- 15. "Ice cream plant" means a place where ice cream is made for commercial purposes.
- 45- 16. "Ice milk plant" means a place where ice milk is made for commercial purposes.
- 46- 17. "Imitation milk" or "imitation milk product" means a food product or food compound made to resemble milk or a milk product when any of the following occurs:
- a. The food physically resembles milk or a milk product. "Physical resemblance" means those characteristics relating to the composition of food, including fat and moisture content, nonfat solids content, and functional ingredient or food additive content such as emulsifiers, stabilizers, flavor, or color additives.
 - b. The packaging used resembles the packaging used for milk or for a milk product.
 - c. The food product or food compound is displayed in a retail establishment in the same manner as milk or a milk product.
 - d. Verbal or pictorial expressions are used on the food products or food compounds, labeling, or in advertisements or other similar devices used to promote the food products or food compounds that state or imply that the food is milk or a milk product.
 - e. The food product or food compound in any other way is manufactured, packaged, or labeled so as to resemble the identity, intended use, or physical and sensory properties of milk or a milk product. "Physical and sensory properties" means those characteristics relating to

flavor, texture, smell, and appearance of a food product or food compound.

47. ~~"Instant dry powder or instant dry milk" means milk dehydrated to dryness and which dissolves "instantly" when reconstituted.~~
48. ~~"Milk" means the lacteal secretion, free from colostrum, obtained by the complete milking of one or more healthy dairy animals.~~
- 49- 18. ~~"Milk or cream hauler" means a person, business, or corporation that who owns vehicles used to transport raw milk from a dairy farm to a dairy facility.~~
- 50- 19. "Milk plant or bottling plant" means a place where milk or milk products are collected, handled, processed, stored, and prepared for distribution.
51. ~~"Milk producer" means a person who owns or controls one or more dairy animals, a part or all of the milk or milk products from which is sold, or offered for sale.~~
52. ~~"Milk products or dairy products" means and includes cream, sour cream, half and half, whipped cream, concentrated milk, concentrated milk products, low fat skim milk, nonfat milk, flavored milk, flavored drink, flavored reconstituted milk, flavored reconstituted drink, buttermilk, cultured buttermilk, cultured milk, vitamin D milk, fortified milk, reconstituted or recombined milk, reconstituted cream, reconstituted skim milk, cottage cheese, creamed cottage cheese, butter, ice cream, ice milk, cheese, unsweetened condensed milk, sweetened condensed milk, evaporated milk, dry buttermilk, dry whole milk, dry skim milk, and any other product made by the addition of any substance to milk or to any of these milk products, and used for similar purposes, and designated as a milk product by the dairy commissioner.~~
- 53- 20. "Milk solids or total solids" means the total amount of solids in milk.
54. ~~"Misbranded milk or misbranded milk products" means any milk or milk product which carries a grade label, unless such grade label has been awarded by the dairy commissioner and not revoked, or which fails to conform in any other respect with the statements on the label.~~
55. ~~"Nonfat, fat free, or defatted milk" means skim milk which contains not more than fifteen hundredths of one percent milkfat.~~
- 56- 21. "Overrun" means the increase in volume of a manufactured product due to the incorporation of water, air, or other substance commonly used in the manufacturing processes.
- 57- 22. "Pasteurization" as applied to milk or skim milk means the process of heating every particle of milk to at least one hundred forty-five degrees Fahrenheit [62.78 degrees Celsius] and cream and other milk products to at least one hundred fifty degrees Fahrenheit [65.55 degrees Celsius], and holding it at such temperature continuously for at least thirty minutes; or heating every particle of milk to at least one hundred sixty-one degrees Fahrenheit [71.67 degrees Celsius] and cream and other milk products to at least one hundred sixty-six degrees Fahrenheit [74.44

degrees Celsius], and holding it at such temperature continuously for at least fifteen seconds in approved and properly operated equipment. When applied to cream for buttermaking, the cream shall be held at a temperature of not less than one hundred sixty-five degrees Fahrenheit [73.89 degrees Celsius] for at least thirty minutes or not less than one hundred eighty-five degrees Fahrenheit [85.00 degrees Celsius] for at least fifteen seconds. Nothing contained in this definition may be construed as barring any other process which has been demonstrated to be equally efficient which assures proper pasteurization and keeping quality, which is consistent with the most desirable quality, and which is approved by the dairy commissioner.

- 58- 23. "Peddler" means a person who purchases milk or milk products and sells them directly to consumers at any place other than from a store, stand, or other fixed place of business.
- 59- 24. "Person" means individuals, firms, partnerships, associations, trusts, estates, corporations, and any and all other business units, devices, or arrangements.
- 60- 25. "Processing or manufacturing" means the treatment of milk or milk products by pasteurizing, bottling, churning, adding flavors to, freezing, dehydrating, packaging, coagulating, or treating in any manner which changes the natural, physical, or chemical properties of the original product.
- 61- 26. "Producer dairy" means a dairy farm which sells milk or cream to a dairy plant for processing or manufacturing.
- 62- 27. "Producer-processor" or "producer-distributor" means a producer who is also a processor or distributor.
- 63- 28. "Raw milk or raw milk products" means products which have not been treated by the process of pasteurization as defined in this section.
- 64- 29. "Receiving and transfer station" means a place where milk or milk products are collected for shipment to a processing or manufacturing plant. This definition must not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.
- 65- ~~"Reconstituted or recombined cream" means a product which results from the combination of dry cream, butter, or milkfat, with cream, milk, skim milk, or water, and which complies with the milkfat standards of cream.~~
- 66- ~~"Reconstituted, or recombined, half and half" means a product resulting from the combination of reconstituted milk or reconstituted skim milk with cream or reconstituted cream.~~
- 67- ~~"Reconstituted or recombined milk" means a product which results from the recombining of milk constituents with water, and which complies with the standards for milkfat and solids not fat of milk.~~
- 68- ~~"Reconstituted or recombined skim milk" means a product which results from the recombining of skim milk constituents with water.~~
- 69- 30. "Retail" means the sale of milk or milk products directly to the consumer.

- ~~70- 31.~~ "Sampler" means a person, other than a milk producer or dairy plant employee, who transports samples for official use or raw milk or milk products from a dairy farm to a dairy facility.
- ~~71- 32.~~ "Sampling" means a procedure whereby a portion or specimen of milk or milk products is taken for the purpose of grading or testing.
- ~~72.~~ "~~Skim milk or low fat milk~~" means ~~milk from which a portion of milkfat has been removed.~~
- ~~73.~~ "~~Skim milk powder or dry skim milk~~" means ~~skim milk dehydrated to dryness.~~
- ~~74- 33.~~ "Skim milk solids or solids-not-fat" means the total solids in milk after all fat has been removed.
- ~~75- 34.~~ "Testing" means an examination of milk, or milk products by sight, odor, taste, or laboratory analysis to determine the quality, wholesomeness, or composition thereof.
- ~~76- 35.~~ "3A Standards" means standards which have been established for certain equipment, utensils, and other items by the 3A Sanitary Standards Committee of the International Association of Milk and Food Sanitarians, Incorporated.
- ~~77- 36.~~ "Transfer station" means a place where milk or milk products are regularly transferred from one vehicle to another. This definition shall not be interpreted to include the warehouses, docks, loading platforms, or storage rooms of commercial carriers.
- ~~78.~~ "~~Vitamin D milk~~" means ~~milk the vitamin D content of which has been increased by an approved method.~~
- ~~79.~~ "~~Whipped butter~~" means ~~butter to which a harmless gas has been added.~~
- ~~80.~~ "~~Whipped cream~~" means ~~cream to which a harmless gas has been added to cause whipping of the product. It may also contain sugar, a harmless flavoring, or a harmless stabilizer.~~
- ~~81.~~ "~~Whole milk powder or dry whole milk~~" means ~~milk which has been dehydrated to dryness.~~
- ~~82- 37.~~ "Wholesale" means the sale of milk or milk products to a retail dealer for purposes of resale.

