CORPORATIONS

CHAPTER 122

SENATE BILL NO. 2246
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

INVESTMENT ADVISORS

AN ACT to create and enact section 10-04-10.3 of the North Dakota Century Code, relating to postregistration requirements for registered dealers, salesmen, investment advisers, and investment adviser representatives; and to amend and reenact section 10-04-02, subsection 1 of section 10-04-03, sections 10-04-10, 10-04-10.1, 10-04-10.2, 10-04-11, and 10-04-12 of the North Dakota Century Code, relating to registration requirements for investment advisers and investment adviser representatives, and suspension or revocation of dealer's, salesman's, investment adviser's, and investment adviser representative's registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-04-02 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-02. Definitions. When used in this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the securities commissioner of this state.

2. "Dealer" means every person, other than a salesman, who engages in this state, either for all or part of his time:

   a. Directly or indirectly, as agent, broker, or principal in the business of offering, buying, selling, or otherwise dealing or trading in securities issued by another person; or

   b. Directly or through an officer, director, employee, or agent, which officer, director, employee, or agent is not registered as a dealer under this chapter, in selling securities issued by such person.

3. "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing

investment advisory services to others for compensation. "Investment adviser" does not include:

a. An investment adviser representative.

b. A bank, savings institution, or trust company.

~~b.~~ c. A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession.

~~c.~~ d. A broker or dealer or its salesman whose performance of these services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation for them.

~~d.~~ e. A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation.

~~e. A person whose advice, analysis, or reports relate only to securities exempted by subsection 1 of section 10-04-05.~~

~~f. A person who has no place of business in this state if his only clients in this state are other investment advisers, brokers or dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees.~~

~~g.~~ f. Such other persons not within the intent of this subsection as the commissioner may by rule or order designate.

4. "Investment adviser representative" means any partner, officer, director of an investment adviser, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:

a. Makes any recommendations or otherwise renders advice regarding securities directly to advisory clients;

b. Manages the accounts or portfolios of clients;

c. Determines which recommendations or advice regarding securities should be given if that person is a member of the investment adviser's investment committee that determines general investment advice to be given to clients or, if the investment adviser has no investment committee, the person determines general client advice (if there are more than five such persons, only the supervisors of such persons are deemed to be investment adviser representatives);

d. Solicits, offers, or negotiates for the sale of or sells investment advisory services unless that person is a dealer licensed in this state or a licensed salesman of a dealer and

the person would not be an investment adviser representative except for the performance of the activities described in this subdivision; or

e. Immediately supervises employees in the performance of any of the foregoing.

5. "Issuer" means every person who issues or proposes to issue any security, except that:

a. With respect to certificates of deposit, voting-trust certificates, collateral trust certificates, certificates of interest, or shares in an unincorporated investment trust, whether or not of the fixed, restricted management, or unit type, issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which such securities are issued.

b. With respect to equipment trust certificates or like securities, issuer means the person by whom the equipment or property is or is to be used.

c. With respect to fractional interests in oil, gas, or other mineral rights, issuer means the owner of any such right or any interest in such rights, whether whole or fractional, which are created for the purpose of sale.

~~5.~~ 6. "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value. Every sale or offer for sale of a warrant or right to subscribe to another security of the same issuer or of another issuer, and every sale or offer for sale of a security which gives the holder thereof a present or future right or privilege to convert such security into another security of the same issuer or of another issuer, shall be deemed an offer to sell the security to be acquired by subscription or conversion. The offer or grant of an option to purchase securities may not be deemed an offer to sell the securities to be purchased if:

a. The offer or grant is an offer or grant limited to directors, officers, or employees of the issuer or a parent or subsidiary of the issuer;

b. No money or other tangible property is given for the option; and

c. The option, by its terms or by the terms of a supplemental agreement, is nontransferable except by will or the laws of descent and distribution.

~~6.~~ 7. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any other unincorporated organization.

~~7.~~ 8. "Registered dealer" means a dealer registered under this chapter.

~~8.~~ 9. "Registered salesman" means a salesman registered under this chapter.

~~9.~~ 10. "Sale" or "sell" means every sale or other disposition of a security or interest in a security for value, and every contract to make any such sale or disposition. Any security given or delivered with, or as a bonus on account of any purchase of securities or any other thing, shall be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

~~10.~~ 11. "Salesman" means any individual, other than a dealer, who represents a dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. A partner, officer, or director of a dealer or an issuer or a person occupying a similar status or performing similar functions is a "salesman" only if he otherwise comes within the definition.

~~11.~~ 12. "Securities Act of 1933" means the Act of Congress known as the Securities Act of 1933, as now or hereafter amended.

~~12.~~ 13. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor where the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

SECTION 2. AMENDMENT. Subsection 1 of section 10-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The securities commissioner shall be appointed by the governor and confirmed by the senate and shall hold office for a term of four years, beginning on the first day of July following a national presidential election and continuing until a successor has been appointed, confirmed by the senate, and has qualified, unless removed as herein provided. If the senate is not in session, the governor may make an interim appointment, and the interim appointee shall hold office until the senate confirms or rejects the appointment. The commissioner shall be skilled in securities and shall not be an incumbent of any other public office in the state. The commissioner may not own or control any security required to be registered under this chapter and may not be an officer, director,

or employee of any dealer, salesman, ~~or~~ investment adviser, or investment adviser representative required to be registered under this chapter. The governor may remove from office any commissioner who fails to discharge faithfully the duties of office or who becomes disqualified under the provisions of this section.

It shall be the prime duty of the commissioner to administer the provisions of this chapter. The commissioner shall receive a salary within the amount appropriated for salaries by the legislative assembly. The commissioner shall use a seal with the words "securities commissioner, North Dakota" and such design as the commissioner may prescribe engraved thereon by which seal the commissioner may authenticate documents used in the administration of this chapter. The commissioner may employ such employees as are necessary for the administration of this chapter. In the absence or disability of the commissioner, the deputy shall administer the provisions of this chapter as acting commissioner.

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

10-04-10. Registration of dealers, salesmen, and investment ~~counsel~~ advisers, and investment adviser representatives. No dealer or salesman shall offer for sale or sell any securities within or from this state, except in transactions exempt under section 10-04-06, unless he is registered as a dealer or salesman pursuant to the provisions of this section.

1. Dealers. Application for registration as a dealer may be made by any person eighteen years of age or older. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant, duly verified by oath, shall be filed in the office of the commissioner, and shall contain the following information:

   a. The name of the applicant.

   b. The address of the principal place of business of the applicant and the addresses of all branch offices, if any, of the applicant in this state.

   c. The form of business organization and the date of organization of the applicant.

   d. The names and business addresses of all members, partners, officers, directors, trustees, or managers of the applicant; a statement of the limitations, if any, of the liability of any partner, member, manager, or trustee; and a statement setting forth in chronological order the occupational activities of each such partner, member, officer, director, trustee, or manager during the preceding ten years.

   e. A brief description of the general character of the business conducted or proposed to be conducted by the applicant.

   f. A list of any other states in which the applicant is registered as a dealer, and, if registration of the applicant as a dealer

* NOTE: Section 10-04-10 was also amended by section 1 of Senate Bill No. 2209, chapter 125.

has ever been refused, canceled, suspended, or withdrawn in any state, full details with respect thereto.

g. Whether the applicant is registered as a dealer under the Securities Exchange Act of 1934 or any act in amendment thereof and whether any such registration of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension by the securities and exchange commission.

h. The names of all organizations of dealers or brokers of which the applicant is a member or before which any application for membership on the part of the applicant is then pending, and whether any such membership of the applicant has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.

i. The names of any securities exchange of which the applicant or any of its partners, officers, directors, trustees, members, managers, or employees is a member, and whether any such membership has ever been denied, revoked, or suspended or is then the subject of proceedings for revocation or suspension.

j. A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant, or by a responsible officer or member of said applicant as the commissioner may require.

k. Whether the applicant or any officer, director, partner, member, trustee, or manager of the applicant, has ever been convicted of a felony or any misdemeanor other than minor highway traffic offenses and, if so, all pertinent information with respect to any such conviction.

l. Any other information which the commissioner may by rule or order require.

The commissioner may also require such additional information as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees as he may deem necessary to establish whether or not the applicant should be registered as a dealer under the provisions of this law.

There shall be filed with such application a written consent to the service of process upon the commissioner in actions against such dealer, conforming to the requirements of section 10-04-14, and payment of the prescribed registration fee, which shall be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection the commissioner may register such applicant as a dealer unless he shall find that the applicant is not of good business reputation, or is not solvent, or does not appear

qualified by training or experience to act as a dealer in securities.

The commissioner shall require an indemnity bond or a deposit of cash or other properties approved by the commissioner running to the state of North Dakota conditioned for the faithful compliance by the dealer, his agents, and his salesmen with all the provisions of this law and for the faithful performance and payment of all obligations of the dealer and his agents and salesmen.

The bond or deposit shall be of such type as may be approved by the commissioner and shall be in such amount as he shall deem necessary to protect purchasers when there is taken into consideration the volume of business engaged in by the applicant and the number of salesmen employed by the applicant. Any such bond shall have as surety thereon a surety company authorized to do business in this state. When the commissioner has registered an applicant as a dealer he shall notify the applicant of such registration.

