

CORPORATIONS

CHAPTER 80

SENATE BILL NO. 2322

(Senators J. Lee, O. Larsen, Heckaman)
(Representatives Keiser, K. Koppelman, Delmore)

AN ACT to create and enact a new section to chapter 10-04 of the North Dakota Century Code, relating to the financial exploitation of vulnerable adults.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-04 of the North Dakota Century Code is created and enacted as follows:

Financial exploitation - Vulnerable adult.

1. As used in this section:

a. "Eligible adult" means an adult who is at least sixty-five years old or a vulnerable adult as defined in section 50-25.2-01.

b. "Financial exploitation" means:

(1) The wrongful or unauthorized taking, withholding, appropriation, or use of money, assets, or property of an eligible adult; or

(2) Any act or omission taken by a person, including through the use of a power of attorney, guardianship, or conservatorship of an eligible adult, to:

(a) Obtain control, through deception, intimidation, or undue influence, over the eligible adult's money, assets, or property, to deprive the eligible adult of the ownership, use, benefit, or possession of the eligible adult's money, assets, or property; or

(b) Convert money, assets, or property of the eligible adult to deprive the eligible adult of the ownership, use, benefit, or possession of the eligible adult's money, assets, or property.

c. "Qualified individual" means any agent, investment adviser representative, or person who serves in a supervisory, compliance, or legal capacity for a broker-dealer or investment adviser.

2. If a qualified individual reasonably believes financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, the qualified individual shall notify the department of human services and the commissioner.

3. If a qualified individual reasonably believes financial exploitation of an eligible adult may have occurred, may have been attempted, or is being attempted, a qualified individual may notify a third party reasonably associated with the eligible adult or any other person permitted under state or federal law or rule, rules of a self-regulating organization, or customer agreement. Disclosure may not be made to a designated third party who is suspected of financial exploitation or other abuse of the eligible adult.
4. A qualified individual who in good faith and exercising reasonable care discloses information under this section is immune from administrative or civil liability that might otherwise result from disclosure or for any failure to notify the customer of the disclosure.
5. a. A broker-dealer or investment adviser may delay a transaction or disbursement of funds or securities from an account of an eligible adult or an account on which an eligible adult is a beneficiary if:
 - (1) The broker-dealer or investment adviser reasonably believes the requested transaction or disbursement may result in financial exploitation of an eligible adult after initiating an internal review of the requested transaction or disbursement and the suspected financial exploitation; and
 - (2) The broker-dealer or investment adviser:
 - (a) Provides written notification of the delay and the reason for the delay to all parties authorized to transact business on the account, unless a party is reasonably believed to have engaged in suspected or attempted financial exploitation of the eligible adult, within two days after the requested transaction or disbursement;
 - (b) Notifies the department of human services and the commissioner within two days after the requested transaction or disbursement; and
 - (c) Continues its internal review of the suspected or attempted financial exploitation of the eligible adult as necessary.
- b. Any delay of a transaction or disbursement authorized by this section expires upon the earlier of:
 - (1) A determination by the broker-dealer or investment adviser that the transaction or disbursement will not result in financial exploitation of the eligible adult; or
 - (2) Fifteen business days after the date on which the broker-dealer or investment adviser first delayed the transaction or disbursement of the funds or securities, unless the department of human services or the commissioner requests the broker-dealer or investment adviser extend the delay, in which case the delay expires within twenty-five business days after the date the broker-dealer or investment adviser first delayed the transaction or disbursement of the funds or securities, unless the delay is terminated by either of the agencies or an order of a court of competent jurisdiction.

- c. A court of competent jurisdiction or the commissioner may enter an order extending the delay of the transaction or disbursement of funds or securities or may order other protective relief based on the broker-dealer, investment adviser, or other interested party's petition that initiated the delay under this section.
6. A broker-dealer or investment adviser who in good faith and exercising reasonable care complies with this section is immune from any administrative or civil liability that may otherwise arise from a delay in the transaction or disbursement in accordance with this section.
7. A broker-dealer or investment adviser shall provide access to or copies of records that are relevant to the suspected or attempted financial exploitation of an eligible adult to the department of human services and to law enforcement, either as part of a referral to the department or to law enforcement, or upon request of the department or law enforcement pursuant to an investigation. The records may include historical records and records relating to the most recent transaction that may comprise financial exploitation of an eligible adult. Any record provided to the department of human services or law enforcement under this section is an exempt record under chapter 44-04. This section does not limit or otherwise impede the authority of the commissioner to access or examine the books and records of a broker-dealer or investment adviser as otherwise provided by law.