SECTION 2. AMENDMENT. Section 4-30-02 of the North Dakota Century Code is amended and reenacted as follows:

4-30-02. Licenses required - Fees - Term. Every producer-processor, peddler, distributor, every person purchasing milk or milk products for processing or manufacturing, or owning, operating, or leasing a creamery, cheese factory, condensery, drying plant, ice cream plant, ice milk plant, cream station, milk plant, every other business engaged in the processing or manufacturing of milk or milk products and every organization acquiring milk or milk products as an agent for sale on behalf of others and doing business within this state shall obtain the license required by this section for each such place of business. Application for license must be made to the dairy commissioner upon forms as the commissioner may

require. Upon making application for license, it is implied that consent is given by the applicant for inspection by the ~~state dairy~~ department. If the commissioner finds that the applicant conforms to the North Dakota laws and the rules and regulations of the department, ~~he~~ the commissioner shall issue a license for conducting those operations listed on the application form. If a licensee wishes to conduct operations other than those listed, ~~he~~ the licensee may request that the commissioner approve them, and if the commissioner finds that the proposals are in conformance with North Dakota laws and the rules of the department, ~~he~~ the commissioner shall approve them. The license must be posted conspicuously in each licensed business. All licenses issued under this section must expire on the thirtieth day of June of each year and are not transferable. The fee for licenses is twenty-five dollars. Every organization acquiring milk or milk products as an agent for sale on behalf of others is, for the purposes of this chapter, deemed to be a purchaser of milk or cream from a dairy producer.

SECTION 3. AMENDMENT. Section 4-30-03.9 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-03.9. Entry, inspection, and investigation. Authorized representatives of the department may enter, at reasonable hours, places of business where a licensee or license applicant maintains books, papers, accounts, records, or other documents related to the production, storage, processing, manufacturing, or sale of dairy products. The commissioner ~~of agriculture~~ may subpoena, and the commissioner's authorized representative may inspect, audit, and make copies of relevant books, papers, records, accounts, or other documents of persons doing business with licensees. Any information gained by the department or by the commissioner ~~of agriculture or the commissioner's authorized representative~~ under this section is confidential and may be used only for the administration of this chapter, but the department or the commissioner ~~of agriculture or the commissioner's authorized representative~~ may divulge the information when testifying in any departmental administrative hearing, in a duly noticed proceeding before the milk stabilization board, or in any court proceeding in which the department or the commissioner ~~of agriculture~~ is a party. This chapter does not prevent the use of information procured by the department or the commissioner ~~of agriculture or the commissioner's authorized representative~~ in the compiling or dissemination of general statistical data containing information procured from a number of licensees and compiled in a manner so as not to reveal individual information for any licensee or license applicant.

The commissioner ~~of agriculture or the commissioner's authorized representative~~ may also subpoena and take the testimony under oath of persons believed by the commissioner ~~of agriculture~~ to have information needed by the commissioner in administering and enforcing this chapter.

SECTION 4. AMENDMENT. Section 4-30-05 of the North Dakota Century Code is amended and reenacted as follows:

4-30-05. Application by dairy department for appointment of trustee - Hearing - Appointment. Upon the insolvency of a licensee as defined in section 4-30-04, the dairy department shall apply to the district court of the county in which the licensee maintains its principal place of business for the appointment of itself as trustee. Upon such notice to the licensee as the court shall prescribe, but not exceeding ten days, or upon waiver of such notice in writing by the licensee, the court shall proceed to hear and determine such application in a

summary manner. If it shall appear to the court that the licensee is insolvent within the meaning of this chapter and that it would be for the best interest of persons holding claims against the licensee for the purchase price of milk or milk products sold to such licensee or ~~to his agent~~ that the ~~dairy~~ department shall execute such trust, the court shall issue an order appointing the ~~dairy~~ department as a trustee, without bond, and the ~~dairy~~ department shall proceed in the manner set out in this chapter without further direction from the court.

SECTION 5. AMENDMENT. Section 4-30-06 of the North Dakota Century Code is amended and reenacted as follows:

4-30-06. Notice to file claims - When claims barred. The ~~dairy~~ department, as trustee, ~~by publication of a notice published once each week for three successive weeks in the official newspapers of the principal counties in which the licensee operated,~~ shall notify all persons having claims against the licensee personally by certified mail to file the same with the department. Any such person who fails to file ~~his a~~ claim with the department and to surrender to it any receipts ~~which he obtained from such licensee within forty-five~~ thirty days after ~~the last publication of such receiving notice~~ must be barred from participation upon such claim in any fund marshalled by the department as prescribed in this chapter. The department may proceed as prescribed by law when all producers have responded to the notification.

SECTION 6. AMENDMENT. Section 4-30-09 of the North Dakota Century Code is amended and reenacted as follows:

4-30-09. Moneys collected on claims to be deposited in Bank of North Dakota. All moneys collected and received by the ~~dairy~~ department as trustee must be deposited in the Bank of North Dakota pending the marshalling of ~~said~~ the fund.

SECTION 7. AMENDMENT. Section 4-30-10 of the North Dakota Century Code is amended and reenacted as follows:

4-30-10. ~~Dairy department~~ Department to file report upon recovery of trust fund - Notice to claimants - Approving or modifying report. Upon recovery of the trust fund, or so much thereof as it is possible to recover or as is necessary to pay all outstanding claims, the ~~dairy~~ department shall file its report in court showing the amount payable upon each claim, after recognizing any proper liens or pledges thereon or assignments thereof or deductions therefrom, with legal interest thereon. If the fund proves insufficient to redeem all claims in full, the fund must be prorated among the claimants in such manner as the department deems fair and equitable. Thereupon the court shall cite such claimants upon such notice by mail as it prescribes to appear upon a day fixed in the notice and show cause why such report should not be approved and distribution of ~~said~~ the fund made as outlined in the report. Upon such hearing the court shall approve such report or modify the same as justice may require and shall issue an order directing the distribution of the fund and discharging the department from its trust.

SECTION 8. AMENDMENT. Section 4-30-11 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-11. Attorney general to represent ~~dairy~~ department and may employ assistants - ~~Dairy department~~ Department need not pay court costs. The attorney general shall represent the ~~dairy~~ department in any action or proceeding brought under the provisions of section 4-30-04, and may employ outside legal assistance

when necessary, and may deduct the expense in connection therewith from the trust fund. The department is not required to pay any filing fee or other court cost or disbursement in connection with an application for appointment as trustee or with any action brought by it under the provisions of section 4-30-04 when such fee, cost, or disbursement accrues to the state or to a county of this state.

SECTION 9. AMENDMENT. Section 4-30-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-12. License needed to sample, haul, or test - Training - Examination - Term - Fee. No person shall sample, haul, or test milk or milk products for the purpose of determining the value or grade without obtaining a license from the ~~dairy~~ department. In case of illness or necessary absence, a licensee may appoint a substitute for a period not to exceed six days in one calendar year, unless specific approval for a longer period is obtained from the commissioner. The licensee is responsible for the acts of ~~his~~ the substitute. An applicant for license shall file an application with the department stating the type of sampling, hauling, or testing the applicant wishes to be licensed for. Before a license is issued, the sampler shall receive training in the sampling of milk or milk products as may be required by the department, and shall pass a written examination prepared and given by the department. The sampler shall show knowledge of the requirements of this chapter which pertain to sampling or testing, and must prove by actual demonstration that the sampler is competent and qualified to perform each type of sampling and testing listed on ~~his~~ the application. The commissioner shall then issue a license which shall state the types of sampling, hauling, or testing which the applicant has proven to be able to perform. Additions may be added to the application form and license, without charge, after the license has been issued, upon the request of the licensee and after ~~he has taken~~ receiving any additional training and ~~has satisfactorily passed~~ passing the required examinations. Examinations shall be given by the department at times and places as the department shall determine. A licensee need not take any examinations when renewing ~~his~~ a license unless ~~his ability at performing sampling or testing is questioned~~ required by the commissioner or ~~his~~ the commissioner's assistants. All testers and samplers are required to attend a training session sponsored by the department every two years. Retraining or retesting or both may be required by the commissioner at any time when the commissioner reasonably determines it to be necessary. Licenses issued under this section shall expire on December thirtieth of each year. Testers' licenses must be posted conspicuously in the licensee's place of operation, and are not transferable. Samplers' licenses must be carried by the sampler at all times during sampling activities and are not transferable. The fee for the annual license is ten dollars, and a five dollar penalty fee is applied after the thirty-first day of January if renewals are not paid prior to that date.