2. Salesmen. Application for registration as a salesman may be made by any individual eighteen years of age or older. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant and by the registered dealer or issuer employing or proposing to employ such applicant, duly verified by oath, shall be filed in the office of the commissioner and shall contain the following information:

   a. Name and residence and business address of the applicant.

   b. Name of the dealer or issuer employing or proposing to employ the applicant, unless the applicant is to be self-employed.

   c. Names and addresses of three persons of whom the commissioner may inquire as to the character and business reputation of the applicant.

   d. Applicant's age and education.

   e. The nature of employment and names and addresses of employers of the applicant for the period of ten years immediately preceding the date of application.

   f. Other state or federal laws under which the applicant has ever been registered as a dealer or salesman of securities, and, if any such registration has ever been refused, canceled, suspended, or revoked, full details with respect thereto.

   g. Whether applicant has ever been convicted of a felony or misdemeanor other than minor highway traffic offenses, and if so, all pertinent information with respect to any such conviction.

   The commissioner shall require as a condition of registration that the applicant, and, in the case of a corporation or partnership, all officers, directors, or partners doing securities business in this state, pass a written examination as evidence of

knowledge of the securities business; provided, that not more than two officers of an issuer may be registered as a salesman for a particular original offering of the issuer's securities without being required to pass such written examination; and provided, further, that no such officer may again register within five years as such salesman for this or any other issuer without passing the written examination.

The commissioner may also require such additional information as to the applicant's previous business experience as he may deem necessary to determine whether or not the applicant should be registered as a salesman under the provisions of this law. If a salesman proposes to be self-employed, he shall specifically state the particular security or securities he proposes to sell in this state in his application, and if said security or securities are exempt under section 10-04-05, or have been registered by description under section 10-04-07, or have been registered by announcement under section 10-04-07.1, or have been registered by qualification under section 10-04-08, then the commissioner shall require that said self-employed salesman file an indemnity bond running to the state of North Dakota conditioned for the faithful compliance by said self-employed salesman with all the applicable provisions of this chapter and for the faithful performance and payment of all obligations hereunder. The bond shall be in a form approved and in the amount required by the commissioner. There shall be filed with such application payment of the prescribed registration fee, which shall be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as a salesman unless he finds that such applicant is not of good business reputation, or that the dealer named on the application is not a registered dealer. When the commissioner has registered an applicant as a salesman, he shall immediately notify the applicant of such registration.

Every registered dealer or issuer shall promptly notify the commissioner of the termination of the employment by him of a registered salesman. The registration of such salesman shall automatically be suspended from the time of termination of such employment until such time as he shall notify the commissioner of his employment by another registered dealer or issuer.

3. Investment advisers.

a. It is unlawful for any person to transact business in this state as an investment adviser unless:

(1) He is so registered under this chapter;

(2) ~~He is registered as a dealer; provided, however, that the commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a dealer or salesman. When he finds that an applicant for initial or renewal registration as a dealer is not qualified as an investment adviser, he may by order~~

~~condition the applicant's registration as a dealer upon his not transacting business in this state as an investment adviser; or~~

~~(3)~~ His only clients in this state are investment companies as defined in the Investment Company Act of 1940 ~~or insurance companies~~, other investment advisers, dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans with assets of not less than one million dollars, and governmental agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner.

b. Application for registration as an investment adviser may be made by any person eighteen years of age or older. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant, duly verified by oath, shall be filed in the office of the commissioner, and shall contain the following information:

(1) Name, residence, and business address of the applicant.

(2) If the applicant is a corporation or association, give full information as to agents, partners, and managing officers.

(3) Statement showing each individual named is of good repute and possesses essential experience and education.

(4) The plan and character of business, and the proposed method of operation.

(5) Such other information as may be required.

c. If the applicant is a foreign corporation or association, it shall file with its application:

(1) A copy of its articles.

(2) Certificate showing authorization to transact business.

d. The commissioner may also require such additional information as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees, as he may deem necessary to establish whether or not the applicant should be registered as an investment adviser under the provisions of this chapter.

e. There shall be filed with such application:

(1) A written consent to the service of process upon the commissioner in actions against such investment adviser conforming to the requirements of section 10-04-14.

(2) Payment of the prescribed registration fee, which shall be returned if registration is refused.

(3) A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant or by a responsible officer or member of said applicant, as the commissioner may require.

f. The commissioner may require an indemnity bond or a deposit of cash or other properties approved by the commissioner running to the state of North Dakota conditioned for the faithful compliance by the investment adviser and his representatives with all the provisions of this law and for the faithful performance and payment of all obligations of the investment adviser and his representatives. The bond or deposit shall be of such type as may be approved by the commissioner and shall be in such amount as he shall deem necessary to protect persons in this state when there is taken into consideration the volume of business engaged in by the applicant and the number of persons who represent him. Any such bond shall have as surety thereon a surety company authorized to do business in this state.

g. The commissioner may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.

h. When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an investment adviser unless he shall find that the applicant is not of good business reputation or is not solvent.

i. A registrant as investment adviser shall notify the commissioner of any change of address.

4. Investment adviser representatives. Application for registration as an investment adviser representative may be made by any person eighteen years of age or older. The application for registration must be made in writing in a form prescribed by the commissioner, signed by the applicant and by the investment adviser employing or proposing to employ the applicant, duly verified by oath, filed in the office of the commissioner, and contain the following information:

a. Name, residence, and business address of the applicant.

b. Name of the investment adviser employing or proposing to employ the applicant, unless the applicant is to be self-employed.

c. Applicant's age and education.

d. The nature of employment and names and addresses of employers of the applicant for the period of ten years immediately preceding the date of the application.

e. Other state or federal laws under which the applicant has ever been registered as an investment adviser representative, and, if any registration has ever been refused, canceled, suspended, or revoked, full details with respect thereto.

f. Whether applicant has ever been convicted of a felony or misdemeanor other than minor highway traffic offenses, and if so, all pertinent information with respect to any such conviction.

There must be filed with the application payment of the prescribed registration fee, which must be returned if registration is refused.

When an applicant has fully complied with the provisions of this subsection, the commissioner may register the applicant as an investment adviser representative unless the commissioner finds that the applicant is not of good business reputation, or that the investment adviser named in the application is not a registered investment adviser. When the commissioner has registered an applicant as an investment adviser representative, the commissioner shall immediately notify the applicant of such registration.

Every registered investment adviser shall promptly notify the commissioner of the termination of the employment by the adviser of a registered investment adviser representative. The registration of the investment adviser representative is automatically suspended from the time of termination of employment until such time as the representative notifies the commissioner of employment by another investment adviser.

The commissioner may by rule provide for an examination to be taken by the applicant.

5. Refusal of registration. If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-04-12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, he shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order shall be mailed to the applicant at his business address, and if the application is for registration as a salesman, to the registered dealer or issuer who proposed to employ such applicant. If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a dealer's, salesman's, ~~or~~ investment adviser's, or investment adviser representative's registration under section 10-04-11, such act or omission may constitute a sufficient ground for a finding by the commissioner that such applicant is not of "good business reputation".

~~3.~~ 4. It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:

a. The commissioner by rule prohibits custody; or

b. In the absence of rule, the investment adviser fails to notify the commissioner that he has or may have custody.

SECTION 5. AMENDMENT. Section 10-04-10.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-10.2. Conviction not bar to registration - Exceptions. Conviction of an offense shall not disqualify a person from registration under this chapter unless the commissioner determines that the offense has a direct bearing upon a person's ability to serve the public as a dealer, salesman, ~~or~~ investment adviser, or investment adviser representative, or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

* SECTION 6. Section 10-04-10.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-04-10.3. Postregistration provisions.

1. Every registered dealer, salesman, investment adviser, and investment adviser representative shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the commissioner prescribes by rule. All records so required must be preserved for three years unless the commissioner prescribes otherwise by rule for particular types of records.

2. Every registered dealer, salesman, investment adviser, and investment adviser representative shall file such financial reports as the commissioner prescribes by rule.

3. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

4. All the records referred to in subsection 1 are subject at any time or from time to time to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or outside this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, if deemed practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or any other jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business, and in so cooperating may share any information obtained as a result of any investigation or examination.

* NOTE: Section 10-04-10.3 was also created by section 1 of Senate Bill No. 2175, chapter 126.

5. The commissioner and the commissioner's representatives may copy records or require a registrant to copy records and provide the copies to the commissioner and the commissioner's representatives to the extent and in a manner reasonable under the circumstances.

* SECTION 7. AMENDMENT. Section 10-04-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-11. Suspension or revocation of dealer's, salesman's, ~~and~~ investment adviser's, and investment adviser representative's registration.