Approved April 7, 2017

Filed April 7, 2017

CHAPTER 81

SENATE BILL NO. 2213

(Senator Casper)
(Representative Howe)

AN ACT to amend and reenact subsections 1, 2, and 3 of section 10-31-13 of the North Dakota Century Code, relating to annual reports of professional organizations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1, 2, and 3 of section 10-31-13 of the North Dakota Century Code are amended and reenacted as follows:

1. With respect to a professional organization in the form of a corporation:
 - a. Each corporation incorporated under this chapter shall file with the secretary of state an annual report at the time specified for the filing of the report by chapter 10-19.1 giving the name and residence address of each officer, director, and shareholder of the corporation at the time of filing of the report. With respect to shares, the report must include:
 - (1) A statement of the aggregate number of shares the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class;
 - (2) A statement of the aggregate number of issued shares, itemized by classes, par value of shares, shares without par value, and series, if any, within a class; and
 - (3) If there are minority owners, a statement of the issued shares, itemized by minority owner and nonminority owner.
 - b. Except as provided under subsection 4, the report must include a statement that all directors and shareholders of voting shares who practice in this state are licensed to render the same specific professional services as those for which the corporation was incorporated. The report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) ~~Signed by the president or vice president of the corporation as specified in subsection 2 of section 10-19.1-146;~~ and
 - (3) ~~Accompanied by the filing fee prescribed in chapter 10-19.1 section 10-19.1-147.~~
 - c. A copy of the report must be filed at the same time with the regulatory board that licenses the shareholders providing the corporation's professional service. The regulatory board may not charge a filing fee.

- d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulating board.
2. With respect to a professional organization 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 the report by chapter 10-32.1 giving the name and residence address of all managers, governors, and members of the organization at the time of filing of the annual report.
 - b. Except as provided under subsection 4, the report must include a statement that all governors and members holding voting membership interests who practice in this state are licensed to render the same specific professional services as those for which the limited liability company was organized. This report must be:
 - (1) Made on a form as prescribed and furnished by the secretary of state;
 - (2) Signed by the president or vice president of the limited liability company as specified in subsection 2 of section 10-32.1-89; and
 - (3) Accompanied by the filing fee prescribed in section 10-32.1-92.
 - c. A copy of the report must be filed at the same time with the regulatory board that licenses the members providing the limited liability company's professional service. The regulatory board may not charge a filing fee.
 - d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not to exceed twenty dollars per individual certified to be licensed by the regulatory board.
 3. With respect to a professional organization in the form of a limited liability partnership:
 - a. The annual report filed with the secretary of state at the time specified for the filing of the report by chapter 45-22 must include the name and residence address of each partner of the organization at the time of filing of the annual report.
 - b. Except as provided under subsection 4, the annual report must include a statement that each partner holding voting partnership interests who practices in this state is licensed to render the same specific professional services as those for which the limited liability partnership was registered. The annual report must be:

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- (1) Made on a form prescribed and furnished by the secretary of state;
 - (2) ~~Signed by a managing partner of the limited liability partnerships specified in subsection 2 of section 45-22-21.1;~~ and
 - (3) Accompanied by the filing fee prescribed in section 45-22-22.
- c. A copy of the annual report must be filed at the same time with the regulatory board that licenses the partners providing the limited liability partnership's professional service. The regulatory board may not charge a filing fee.
 - d. A regulatory board issuing a license under section 10-31-01 shall issue a certificate required in section 10-31-02. The certificate must be on a form prescribed and furnished by the secretary of state. The regulatory board may charge and collect a fee not exceeding twenty dollars per individual certified to be licensed by the regulating board.