SECTION 10. A new section to chapter 4-30 of the North Dakota Century Code is created and enacted as follows:

Commissioner to investigate complaint. Upon receiving a written statement claiming that any provision of this chapter or the rules of the department have been violated, the commissioner shall investigate the complaint as thoroughly and as soon as possible and practicable. If the commissioner finds upon conducting such investigation that a provision of this chapter or the rules of the department have been violated, the commissioner may take any action deemed appropriate.

SECTION 11. AMENDMENT. Section 4-30-15 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

² **4-30-15. Suspension or revocation of license - Judicial review - Emergency order.** Any proceedings under this chapter for the suspension or revocation of any license, or to otherwise determine compliance with this chapter ~~and~~, the rules and regulations and orders of the dairy department, must be conducted in accordance with the provisions of chapter 28-32 and appeals may be taken as therein provided. Where an emergency exists requiring immediate action to protect the public health and safety, the department may, without notice or hearing, issue an order reciting the existence of the emergency and requiring that action be taken as necessary to meet the emergency. Notwithstanding any provision of this chapter, the order is effective immediately, but on application to the department an interested person must be afforded a hearing before the department within ten days. On the basis of the hearing, the emergency order must be continued, modified, or revoked within thirty days after the hearing.

Any person, firm, or corporation whose license is suspended is not eligible during the period of the suspension to engage in activities allowed by the suspended license either personally, or indirectly by having a financial interest in the business.

SECTION 12. AMENDMENT. Section 4-30-23 of the North Dakota Century Code is amended and reenacted as follows:

4-30-23. Sediment testing program for manufacturing cream. The dairy commissioner ~~shall~~ may promulgate rules and regulations concerning frequency and operational details of a sediment testing program.

SECTION 13. AMENDMENT. Section 4-30-24 of the North Dakota Century Code is amended and reenacted as follows:

4-30-24. Acceptable, probational, and reject cream. The dairy commissioner may promulgate rules and regulations concerning acceptable, probational, and reject cream.

SECTION 14. AMENDMENT. Section 4-30-27 of the North Dakota Century Code is amended and reenacted as follows:

4-30-27. Standards for the production of manufacturing grade milk - Commissioner to adopt rules. The commissioner ~~shall~~ may adopt rules governing the production and processing of milk for manufactured dairy products. Rules shall, at a minimum, comply with United States department of agriculture minimum standards for manufacturing grade dairy products.

SECTION 15. AMENDMENT. Section 4-30-28 of the North Dakota Century Code is amended and reenacted as follows:

4-30-28. Farm certification. The dairy commissioner may promulgate rules and regulations concerning farm certification.

² NOTE: Section 4-30-15 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

SECTION 16. AMENDMENT. Section 4-30-29 of the North Dakota Century Code is amended and reenacted as follows:

4-30-29. Grades of milk for manufacturing purposes. The dairy commissioner may promulgate rules and regulations concerning grades of milk for manufacturing purposes.

SECTION 17. AMENDMENT. Section 4-30-30 of the North Dakota Century Code is amended and reenacted as follows:

4-30-30. Milk grading program. The dairy commissioner may promulgate rules and regulations concerning a milk grading program.

SECTION 18. AMENDMENT. Section 4-30-31 of the North Dakota Century Code is amended and reenacted as follows:

4-30-31. Rejection and exclusion of milk. The dairy commissioner may promulgate rules and regulations concerning rejection and exclusion of milk.

SECTION 19. AMENDMENT. Section 4-30-32 of the North Dakota Century Code is amended and reenacted as follows:

4-30-32. New producers - Transfer producers. The dairy commissioner may promulgate rules and regulations concerning new producers and transfer producers.

SECTION 20. AMENDMENT. Section 4-30-33 of the North Dakota Century Code is amended and reenacted as follows:

4-30-33. Standards for dairy manufacturing or processing - Commissioner to adopt rules. The commissioner ~~shall~~ may adopt rules governing the approval of dairy processing and manufacturing plants and standards for grades of dairy products. Rules must, at a minimum, comply with United States department of agriculture general specifications for approved dairy plants and standards for grades of dairy products. No plant may be operated or any dairy products sold in violation of these rules.

SECTION 21. AMENDMENT. Section 4-30-34 of the North Dakota Century Code is amended and reenacted as follows:

4-30-34. Inspection of dairy plants manufacturing or processing milk products. The dairy commissioner ~~shall~~ may promulgate rules and regulations for an inspection program of dairy plants manufacturing or processing milk products.

SECTION 22. AMENDMENT. Section 4-30-35 of the North Dakota Century Code is amended and reenacted as follows:

4-30-35. Standards for manufactured dairy products. The dairy commissioner ~~shall~~ may promulgate rules and regulations establishing standards for manufactured dairy products.

SECTION 23. AMENDMENT. Section 4-30-36 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-36. Standards for grade A milk and milk products - Adoption of amendments. Only grade A milk may be sold as fluid beverage for human consumption. The minimum standards for milk and milk products designated as grade A are the same

as the minimum requirements of the "Grade A Pasteurized Milk Ordinance, 1989 Recommendations of the United States Public Health Service" and all supplements added thereto except that the minimum requirements for solids not fat in all grade A milk is eight and one-half percent and the butterfat content of grade A whole milk is three and one-fourth percent. The commissioner may adopt as ~~dairy~~ department regulations other standards in addition to any amendments, supplements to, or new editions of ~~said the~~ milk ordinance which are in the interest of public safety, wholesomeness of product, consumer interest, sanitation, good supply, salability, and promotion of grade A milk and milk products.

SECTION 24. AMENDMENT. Section 4-30-37 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4-30-37. Quality records to be kept - Term. Adequate records for testing and grading in conformance with this chapter and the rules and regulations of the ~~dairy~~ department must be kept by each business sampling or testing milk or cream for at least twelve months in a manner approved by the ~~dairy~~ commissioner.

SECTION 25. AMENDMENT. Section 4-30-38 of the North Dakota Century Code is amended and reenacted as follows:

4-30-38. Transportation of milk and cream for manufacturing, processing, or bottling purposes - Commissioner to adopt rules. The commissioner ~~shall~~ may adopt rules governing the transportation of milk and cream to be used for manufacturing, processing, or bottling purposes. No facility or vehicle shall be used or operated in violation of these rules.

SECTION 26. AMENDMENT. Section 4-30-39 of the North Dakota Century Code is amended and reenacted as follows:

4-30-39. Transportation of processed and manufactured products - Commissioner to adopt rules. The commissioner ~~shall~~ may adopt rules governing the transportation of processed and manufactured milk or milk products. No facility or vehicle may be used or operated in violation of these rules.

SECTION 27. AMENDMENT. Section 4-30-42 of the North Dakota Century Code is amended and reenacted as follows:

4-30-42. Overrun limited. No person may permit an overrun in excess of twenty-five percent when manufacturing butter. The reports made to the ~~dairy~~ commissioner under the provisions of section 4-30-46 by persons who are engaged in the manufacture of butter are competent evidence against the person making the report in a prosecution. If the report shows that during a period of one month or more the person making the report and charged with a violation of this section on a certain day within the period of the report, has had or permitted an average percentage of overrun in excess of twenty-five percent in the manufacture of butter during said period, the report is prima facie evidence of a violation of this section.

