

**FIRST ENGROSSMENT
with Conference Committee Amendments
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; to amend
3 and reenact subsection 4 of section 10-04-03 of the North Dakota Century Code, relating to
4 deposit of security fees; and to declare an emergency.

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

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

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

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

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

20 a. Is organized under the laws of this state and operates its principal place of
21 business in this state or is a person who is a member of the North Dakota
22 private capital investment network or multistate angel capital electronic
23 network who has registered with the commissioner and who offers, sells,

- 1 purchases, or exchanges only securities that are registered with the
2 commissioner or the securities and exchange commission.
- 3 b. Does not engage in or propose activities for petroleum exploration, oil
4 production, extractive mining, or any blind pool offering without a specific
5 business purpose.
- 6 c. Discusses potential business strategies and economic development or solicits
7 indications of potential interest in a project or business only within a period of
8 twelve months after receiving approval from the commissioner and does not
9 pay a commission or fee to any person for soliciting a potential investor or
10 prospective purchaser in this state or involving a resident of this state unless
11 the person who receives the commission or fee is registered as a dealer or
12 sales agent in this state.
- 13 d. Intends to file an application to register securities in this state or to receive
14 approval for an exemption under subsection 9 and the issuer intends to offer
15 and sell securities described in section 3(a)11 of the federal Securities Act of
16 1933, in regulation A or rule 504 of regulation D of the securities and
17 exchange commission, in a small corporate offering registration, or in a state
18 or federal securities registration for a private placement involving only
19 accredited investors as defined by the securities and exchange commission.
- 20 e. Files a solicitation of interest form and copies of any advertising or marketing
21 materials, including scripts for use in telephone, television, electronic, or
22 computer publications, for approval by the commissioner at least ten business
23 days before the issuer begins soliciting indications of interest from potential
24 purchasers and at least ten business days before publishing or distributing
25 any materials or information to any person.
- 26 f. Obtains approval of the commissioner for any amendments or changes in
27 filed forms, marketing materials, or advertisements at least ten business days
28 before distributing the amended marketing materials or amended advertising
29 information to any person.
- 30 g. Stops all communications with prospective investors made in reliance on this
31 exemption immediately after filing an application to register or qualify the

1 securities with the commissioner or with the securities and exchange
2 commission.

3 h. Does not accept money or sign completed contracts for sales of securities
4 with any person while soliciting indications of interest and does not complete
5 any sales of securities until at least ten business days after completing a
6 securities registration in this state.

7 i. Includes the name, address, and telephone number of the chief executive
8 officer of the issuer, a general description of the business and products, and
9 the following statements in any published notice, marketing materials, or
10 broadcast scripts:

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

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

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

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

26 (1) Been the subject of or filed a registration statement that is the subject
27 of a stop order, administrative enforcement order, judgment, injunction,
28 or restraining order issued by any federal or state securities agency,
29 any court of competent jurisdiction, or the United States postal service
30 and which prohibits, denies, or revokes the registration, offer, sale, or

1 purchase or a security, franchise, commodity, or other financial
2 transaction or which involves fraud, deceit, misstatements of material
3 facts, forgery, embezzlement, obtaining money under false pretenses,
4 larceny, conspiracy to defraud, or similar deceptive acts; or

5 (2) Been convicted of any felony or misdemeanor involving the offer,
6 purchase, or sale of a security, franchise, commodity, or financial
7 transaction, or any felony or misdemeanor involving fraud, deceit,
8 forgery, embezzlement, obtaining money under false pretenses,
9 larceny, conspiracy to defraud, or a similar financial crime.

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