Sixty-fifth
Legislative Assembly
of North Dakota

Introduced by

A BILL for an Act to amend and reenact section 1-01-49, subsection 4 of section 10-30.5-01, subdivision b of subsection 1 of section 10-33-124, subsection 4 of section 26.1-50-01, subsection 3 of section 40-57.1-02, subsection 11 of section 52-02.1-01, subdivision b of subsection 2 of section 57-38-01.33, subdivision c of subsection 4 of section 57-38-30.5, ~~subsection 4 of~~ section 57-38.5-01, and subdivision g of subsection 6 of section 57-39.2-04.3 of the North Dakota Century Code, relating to a uniform definition of a primary sector business; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 1-01-49 of the North Dakota Century Code is amended and reenacted as follows:

1-01-49. Other general definitions.

As used in this code, unless the context otherwise requires:

1. "Depose" includes every mode of written statement under oath or affirmation.
2. "Executor" includes administrator and "administrator" includes executor.
3. "Individual" means a human being.
4. "Oath" includes "affirmation".
5. "Organization" includes a foreign or domestic association, business trust, corporation, enterprise, estate, joint venture, limited liability company, limited liability partnership, limited partnership, partnership, trust, or any legal or commercial entity.
6. "Partnership" includes a limited liability partnership registered under chapter 45-22.
7. "Penitentiary" includes any affiliated facilities.
8. "Person" means an individual, organization, government, political subdivision, or government agency or instrumentality.

9. "Personal property" includes money, goods, chattels, things in action, and evidences of debt.

10. "Preceding" and "following" when used by way of reference to a chapter or other part of a statute means the next preceding or next following chapter or other part.

11. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association certified by the department of commerce division of economic development and finance that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth.

12. "Process" means a writ or summons issued in the course of judicial proceedings.

~~12.~~13. "Property" includes property, real and personal.

~~13.~~14. "Real property" shall be coextensive with lands, tenements, and hereditaments.

~~14.~~15. "Rule" includes regulation.

~~15.~~16. "Signature" or "subscription" includes "mark" when the person cannot write, the person's name being written near it and written by a person who writes that person's own name as a witness.

~~16.~~17. "State" when applied to the different parts of the United States, includes the District of Columbia and the territories.

~~17.~~18. "Testify" includes every mode of oral statement under oath or affirmation.

~~18.~~19. "United States" includes the District of Columbia and the territories.

~~19.~~20. "Will" includes codicils.

~~20.~~21. "Writ" means an order or precept in writing, issued in the name of the state or of a court or judicial officer.

SECTION 2. AMENDMENT. Subsection 4 of section 10-30.5-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Primary sector business" ~~means an individual, corporation, limited liability company, partnership, or association which through the employment of knowledge or labor adds value to a product, process, or service that results in the creation of new wealth. The term~~ has the meaning provided in section 1-01-49 and includes tourism but does not include production agriculture.

SECTION 3. AMENDMENT. Subdivision b of subsection 1 of section 10-33-124 of the North Dakota Century Code is amended and reenacted as follows:

b. "Primary sector business" ~~means an individual, corporation, limited liability company, partnership, or association that, through a process employing knowledge and labor, adds~~ has the meaning provided in section 1-01-49 ~~and must also add value to a product produced for resale~~.

SECTION 4. AMENDMENT. Subsection 4 of section 26.1-50-01 of the North Dakota Century Code is amended and reenacted as follows:

4. "Primary sector business" ~~means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth~~ has the meaning provided in section 1-01-49 . ~~Qualification as a primary sector business under this subsection must be determined by the department of commerce division of economic development and finance.~~

SECTION 5. AMENDMENT. Subsection 3 of section 40-57.1-02 of the North Dakota Century Code is amended and reenacted as follows:

3. "Primary sector business" ~~means an individual, corporation, limited liability company, partnership, or association which through the employment of knowledge or labor adds value to a product, process, or service that results in the creation of new wealth~~ has the meaning provided in section 1-01-49.