SECTION 28. AMENDMENT. Section 4-30-48 of the North Dakota Century Code is amended and reenacted as follows:

4-30-48. Failure to agree on sample for official test - Procedure to be followed. Whenever it is impossible to secure or mutually agree upon a sample of milk or cream as provided in section 4-30-47, then the party selling or offering for

sale such milk or cream may require that the buyer or prospective buyer forward to the ~~office of the dairy commissioner~~ department the sample taken in compliance with sections 4-30-19 and 4-30-20. Each sample so forwarded must be accompanied by a statement in the form of an affidavit from the buyer or prospective buyer, stating that the sample was taken in compliance with the provisions of sections 4-30-19 and 4-30-20, and the statement also must contain all information required in section 4-30-47, except that the signature of the seller is not required thereon. Each sample must be tested and reported on as prescribed in section 4-30-47, and the percentage of butterfat so determined and reported constitutes the "official butterfat test" and is the basis on which final settlement must be made.

SECTION 29. AMENDMENT. Section 4-30-49 of the North Dakota Century Code is amended and reenacted as follows:

4-30-49. Standards considered minimum - Municipality may provide more stringent standards. The standards set forth in this chapter must be considered as minimum standards only. Nothing in this chapter may be construed to prevent any municipality from providing by ordinance more stringent or comprehensive standards than are contained herein nor is anything in this chapter or in the rules and regulations of the ~~dairy~~ department to be construed to prevent any person, ~~business, or organization~~ concerned with dairying from using standards, inspections, or other practices or procedures which are more stringent or comprehensive.

SECTION 30. AMENDMENT. Section 4-30-52 of the North Dakota Century Code is amended and reenacted as follows:

4-30-52. Disposal of illegal milk or milk products - Seizure. Any milk or cream offered for sale and which is in violation of any provisions of this chapter or the rules and regulations of the ~~dairy~~ department must be colored with a harmless food coloring and returned to the owner. In addition, any milk or milk product which is in violation of this chapter or the rules of the ~~dairy~~ department may be seized or ordered held by the ~~dairy~~ commissioner and must be disposed of as any other illegal food or drug as outlined in chapter 19-02.1.

SECTION 31. AMENDMENT. Section 4-30-53 of the North Dakota Century Code is amended and reenacted as follows:

4-30-53. Penalty for violation of chapter - Additional civil penalty - Failure to pay civil penalty. Any person violating any of the provisions of this chapter ~~or~~, the rules of the ~~dairy~~ department or any order of the commissioner, for which another criminal penalty is not specifically provided is guilty of a class B misdemeanor. In addition, a civil penalty not to exceed five hundred dollars per day for each violation or continuing violation may be imposed. The civil penalty may be imposed by the courts in a civil proceeding or by the ~~dairy~~ commissioner through an administrative hearing pursuant to chapter 28-32. If a civil penalty is imposed by the ~~dairy~~ commissioner through an administrative hearing and the civil penalty is not paid, the ~~dairy~~ commissioner may collect the civil penalty by a civil proceeding in any appropriate court. The ~~dairy~~ commissioner may suspend or revoke a license issued pursuant to this chapter for failure to pay a civil penalty within thirty days after a final determination is made that the civil penalty is owed. The commissioner may refuse to renew or issue a license if the licensee or license applicant has repeatedly violated the provisions of this chapter, the department rules, or orders of the commissioner.

SECTION 32. A new section to chapter 4-30 of the North Dakota Century Code is created and enacted as follows:

Inspections. Upon notification, the commissioner shall have free access to all places of business, buildings, vehicles, and equipment used in the production, storage, handling, processing, manufacturing, transporting, and marketing of milk and milk products, and their substitutes. The commissioner may open and inspect any container suspected of containing a substance produced, stored, handled, processed, manufactured, transported, sold, or offered for sale under the provisions of this chapter. It is a violation of this chapter to refuse to allow inspections of any dairy facilities licensed under this chapter. The commissioner may suspend a license for failure to comply with this section.

SECTION 33. A new section to chapter 4-30 of the North Dakota Century Code is created and enacted as follows:

Grade A pasteurized milk ordinance. Dairy producers, processors, and manufacturers shall comply with the "Grade A Pasteurized Milk Ordinance of 1989" and its supplements.

SECTION 34. A new section to chapter 4-30 of the North Dakota Century Code is created and enacted as follows:

Labeling. North Dakota labeling standards and standards of identity are those set forth in the National Labeling and Education Act of 1990, all supplements, and rules and regulations promulgated thereunder. The commissioner shall adopt definitions consistent with federal law for, among other words, "milk", "butter", "cream", "cheese", and "ice cream". If state law conflicts with the National Labeling and Education Act of 1990, the National Labeling and Education Act of 1990 applies.

SECTION 35. REPEAL. Chapter 4-29, sections 4-30-13, 4-30-14, and 4-30-17 of the North Dakota Century Code, and sections 4-30-06.1, 4-30-16, and 4-30-51 of the 1991 Supplement to the North Dakota Century Code are repealed.

³ **SECTION 36. REPEAL.** Section 4-30-41.1 of the North Dakota Century Code and section 4-30-45 of the 1991 Supplement to the North Dakota Century Code are repealed.

SECTION 37. EFFECTIVE DATE. Section 36 of this Act becomes effective when the rules and regulations promulgated under the National Labeling and Education Act of 1990 and its supplements become effective.

Approved April 1, 1993
Filed April 2, 1993

³ NOTE: Section 4-30-45 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 58

HOUSE BILL NO. 1054
(Legislative Council)
(Interim Natural Resources Committee)

PEST CONTROL

AN ACT to create and enact a new section to chapter 63-01.1 of the North Dakota Century Code, relating to authority of county weed boards to control pests; and to amend and reenact subsection 1 of section 4-33-11, sections 63-01.1-02, 63-01.1-03, 63-01.1-04.1, subsections 2, 3, and 4 of section 63-01.1-05, sections 63-01.1-08, 63-01.1-09, 63-01.1-13, and 63-01.1-13.1 of the North Dakota Century Code, relating to financing local pest control programs and pest control by county weed boards.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 1 of section 4-33-11 of the North Dakota Century Code is amended and reenacted as follows:

1. The governing body of any political subdivision of this state may appropriate money for the control of pests pursuant to this chapter or section 5 of this Act. If state funds are involved, ~~such the~~ money must be expended according to control plans approved by the commissioner. The governing body of a political subdivision shall determine the portion, if any, of control program costs that should be paid by the political subdivision. Costs of the control program may be paid by moneys in the emergency fund. If the emergency fund is not sufficient to carry out the program, the governing body may expend money from the general fund and in ~~such this~~ event the governing body may, upon approval of sixty percent of those voting in any special election or the next regularly scheduled primary or general election, levy a tax during the following year upon all taxable property in the political subdivision to fully reimburse the general fund for the amount expended except that ~~such the~~ levy may not exceed the limitation in subsection 1 of section 57-15-28.1.

SECTION 2. AMENDMENT. Section 63-01.1-02 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-02. Definitions. As used in this chapter:

1. "Board member area" means a geographical area within the county from which a member of the weed board is appointed.
2. "Commissioner" means the North Dakota ~~state~~ commissioner of agriculture.
3. "Control" means to prevent the spread of any noxious weed, designated by the commissioner or other control authority, by seed or any other propagating part or, pursuant to section 5 of this Act, to suppress, eradicate, or prevent or retard the spread of a pest.

4. "Control authority" means the commissioner and those ~~he~~ the commissioner may designate to act in ~~his~~ the commissioner's behalf, and the county weed board.
5. "County weed board" means members of the board of each county as appointed by the county commissioners of the county pursuant to section 63-01.1-04.
6. "County weed control officer" means the person appointed or designated by the county weed board to be responsible for the operation and enforcement of this chapter within each county.
7. "Eradicate" or "eradication" means to destroy a plant or, pursuant to section 5 of this Act, a pest so that it is not viable.
8. "Landowner" means any owner of federal, state, municipal, or private land, under statutory authority or otherwise, but does not include a lessee, renter, tenant, operator, or an owner of any easement or right of way.
9. "Noxious weed" means any plant propagated by either seed or vegetative parts which is determined by the commissioner after consulting with the state cooperative extension service, or a county weed board after consulting with the county extension agent, to be injurious to public health, crops, livestock, land, or other property.
10. "Operator" means the person chiefly responsible for the farming or other operations being performed on the land, whether for self-benefit, or for the benefit of the landowner or another.
11. "Person" means any individual, partnership, firm, corporation, company, society, association, the state, or any department, agency, or subdivision thereof, or any other entity which occupies or owns land or which causes noxious weed seeds or propagating parts to be disseminated or transported in North Dakota.
12. "Pest" means any pest as defined in section 4-33-01.
13. "Township road" means a public road which is an improved road, constructed, maintained, graded, and drained by the township, or county in the case of an unorganized township. A township road includes a street in the case of an unincorporated townsite and does not necessarily have to be surfaced. A sodded road is not a township road. In order for a section line to be a township road it must be graded and drained and be an improved maintained road. A township road is a public road which is not designated as part of a county, state, or federal-aid road system and is not located in an incorporated city.