1. The commissioner may revoke the registration of any dealer, salesman, ~~or~~ investment adviser, or investment adviser representative if, after a hearing or opportunity for hearing as provided in section 10-04-12, he finds that such registered dealer, salesman, ~~or~~ investment adviser or investment adviser representative:

   a. Has violated or failed to comply with, any provisions of this chapter or any order or rule of the commissioner under this chapter; or

   b. Is, in the case of a dealer or investment adviser, insolvent; or

   c. Has engaged in dishonest, fraudulent, or unethical practices in the securities business; or

   d. Conducts business in purchasing or selling securities at such variations from current market prices as, in the light of all the circumstances, are unconscionable or unfair to the purchasing public, or if such variance, including commissions on sales, unreasonably exceeds the price quoted by a recognized national quotation list as prescribed by the commissioner; or

   e. Has failed to file with the commissioner any financial ~~statement~~ record required pursuant to ~~subsection 3~~ section 10-04-10.3, or has refused to permit an examination into his affairs as provided by ~~subsection 3~~ section 10-04-10.3 and subsection 3 of this section; or

   f. Has filed an application for registration which, as of its effective date or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or

   g. Has been convicted of an offense determined by the commissioner to have a direct bearing upon a person's ability to serve the public as a dealer, salesman, ~~or~~ investment adviser, or investment adviser representative, or the commissioner finds that a person, following conviction of any offense, is not sufficiently rehabilitated under section 12.1-33-02.1; or

   h. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any

* NOTE: Section 10-04-11 was also amended by sections 2 and 3 of Senate Bill No. 2175, chapter 126.

conduct or practice involving any aspect of the securities business; or

i. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a dealer, salesman, ~~or~~ investment adviser, or investment adviser representative; or

j. Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a dealer, salesman, ~~or~~ investment adviser, or investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order ~~of the securities and exchange commission suspending or expelling him from a national securities exchange or national securities association~~ suspending or expelling membership in or association with a member of a self-regulatory organization registered under the Securities Exchange Act of 1934, the Commodity Exchange Act, or the Investment Advisors Act of 1940; or is the subject of a United States post-office fraud order~~, but the commissioner may not enter an order under this subsection on the basis of an order under another state act unless that order was based on facts which would currently constitute a ground for an order of revocation or suspension under this section~~; or

k. Has, in connection with the offer, sale, or purchase of any security, directly or indirectly, effected a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase or sale of the security; or

l. Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business; or

m. Has failed reasonably to supervise his salesmen if he is a dealer or his employees or his investment adviser representatives if he is an investment adviser.

2. It shall be sufficient cause for revocation of registration of a dealer or investment adviser as provided in this section, in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be sufficient ground for revoking the registration of an individual dealer or investment adviser.

3. ~~The commissioner may require any registered dealer, salesman, or investment adviser to make and keep such accounts, correspondence, memoranda, papers, books, and other records as he deems necessary to efficiently administer this chapter. Such records shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records. The commissioner may at any time require a registered dealer or investment adviser to file with him a financial statement showing the financial condition of such dealer or investment adviser as of~~

~~the most recent practicable date, and may require that such financial statement be verified by a certified public accountant; provided, however, that the commissioner shall not require any registered dealer or investment adviser to file such a financial statement more than twice in any one year.~~ If the commissioner has reasonable grounds to believe that the registration of any registered dealer, salesman, ~~or~~ investment adviser, or investment adviser representative should be revoked upon any grounds specified in this section, the commissioner or his agent may conduct an examination into the affairs of any such registered dealer, salesman, ~~or~~ investment adviser or investment adviser representative. In making any such examination, the commissioner or his agent shall have access to and may compel the production of all the books and papers of a registered dealer, salesman, ~~or~~ investment adviser, or investment adviser representative, and may administer oaths to and examine the officers and employees of such dealer or investment adviser as to his business and affairs.

4. If the commissioner has reasonable grounds to believe that a registered dealer, salesman, ~~or~~ investment adviser, or investment adviser representative has been guilty of any act or omission which would be sufficient ground for revoking the registration of such dealer, salesman, ~~or~~ investment adviser, or investment adviser representative, he may enter an order suspending the registration of such dealer, salesman, ~~or~~ investment adviser, or investment adviser representative pending an examination into the affairs of such dealer, salesman, ~~or~~ investment adviser, or investment adviser representative or pending a hearing or opportunity for hearing as provided in section 10-04-12; provided, that no such order shall be effective for more than thirty days, and such order, if not withdrawn by the commissioner within thirty days, shall automatically terminate thirty days after the date of its issuance. Such suspension order shall state specifically the grounds for its issuance. Upon the entry of such suspension order, or of an order withdrawing a suspension order previously entered, the commissioner shall send a copy of such order by registered or certified mail to the dealer, salesman, ~~or~~ investment adviser, or investment adviser representative whose registration is affected thereby at his business address, and, ~~if such order affects the registration of a salesman, to the registered dealer who employs such salesman~~ to the registered dealer or registered investment adviser who employs any salesman or investment adviser representative affected by such order.

5. If the commissioner finds, after affording a registered dealer, a registered salesman, ~~or~~ a registered investment adviser, or a registered investment adviser representative a hearing or opportunity for hearing as provided in section 10-04-12, that there are grounds to revoke the registration of such dealer, salesman, ~~or~~ investment adviser, or investment adviser representative, he may enter an order in the register of dealers, salesmen, ~~and~~ investment advisers, and investment adviser representatives, revoking the registration of such dealer, salesman, ~~or~~ investment adviser, or investment adviser representative. Such order shall state specifically the grounds for its issuance. A copy of such order shall be sent by registered mail to the dealer, salesman, ~~or~~ investment adviser, or investment adviser representative whose

registration is revoked thereby at his business address and, if the revocation is of the registration of a salesman, or investment adviser representative, to the registered dealer or registered investment adviser who employs such ~~salesman~~ person. Suspension or revocation of the registration of a dealer shall also suspend or revoke the registration of all of his salesmen. Suspension or revocation of the registration of an investment adviser also suspends or revokes the registration of all of the investment adviser's investment adviser representatives. Suspension or revocation of the registration of a salesman or investment adviser representative solely because he was employed by a dealer or investment adviser whose registration was suspended or revoked shall not prejudice subsequent applications for registration by such ~~salesman~~ person.

SECTION 8. AMENDMENT. Section 10-04-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-12. Hearings. Before entering an order revoking the registration of any securities as provided in section 10-04-09, the commissioner shall send to the issuer of such securities, and if the application for registration of such securities was filed by a registered dealer, to such registered dealer, a notice of opportunity for hearing. Before entering an order refusing to register any person as a dealer, salesman, ~~or~~ investment adviser, or investment adviser representative, as provided in section 10-04-10, or revoking the registration of any person as a registered dealer, salesman, ~~or~~ investment adviser, or investment adviser representative as provided in section 10-04-11, the commissioner shall send to such person, and if such person is a salesman or investment adviser representative or an applicant for registration as a salesman or investment adviser representative, to the registered dealer or investment adviser who employs or proposes to employ such salesman or investment adviser representative, a notice of opportunity for hearing.

1. Notices of opportunity for hearing shall be sent by registered or certified mail, returned receipt requested, to the addressee's business address, and such notice shall state:

   a. The order which the commissioner proposes to issue.

   b. The grounds for issuing such proposed order.

   c. That the person to whom such notice is sent will be afforded a hearing upon request to the commissioner if such request is made within ten days after receipt of the notice.

2. Whenever a person requests a hearing in accordance with the provisions of this section, the commissioner shall immediately set a date, time, and place for such hearing and shall forthwith notify the person requesting such hearing thereof. The date set for such hearing shall be within fifteen days, but not earlier than five days, after the request for hearing has been made, unless otherwise agreed to by both the commissioner and the person requesting such hearing.

3. For the purpose of conducting any hearing as provided in this section, the commissioner shall have the power to call any party to

testify under oath at such hearings, to require the attendance of witnesses, the production of books, records, and papers, and to take the depositions of witnesses; and for that purpose the commissioner is authorized, at the request of the person requesting such hearing or upon his own initiative, to issue a subpoena for any witness or a subpoena duces tecum to compel the production of any books, records, or papers, directed to the sheriff of the county where such witness resides or is found, which shall be served and returned. The fees and mileage of the sheriff and witnesses shall be paid from the fund in the state treasury for the use of the commissioner in the same manner that other expenses of the commissioner are paid.

4. At any hearing conducted under this section, a party or an affected person may appear in his own behalf or may be represented by an attorney. A stenographic record of the testimony and other evidence submitted shall be taken unless the commissioner and the person requesting such hearing shall agree that such a stenographic record of the testimony shall not be taken. The commissioner shall pass upon the admissibility of evidence, but a party may at any time make objections to the rulings of the commissioner thereon, and if the commissioner refuses to admit evidence the party offering the same shall make a proffer thereof and such proffer shall be made a part of the record of such hearing.

5. In any hearing under this section, the commissioner may conduct such hearing or he may appoint a referee who shall have the same powers and authority in conducting such hearings as are in this section granted to the commissioner. Such referee shall have been admitted to the practice of law in this state and be possessed of such additional qualifications as the commissioner may require. If a hearing is conducted by a referee such referee shall submit to the commissioner a written report setting forth his findings of fact and conclusions of law and a recommendation of the action to be taken by the commissioner. A copy of such written report and recommendations shall within five days of the time of filing thereof be served upon the person who requested the hearing, or his attorney or other representative of record, by registered or certified mail. That person or his attorney may, within ten days of receipt of the copy of such written report and recommendations, file with the commissioner written objections to the report and recommendations which shall be considered by the commissioner before entering an order. No recommendations of the referee shall be approved, modified, or disapproved by the commissioner until after ten days after service of such report and recommendations as herein provided. The recommendations of the referee may be approved, modified, or disapproved by the commissioner. The commissioner may order additional testimony to be taken or permit the introduction of further documentary evidence. A transcript of testimony and evidence, objections, if any, of the parties, and additional testimony and evidence, if any, shall have the same force and effect as if such hearing or hearings had been conducted by the commissioner. All recommendations of the referee to the commissioner shall be advisory only and shall not have the effect of an order of the commissioner.