SECTION 6 AMENDMENT. Subsection 11 of section 52-02.1-01 of the North Dakota Century Code is amended and reenacted as follows:

11. "Primary sector business" ~~means an employer engaged in locating to or in this state which previously had no presence in this state, or in expanding its operations within this state, which through the employment of knowledge or labor, adds value to a product, process, or export service that results in the creation of new wealth, excluding production agriculture, if it~~ has the meaning provided in section 1-01-49. For purposes of this subsection, a primary sector business must also be an employer, excluding an employer engaged in production agriculture, ~~locating to or in this state which previously had no presence in this state, or expanding its operations within this state, and~~ which meets the following eligibility criteria:

a. An employer entering into an agreement, and increasing its base employment level by at least one employee, or in the case of an employer without an established base employment level in this state creating at least five employees, within the time set in the agreement, is entitled to the new jobs credit from withholding.

b. An employer must have an economically productive and socially desirable purpose within the state.

c. An employer must not be closing or reducing its operation in one area of the state and relocating substantially the same operation in another area.

~~d. An employer adding value to a service through the employment of knowledge or labor must be adding value to an export service.~~

SECTION 7. AMENDMENT. Subdivision b of subsection 2 of section 57-38-01.33 of the North Dakota Century Code is amended and reenacted as follows:

b. "Primary sector business" ~~means a business certified by the department of commerce which, through the employment of knowledge or labor, adds value to a product, process, or service that results in the creation of new wealth~~ has the meaning provided in section 1-01-49. ~~For purposes of this subdivision, qualification as a primary sector business must be certified by the department of commerce.~~

SECTION 8. AMENDMENT. Subdivision c of subsection 4 of section 57-38-30.5 of the North Dakota Century Code is amended and reenacted as follows:

c. "Primary sector business" ~~means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service~~ has the meaning provided in section 1-01-49.

SECTION 9. AMENDMENT. ~~Subsection 4 of section~~ Section 57-38.5-01 of the North Dakota Century Code is amended and reenacted as follows:

57-38.5-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Director" means the director of the department of commerce division of economic development and finance.

2. ~~"New wealth" means revenues to a North Dakota business which are generated by sales of products or services to customers outside of the state. "New wealth" also includes revenues to a qualified business the customers of which previously were unable to acquire, or had limited availability of, the product or service from a North Dakota provider.~~

~~3.~~ "Passthrough entity" has the same meaning as in section 57-38-01.

~~4.~~3. "Primary sector business" ~~means a qualified business that through the employment of knowledge or labor adds value to a product, process, or service and which results in the creation of new wealth~~ has the meaning provided in section 1-01-49 but does not include an agricultural commodity processing facility as defined under section 57-38.6-01. ~~For purposes of this subsection, a primary sector business must also be a qualified business.~~

~~5.~~4. "Qualified business" means a business other than a real estate investment trust which is a primary sector business that:

a. Is incorporated or its satellite operation is incorporated as a for-profit corporation, passthrough entity, or joint venture;

b. Is in compliance with the requirements for filings with the securities commissioner under the securities laws of this state;

c. Has North Dakota residents as a majority of its employees in the North Dakota principal office or the North Dakota satellite operation;

d. Has its principal office in this state and has the majority of its business activity performed in this state, except sales activity, or has a significant operation in North Dakota that has or is projected to have more than ten employees or one hundred fifty thousand dollars of sales annually; and

e. Relies on innovation, research, or the development of new products and processes in its plans for growth and profitability.

~~6.~~5. "Taxpayer" means an individual, estate, or trust or a corporation, passthrough entity, or an angel fund. The term does not include a real estate investment trust.

SECTION 10. AMENDMENT. Subdivision g of subsection 6 of section 57-39.2-04.3 of the North Dakota Century Code is amended and reenacted as follows:

g. "Primary sector business" ~~means an individual, corporation, limited liability company, partnership, or association that through the employment of knowledge or labor adds value to a product, process, or service which results in the creation of new wealth and which has been~~ has the meaning provided in section 1-01-49. ~~For purposes of this subdivision, qualification as a primary sector business must be certified by the department of commerce division of economic development and finance to be qualified under this subdivision~~.

SECTION 11. EFFECTIVE DATE. Section 10 of this Act is effective for taxable events occurring after June 30, 2017, and the remainder of this Act is effective for taxable years beginning after December 31, 2016