SECTION 3. AMENDMENT. Section 63-01.1-03 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-03. State weed control authority - Commissioner of agriculture - Powers and duties.

1. The duty of enforcing this chapter and carrying out its provisions and intent is vested in the commissioner who may designate employees of ~~his~~ department ~~the commissioner~~ and local weed control officers to act in ~~his~~

the commissioner's behalf, but under ~~his~~ the commissioner's supervision and direction.

2. The commissioner shall determine which weeds are noxious for the purposes of a state list of noxious weeds after consulting with the state cooperative extension service, and shall compile and keep current a list of ~~such~~ these noxious weeds.
3. The commissioner shall outline procedures, prepare and supply official notices, posters, report forms, and ~~such any~~ other documents ~~as are~~ needed in carrying out the provisions of this chapter. ~~Such~~ The documents ~~shall~~ must be supplied to weed control officers, county, township, and city authorities, and others as needed to carry out an effective weed control program or, pursuant to section 5 of this Act, pest control program. Official notices or posters such as the noxious weed list, rules and regulations, dates for controlling, and other compliance requirements ~~shall~~ must be prepared by the commissioner ready for printing in official newspapers, or for posting at least annually.
4. The commissioner shall cooperate with the county weed board, county weed control officers, highway patrol officers, county sheriffs, ~~the truck regulatory division,~~ and others in carrying out ~~his~~ the commissioner's duties under this chapter. He The commissioner shall also encourage the state cooperative extension service to disseminate information and to conduct educational campaigns with respect to eradication and control of noxious weeds or, for purposes of section 5 of this Act, pests.
5. The commissioner upon receiving complaints in writing from persons shall immediately refer the complaint to the proper weed control officer or control authority.
6. The commissioner shall encourage the cooperation of program agencies of both the federal and state governments in furtherance of the purposes of this chapter.
7. The commissioner shall prescribe, in accordance with chapter 28-32, and cause to be published, ~~such~~ rules, regulations, and procedures as ~~he~~ the commissioner deems necessary to carry out the intent of this chapter.
8. The commissioner shall require a minimum number of operational or program reports from weed control authorities or weed control officers as deemed necessary to keep posted on weed control progress and activity in the state and, for purposes of section 5 of this Act, pest control progress and activity in the state.
9. The commissioner shall call an annual meeting of all weed control officers, either statewide or by areas, to review the intent, operation, procedures, and accomplishments under this chapter and may also request the extension service or others to present educational information on weed control practices or, for purposes of section 5 of this Act, pest control practices. Weed control authority members ~~shall~~ must be invited to attend meetings called pursuant to this subsection.

SECTION 4. AMENDMENT. Section 63-01.1-04.1 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-04.1. Powers and duties of county weed board.

1. The county weed board shall appoint or designate a county weed control officer who shall cooperate with the board and be responsible for operation and enforcement of this chapter within the district. The officer may be a member of the county weed board or may be any other interested and able person. The same person may serve as weed control officer for more than one county weed board. Employment ~~shall be~~ is for a tenure and at rates of compensation and reimbursement for travel expenses as the county weed board may prescribe and ~~shall be~~ is without regard to any provisions of law relating to age or dual compensation. The appointment or designation of a county weed control officer ~~shall~~ must be certified by the county weed board to the commissioner.
2. The county weed board may expend funds from those sources authorized in section 63-01.1-06 for the purpose of controlling noxious weeds, in addition to any other expenditures for control authorized by this chapter, when weeds have grown on any public or private land and a control authority finds that the extent of the weeds is so severe that their eradication would constitute an extreme financial burden upon the person otherwise liable for the expense.
3. The county weed board may develop and compile a county list of noxious weeds. Any county list ~~shall~~ must, at a minimum, contain those noxious weeds determined by the commissioner. The commissioner may remove a county weed board noxious weed determination from the county list after consulting with the board and the state cooperative extension service.
4. County weed boards shall cooperate with all other control authorities.
5. The county weed board shall implement and pursue an effective program for control of noxious weeds and, for purposes of section 5 of this Act, pests.
6. The county weed board shall fix the time and place of regular meetings, which ~~shall~~ must occur at least once each year and ~~shall~~ be open to the public. The first regular meeting ~~shall~~ must be held prior to August 15, 1981. The board shall keep minutes of all meetings and a complete record of all official acts.
7. The county weed board shall make at least one annual inspection to determine the progress of weed control activities within the county and, for purposes of section 5 of this Act, the progress of pest control activities within the county.
8. The county weed board shall control and disburse all moneys received by the county, for weed control, from any source.
9. The county weed board shall render technical assistance to any city with a population of three thousand or more which establishes a program as provided in section 63-01.1-10.1.

SECTION 5. A new section to chapter 63-01.1 of the North Dakota Century Code is created and enacted as follows:

County weed board - Pest control. The board of county commissioners in consultation with the county weed board may authorize the county weed board to control pests. A county weed board that has been authorized to control pests pursuant to this section may expend funds made available from state or federal sources for pest control purposes.

SECTION 6. AMENDMENT. Subsections 2, 3, and 4 of section 63-01.1-05 of the North Dakota Century Code are amended and reenacted as follows:

2. Become acquainted with the location of noxious weeds and, for purposes of section 5 of this Act, pests on all land within the county.
3. Through personal contact, by letter, telephone, or other means, encourage noxious weed and, for purposes of section 5 of this Act, pest control or eradication by all landowners or occupants within the county.
4. Investigate all complaints received by himself that person, the county weed board, or the commissioner. If the weed control officer determines that the complaint is justified, he the weed control officer shall personally serve upon the landowner written notice, or shall issue written notice by certified mail to the address of the landowner requiring the landowner to control or eradicate noxious weeds or, for purposes of section 5 of this Act, pests on ~~his~~ that person's land within five days, unless additional time is requested from and granted by the county weed board. A copy of the written notice shall must be sent by certified mail to the address of any lessee, tenant, renter, or operator of the land. If the landowner resides in another state, an additional time of not less than ten days shall must be granted to the landowner for control and eradication purposes. The weed control officer may, upon failure by the landowner to do so in the time limits provided, cause noxious weeds or, for purposes of section 5 of this Act, pests to be controlled or eradicated and the expenses to be charged against the land of the landowner.

When noxious weeds or, for purposes of section 5 of this Act, pests in an area of more than three acres [1.21 hectares] in each forty-acre [16.19-hectare] area, in which a crop or trees are growing, are to be controlled, or eradicated because of infestations of noxious weeds or pests, the landowner, lessee, renter, tenant, or operator of the land may petition the county weed board to halt the controlling or eradication of the noxious weeds or pests on the land, and the controlling or eradication shall may not take place unless approved by the county weed board by a majority vote of those members present and voting at a regular or special meeting.

The expenses charged shall become a part of the taxes to be levied against the land for the ensuing year and shall must be collected in the same manner as other real estate taxes are collected, and placed to the credit of the respective subdivisions entitled thereto, or the landowner shall be subject to the penalties provided in section 63-01.1-15. Complaints, subject to the approval of the weed board, may be initiated by the weed control officer, and notice served in accordance with this subsection.

SECTION 7. AMENDMENT. Section 63-01.1-08 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

63-01.1-08. Entry upon land for weed control purposes - Remedial requirements - Liens - Penalty.