Approved March 14, 2017

Filed March 15, 2017

CHAPTER 82

SENATE BILL NO. 2223

(Senators Nelson, Armstrong, Sorvaag)
(Representatives M. Johnson, Klemin, Schneider)

AN ACT to create and enact section 10-32.1-30.1 of the North Dakota Century Code, relating to sharing of profits and losses; to amend and reenact subsection 2 of section 10-32.1-15, section 10-32.1-30, subsection 2 of section 10-32.1-39, and sections 10-32.1-45, 10-32.1-54, 45-10.2-64, and 45-17-04 of the North Dakota Century Code, relating to limited liability company distributions and management and partnership transferable interests.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 10-32.1-15 of the North Dakota Century Code is amended and reenacted as follows:

2. The obligations of a limited liability company and its members to a person in the capacity of the person as a transferee or dissociated member are governed by the operating agreement. Subject only to any court order issued under ~~subdivision b of subsection 2~~ of section 10-32.1-45, to effectuate a charging order, an amendment to the operating agreement made after a person becomes a transferee or dissociated member is effective with regard to any debt, obligation, or other liability of the limited liability company or its members to the person in the capacity of the person as a transferee or dissociated member.

SECTION 2. AMENDMENT. Section 10-32.1-30 of the North Dakota Century Code is amended and reenacted as follows:

10-32.1-30. Sharing of and right to distributions before dissolution.

1. ~~Subject~~ Except as provided in subsection 5 and subject to paragraphs 1 through 4 of subdivision c of subsection 4 of section 10-32.1-05, any distributions made by a limited liability company before its dissolution and winding up must be in equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44 and any charging order in effect under section 10-32.1-45.
2. A person has a right to a distribution before the dissolution and winding up of a limited liability company only if the company decides to make an interim distribution. The dissociation of a person does not entitle the person to a distribution.
3. A person does not have a right to demand or receive a distribution from a limited liability company in any form other than money. Except as otherwise provided in ~~subsection 3 of section 10-32.1-54,~~ a limited liability company may distribute an asset in kind if each part of the asset is fungible with each other part and each person receives a percentage of the asset equal in value to the share of distributions of the person.

4. If a member or transferee becomes entitled to receive a distribution, then the member or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited liability company with respect to the distribution.
5. Notwithstanding subsection 1, subject to paragraphs 1 through 4 of subdivision c of subsection 4 of section 10-32.1-05 and unless otherwise provided in the articles of organization or in an operating agreement, for a limited liability company created after July 31, 2017, any distributions among members and dissociated members made by a limited liability company before its dissolution and winding up must be in proportion to the value of the contributions of the members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44 and any charging order in effect under section 10-32.1-45.

SECTION 3. Section 10-32.1-30.1 of the North Dakota Century Code is created and enacted as follows:

10-32.1-30.1. Sharing of profits and loss.

Unless otherwise provided in the articles of organization, or in an operating agreement, the profits and losses of a limited liability company created after July 31, 2017, must be allocated among the members and among classes and series of members in proportion to the value of the contributions of the members.

²⁸ **SECTION 4. AMENDMENT.** Subsection 2 of section 10-32.1-39 of the North Dakota Century Code is amended and reenacted as follows:

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- a. Except as provided in subdivision b, in a member-managed limited liability company, the following rules apply:
 - a- (1) The management and conduct of the company are vested in the members.
 - b- (2) Each member has equal rights in the management and conduct of the activities of the company.
 - e- (3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the members.
 - d- (4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.
 - e- (5) The operating agreement may be amended only with the consent of all members.
- b. Notwithstanding subdivision a, in a member-managed limited liability company created after July 31, 2017, the following rules apply:

²⁸ Section 10-32.1-39 was also amended by section 1 of Senate Bill No. 2159, chapter 83, section 2 of Senate Bill No. 2159, chapter 83, and section 3 of Senate Bill No. 2159, chapter 83.

- (1) The management and conduct of the company are vested in the members.
- (2) Unless otherwise provided in the articles of organization or in an operating agreement, each member possesses voting power in the management and conduct of the activities of the company in proportion to the interest of the member in distributions of the limited liability company before dissolution and winding up.
- (3) A difference arising among members as to a matter in the ordinary course of the activities of the company may be decided by a majority of the voting power of the transferable interest of the members.
- (4) An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members.
- (5) The operating agreement may be amended only with the consent of all members.

SECTION 5. AMENDMENT. Section 10-32.1-45 of the North Dakota Century Code is amended and reenacted as follows:

10-32.1-45. Charging order.

