

Introduced by

Legislative Management

(Political Subdivision Taxation Committee)

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

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

11 **1-01-49. Other general definitions.**

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

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

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- 1           9. "Personal property" includes money, goods, chattels, things in action, and evidences  
2           of debt.
- 3           10. "Preceding" and "following" when used by way of reference to a chapter or other part  
4           of a statute means the next preceding or next following chapter or other part.
- 5           11. "Primary sector business" means an individual, corporation, limited liability company,  
6           partnership, or association certified by the department of commerce division of  
7           economic development and finance which through the employment of knowledge or  
8           labor adds value to a product, process, or service which results in the creation of new  
9           wealth.
- 10          For purposes of this subsection, "new wealth" means revenues generated by a  
11          business in this state through the sale of products or services to:
- 12          a. Customers outside of this state; or
- 13          b. Customers in this state if the products or services were previously unavailable or  
14          difficult to obtain from a business in this state.
- 15          ~~12.~~ "Process" means a writ or summons issued in the course of judicial proceedings.
- 16          ~~12-13.~~ "Property" includes property, real and personal.
- 17          ~~13-14.~~ "Real property" shall be coextensive with lands, tenements, and hereditaments.
- 18          ~~14-15.~~ "Rule" includes regulation.
- 19          ~~15-16.~~ "Signature" or "subscription" includes "mark" when the person cannot write, the  
20          person's name being written near it and written by a person who writes that person's  
21          own name as a witness.
- 22          ~~16-17.~~ "State" when applied to the different parts of the United States, includes the District of  
23          Columbia and the territories.
- 24          ~~17-18.~~ "Testify" includes every mode of oral statement under oath or affirmation.
- 25          ~~18-19.~~ "United States" includes the District of Columbia and the territories.
- 26          ~~19-20.~~ "Will" includes codicils.
- 27          ~~20-21.~~ "Writ" means an order or precept in writing, issued in the name of the state or of a  
28          court or judicial officer.

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

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

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

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

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

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

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

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

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

28           11.   ~~"Primary sector business" means an employer engaged in locating to or in this state~~  
29                   ~~which previously had no presence in this state, or in expanding its operations within~~  
30                   ~~this state, which through the employment of knowledge or labor, adds value to a~~  
31                   ~~product, process, or export service that results in the creation of new wealth, excluding~~

1           ~~production agriculture, if it has the meaning provided in section 1-01-49. For purposes~~  
2           ~~of this subsection, a primary sector business must also be an employer, excluding an~~  
3           ~~employer engaged in production agriculture, which~~ meets the following eligibility  
4           criteria:

- 5           a. An employer entering into an agreement, and increasing its base employment  
6           level by at least one employee, or in the case of an employer without an  
7           established base employment level in this state creating at least five employees,  
8           within the time set in the agreement, is entitled to the new jobs credit from  
9           withholding.
- 10          b. An employer must have an economically productive and socially desirable  
11          purpose within the state.
- 12          c. An employer must not be closing or reducing its operation in one area of the state  
13          and relocating substantially the same operation in another area.

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

- 16          b. ~~"Primary sector business" means a business certified by the department of~~  
17          ~~commerce which, through the employment of knowledge or labor, adds value to a~~  
18          ~~product, process, or service that results in the creation of new wealth~~has the  
19          ~~meaning provided in section 1-01-49.~~

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

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

25           **SECTION 9. AMENDMENT.** Section 57-38.5-01 of the North Dakota Century Code is  
26 amended and reenacted as follows:

27           **57-38.5-01. Definitions.**

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

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

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

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

7           4.3. ~~"Primary sector business" means a qualified business that through the employment of~~  
8           ~~knowledge or labor adds value to a product, process, or service and which results in~~  
9           ~~the creation of new wealth~~ has the meaning provided in section 1-01-49 but does not  
10          include an agricultural commodity processing facility as defined under section  
11          57-38.6-01.

12          5.4. "Qualified business" means a business other than a real estate investment trust which  
13          is a primary sector business that:

- 14           a.   Is incorporated or its satellite operation is incorporated as a for-profit corporation,  
15           passthrough entity, or joint venture;
- 16           b.   Is in compliance with the requirements for filings with the securities commissioner  
17           under the securities laws of this state;
- 18           c.   Has North Dakota residents as a majority of its employees in the North Dakota  
19           principal office or the North Dakota satellite operation;
- 20           d.   Has its principal office in this state and has the majority of its business activity  
21           performed in this state, except sales activity, or has a significant operation in  
22           North Dakota that has or is projected to have more than ten employees or one  
23           hundred fifty thousand dollars of sales annually; and
- 24           e.   Relies on innovation, research, or the development of new products and  
25           processes in its plans for growth and profitability.

26          6.5. "Taxpayer" means an individual, estate, or trust or a corporation, passthrough entity, or  
27          an angel fund. The term does not include a real estate investment trust.

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

30           g.   ~~"Primary sector business" means an individual, corporation, limited liability~~  
31           ~~company, partnership, or association that through the employment of knowledge~~

1                   ~~or labor adds value to a product, process, or service which results in the creation-~~  
2                   ~~of new wealth and which has been~~has the meaning provided in section 1-01-49.  
3                   ~~certified by the department of commerce division of economic development and-~~  
4                   ~~finance to be qualified under this subdivision.~~

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