1. The commissioner, any control authority, county weed control officer, or anyone authorized thereby, may enter upon all land under their jurisdiction for the purpose of performing their duties and exercising their powers under this chapter, including the taking of specimens of weeds or, for purposes of section 5 of this Act, pests or other materials, without the consent of the landowner, lessee, renter, tenant, or operator, and without being subject to any action for trespass or damages, including damages for destruction of growing crops, if reasonable care is exercised.
2. If any land is found to be infested with noxious weeds or, for purposes of section 5 of this Act, pest by the commissioner, any control authority, county weed control officer, or other authorized person, the county weed board, by resolution adopted by two-thirds of its members, may confirm the fact. The board may set forth minimum remedial requirements for control of the infested property. The board shall deliver, personally or by certified mail, to the address of the landowner of the infested land:
 - a. A copy of the resolution.
 - b. A statement of the cost of fulfilling the requirements for control.
 - c. A request that the requirements contained in the resolution be carried out at the landowner's expense within five days, unless additional time is requested from and granted by the board, or on a cooperative basis. If the landowner resides in another state, an additional time of not less than thirty days ~~shall~~ must be granted to the landowner for control and eradication purposes.
3. A copy of the resolution ~~shall~~ must be sent by certified mail to any lessee, renter, tenant, or operator of the land.
4. A landowner who is responsible for an infestation and fails or refuses to perform the remedial requirements for the control of the weeds or, for purposes of section 5 of this Act, pests on the infested area within the time designated may be fined not more than fifty dollars per day for each day of violation and not more than a total of two thousand five hundred dollars per year as determined by the district court. Any person accused of failure to perform remedial requirements under this section is entitled to a trial by jury, upon request. The accumulated fines under this section are a lien against the property of the landowner from the day the resolution is delivered to the landowner by the weed board. All fines collected pursuant to this section ~~shall~~ must be deposited with the treasurer of the political subdivision and credited to the weed board noxious weed control fund in the political subdivision in which the fine originated. Fines collected pursuant to this section for failure or refusal to perform remedial requirements for the control of pests on an infested area must be credited to the weed board noxious weed control fund but dedicated for use by the county weed board to control pests.

5. When noxious weeds or, for purposes of section 5 of this Act, pests in an area of more than three acres [1.21 hectares] in each forty-acre [16.19-hectare] area, in which a crop or trees are growing, are to be controlled or eradicated because of infestations of noxious weeds or pests, the landowner, lessee, renter, tenant, or operator of the land may petition the county weed board to halt the controlling or eradication of the noxious weeds or pests on the land, and the controlling or eradication ~~shall~~ may not take place unless approved by the county weed board by a majority vote of those members present and voting at a regular or special meeting.

SECTION 8. AMENDMENT. Section 63-01.1-09 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-09. County weed board to control or eradicate noxious weeds and pests along county and township highways. The county weed board shall eradicate or control noxious weeds or, for purposes of section 5 of this Act, pests as defined in this chapter along county and township highways within the county and the expense ~~thereof shall~~ incurred for noxious weed control must be paid from funds as provided in section 63-01.1-06.

SECTION 9. AMENDMENT. Section 63-01.1-13 of the North Dakota Century Code is amended and reenacted as follows:

63-01.1-13. Publicly owned land - Weed and pest control. The commissioner shall make every effort possible to arrange a satisfactory noxious weed and pests eradication or control program with all state and federal agencies owning, controlling, or having jurisdiction over land within the state. Weed control officers shall make every effort possible to arrange a satisfactory noxious weed or, for purposes of section 5 of this Act, pest eradication or control program with cities, park boards, cemeteries, school boards, counties, and other local entities owning or controlling public land within the control authority. State agencies controlling or having jurisdiction over lands within the state shall provide for eradication or control of noxious weeds and pests on ~~such~~ these lands. In the event that agencies coming within the provisions of this section ~~shall~~ fail or refuse to eradicate or control noxious weeds and pests in accordance with this section, the commissioner may hold a public hearing under ~~such~~ conditions and terms as ~~he shall deem~~ the commissioner deems advisable, to determine the reason for ~~such~~ the failure or refusal.

SECTION 10. AMENDMENT. Section 63-01.1-13.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

63-01.1-13.1. Noxious weed and pest control on game and fish land. Upon failure of the game and fish department to adequately destroy noxious weeds and pests, or control and prevent spreading and dissemination of noxious weeds and pests, on any parcel of land under its control, the county weed board for the county in which all or a portion of the land owned, leased, or managed by the game and fish department is located may, upon approval of the commissioner, enter upon the land owned, leased, or managed by the game and fish department for the purposes of destruction, control, or prevention of noxious weeds and pests. All expenditures by a county weed board for destruction, control, or prevention of noxious weeds and pests on game and fish lands pursuant to this section must be reimbursed within

thirty days by the game and fish department to the board upon adequate certification by the board.

Approved April 1, 1993
Filed April 2, 1993

CHAPTER 59

SENATE BILL NO. 2139
(Agriculture Committee)
(At the request of the Department of Agriculture)

PESTICIDE DISTRIBUTION REGULATION

AN ACT to amend and reenact subsection 1 of section 4-35-12 of the North Dakota Century Code, relating to the regulation of outlets for distribution of pesticides.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

¹ **SECTION 1. AMENDMENT.** Subsection 1 of section 4-35-12 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. It is unlawful for any person to distribute or sell restricted use pesticides or assume to act as a restricted use pesticide dealer, at any time, without first having obtained certification from the North Dakota state university extension service, or the service's designee in the county in which the applicant operates his principal place of business. A certified person is required at each location or outlet located within this state from which restricted use pesticides are distributed. Any manufacturer, registrant, or distributor that has no pesticide dealer outlet within this state and which distributes such pesticides directly into this state shall obtain a pesticide dealer certificate for its principal out-of-state location or outlet.

Approved March 10, 1993
Filed March 11, 1993

¹ **NOTE:** Section 4-35-12 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

CHAPTER 60

SENATE BILL NO. 2436
(Senators Nelson, Kelsh, Kinnoin)
(Representative Nicholas)

PESTICIDE REGULATION

AN ACT to create and enact a new section to chapter 4-35 of the North Dakota Century Code, relating to a state preemption of local regulation of pesticides.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 4-35 of the North Dakota Century Code is created and enacted as follows:

Limitation on authority of political subdivisions regarding pesticides. No political subdivision, including a home rule city or county, may adopt or continue in effect any ordinance, resolution, or home rule charter regarding the registration, labeling, distribution, sale, handling, use, application, transportation, or disposal of pesticides. This section does not apply to city zoning ordinances.

Approved March 18, 1993
Filed March 18, 1993

CHAPTER 61

SENATE BILL NO. 2387
(Senators Kelsh, Nelson, Wogsland)
(Representatives Aarsvold, Kempenich, Rennerfeldt)

PESTICIDE DISPOSAL

AN ACT relating to an agricultural pesticide and pesticide container disposal program; to provide an appropriation; and to provide an expiration date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Agricultural pesticide container disposal - Compensation.

1. The words used in this section are as defined in North Dakota Century Code section 4-35-05.
2. In consultation with an advisory board consisting of the state health officer; the state engineer; the state geologist; the director of the North Dakota state university extension service; the administrative officer of the state soil conservation committee; the attorney general; and two individuals representing agribusiness organizations, one individual representing a farm organization, and one member of the legislative assembly, all of whom must be selected by the commissioner of agriculture, the commissioner of agriculture shall design and implement a project to:
 - a. Collect and either recycle or dispose of unusable pesticides and empty, triple-rinsed agricultural pesticide containers. The commissioner shall provide for the establishment and operation of temporary collection sites for the containers and pesticides. The commissioner may limit the type and quantity of containers and pesticides acceptable for collection.
 - b. Promote proper agricultural pesticide container management. The commissioner, in consultation with the director of the North Dakota state university extension service, shall promote proper methods of pesticide container management, including information on the variety of pesticide containers available.
 - c. Evaluate recycling options and investigate markets and business opportunities to encourage recycling of containers for resource recovery.
3. Any entity collecting pesticide containers or unusable pesticides shall manage and dispose of the containers and pesticides in compliance with applicable federal and state requirements. State agencies, when called upon, shall assist the commissioner in implementing the project.
4. For services rendered in connection with the design and implementation of the project, the legislator member of the advisory board is entitled to

compensation and expense reimbursement in the amounts provided for in section 54-35-10 and the other members selected by the commissioner of agriculture are entitled to reimbursement for mileage and travel expenses in the same manner and for the same amounts provided for state employees and officials. Compensation and expense reimbursement must be paid from the environment and rangeland protection fund.