1. On application by a judgment creditor of a member or transferee and following notice to the limited liability company of the application, a court may enter a charging order against the transferable interest of the judgment debtor for the unsatisfied amount of the judgment.
2. A charging order constitutes a lien on the transferable interest of a judgment debtor and requires the limited liability company to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.
- ~~2.3.~~ To the extent necessary to effectuate the collection of distributions pursuant to a charging order in effect under subsection 1, the court may:
 - a. ~~Appoint a receiver of the distributions subject to the charging order, with the power to make all inquiries the judgment debtor might have made; and~~
 - b. ~~Make all other orders necessary to give effect to the charging order.~~
3. ~~Upon a showing that distributions under a charging order will not pay the judgment debt within a reasonable time, then the court may foreclose the lien and order the sale of the transferable interest. The purchaser at the foreclosure sale obtains only the transferable interest, does not thereby become a member, and is subject to section 10-32.1-44.~~
4. ~~At any time before foreclosure under subsection 3, the~~The member or transferee whose transferable interest is subject to a charging order ~~under subsection 4~~ may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.
- ~~5.4.~~ At any time before foreclosure~~extinguishment~~ under subsection 3, a limited liability company or one or more members whose transferable interests are

not subject to the charging order may pay to the judgment creditor the full amount due under the judgment and thereby succeed to the rights of the judgment creditor, including the charging order.

- 6-5. This chapter does not deprive any member or transferee of the benefit of any exemption laws applicable to the transferable interest of the member or transferee.
- 7-6. This section provides the exclusive remedy by which a person seeking to enforce a judgment against a member or transferee may, in the capacity of judgment creditor, satisfy the judgment from the transferable interest of the judgment debtor.
- a. No other remedy, including foreclosure of the transferable interest or a court order for directions, accounts, and inquiries that the debtor member might have made, is available to the judgment creditor that is attempting to satisfy the judgment out of the judgment debtor's interest in the limited liability company.
- b. No creditor of a member or transferee has any right to obtain possession of or otherwise exercise legal or equitable remedies with respect to a property of the company.
7. This section applies to single member limited liability companies and limited liability companies with more than one member.

SECTION 6. AMENDMENT. Section 10-32.1-54 of the North Dakota Century Code is amended and reenacted as follows:

10-32.1-54. Distribution of assets in winding up limited liability activities of the company.

1. ~~In~~Except as provided in subsection 5, in winding up its activities, a limited liability company ~~must~~shall apply its assets to discharge its obligations to creditors, including members that are creditors.
2. After a limited liability company complies with subsection 1, any surplus must be distributed in the following order, subject to any charging order in effect under section 10-32.1-45:
 - a. To each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and
 - b. In equal shares among members and dissociated members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44.
3. If a limited liability company does not have sufficient surplus to comply with subdivision a of subsection 2, then any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.
4. All distributions made under subsections 2 and 3 must be paid in money.

5. a. Notwithstanding subsections 1 through 4, in winding up its activities a limited liability company created after July 31, 2017, shall apply its assets to discharge its obligations to creditors, including members that are creditors.
- b. After a limited liability company complies with subdivision a, any surplus must be distributed in the following order, subject to any charging order in effect under section 10-32.1-45 and unless otherwise provided in the articles of organization or an operating agreement:
 - (1) To each person owning a transferable interest that reflects contributions made by a member and not previously returned, an amount equal to the value of the unreturned contributions; and
 - (2) In proportion to the value of the contributions of members and dissociated members, except to the extent necessary to comply with any transfer effective under section 10-32.1-44.
- c. If a limited liability company does not have sufficient surplus to comply with paragraph 1 of subdivision b, any surplus must be distributed among the owners of transferable interests in proportion to the value of their respective unreturned contributions.
- d. All distributions made under subdivisions a and b must be paid in money unless otherwise provided in the articles of organization or in an operating agreement, or by the unanimous consent of the voting members.

SECTION 7. AMENDMENT. Section 45-10.2-64 of the North Dakota Century Code is amended and reenacted as follows:

45-10.2-64. (703) Rights of a creditor of partner or transferee Charging order.

