

**Fifty-seventh Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 9, 2001**

HOUSE BILL NO. 1042
(Legislative Council)
(Commerce and Labor Committee)

AN ACT to amend and reenact section 10-30.1-04 of the North Dakota Century Code, relating to venture capital corporation incorporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-30.1-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-30.1-04. Venture capital corporation - Incorporation.

1. To carry out the purposes of this chapter, a venture capital organization may be formed under chapter 10-19.1 if a corporation or under chapter 10-32 if a limited liability company. The articles of incorporation or articles of organization of a venture capital organization must comply with subsections 2 through 9.
2. The purpose of a venture capital corporation or limited liability company must be solely to raise funds to be used to make investments in, and provide financing to, qualified entities in a manner that will encourage capital investment in the state, encourage the establishment or expansion of business and industry, provide additional jobs within the state, and encourage research and development activities in the state.
3. Each director of a venture capital corporation or each governor of a venture capital limited liability company must be a North Dakota resident, and must have a minimum investment in the venture capital corporation or limited liability company of one thousand dollars.
4. A venture capital corporation or limited liability company shall 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 or limited liability company 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~~ twenty-five percent of the stated capital of a venture capital corporation or limited liability company 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.
5. Business may not be transacted or indebtedness incurred by the venture capital corporation or limited liability company, except such as is incidental to the venture capital corporation's or limited liability company's organization or to obtaining subscriptions to or payment for the venture capital corporation's or limited liability company's shares or membership interests, until the venture capital corporation or limited liability company receives consideration for such shares or membership interests equal to at least ~~five~~ two hundred fifty thousand dollars, which amount is the initial stated capital of the venture capital corporation or limited liability company.
6. All consideration received from the sale of shares or membership interests must be placed in an interest-bearing escrow account in the Bank of North Dakota, except up to ten percent of the proceeds may be withheld for use in activities incidental to the venture capital corporation's or limited liability company's organization or to obtaining subscriptions to or payment for the venture capital corporation's or limited liability company's shares or membership interests.

7. If at any time within one year of the issuance of the certificate of incorporation of the venture capital corporation or certificate of organization of the limited liability company, the venture capital corporation's or limited liability company's stated capital equals at least ~~five~~ two hundred ~~fifty~~ thousand dollars, or such greater amount established by the articles of incorporation, the articles of organization, or bylaws, the funds held in escrow pursuant to subsection 6 must be released to the venture capital corporation or limited liability company for use and disposition according to the venture capital corporation's or limited liability company's articles of incorporation, articles of organization, or the bylaws.
8. If within one year of the issuance of the certificate of incorporation of the venture capital corporation or the certificate of organization of the venture capital limited liability company, the venture capital corporation's or limited liability company's stated capital has not at any time equaled at least ~~five~~ two hundred ~~fifty~~ thousand dollars, or such greater amount established by the articles of incorporation, the articles of organization, or the bylaws, the venture capital corporation's or limited liability company's certificate of incorporation or certificate of organization must be dissolved or terminated, and all funds held in escrow pursuant to subsection 6, and all other remaining funds, must be returned to the investors in proportion to the investor's investments.
9. Before any investment in a venture capital corporation or limited liability company, the venture capital corporation or limited liability company shall make written disclosure of the provisions contained in subsections 5 through 8 to the potential investor.
10. If a venture capital corporation or limited liability company 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 or limited liability company must be dissolved or terminated and all funds held by the corporation or limited liability company must be returned to the investors in proportion to the investor's investments.

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-seventh Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1042.

House Vote: Yeas 93 Nays 3 Absent 2

Senate Vote: Yeas 44 Nays 0 Absent 5

Chief Clerk of the House

Received by the Governor at _____ M. on _____, 2001.

Approved at _____ M. on _____, 2001.

Governor

Filed in this office this _____ day of _____, 2001,
at _____ o'clock _____ M.

Secretary of State