SECTION 2. Project scope and evaluation - Proposed legislation. The project must occur in areas to be determined by the commissioner of agriculture in consultation with the persons listed in subsection 2 of section 1 of this Act. Before December 1, 1994, the commissioner of agriculture shall determine whether the project implemented under section 1 of this Act should be continued. If the commissioner determines that the project should be continued or expanded, the commissioner shall prefile appropriate legislation for introduction in the fifty-fourth legislative assembly.

SECTION 3. APPROPRIATION. There is hereby appropriated out of any moneys in the environment and rangeland protection fund in the state treasury, not otherwise appropriated, the sum of \$112,000, or so much of the sum as may be necessary, to the commissioner of agriculture for the purpose of analyzing and disposing of pesticide containers and unusable pesticides for the biennium beginning July 1, 1993, and ending June 30, 1995. Expenditure of funds appropriated by this section may not exceed the amount of funds remaining unspent pursuant to the appropriation contained in 1991 Senate Bill No. 2025.

SECTION 4. EXPIRATION DATE. This Act is effective through June 30, 1995, and after that date is ineffective.

Approved March 24, 1993
Filed March 25, 1993

CHAPTER 62

HOUSE BILL NO. 1156
(Education Committee)

(At the request of the State Board of Vocational Education)

BOARD FOR VOCATIONAL AND TECHNICAL EDUCATION

AN ACT to create and enact section 15-47-00.1 of the North Dakota Century Code, relating to the definition of vocational education; and to amend and reenact sections 4-37-03, 14-06.1-07, 15-20.1-01, 15-20.1-02, 15-20.1-05, subsection 5 of section 15-20.2-01, section 15-20.2-10, subsections 4 and 8 of section 15-20.4-01, sections 15-40.1-16.1, 15-41-05, 15-41-24, 27-21-09, 52-02-02.1, subsection 2 of section 52-08.1-04, subsection 12 of section 54-10-14, section 54-56-01, subdivision m of subsection 1 of section 57-38-01.2, and subsection 2 of section 57-38-67 of the North Dakota Century Code, relating to the changing of "state board of vocational education" to "state board for vocational and technical education", and changing "director of vocational education" to "director of vocational and technical education", and changing "vocational education centers" to "area vocational and technology centers"; and to repeal section 15-20.1-09 of the North Dakota Century Code, relating to vocational school districts.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 4-37-03 of the North Dakota Century Code is amended and reenacted as follows:

4-37-03. Purpose - Powers and duties. The agriculture in the classroom council shall develop agricultural curriculum activities and train teachers in these agricultural curriculum activities for grades kindergarten through twelve in this state's public school system. The council shall work with all educators, including the superintendent of public instruction, the state ~~department of~~ board for vocational and technical education, the United States department of agriculture, and the state commissioner of agriculture in accomplishing its purpose. The council shall render services consistent with this purpose which include:

1. Consultations with the state superintendent of public instruction, the state ~~department of~~ board for vocational and technical education, the state commissioner of agriculture, and the United States department of agriculture.
2. Preparation of instructional, informational, and reference publications on the North Dakota agricultural economy and rural lifestyles.
3. Provide training programs for public school teachers in developed agricultural curriculum activities.
4. Encourage research on and identification of new instructional, informational, and reference publications relating to this state's agricultural economy and rural lifestyles.

5. Monitor the quality and condition of the agriculture in the classroom program.

SECTION 2. AMENDMENT. Section 14-06.1-07 of the North Dakota Century Code is amended and reenacted as follows:

14-06.1-07. Program goals. Each of the service centers shall develop a goal to serve a stated number of urban and rural displaced homemakers. In addition, the service centers shall develop plans for including displaced homemakers in existing job training and placement programs offered by job service, colleges, vocational and technical education, or other suitable agencies.

SECTION 3. AMENDMENT. Section 15-20.1-01 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Director" ~~shall mean~~ means the director of vocational and technical education.
2. "Regulations" ~~shall mean~~ means regulations made by the director with the approval of the state board.
3. "State board" ~~shall mean~~ means the state board ~~of~~ for vocational and technical education which is the state board of public school education.

SECTION 4. AMENDMENT. Section 15-20.1-02 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-02. State board ~~of~~ for vocational and technical education - Director of vocational and technical education - Appointment, qualifications, assistants, duties. The state board of public school education shall be the state board ~~of~~ for vocational and technical education. The state board, acting through the office of the superintendent of public instruction, shall appoint a director and executive officer ~~for~~ of vocational and technical education who shall be charged with the administration, under the direction and supervision of the board, of the provisions of this chapter relating to vocational and technical education. The state board, acting through the office of the superintendent of public instruction, shall designate such assistants to the director as may be necessary to carry out the provisions of this chapter. The duties, terms of office, and compensation of the director and of his assistants shall be determined by the state board. The director shall hold as a minimum a baccalaureate degree received from a recognized college or university. ~~He~~ The director shall enforce such rules and regulations as the state board may adopt and shall prepare such reports concerning vocational education as the state board may require.

SECTION 5. AMENDMENT. Section 15-20.1-05 of the North Dakota Century Code is amended and reenacted as follows:

15-20.1-05. Custody and payment of vocational education funds. The state board shall be charged with the duty of administering all funds that are received from federal and state sources and accept and use gifts made unconditionally by will or otherwise for purposes of carrying out this chapter for vocational education. All such moneys received shall be placed in the custody of the state treasurer, and

shall be paid in accordance with legislative appropriations by the office of management and budget as directed by the director of vocational and technical education.

SECTION 6. AMENDMENT. Subsection 5 of section 15-20.2-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

5. "State board" means the state board of for vocational and technical education.

SECTION 7. AMENDMENT. Section 15-20.2-10 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-20.2-10. Appropriated and federal funds used for distribution. The funds distributed to the area vocational and technology centers under the provisions of section 15-20.2-09 must be paid out of moneys appropriated to the state board of for vocational and technical education, including federal funds allotted to the state to promote and attain the purposes of state and federal legislation on vocational education.

¹ **SECTION 8. AMENDMENT.** Subsections 4 and 8 of section 15-20.4-01 of the North Dakota Century Code are amended and reenacted as follows:

4. "Board" means the state board of for vocational and technical education.
8. "Executive officer" means the director of vocational and technical education.

SECTION 9. AMENDMENT. Section 15-40.1-16.1 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

² **15-40.1-16.1. Transportation aid for certain vocational education and special education programs.** There must be paid from state funds to each school district an amount for transporting pupils to and from schools in other districts and to and from schools within school districts for vocational education courses offered through cooperative arrangements approved by the state board of for vocational and technical education. Such amount must be the same amount for mileage and per day as is provided in subsection 1 of section 15-40.1-16. Payments must be made to school districts transporting pupils for special education programs approved by the superintendent of public instruction as follows:

1. School districts transporting nine or fewer pupils per vehicle are entitled to the payment provided in section 15-40.1-16 for vehicles having a capacity of nine or fewer pupils.
2. School districts transporting ten or more pupils per vehicle are entitled to the payment provided for in section 15-40.1-16 for schoolbuses having a capacity of ten or more pupils.

¹ NOTE: Section 15-20.4-01 was also amended by section 106 of Senate Bill No. 2223, chapter 54.

² NOTE: Section 15-40.1-16.1 was also amended by section 5 of House Bill No. 1184, chapter 180.