6. If the commissioner does not receive a request for a hearing within the prescribed time, he may enter the proposed order. If a hearing is requested and conducted with respect to a proposed order, the commissioner shall issue a written order which shall set forth his findings with respect to the matters involved and enter an order in accordance with his findings.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 123

HOUSE BILL NO. 1192
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

SECURITIES OPINIONS, RULES, AND EXEMPTIONS

AN ACT to create and enact a new subsection to section 10-04-03 of the North Dakota Century Code, relating to fees for written opinions of the commissioner; and to amend and reenact subsection 2 of section 10-04-03, subsections 1 and 2 of section 10-04-05, and subsection 11 of section 10-04-06 of the North Dakota Century Code, relating to the authority of the securities commissioner, an exemption for governmental securities, registration exemptions for banks, and an exemption for employee stock purchase plans.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new subsection to section 10-04-03 of the North Dakota Century Code is hereby created and enacted to read as follows:

The commissioner may honor requests from interested persons for the issuance of a statement or opinion concerning the applicability of this chapter or the rules adopted under this chapter to any transaction or proposed transaction which may be subject to this chapter. Any such request must be accompanied by a fee to be set by the commissioner by rule, which may not exceed two hundred fifty dollars.

SECTION 2. AMENDMENT. Subsection 2 of section 10-04-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The commissioner shall have authority to administer oaths in, and to prescribe forms for, all matters arising under this chapter. The commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary under this chapter, including rules and forms governing registration statements, applications and reports, and defining any terms, whether or not used in this chapter, if the definitions are consistent with this chapter. The commissioner shall cooperate with the administrators of the securities laws of other states and of the United States with a view toward achieving maximum uniformity in the interpretation of like provisions of the laws administered by them and in the forms which are required to be filed under such law.

SECTION 3. AMENDMENT. Subsections 1 and 2 of section 10-04-05 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Securities issued or guaranteed by the United States of America, or by any state, territory, or insular possession thereof, or by any

political subdivision of any such state, territory, or insular possession, or by the District of Columbia, or by any public agency or instrumentality of one or more of any of the foregoing, or payable from assessments for improvements or revenues of publicly owned utilities therein; or a certificate of deposit for any of the foregoing, but this exemption does not include any security payable solely from revenues to be received from a nongovernmental industrial or commercial enterprise unless the security is insured or unconditionally guaranteed by, or the revenues are derived from, a person whose securities are exempt from registration under this section.

2. Securities issued by and representing an interest in or a debt of, or guaranteed by, a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an act of Congress and supervised by the United States, or any agency thereof, or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member, or issued by and representing an interest in or a debt of, or guaranteed by, a state bank, trust company, savings bank, savings institution, or credit union ~~incorporated under the laws of this state and subject to supervision by this state or by any agency thereof~~ organized and supervised under the laws of any state, and securities of any person subject to examination by the commissioner of banking and financial institutions of North Dakota.

SECTION 4. AMENDMENT. Subsection 11 of section 10-04-06 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

11. Any ~~investment contract~~ security issued in connection with an employees' stock purchase, savings, pension, profit-sharing, or similar benefit plan; provided, that the securities which fund the plan or are the subject of the plan are otherwise exempt pursuant to section 10-04-05.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 124

SENATE BILL NO. 2043
(Legislative Council)
(Interim Jobs Development Commission)

SECURITIES TRANSACTIONAL EXEMPTIONS

AN ACT to amend and reenact subsection 9 of section 10-04-06 of the North Dakota Century Code, relating to the authority of the securities commissioner to adopt transactional exemptions from securities registration requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 9 of section 10-04-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. a. Any transaction pursuant to an offer directed by the offeror to not more than twenty-five persons (other than those designated in subsection 5) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:

(1) The seller reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.

(2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5).

(3) The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee of one hundred dollars, which fee must accompany the application for approval.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in paragraphs 1, 2, and 3 with or without the substitution of a limitation on remuneration.

b. Any ~~sales by an issuer to not more than twenty persons (other than those designated in subsection 5)~~ offer or sale in this state of common stock or limited partnership interests of an issuer during any period of twelve consecutive months~~, whether~~

~~or not any of the buyers is then present in this state,~~ if all of the following conditions are met:

(1) The issuer reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.

(2) No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5), except reasonable and customary commissions paid by the issuer to a dealer or salesman registered under this chapter or others who the commissioner may designate by rule.

(3) The issuer is both organized under the laws of this state and has its principal place of business in this state.

(4) No public advertising matter or general solicitation is used in connection with any offers or sales.

(5) ~~The issuer has, ten days prior to any sale pursuant to this subdivision, supplied the commissioner with a statement on forms prescribed by the commissioner containing the following information:~~

~~(a) The name and address of the issuer and the date and state of its organization.~~

~~(b) The number of units, price per unit, and description of the securities to be sold.~~

~~(c) The amount of commissions to be paid and the persons to whom they will be paid.~~

~~(d) The names of all officers, directors, and persons owning five percent or more of the equity of the issuer.~~

~~(e) A brief description of the intended use of the proceeds.~~

~~(f) A description of all sales of securities made by the issuer in this state preceding the date of filing.~~

~~(g) A copy of the investment letter, if any, intended to be used in connection with any sale~~

At least eighty percent of the net proceeds from the sale of the securities must be used in connection with the operations of the issuer in this state. "Net proceeds" means gross proceeds less commissions and sales expenses.

(6) An offering disclosure document in the form approved by the commissioner must be delivered to each offeree no less than seventy-two hours prior to the sale of the security.

(7) The gross proceeds of the offering may not exceed five hundred thousand dollars.

(8) The issuer must apply for and obtain the written approval of the commissioner prior to making any offer or sale in this state by filing an application prescribed by the commissioner, a copy of the offering disclosure document, and any other information or documents the commissioner may require, together with a filing fee of one hundred dollars.

(9) All funds raised in the offering are placed in an escrow account until the total offering has been sold.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption~~, or increase or decrease the number of buyers permitted,~~ or waive the conditions in paragraphs ~~1, 2, and 3 with or without the substitution of a limitation on remuneration~~ 6 and 7.

c. The offer or sale of a security offered or sold in compliance with a limited offering transactional exemption that the commissioner, by rule, may adopt to further the objectives of compatibility with the exemptions from securities registration authorized by the Securities Act of 1933 and uniformity among the states.

d. The exemptions provided under subdivisions a ~~and~~, b, and c may not be combined.

Approved April 6, 1989
Filed April 7, 1989

CHAPTER 125

SENATE BILL NO. 2209
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

SECURITIES DEALERS AND PRE-NEED FUNERAL FEES

AN ACT to amend and reenact subsection 6 of section 10-04-10 and section 43-10.1-03 of the North Dakota Century Code, relating to registration fees for securities dealers and salesmen and filing fees for pre-need funeral services annual reports.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. AMENDMENT. Subsection 6 of section 10-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. Fees. The fee, which must accompany the application, for registration, transfer, and for each annual renewal thereof is:

a. For each dealer . . . . . ~~$100.00~~ $175.00

b. For each salesman . . . . . $ 35.00
~~General examination . . . . . $ 10.00~~
~~State law examination . . . . . $ 5.00~~
~~Registration fee . . . . . $ 20.00~~
~~Renewal fee . . . . . $ 20.00~~

c. For each investment adviser $100.00
~~General examination . . . . . $ 10.00~~
~~State law examination . . . . . $ 5.00~~
~~Registration fee . . . . . $ 50.00~~

d. For each investment adviser representative . . $ 35.00

An application to register as a dealer, salesman, ~~or~~ investment adviser, or investment adviser representative may, with the consent of the commissioner, be withdrawn upon written application, but in no event shall any registration fees be returned.

** SECTION 2. AMENDMENT. Section 43-10.1-03 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

43-10.1-03. Annual report filed with securities commissioner. On or before January thirty-first of each year, the owner or manager of each cemetery association or licensed funeral establishment that has entered into any pre-need funeral service contracts shall file a report covering the period of the preceding calendar year with the securities commissioner, which report shall include:

* NOTE: Section 10-04-10 was also amended by section 3 of Senate Bill No. 2246, chapter 122.

** NOTE: Section 43-10.1-03 was also amended by section 2 of House Bill No. 1163, chapter 306.

1. The name and address of the licensed funeral establishment or cemetery association and the name and address of the manager or operator thereof.

2. The name of the purchaser and beneficiary of each pre-need funeral service contract entered into on behalf of the licensed funeral establishment or cemetery association during the preceding calendar year and the date each contract was made.

3. The lump-sum consideration paid upon such pre-need funeral service contract required to be reported under subsection 2 or the total amount in dollars of any installments paid upon each pre-need funeral service contract required to be reported under subsection 2.

4. The name and address of the bank or trust company in which such consideration was deposited in accordance with section 23-06-03.1.

