

**Fifty-fifth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Monday, the sixth day of January,
one thousand nine hundred and ninety-seven**

HOUSE BILL NO. 1412
(Representatives Jensen, Poolman)
(Senator Grindberg)

AN ACT to create and enact a new subsection to section 10-04-06 of the North Dakota Century Code, relating to a "test the waters" exemption to registration of securities; to amend and reenact subsection 4 of section 10-04-03 of the North Dakota Century Code, relating to deposit of security fees; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 10-04-03 of the North Dakota Century Code is amended and reenacted as follows:

4. All fees collected under this chapter ~~shall~~ must be ~~turned~~ deposited in ~~to~~ the general fund of the state treasury, except civil penalties collected from enforcement actions for the purpose of distribution to aggrieved investors may be deposited in a special securities protection fund. All other civil penalties collected, including those collected for the reasonable expenses for the administration of a particular case, must be deposited in the general fund.

SECTION 2. A new subsection to section 10-04-06 of the North Dakota Century Code is created and enacted as follows:

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

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

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

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

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

- j. Does not know and, in the exercise of reasonable care, could not have know that the issuer or any officer, director, ten percent shareholder, promoter, partner, manager or agent of the issuer has:
 - (1) Been the subject of or filed a registration statement that is the subject of a stop order, administrative enforcement order, judgment, injunction, or restraining order issued by any federal or state securities agency, any court of competent jurisdiction, or the United States postal service and which prohibits, denies, or revokes the registration, offer, sale, or purchase of a security, franchise, commodity, or other financial transaction or which involves fraud, deceit, misstatements of material facts, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or similar deceptive acts; or
 - (2) Been convicted of any felony or misdemeanor involving the offer, purchase, or sale of a security, franchise, commodity, or financial transaction, or any felony or misdemeanor involving fraud, deceit, forgery, embezzlement, obtaining money under false pretenses, larceny, conspiracy to defraud, or a similar financial crime.

SECTION 3. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1412 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 93 Nays 0 Absent 4

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 45 Nays 0 Absent 4

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1997.

Approved at _____ M. on _____, 1997.

Governor

Filed in this office this _____ day of _____, 1997,
at _____ o'clock _____ M.

Secretary of State