School districts entitled to transportation aid pursuant to this section shall receive such aid for all miles [kilometers] traveled and for all pupils transported, regardless of whether or not such pupils live within the incorporated limits of cities in which the schools in which they are enrolled are located. Provided, however, that no school district may receive more than one per-pupil payment for transportation regardless of the number of times any pupil is transported in any one day. Notwithstanding any other provisions of this section, the superintendent of public instruction shall, upon request, make the payments under this section which are due to school districts participating in area vocational and technology centers or multidistrict special education programs, for the transportation of pupils in those centers and programs, directly to the respective area vocational and technology centers or multidistrict special education programs.

SECTION 10. AMENDMENT. Section 15-41-05 of the North Dakota Century Code is amended and reenacted as follows:

15-41-05. State board of public school education to prescribe qualifications prerequisite to high school obtaining aid under federal acts. The state board of public school education, acting as the state board for vocational and technical education, shall make all rules and regulations required for compliance with the program of the Smith-Hughes Act, the George-Deen Act, and other federal acts under which a high school may participate in financial benefits accorded by the federal government, and to be eligible for such benefits, a high school must comply with such rules and regulations and conform to all qualification requirements and conditions therein specified.

SECTION 11. AMENDMENT. Section 15-41-24 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

15-41-24. High schools - Minimum curriculum. The following units of study shall be made available to all students in each public and private high school in this state at least once during each four-year period, and each private high school shall comply with the requirements of this section if such high school is to receive approval by the department of public instruction:

1. English, four units.
2. Mathematics, three units.
3. Science, four units.
4. Social studies, three units. Effective July 1, 1994, social studies must include one unit of world history and one unit of United States history, each of which must be integrated with a strong geography component.
5. Health and physical education, one unit.
6. Music, one unit.
7. Any combination of the following course areas: business education, economics and the free enterprise system, foreign language, industrial arts, vocational education, six units. For purposes of this subsection vocational education shall include home economics, agriculture, office education, distributive education, trade industrial, technical, and health occupations.

Each public or private high school may count for purposes of compliance with this section those vocational education courses which are offered through cooperative arrangements approved by the state board ~~of~~ for vocational and technical education.

SECTION 12. Section 15-47-00.1 of the North Dakota Century Code is created and enacted as follows:

15-47-00.1. Definition. In this title, unless the context or subject matter otherwise requires "vocational education" means vocational and technical education.

SECTION 13. AMENDMENT. Section 27-21-09 of the North Dakota Century Code is amended and reenacted as follows:

27-21-09. Cooperation with other agencies and departments of the state - Right to inspect facilities of state institutions - Right to examine children. The division of juvenile services shall cooperate with and receive the cooperation of the department of human services, the department of public instruction, the ~~department of~~ board for vocational and technical education, the juvenile courts, the state department of health and consolidated laboratories, and such other agencies and departments of the state as may be necessary to carry out the objectives of this chapter. The division of juvenile services may inspect at all reasonable times the facilities of those institutions within the state it is authorized to utilize under this chapter, and may examine any child it has placed in the care of such institution, and may contract with public and private agencies to provide services for them or to retain from them required services to meet the purpose and objective of this chapter.

SECTION 14. AMENDMENT. Section 52-02-02.1 of the North Dakota Century Code is amended and reenacted as follows:

52-02-02.1. Adult education and training - Grants to students. Job service North Dakota may make grants of up to five hundred dollars per person to Job Training Partnership Act eligible students enrolled in adult basic and secondary education programs and training programs for adults approved by job service North Dakota. No grants may be made unless federal funds received by the state for job training services as defined in the Job Training Partnership Act [Pub. L. 97-300; 96 Stat. 1361; 29 U.S.C. 1604] have been obligated. Job service may collect an administrative fee not to exceed ten percent of the amount of grants made under this section. Job service North Dakota shall, in cooperation with the superintendent of public instruction, the ~~department of~~ board for vocational and technical education, and any other state agency providing or administering adult education services, coordinate the grant program established under this section. Job service North Dakota shall adopt rules to implement the grant program established under this section including rules regarding eligibility requirements and use of grant proceeds.

SECTION 15. AMENDMENT. Subsection 2 of section 52-08.1-04 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Programs must be conducted in cooperation with appropriate state board for vocational and technical education approved training providers and institutions.

³ **SECTION 16. AMENDMENT.** Subsection 12 of section 54-10-14 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

12. ~~Vocational education~~ Area vocational and technology centers.

SECTION 17. AMENDMENT. Section 54-56-01 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

⁴ **54-56-01. Children's services coordinating committee - Membership.** The children's services coordinating committee is hereby established and consists of the governor or a designee of the governor, the attorney general or a designee of the attorney general, the commissioner of the board of higher education or a designee of the commissioner, the superintendent of public instruction, the executive director of the department of human services, the state health officer, the director of job service North Dakota, the director of the department of corrections and rehabilitation, or a designee of the director of the department of corrections and rehabilitation, the director of the office of management and budget, or a designee of the director of the office of management and budget, the director of vocational and technical education, the chairperson of the governor's committee on children and youth, a representative of the Indian affairs commission, a designee of the chief justice, and a member at large to be appointed by the governor. The governor or the governor's designee shall act as chairperson.

SECTION 18. AMENDMENT. Subdivision m of subsection 1 of section 57-38-01.2 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- m. Reduced by the amount of interest received during that taxable year on a contract for deed on the sale of eighty or more acres [32.37 or more hectares] of agricultural land to a beginning farmer. The contract for deed must extend for not less than ten years and have an annual interest rate equal to or less than the minimum rate allowed by the internal revenue service before interest is imputed. In order for an individual, estate, or trust to qualify for this reduction, the taxpayer must obtain a statement from the buyer stating that the buyer meets all requirements of the beginning farmer definition, together with such other information as the state tax commissioner may require. The value placed on any real property located in North Dakota and owned by the buyer must be the amount listed as the true and full value on the most recent real estate tax statement for that particular piece of property. In determining the net worth of any person, including the person's dependents and spouse, if any, for purposes of this subdivision, the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings may not be included. This statement must be filed along with the income tax

³ NOTE: Section 54-10-14 was also amended by section 1 of House Bill No. 1155, chapter 514.

⁴ NOTE: Section 54-56-01 was also amended by section 1 of House Bill No. 1295, chapter 539.

return. For the purposes of this subdivision, "beginning farmer" means any person who is:

- (1) A resident of this state.
- (2) Receiving more than one-half of that person's gross annual income from farming, unless the person initially commences farming during the tax year for which an adjustment will be claimed under this subdivision.
- (3) Intending to use any farmland to be purchased or rented for agricultural purposes.
- (4) Except for contracts for deed entered into prior to July 1, 1985, having adequate training by education in the type of farming operation which the person wishes to begin through satisfactory participation in the adult farm management education program of the state board of for vocational and technical education or an equivalent program approved by the commissioner of agriculture.
- (5) Having, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars.

SECTION 19. AMENDMENT. Subsection 2 of section 57-38-67 of the 1991 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. "Beginning farmer" means any person who is:

- a. A resident of this state;
- b. Receiving more than half of that person's gross annual income from farming, unless the person initially commences farming during the tax year for which a deduction will be claimed under sections 57-38-67 through 57-38-70;
- c. Intending to use any farmland to be purchased or rented for agricultural purposes;
- d. Except for tax-exempt transactions entered into prior to July 1, 1985, having adequate training by education in the type of farming operation which the person wishes to begin on the purchased or rented land referred to in subdivision c through satisfactory participation in the adult farm management education program of the state board of for vocational and technical education or an equivalent program approved by the commissioner of agriculture; and
- e. Having, including the net worth of any dependents and spouse, a net worth of less than one hundred thousand dollars, not including the value of their equity in their principal residence, the value of one personal or family motor vehicle, and the value of their household goods, including furniture, appliances, musical instruments, clothing, and other personal belongings.

SECTION 20. REPEAL. Section 15-20.1-09 of the 1991 Supplement to the North Dakota Century Code is repealed.

Approved March 19, 1993
Filed March 19, 1993