5. The total in dollars of all sums received as consideration upon pre-need funeral service contracts executed by the licensed funeral establishment or cemetery association or in its behalf during all periods after July 1, 1973, which are undrawn or unexpended and on deposit in a bank or trust company or in the hands of the licensed funeral establishment or cemetery association.

6. Such other information as may reasonably be required by the securities commissioner for the purpose of the proper administration of this chapter.

Such report shall be accompanied by a filing fee of ~~five~~ fifteen dollars and shall be a public record.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 126

SENATE BILL NO. 2175
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

INVESTMENT BUSINESS RECORDS AND REPORTS

AN ACT to create and enact section 10-04-10.3 of the North Dakota Century Code, relating to post-registration requirements for registered dealers, salesmen, investment advisers, and investment adviser representatives; and to amend and reenact subdivision e of subsection 1 and subsection 3 of section 10-04-11 of the North Dakota Century Code, relating to suspension or revocation of dealer's, salesman's, investment adviser's, and investment adviser representative's registration.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

* SECTION 1. Section 10-04-10.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-04-10.3. Post-registration provisions.

1. Every registered dealer, salesman, investment adviser, and investment adviser representative shall make and keep such accounts, correspondence, memoranda, papers, books, and other records as the commissioner prescribes by rule. All records required must be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records.

2. Every registered dealer, salesman, investment adviser, and investment adviser representative shall file such financial reports as the commissioner prescribes by rule.

3. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the registrant shall promptly file a correcting amendment.

4. All the records referred to in subsection 1 are subject at any time to such reasonable periodic, special, or other examinations by representatives of the commissioner, within or outside this state, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as deemed practicable in administering this subsection, may cooperate with the securities administrators of other states, the securities and exchange commission, any national securities exchange, or national securities association registered under the Securities Exchange Act of 1934, or any other jurisdiction, agency, or organization charged by law or statute with regulating or prosecuting any aspect of the securities business. In cooperating

* NOTE: Section 10-04-10.3 was also created by section 6 of Senate Bill No. 2246, chapter 122.

with any entity under this subsection, the commissioner may share any information the commissioner or the commissioner's representatives may obtain as a result of any investigation or examination.

5. The commissioner and the commissioner's representatives may copy records or require a registrant to copy records and provide the copies to the commissioner and the commissioner's representatives to the extent and in a manner reasonable under the circumstances.

* SECTION 2. AMENDMENT. Subdivision e of subsection 1 of section 10-04-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

e. Has failed to file with the commissioner any financial ~~statement~~ record required pursuant to ~~subsection 3~~ section 10-04-10.3, or has refused to permit an examination into his affairs as provided by section 10-04-10.3 and subsection 3 of this section; or

* SECTION 3. AMENDMENT. Subsection 3 of section 10-04-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. ~~The commissioner may require any registered dealer, salesman, or investment adviser to make and keep such accounts, correspondence, memoranda, papers, books, and other records as he deems necessary to efficiently administer this chapter. Such records shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records. The commissioner may at any time require a registered dealer or investment adviser to file with him a financial statement showing the financial condition of such dealer or investment adviser as of the most recent practicable date, and may require that such financial statement be verified by a certified public accountant, provided, however, that the commissioner shall not require any registered dealer or investment adviser to file such a financial statement more than twice in any one year.~~ If the commissioner has reasonable grounds to believe that the registration of any registered dealer, salesman, ~~or~~ investment adviser, or investment adviser representative should be revoked upon any grounds specified in this section, the commissioner or his agent may conduct an examination into the affairs of any such registered dealer, salesman, ~~or~~ investment adviser, or investment adviser representative. In making any such examination, the commissioner or his agent shall have access to and may compel the production of all the books and papers of a registered dealer, salesman, ~~or~~ investment adviser, or investment adviser representative, and may administer oaths to and examine the officers and employees of such dealer or investment adviser as to his business and affairs.

Approved March 31, 1989
Filed March 31, 1989

* NOTE: Section 10-04-11 was also amended by section 7 of Senate Bill No. 2246, chapter 122.

CHAPTER 127

SENATE BILL NO. 2223
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

SECURITIES LAWS ENFORCEMENT

AN ACT to amend and reenact subsections 1 and 2 of section 10-04-16 and subsection 1 of section 10-04-16.1 of the North Dakota Century Code, relating to injunctions for violations and to investigations under the securities laws.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsections 1 and 2 of section 10-04-16 of the North Dakota Century Code are hereby amended and reenacted to read as follows:

1. Issue any order including, but not limited to, cease and desist, stop, and suspension orders, which ~~he~~ the commissioner deems necessary or appropriate in the public interest or for the protection of investors~~; provided, however, that~~. The commissioner may, in addition to any other remedy authorized by this chapter, impose by order and collect a civil penalty against any person found in an administrative action to have violated any provision of this chapter, or any regulation, rule, or order adopted or issued under this chapter, in an amount not to exceed ten thousand dollars for each violation. The attorney general, upon the commissioner's request, may bring actions to recover penalties pursuant to this section in district court. However, any person aggrieved by an order issued pursuant to this subsection may request a hearing before the commissioner if such request is made within ten days after receipt of the order. The provisions of subsections 2, 3, 4, and 5 of section 10-04-12 shall apply to any hearing conducted hereunder. If, after a hearing, the commissioner shall sustain an order previously issued, the sustaining order shall be subject to appeal to the district court of Burleigh County by serving on the commissioner within twenty days after the date of entry of the sustaining order a written notice of appeal signed by the appellant stating:

   a. The order of the commissioner from which the appeal is taken.

   b. The grounds upon which a reversal or modification of such order is sought.

   c. A demand for a certified transcript of the record of such order.

   The provisions of subdivisions a and b of subsection 3 of section 10-04-13 shall apply to an appeal hereunder.

2. Apply to the district court of any county in this state for an injunction restraining such person and his agents, employees, partners, officers, and directors from continuing such act, practice, or transaction or engaging therein or doing any acts in furtherance thereof, and for such other and further relief as the facts may warrant. In any proceeding for an injunction, the commissioner may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendant and his agents, employees, partners, officers, or directors, and the production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant, and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

SECTION 2. AMENDMENT. Subsection 1 of section 10-04-16.1 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. The commissioner in his discretion:

   a. May make such public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. In the discretion of the commissioner, the expense reasonably attributed to an investigation under this section must be paid by the dealer, salesman, investment adviser, or investment adviser representative whose affairs are investigated, but the expense so payable may not exceed an amount that the commissioner prescribes by rule.

   b. May require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated.

   c. May publish information concerning any violation of this chapter or any rule or order hereunder, and may keep confidential the information or documents obtained or prepared in the course of any investigation conducted under this section but only during an active and ongoing investigation. If an investigation under this section extends beyond six months, the commissioner must, upon a request by any party, state in writing that the need for confidentiality still exists, the general reason why the need exists, and the date, as can best be determined at the time, when the need for confidentiality will cease.

Approved March 31, 1989
Filed March 31, 1989

CHAPTER 128

HOUSE BILL NO. 1440
(Representatives A. Olson, Myrdal, Shaft)
(Senators Maxson, Vosper)

FARM CORPORATION CONVERSION

AN ACT to amend and reenact section 10-06-01 of the North Dakota Century Code, relating to conversion of a farm corporation to a business corporation; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-06-01 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-06-01. Farming or ranching by corporations prohibited - Retention of mineral interests prohibited - Conversion of corporation. All corporations, 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 may be a partner in a partnership that is in the business of farming or ranching only if that corporation complies with this chapter. For land and minerals acquired after July 1, 1985, any corporation which 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 that 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 divests itself of the land, and the mineral interests must be passed with the surface estate of the land when the corporation divests itself of the land pursuant to this chapter. As used in this chapter, "corporation" includes any joint stock company or association.

A business corporation organized under chapter 10-19.1 may convert to a farm corporation by adopting an amendment to its articles of incorporation. The amendment must specify that the corporation elects to be subject to this chapter, and the corporation does comply with all requirements of this chapter. The amendment must be filed with the prescribed fee and with the initial report required by section 10-06-07.3. A farm corporation may convert to a business corporation by adopting an amendment to its articles of incorporation. The amendment must be filed with the prescribed fee.

SECTION 2. EMERGENCY. This Act is declared to be an emergency measure.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 129

SENATE BILL NO. 2161
(Committee on Agriculture)
(At the request of the Secretary of State)

FARM CORPORATION AGENT ADDRESS

AN ACT to amend and reenact subsection 2 of section 10-06-08 of the North Dakota Century Code, relating to the address and agent of a North Dakota farm corporation as reported on the annual report.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 10-06-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The address of the registered office of the corporation in this state and the name ~~and address~~ of its registered agent in this state at that address.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 130

HOUSE BILL NO. 1135
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

CORPORATE CERTIFICATE OF EXISTENCE

AN ACT to amend and reenact section 10-22-06 of the North Dakota Century Code, relating to filing of an application of a corporation for a certificate of authority.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-22-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-22-06. Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority must be delivered to the secretary of state, together with a certificate of good standing or a certificate of existence duly authenticated by the ~~proper~~ incorporating officer of the state or country where the corporation is incorporated and the consent of the designated registered agent for service of process to serve in that capacity.