1. On application to a court of competent jurisdiction by any by a judgment creditor of a partner or of a partner's transferee, the court may charge and following notice to the partnership of the application, a court of competent jurisdiction may enter a charging order against the transferable interest of the judgment debtor with payment of the for the unsatisfied amount of the judgment with interest.
 - a. To the extent so charged, the judgment creditor has only the rights of a transferee.
 - b. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.
 - c.
2. A charging order constitutes a lien on the transferable interest of the judgment debtor and requires the partnership to pay to the person to which the charging order was issued any distribution that otherwise would be paid to the judgment debtor.

3. The partner or transferee having a transferable interest subject to a charging order may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the charging order.
4. A partnership or partner having any transferable interest not subject to the charging order may pay the full amount due under the judgment to the judgment creditor and succeed to the rights of the judgment creditor, including the charging order.
- 2-5. This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the transferable interest of the partner or transferee.
- 3-6. This section provides the exclusive remedy by which a person seeking to enforce a judgment creditor against a partner or transferee may satisfy, in the capacity of a judgment with request to creditor, the judgment from the transferable interest of the judgment debtor.
 - a. No other remedy, including foreclosure of the transferable interest or a court order for directions, accounts, and inquiries the debtor partner may have made, is available to the judgment creditor attempting to satisfy the judgment from the judgment debtor's interest in the partnership.
 - b. No creditor of a partner or transferee has a right to obtain possession or otherwise exercise legal or equitable remedies with respect to property of the partnership.

SECTION 8. AMENDMENT. Section 45-17-04 of the North Dakota Century Code is amended and reenacted as follows:

45-17-04. (504) Partner's transferable interest subject to charging order.

1. On application by a judgment creditor of a partner or of a partner's transferee and following notice to the partnership of such application, a court having jurisdiction may charge ~~enter a charging order against~~ the transferable interest of the judgment debtor ~~to satisfy for the unsatisfied amount of the judgment.~~ The court may appoint a receiver of the share of the distributions ~~due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require.~~
2. A charging order constitutes a lien on the ~~judgment debtor's~~ transferable interest ~~in of a judgment debtor and requires the partnership to pay over to the person to which the charging order was issued any distribution that would otherwise be paid to the judgment debtor.~~ The court may order a foreclosure of the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.
3. At any time before foreclosure, an interest charged may be redeemed:
 - a. By the judgment debtor;
 - b. ~~With property other than partnership property, by one or more of the other partners; or~~

- ~~e. With partnership property, by one or more of the other partners with the consent of all of the partners whose interests are not so charged. The partner or transferee whose transferable interest is subject to a charging order may extinguish the charging order by satisfying the judgment and filing a certified copy of the satisfaction with the court that issued the order.~~
4. At any time before extinguishment under subsection 3, a partnership or one or more partners whose transferable interest are not subject to the charging order may pay the full amount due under the judgment to the judgment creditor and succeed to the rights of the judgment creditor, including the charging order.
5. Chapters 45-13 through 45-21 do not deprive a partner of a right under exemption laws with respect to the partner's interest in the partnership.
- 5-6. This section provides the exclusive remedy by which a person seeking to enforce a judgment creditor of against a partner or partner's transferee may satisfy a, in the capacity of a judgment out creditor, the judgment from the transferable interest of the judgment debtor's transferable interest in the partnership debtor.
- a. No other remedy, including foreclosure of the transferable interest or a court order for directions, accounts, and inquiries the debtor partner might have made, is available to the judgment creditor attempting to satisfy the judgment out of the judgment debtor's interest in the partnership.
- b. No creditor of a partner or transferee has any right to obtain possession of or otherwise exercise legal or equitable remedies to a property of the partnership.

Approved April 14, 2017

Filed April 17, 2017

CHAPTER 83

SENATE BILL NO. 2159

(Senators Campbell, Laffen)
(Representatives Monson, D. Ruby, Trottier)

AN ACT to amend and reenact subdivision d of subsection 2 of section 10-32.1-39, paragraph 1 of subdivision d of subsection 3 of section 10-32.1-39, and paragraph 1 of subdivision q of subsection 4 of section 10-32.1-39 of the North Dakota Century Code, relating to management of a limited liability company; and to provide for retroactive application.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

²⁹ **SECTION 1. AMENDMENT.** Subdivision d of subsection 2 of section 10-32.1-39 of the North Dakota Century Code is amended and reenacted as follows:

- d. An act outside the ordinary course of the activities of the company may be undertaken only with the consent of all members, except member consent is not required for the grant of a lien on or security interest in all or substantially all of the company's property and assets, whether in the usual and regular course of the company's business, or for the transfer of any or all of the company's property to an organization, all of the ownership interests that are directly or indirectly owned through wholly owned organizations, by the company.

