

Fifty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1412

Introduced by

Representatives Jensen, Poolman

Senator Grindberg

1 A BILL for an Act to create and enact a new subsection to section 10-04-06 of the North Dakota
2 Century Code, relating to a "test the waters" exemption to registration of securities.

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

4 **SECTION 1.** A new subsection to section 10-04-06 of the North Dakota Century Code
5 is created and enacted as follows:

6 The distribution of a prospectus or similar disclosure document by an issuer to
7 "test the waters" with an offer of a security for the sole purpose of discussing
8 possible business strategies or economic development or soliciting potential
9 indications of interest from prospective purchasers if the issuer:

- 10 a. Is organized under the laws of this state and operates its principal place of
11 business in this state or is a person who is a member of the North Dakota
12 private capital investment network or multistate angel capital electronic
13 network who has registered with the commissioner and who offers, sells,
14 purchases, or exchanges only securities that are registered with the
15 commissioner or the securities and exchange commission.
- 16 b. Does not engage in or propose activities for petroleum exploration, oil
17 production, extractive mining, or any blind pool offering without a specific
18 business purpose.
- 19 c. Discusses potential business strategies and economic development or solicits
20 indications of potential interest in a project or business only within a period of
21 twelve months after receiving approval from the commissioner and does not
22 pay a commission or fee to any person for soliciting a potential investor or
23 prospective purchaser in this state or involving a resident of this state unless

the person who receives the commission or fee is registered as a dealer or sales agent in this state.

- d. Intends to file an application to register securities in this state or to receive approval for an exemption under subsection 9 and the issuer intends to offer and sell securities described in section 3(a)11 of the federal Securities Act of 1933, in regulation A or rule 504 of regulation D of the securities and exchange commission, in a small corporate offering registration, or in a state or federal securities registration for a private placement involving only accredited investors as defined by the securities and exchange commission.
- e. Files a solicitation of interest form and copies of any advertising or marketing materials, including scripts for use in telephone, television, electronic, or computer publications, for approval by the commissioner at least ten business days before the issuer begins soliciting indications of interest from potential purchasers and at least ten business days before publishing or distributing any materials or information to any person.
- f. Obtains approval of the commissioner for any amendments or changes in filed forms, marketing materials, or advertisements at least ten business days before distributing the amended marketing materials or amended advertising information to any person.
- g. Stops all communications with prospective investors made in reliance on this exemption immediately after filing an application to register or qualify the securities with the commissioner or with the securities and exchange commission.
- h. Does not accept money or sign completed contracts for sales of securities with any person while soliciting indications of interest and does not complete any sales of securities until at least ten business days after completing a securities registration in this state.
- i. Includes the name, address, and telephone number of the chief executive officer of the issuer, a general description of the business and products, and the following statements in any published notice, marketing materials, or broadcast scripts:

1 NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED
2 AND NONE WILL BE ACCEPTED UNTIL AFTER THESE
3 SECURITIES ARE REGISTERED OR QUALIFIED WITH THE
4 SECURITIES COMMISSIONER OF THIS STATE AND WITH THE
5 SECURITIES AND EXCHANGE COMMISSION.

6 NO SALES OF THESE SECURITIES WILL BE MADE OR
7 COMMITMENT TO PURCHASE ACCEPTED UNTIL AFTER
8 DELIVERY OF A PROSPECTUS THAT INCLUDES ADDITIONAL
9 INFORMATION ABOUT THE OFFERING.

10 A PROSPECTIVE INVESTOR WHO EXPRESSES AN INTEREST IN
11 THIS INVESTMENT OR PROJECT IS NOT OBLIGATED OR
12 COMMITTED TO INVEST MONEY OR PURCHASE SECURITIES.

13 j. Does not know and, in the exercise of reasonable care, could not have know
14 that the issuer or any officer, director, ten percent shareholder, promoter,
15 partner, manager or agent of the issuer has:

- 16 (1) Been the subject of or filed a registration statement that is the subject
17 of a stop order, administrative enforcement order, judgment, injunction,
18 or restraining order issued by any federal or state securities agency,
19 any court of competent jurisdiction, or the United States postal service
20 and which prohibits, denies, or revokes the registration, offer, sale, or
21 purchase or a security, franchise, commodity, or other financial
22 transaction or which involves fraud, deceit, misstatements of material
23 facts, forgery, embezzlement, obtaining money under false pretenses,
24 larceny, conspiracy to defraud, or similar deceptive acts; or
25 (2) Been convicted of any felony or misdemeanor involving the offer,
26 purchase, or sale of a security, franchise, commodity, or financial
27 transaction, or any felony or misdemeanor involving fraud, deceit,
28 forgery, embezzlement, obtaining money under false pretenses,
29 larceny, conspiracy to defraud, or a similar financial crime.