The secretary of state shall, upon determining that the application conforms to law and that all fees have been paid as prescribed in chapter 10-23:

1. Endorse on each document the word "filed" and the month, day, and year of the filing.

2. File one of the duplicate originals of the application, the certificate of good standing or certificate of existence, and the consent of the registered agent.

3. Issue to the corporation or its representative a certificate of authority to transact business in this state with the other duplicate original application affixed.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 131

HOUSE BILL NO. 1577
(Hoffner, D. Larson)

CORPORATION ANNUAL REPORTS SIGNATURES

AN ACT to amend and reenact section 10-23-01 of the North Dakota Century Code, relating to annual reports of domestic and foreign corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-23-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-23-01. Annual report of domestic and foreign corporations. Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall file, within the time prescribed by sections 10-23-02 and 10-23-03, an annual report setting forth:

1. The name of the corporation and the state or country under the laws of which it is incorporated.

2. The address of the registered office of the corporation in this state, and the name of its registered agent in this state at such address, and, in the case of a foreign corporation, the address of its principal office in the state or country under the laws of which it is incorporated.

3. A brief statement of the character of the business in which the corporation is actually engaged in this state.

4. The names and respective addresses of the directors and officers of the corporation.

5. A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class.

6. 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.

7. A statement, expressed in dollars, of the amount of stated capital of the corporation. "Stated capital" means, at any particular time, the sum of the following:

   a. The par value of all shares of the corporation having a par value, which have been issued.

   b. The amount of the consideration received by the corporation for all shares of the corporation without par value, which have

been issued, except such part of the consideration thereof as may have been allocated to capital surplus in a manner permitted by law.

c. Such amounts not included in subdivisions a and b as have been transferred to stated capital of the corporation, whether upon the issue of shares as a share dividend or otherwise, minus all reductions from such sum as have been effected in a manner permitted by law. Irrespective of the manner of designation thereof by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation must be determined on the same basis and in the same manner as the stated capital of a domestic corporation, for the purpose of computing fees and other charges imposed by chapters 10-19.1 through 10-23.

8. A statement, expressed in dollars, of the value of all the property owned by the corporation, wherever located, and the value of the property of the corporation located within this state, and a statement, expressed in dollars, of the gross amount of business transacted by the corporation for the twelve months ending on the thirty-first day of December preceding the date herein provided for the filing of the annual report and the gross amount thereof transacted by the corporation at or from places of business in this state. If, on the thirty-first day of December preceding the time herein provided for the filing of such report, the corporation had not been in existence for a period of twelve months, or, in the case of a foreign corporation, had not been authorized to transact business in this state for a period of twelve months, the statement with respect to business transacted shall be furnished for the period between the date of incorporation or the date of its authorization to transact business in this state, as the case may be, and such thirty-first day of December.

9. Such additional information as may be necessary or appropriate in order to enable the secretary of state to determine and assess the proper amount of fees payable by such corporation.

Such annual report shall be made on forms prescribed and furnished by the secretary of state, and the information therein contained shall be given as of the date of the execution of the report, except as to the information required by subsections 7, 8, and 9 which shall be given as of the close of business on the thirty-first day of December next preceding the date herein provided for the filing of such report, or, in the alternative, data of the fiscal year ending next preceding this report may be used. It shall be ~~executed by the corporation by its president, a vice president, secretary, an assistant secretary, or treasurer~~ signed as prescribed in subsection 28 of section 10-19.1-01 or, if the corporation is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation. The secretary of state may destroy all the annual reports provided for in this section after they have been on file for six years.

Approved March 29, 1989
Filed March 30, 1989

CHAPTER 132

HOUSE BILL NO. 1558
(P. DeMers, Wilkie, Clayburgh, Dalrymple, Gates)

NONPROFIT DEVELOPMENT CORPORATION CREDITS

AN ACT to create and enact three new sections to chapter 10-24 and a new section to chapter 57-38 of the North Dakota Century Code, relating to certification of nonprofit development corporations and providing income tax credits for purchase of memberships, payment of dues, or making contributions by individuals and corporations to certified nonprofit development corporations; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. A new section to chapter 10-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

Definitions. As used in sections 1 through 3 of this Act, unless the context otherwise requires:

1. "Certified nonprofit development corporation" means a corporation organized under this chapter, certified by the secretary of state under section 2 of this Act, and no part of the income of which is distributable to its members, directors, or officers.

2. "Primary sector business" means an individual, corporation, partnership, or association that, through a process employing knowledge and labor, adds value to a product produced for resale.

SECTION 2. A new section to chapter 10-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

Certification of nonprofit development corporations. The secretary of state, after consultation with the economic development commission, shall adopt rules establishing minimum requirements for certification of nonprofit development corporations. The rules must contain a requirement that at least a majority of funds of the corporation must be used for investment in primary sector business. A nonprofit development corporation may obtain certification from the secretary of state upon compliance with this section, the rules adopted by the secretary of state, and payment of a fee of ten dollars.

SECTION 3. A new section to chapter 10-24 of the North Dakota Century Code is hereby created and enacted to read as follows:

Certified nonprofit development corporations - Income tax credit for memberships or dues. An individual or corporate income taxpayer that buys membership in, or pays dues or contributes to, a nonprofit development corporation certified by the secretary of state under section 2 of this Act is entitled to a credit against income tax liability under chapter 57-38 in

an amount equal to twenty-five percent of the total amount invested. No taxpayer is entitled to more than two thousand dollars in total income tax credits under this section. 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.

SECTION 4. A new section to chapter 57-38 of the North Dakota Century Code is hereby created and enacted to read as follows:

Credit for investments in development corporations. An individual, estate, trust, or corporation is allowed, as a credit against a tax otherwise due under section 57-38-29 or 57-38-30 the credit for buying membership in, or paying dues or contributions to, a certified nonprofit development corporation as provided in section 3 of this Act.

SECTION 5. EFFECTIVE DATE. This Act is effective for taxable years beginning after December 31, 1988.

Approved April 18, 1989
Filed April 18, 1989

CHAPTER 133

SENATE BILL NO. 2199
(Committee on Industry, Business and Labor)
(At the request of the Secretary of State)

CORPORATE CERTIFICATE APPLICATIONS

AN ACT to amend and reenact section 10-27-06 of the North Dakota Century Code, relating to filing of application for a certificate of authority by a corporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-27-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-27-06. Filing of application for certificate of authority. Duplicate originals of the application of the corporation for a certificate of authority shall be delivered to the secretary of state, together with a certificate of good standing or a certificate of existence, duly authenticated by the ~~proper~~ incorporating officer of the state or country under the laws of which it is incorporated.

If the secretary of state finds that such application conforms to law, he shall, when all fees have been paid as provided in chapters 10-24 through 10-28:

1. Endorse on each of such documents the word "filed" and the month, day, and year of the filing thereof.

2. File in his office one of such duplicate originals of the application and the good standing certificate or certificate of existence.

3. Issue a certificate of authority to conduct affairs in this state to which he shall affix the other duplicate original application.

The certificate of authority, together with the duplicate original of the application affixed thereto by the secretary of state, shall be returned to the corporation or its representative.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 134

HOUSE BILL NO. 1049
(Legislative Council)
(Interim Jobs Development Commission)

VENTURE CAPITAL CORPORATIONS

AN ACT to create and enact a new subsection to section 10-30.1-04, two new sections to chapter 10-30.2, a new subsection to section 57-01-02, and two new subdivisions to subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to investments made by venture capital corporations and procedures for claiming the income tax credit for investment in the Myron G. Nelson Fund, Incorporated, and venture capital corporations, the authority of the tax commissioner and attorney general to waive tax due, and tax exemptions for pension benefits; to amend and reenact section 10-30.1-01, subsection 4 of section 10-30.1-04, subsection 1 of section 10-30.1-05, sections 10-30.1-06, 10-30.1-07, 10-30.1-08, 10-30.1-09, 10-30.2-06, 10-30.2-11, 10-30.2-12, 10-30.2-13, 10-30.2-14, and subdivisions j and l of subsection 1 of section 57-38-01.2 of the North Dakota Century Code, relating to investments made by venture capital corporations and tax credits for investment in the Myron G. Nelson Fund, Incorporated, and venture capital corporations, board of director liability and investment policy of the Myron G. Nelson Fund, Incorporated, and tax exemptions for pension benefits; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-30.1-01 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-01. Definitions. As used in this chapter, unless the context otherwise requires, the term:

1. "Qualified entity" means a business that:

   a. Is a small business concern as defined under Public Law No. 85-536, § 2[3], 72 Stat. 384; 15 U.S.C. 632, as amended~~; and~~.

   b. Is a business which through a process employing knowledge and labor adds value to a product for resale.

   c. Has its principal office in this state and is primarily doing business within this state.

   However, after the effective date of this Act, a "qualified entity" does not include any business or an affiliate of a business that owns tax-exempt securities. In addition, any venture capital corporation organized before January 1, 1989, may invest not more than five hundred thousand dollars in an entity or an affiliate of an entity that owns tax-exempt securities.

2. "Taxpayer" includes any individual, corporation, or fiduciary subject to a tax or a duty to file a tax return imposed by chapter 57-38.