³⁰ **SECTION 2. AMENDMENT.** Paragraph 1 of subdivision d of subsection 3 of section 10-32.1-39 of the North Dakota Century Code is amended and reenacted as follows:

- (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the property of the company, with or without the good will, outside the ordinary course of the activities of the company, except member consent is not required for the grant of a lien on or security interest in all or substantially all of the company's property and assets, whether in the usual and regular course of the company's business, or for the transfer of any or all of the company's property to an organization, all of the ownership interests that are directly or indirectly owned through wholly owned organizations, by the company;

²⁹ Section 10-32.1-39 was also amended by section 2 of Senate Bill No. 2159, chapter 83, section 3 of Senate Bill No. 2159, chapter 83, and section 4 of Senate Bill No. 2223, chapter 82.

³⁰ Section 10-32.1-39 was also amended by section 1 of Senate Bill No. 2159, chapter 83, section 3 of Senate Bill No. 2159, chapter 83, and section 4 of Senate Bill No. 2223, chapter 82.

³¹ **SECTION 3. AMENDMENT.** Paragraph 1 of subdivision q of subsection 4 of section 10-32.1-39 of the North Dakota Century Code is amended and reenacted as follows:

- (1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the property of the company, with or without the good will, outside the ordinary course of the activities of the company, except member consent is not required for the grant of a lien on or security interest in all or substantially all of the company's property and assets, whether in the usual and regular course of the company's business, or for the transfer of any or all of the company's property to an organization, all of the ownership interests that are directly or indirectly owned through wholly owned organizations, by the company;

SECTION 4. RETROACTIVE APPLICATION. This Act applies retroactively to cases arising after July 31, 2015.

Approved March 15, 2017

Filed March 16, 2017

³¹ Section 10-32.1-39 was also amended by section 1 of Senate Bill No. 2159, chapter 83, section 2 of Senate Bill No. 2159, chapter 83, and section 4 of Senate Bill No. 2223, chapter 82.

CHAPTER 84

SENATE BILL NO. 2276

(Senators Wardner, Armstrong)

AN ACT to amend and reenact subsection 7 of section 10-33-21, section 10-33-100, and subsection 4 of section 10-33-108 of the North Dakota Century Code, relating to the prohibition of the diversion of restricted assets and the priority of those assets in a dissolution.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 7 of section 10-33-21 of the North Dakota Century Code is amended and reenacted as follows:

7. A corporation may make contracts and incur liabilities, borrow money, issue its securities, and secure any of its obligations by mortgage of or creation of a security interest in all or any of its property, franchises, and income. All assets received by a corporation from donors for special use or purpose must be designated as temporarily restricted or permanently restricted in accordance with the applicable generally accepted accounting principles and disclosed on the corporation's financial statements. A corporation may pledge as collateral, grant a security interest in, or borrow from assets initially designated as temporarily restricted only for purposes that are in accordance with the donor's restrictions. A corporation may not pledge as collateral, grant a security interest in, or borrow from assets designated as permanently restricted assets.

SECTION 2. AMENDMENT. Section 10-33-100 of the North Dakota Century Code is amended and reenacted as follows:

10-33-100. Procedure in dissolution.

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 to collect or make provision for the collection of debts owing to the corporation and to pay or make provision for the payment of debts, obligations, and liabilities of the corporation according to their priorities.
2. Notwithstanding section 10-33-94, when a notice of intent to dissolve has been filed with the secretary of state, the directors may sell, lease, transfer, or otherwise dispose of all or substantially all of the property and assets of a dissolving corporation without a vote of the members, subject to sections 10-33-95 and 10-33-122.
3. ~~Property, including money, remaining after the discharge of the debts, obligations, and liabilities of the corporation must be distributed under section 10-33-105.~~

SECTION 3. AMENDMENT. Subsection 4 of section 10-33-108 of the North Dakota Century Code is amended and reenacted as follows:

4. The assets of the corporation or the proceeds resulting from a sale, lease, transfer, or other disposition must be applied in the following order of priority to the payment and discharge of:
 - a. Assets received and held for a special use or purpose must be distributed pursuant to subsection 2 of section 10-33-105;
 - b. The costs and expenses of the proceedings, including attorney's fees and disbursements;
 - b-c. Debts, taxes, and assessments due the United States, this state and its subdivisions, and other states and their subdivisions, in that order;
 - e-d. Claims duly proved and allowed to employees under title 65. Claims under this subdivision may not be allowed if the corporation carried workforce safety and insurance coverage, as provided by law, at the time the injury was sustained;
 - d-e. Claims, including the value of all compensation paid in any medium other than money, duly proved and allowed to employees for services performed within three months preceding the appointment of the receiver, if any; and
 - e-f. Other claims duly proved and allowed.

Approved April 10, 2017

Filed April 10, 2017

CHAPTER 85

HOUSE BILL NO. 1048

(Legislative Management)
(Political Subdivision Taxation Committee)

AN ACT to amend and reenact section 10-33-124 of the North Dakota Century Code, relating to the certified nonprofit development corporation investment tax credit; to repeal section 57-38-01.17 of the North Dakota Century Code, relating to the certified nonprofit development corporation investment tax credit; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

³² **SECTION 1. AMENDMENT.** Section 10-33-124 of the North Dakota Century Code is amended and reenacted as follows:

10-33-124. Certified nonprofit development corporation - Application -- Income tax credit.

1. For the purposes of this section:
 - a. "Certified nonprofit development corporation" means a corporation organized under this chapter which meets the following requirements:
 - (1) Is certified by the secretary of state under this section;
 - (2) Invests a majority of its funds in primary sector businesses; and
 - (3) No part of the income is distributable to its members, directors, or officers.
 - b. "Primary sector business" means an individual, corporation, limited liability company, partnership, or association that, through a process employing knowledge and labor, adds value to a product produced for resale.
2. A corporation may apply to the secretary of state to become a certified nonprofit development corporation by submitting an application executed by an officer of the corporation containing:
 - a. The name of the corporation and the address of its principal executive office;
 - b. The names and addresses of the officers and directors of the corporation; and
 - c. A statement that the corporation has adopted a resolution to invest a majority of membership payments, dues, or contributions received in primary sector businesses. A copy of the resolution must be submitted with

³² Section 10-33-124 was also amended by section 3 of House Bill No. 1044, chapter 56.

- the application to the secretary of state together with the fees provided in section 10-33-140.
3. Upon receipt by the secretary of state of the completed application and fee, the secretary of state shall certify the applicant as a certified nonprofit development corporation.
 4. ~~a. A corporation that buys membership in, or pays dues or contributes to, a nonprofit development corporation is entitled to an income tax credit against the tax liability under section 57-38-30 equal to twenty five percent of the amount paid.~~
 - ~~b. This credit may not be claimed by a corporation that is recognized as a subchapter S corporation under section 57-38-01.4.~~
 - ~~c. No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section.~~
 - ~~d. The amount of the credit under this section in excess of the taxpayer's income tax liability may be carried forward for up to seven taxable years.~~
 5. ~~a. Within thirty days of the date on which a taxpayer buys membership in, or pays dues or contributes to, a certified nonprofit development corporation, the certified nonprofit development corporation must complete and file with the tax commissioner a form prescribed by the tax commissioner setting forth:
 - ~~(1) The name, address, and social security number or federal employer identification number of the taxpayer making the payment;~~
 - ~~(2) The dollar amount paid by the taxpayer;~~
 - ~~(3) The date the certified nonprofit development corporation received the payment from the taxpayer;~~
 - ~~(4) The name, address, and federal employer identification number of the certified nonprofit development corporation; and~~
 - ~~(5) The signature and title of an officer authorized to act on behalf of the corporation.~~~~
 - ~~b. Two copies of this form must be provided to the taxpayer. To receive the credit, the taxpayer must attach one copy of the form to the taxpayer's income tax return.~~

SECTION 2. REPEAL. Section 57-38-01.17 of the North Dakota Century Code is repealed.

SECTION 3. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 2016.

Approved March 21, 2017

Filed March 22, 2017