

Sixty-second
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1091

Introduced by

Judiciary Committee

(At the request of the Securities Commissioner)

1 A BILL for an Act to amend and reenact subsection 5 of section 10-04-10.1 of the North Dakota
2 Century Code, relating to investment advisory contracts.

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

4 **SECTION 1. AMENDMENT.** Subsection 5 of section 10-04-10.1 of the North Dakota
5 Century Code is amended and reenacted as follows:

- 6 5. It is unlawful for any investment adviser to enter ~~into~~, extend, or renew any investment
7 advisory contract unless ~~it~~the investment advisory contract provides in writing that:
- 8 a. The investment adviser ~~shall~~may not be compensated on the basis of a share of
9 capital gains, earnings, or capital appreciation of the funds or any portion of the
10 funds of the client. This subdivision does not prohibit an investment advisory
11 contract that provides for compensation based on the total value of a fund
12 determined as of a definite date or averaged as of definite dates or over a definite
13 period. This subdivision does not prohibit an investment advisory contract that
14 provides for performance fees permitted and determined in accordance with
15 section 205 of the Investment Advisers Act of 1940 [Pub. L. 768; 54 Stat. 852;
16 15 U.S.C. 80b-5] and the rules adopted thereunder.
- 17 b. An assignment of the investment advisory contract may not be made by the
18 investment adviser unless the investment adviser notifies the client of the
19 intended assignment and obtains the prior written consent of the client.
- 20 c. The investment adviser shall provide written notice to the client within fifteen days
21 of any change of ownership in excess of five percent.
- 22 d. The investment adviser shall provide written notice to the client within fifteen days
23 of a change of controlling interest of the investment adviser. The client may
24 terminate the investment advisory contract without penalty by providing a written

1 notice to the investment adviser within thirty days after the client's receipt of the
2 notice of change of controlling interest.
3 ~~e. The commissioner may specify by rule the contents of an investment advisory~~
4 ~~contract that will comply with the requirements of this subsection.~~