3. "Venture capital corporation" means a corporation ~~which~~ that is organized for the specific purposes and under the specific conditions provided for in this chapter.

SECTION 2. A new subsection to section 10-30.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

If a venture capital corporation does not invest or provide financing with eighty percent of the funds received from investors within two years of receiving the funds, the venture capital corporation must be dissolved and all funds held by the corporation must be returned to the investors in proportion to their investments.

SECTION 3. AMENDMENT. Subsection 4 of section 10-30.1-04 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. A venture capital corporation will provide financing to qualified entities to be used solely for the purpose of enhancing the production capacity of the qualified entity or the ability of the qualified entity to do business in this state. The venture capital corporation may establish and regulate terms and conditions, consistent with this chapter, with respect to the financing. The financing may include any combination of equity investments, loans, guarantees, and commitments for financing, but no more than twenty percent of the stated capital of a venture capital corporation may be invested in any one qualified entity. For purposes of this chapter, "one qualified entity" means a single entity or a group of affiliated entities that are engaged in a unitary business.

SECTION 4. AMENDMENT. Subsection 1 of section 10-30.1-05 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

1. Subject to sections 10-30.1-06, 10-30.1-07, and 10-30.1-08, a taxpayer is entitled to a credit against any state income tax liability which may be imposed on the taxpayer for a particular taxable year that begins after December 31, 1984, if the taxpayer makes an investment in a venture capital corporation. However, a taxpayer that makes an investment in a venture capital corporation on or after the effective date of this Act is only entitled to a tax credit if the venture capital corporation uses the funds it receives from the taxpayer to invest or provide financing to qualified entities, which entities do not include a business or an affiliate of a business that owns tax-exempt securities. Investments by Myron G. Nelson Fund, Incorporated, in a venture capital corporation do not qualify for the tax credit provided by this chapter. Tax credits under this chapter are not subject to payment of interest as provided in section 57-38-35.1.

SECTION 5. AMENDMENT. Section 10-30.1-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-06. Amount of tax credit. Subject to sections 10-30.1-07 and 10-30.1-08, the maximum amount of tax credit a taxpayer may receive is equal to twenty-five percent of the taxpayer's investment in any venture capital corporations, up to a total tax credit of two hundred fifty thousand dollars under this chapter. However, a taxpayer is not entitled to a tax credit if the taxpayer has purchased stock from and sold stock back to the venture capital corporation in a manner that indicates that the sole purpose of the taxpayer's activities was to avoid paying state income tax by receiving additional tax credits.

SECTION 6. AMENDMENT. Section 10-30.1-07 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-07. Taxable year for credit.

1. The tax credit must be credited against the taxpayer's income tax liability for the taxable year in which full consideration for the investment in the venture capital corporation is received by the venture capital corporation. If the amount of the tax credit exceeds the taxpayer's tax liability for that taxable year, the amount of the credit which exceeds the tax liability may be ~~carried back or~~ carried forward, to the extent not already used as a credit pursuant to this section, as a credit against the taxpayer's state income tax liability for ~~the three taxable years preceding and the~~ seven taxable years following the taxable year in which full consideration for the investment is received.

2. A taxpayer is eligible for a tax credit under this chapter on the date the venture capital corporation receives full consideration for the investment purchased by the taxpayer in the venture capital corporation. In the event the venture capital corporation must return the taxpayer's investment pursuant to subsection 8 of section 10-30.1-04 or section 2 of this Act, any tax credit taken by a taxpayer for the investment under this chapter plus penalty and interest as provided in section 57-38-45 must be paid to the state tax commissioner; however, the taxpayer is entitled to retain a percentage of the tax credit equal to the percentage of the taxpayer's investment not returned by the venture capital corporation, up to a maximum percentage of ten percent.

SECTION 7. AMENDMENT. Section 10-30.1-08 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-08. Tax credit limits. The total amount of investments for which tax credits are allowed for all taxpayers under this chapter for the period beginning ~~on July 1, 1985, and ending December 31, 1986, is four million dollars, and for each two-year period thereafter is four million dollars plus up to one million dollars of any investments available for tax credits from the previous two-year period~~ January 1, 1989, and ending December 31, 1990, is one million dollars. If investments in venture capital corporations reported to the state tax commissioner pursuant to section 10-30.1-10 exceed the limits on investments for tax credit imposed by this section, the credit must be allowed to taxpayers in the chronological order

of their investments in the venture capital corporations as determined from the forms provided for in section 10-30.1-10.

SECTION 8. AMENDMENT. Section 10-30.1-09 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-09. Tax credit - Procedure. To receive the tax credit provided by this chapter, a taxpayer must claim the tax credit on the taxpayer's annual state income tax return in the manner prescribed by the state tax commissioner and file with the taxpayer's annual state tax return a copy of the form issued by the venture capital corporation as to the taxpayer's investment in the venture capital corporation pursuant to section 10-30.1-10. The tax credit provided for in this chapter, including ~~carrybacks and~~ carryforwards, may not be claimed by taxpayers filing income tax returns pursuant to the provisions of section 57-38-30.3.

SECTION 9. AMENDMENT. Section 10-30.2-06 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.2-06. Professional investor to manage corporate funds - Investment policy. The board of directors shall contract with a professional investor, determined by the board of directors to be experienced in making successful venture capital investments, for the purpose of managing the corporation's investment fund. The management contract may provide that the professional investor take an active role in the management of any entity in which an equity interest is purchased. The board of directors shall annually review the investment performance of the professional investor. It shall be the policy of the corporation to invest primarily in North Dakota businesses. ~~The corporation's investment in any one entity may not exceed a maximum of forty percent of the entity's capital. This percentage limitation does not apply to co-venture investments made on behalf of the corporation in conjunction with one or more additional professional investors. The~~ However, the board of directors may prescribe in the management contract that a percentage of the corporation's investment fund be made available for investment outside the state.

SECTION 10. AMENDMENT. Section 10-30.2-11 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.2-11. Tax credits for investment ~~in stock of corporation~~ by banks, savings and loan associations, trust companies, and insurance companies. A bank, savings and loan association, trust company, or insurance company that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, is entitled, subject to section 10-30.2-13, to a credit in an amount equal to twenty-five percent of the total amount invested ~~in the stock~~ against the tax liability imposed against the taxpayer pursuant to sections 26.1-03-17, 57-35-02, 57-35.1-02, and 57-35.2-02, if applicable. ~~In any one taxable year, the amount of the credit allowed for deduction from the taxpayer's tax liability may not exceed twenty-five percent of the total amount of the credit, and in no case may the amount exceed twenty-five percent of the taxpayer's tax liability in that year. The amount of any remaining unused credit may be carried forward until the total amount of the credit is used.~~ The tax credit allowed under this section must be credited against the

taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which ~~that portion of~~ the credit allowed by this section ~~to be claimed in any one taxable year~~ exceeds ~~twenty-five percent of~~ the taxpayer's tax liability in that year may be ~~carried back for not more than three taxable years or~~ carried forward ~~until the total amount of the credit is used~~ for seven taxable years.

SECTION 11. AMENDMENT. Section 10-30.2-12 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.2-12. Income tax credits for investment ~~in stock of corporation~~. A taxpayer that invests in stock issued by the corporation, or in a separate legal entity such as a limited partnership created by the corporation as an affiliate for the purpose of obtaining investment capital from the public, is entitled, subject to section 10-30.2-13, to a credit in the amount equal to twenty-five percent of the total amount invested ~~in the stock~~ against any state income tax liability imposed against the taxpayer. ~~In any one taxable year, the amount of the credit allowed for deduction from the taxpayer's tax liability may not exceed twenty-five percent of the total amount of the credit, and in no case may the amount exceed twenty-five percent of the taxpayer's liability in that year. The amount of any remaining unused credit may be carried forward until the total amount of the credit is used.~~ The tax credit allowed under this section must be credited against the taxpayer's tax liability for the taxable year in which full consideration for the investment is paid by the taxpayer. The amount by which ~~that portion of~~ the credit allowed by this section ~~to be claimed in any one taxable year~~ exceeds ~~twenty-five percent of~~ the taxpayer's tax liability in that year may be ~~carried back for not more than three taxable years or~~ carried forward ~~until the total amount of the credit is used~~ for seven taxable years. No taxpayer claiming a credit under this section is eligible to claim a credit for the same investment under chapter 10-30.1.

SECTION 12. AMENDMENT. Section 10-30.2-13 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.2-13. Limitation on tax credits. The state tax commissioner shall allow tax credits pursuant to sections 10-30.2-11 and 10-30.2-12 which are attributable to not more than the first ~~five~~ ten million dollars of total investment in the corporation or in an affiliate of the corporation. However, the total amount of investments for which tax credits are allowed for all taxpayers under this chapter for the period beginning January 1, 1989, and ending December 31, 1990, is one million two hundred fifty thousand dollars. If investments reported to the state tax commissioner pursuant to section 14 of this Act exceed the ten million dollar limitation imposed by this section, the credit must be allowed to taxpayers in the chronological order of their investments in either the corporation or an affiliate of the corporation as determined from the forms provided for in section 14 of this Act.

SECTION 13. AMENDMENT. Section 10-30.2-14 of the 1987 Supplement to the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.2-14. State and board of director immunity from liability. The state of North Dakota ~~is~~ and the board of directors are not liable for any

damage incurred by an investor in the corporation, or a separate legal entity such as a limited partnership created by the corporation as an affiliate for the purpose of obtaining investment capital from the public.

SECTION 14. A new section to chapter 10-30.2 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Investment reporting forms. Within thirty days of the date on which an investment is purchased, or within sixty days from the effective date of this Act, the corporation or an affiliate of the corporation must file with the state tax commissioner and provide to the investor the completed form prescribed by the state tax commissioner stating with respect to the investment in the corporation or an affiliate of the corporation the following:

1. The name, address, and identification number of the taxpayer who purchased the investment.

2. The dollar amount paid by the taxpayer for the investment.

3. The date on which the corporation or an affiliate of the corporation received full consideration for the investment.

SECTION 15. A new section to chapter 10-30.2 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Tax credit procedure. To receive the tax credit provided by this chapter, a taxpayer must claim the credit on the taxpayer's annual tax return in the manner prescribed by the state tax commissioner and file with that tax return a copy of the form issued by the corporation or an affiliate of the corporation pursuant to section 14 of this Act.

SECTION 16. A new subsection to section 57-01-02 of the North Dakota Century Code is hereby created and enacted to read as follows:

May, upon a showing of good cause, waive any and all tax due. A lien must have been filed against the debtor's property prior to the request for a waiver. The waiver must be approved by the attorney general.

* SECTION 17. AMENDMENT. Subdivisions j and l of subsection 1 of section 57-38-01.2 of the 1987 Supplement to the North Dakota Century Code are hereby amended and reenacted to read as follows:

j. Reduced by any amount, up to a maximum of five thousand dollars, received pursuant to the ~~United States Civil Service Retirement Act,~~ firemen's relief associations authorized by chapters 18-05 and 18-11, or policemen's pension funds authorized by chapter 40-45; provided, however, that the adjustment provided in this subdivision shall be reduced by any amount received pursuant to the federal Social Security Act.

l. Reduced by any amount, up to a maximum of five thousand dollars, received by any person ~~sixty~~ fifty years of age or older as retired military personnel pay for service in the

* NOTE: Subdivision j of subsection 1 of section 57-38-01.2 was also amended by section 1 of House Bill No. 1384, chapter 709.

United States army, navy, air force, coast guard, or marine corps or reserve components thereof; provided, however, that the adjustment provided in this subdivision shall be reduced by any amount received pursuant to the federal Social Security Act.

SECTION 18. A new subdivision to subsection 1 of section 57-38-01.2 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Reduced by the amount, up to a maximum of five thousand dollars for any person or ten thousand dollars if a joint return is filed, of investment made after January 1, 1989, in either a venture capital corporation organized pursuant to chapter 10-30.1 or in the Myron G. Nelson Fund, Incorporated, or a separate legal entity such as a limited partnership created by the Myron G. Nelson Fund, Incorporated, as an affiliate, which entities are organized pursuant to chapter 10-30.2. This deduction may only be taken in the tax year in which the taxpayer qualifies for a credit pursuant to chapter 10-30.1 or 10-30.2. However, a taxpayer that makes an investment in a venture capital corporation on or after the effective date of this Act is only entitled to a deduction if the venture capital corporation uses the funds it receives from the taxpayer to invest or provide financing to qualified entities, which entities do not include a business or an affiliate of a business that owns tax-exempt securities.

SECTION 19. A new subdivision to subsection 1 of section 57-38-01.2 of the 1987 Supplement to the North Dakota Century Code is hereby created and enacted to read as follows:

Reduced by any amount, up to a maximum of five thousand dollars, received as retirement benefits paid by the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, other than retired military personnel pay, as exempted in subdivision 1; provided, however, that the adjustment provided in this subdivision must be reduced by any amount received pursuant to the federal Social Security Act.

SECTION 20. EFFECTIVE DATE. Sections 17 and 19 of this Act are effective for taxable years beginning after December 31, 1988.

Approved April 28, 1989
Filed April 28, 1989

CHAPTER 135

HOUSE BILL NO. 1160
(Committee on Industry, Business and Labor)
(At the request of the Bank of North Dakota)

VENTURE CAPITAL CORPORATION INVESTMENTS

AN ACT to amend and reenact sections 10-30.1-02 and 10-30.1-03 of the North Dakota Century Code, relating to investments made by venture capital corporations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-30.1-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-02. Certification - Investment reporting by venture capital corporations. At the request of a venture capital corporation, the ~~Bank of North Dakota~~ secretary of state shall certify whether a business meets the requirements of a qualified entity as defined in section 10-30.1-01. The ~~Bank of North Dakota~~ secretary of state shall establish the necessary forms and procedures for certifying qualified entities. Within fourteen days of making any investment, a venture capital corporation must give notice of the investment to the ~~Bank of North Dakota~~ secretary of state. The notice must contain the name of the business in which the venture capital corporation invested, the dollar amount of the investment, and the date on which the investment was made.

SECTION 2. AMENDMENT. Section 10-30.1-03 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30.1-03. Unqualified investment - Civil penalties enforcement. The ~~Bank of North Dakota~~ secretary of state shall notify the attorney general of any investment made by a venture capital corporation in a business not certified as a qualified entity under section 10-30.1-02. The attorney general shall assess a civil penalty for ~~the~~ an investment made by a venture capital corporation in a business not certified as a qualified entity under section 10-30.1-02 and collect such civil penalty by a civil proceeding in any appropriate court. The civil penalty is twenty-five percent of the amount invested by the venture capital corporation in the business not certified as a qualified entity.

Approved March 14, 1989
Filed March 15, 1989

CHAPTER 136

SENATE BILL NO. 2234
(Committee on Industry, Business and Labor)
(At the request of the Governor)

STATEWIDE NONPROFIT EQUITY CORPORATION

AN ACT to provide for the establishment of a statewide nonprofit equity corporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Definitions. As used in this chapter unless the context otherwise requires, the term:

1. "Board of directors" means the board of directors of the corporation.

2. "Corporation" means the corporation established under this chapter.

3. "North Dakota business" means a business owned by a North Dakota resident, a partnership, association, or corporation domiciled in North Dakota or a corporation, including a wholly owned subsidiary of a foreign corporation that does business primarily in North Dakota or does substantially all of its production in North Dakota.

4. "Primary sector business" means an individual, corporation, partnership, or association which through a process employing knowledge and labor adds value to a product produced for resale.

SECTION 2. Purpose. It is the purpose of this Act to create a statewide nonprofit development corporation that will have the authority to take equity positions in new and existing businesses in North Dakota. The corporation's principal mission is the development and expansion of primary sector business in North Dakota. The corporation may form additional corporations, partnerships, or other forms of business associations in order to further its mission of primary sector economic development.

The exclusive focus of this corporation is business development in the state of North Dakota, however, it is not excluded from participation with other states or organizations in projects that have a clear economic benefit to North Dakota residents in the creation of jobs or secondary business.

SECTION 3. Organization. The statewide nonprofit development corporation must be managed by a board of directors. The board of directors shall adopt articles of incorporation and bylaws consistent with the purposes detailed in section 2 of this Act. The board of directors consists of five members who shall serve three-year terms. The terms must be staggered so that no more than two positions require reappointment in any one year. Members must be appointed by the governor who shall consider representatives from the following areas in making the selections: manufacturing, higher

education, finance, industrial technology and research, and private sector business. Members may be reappointed for additional terms.

SECTION 4. Powers. The corporation must be organized as a nonprofit corporation under chapter 10-24. In addition to the powers in chapter 10-24, the corporation has the power to:

1. Cooperate and contract with state agencies, colleges, universities, other private and public academic and research sources, agencies and organizations of the federal government, and all public or private entities.

2. Receive appropriations from the legislative assembly and other public moneys as well as contributions from other public agencies, private individuals, companies, and other contributors.

SECTION 5. Management. The board of directors shall ensure that the corporation is managed by a full-time director. The board of directors shall determine minimum qualifications of all staff positions.

All investments, contracts, partnerships, and business transactions of the corporation are the responsibility of the board of directors. The board may provide that normal operating costs anticipated in an approved budget may be incurred and paid without prior board approval.

SECTION 6. Divestiture. The board of directors shall establish a policy for divesting the corporation's interest in any business when certain levels of profitability are obtained.

SECTION 7. Confidentiality of corporation records. The following records of the corporation are confidential:

1. Commercial or financial information, whether obtained by the corporation directly or indirectly, of any entity in which an equity interest is purchased or considered for purchase under this chapter.

2. Internal or interagency memorandums or letters which would not be available by law to a party other than in litigation with the corporation.

SECTION 8. Annual audit. The board of directors shall contract with a certified public accounting firm to audit annually the financial statements of the corporation in accordance with generally accepted auditing standards. The cost of the audit must be borne by the corporation.

SECTION 9. Annual report. The corporation shall prepare and publish an annual report of its activities for the information of the governor, the legislative assembly, and the public. The report must include audited financial statements of the corporation for the fiscal year covered by the report and must specify:

1. The investment strategy and workplan approved by the board of directors.

2. The total investments made annually by the corporation in North Dakota businesses.

3. An estimate of jobs created and jobs preserved by investments of the corporation in North Dakota businesses.

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