

HOUSE BILL NO. 1042

Introduced by

Legislative Council

(Commerce and Labor Committee)

1 A BILL for an Act to amend and reenact section 10-30.1-04 of the North Dakota Century Code,
2 relating to venture capital corporation incorporation.

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

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

6 **10-30.1-04. Venture capital corporation - Incorporation.**

- 7 1. To carry out the purposes of this chapter, a venture capital organization may be
8 formed under chapter 10-19.1 if a corporation or under chapter 10-32 if a limited
9 liability company. The articles of incorporation or articles of organization of a
10 venture capital organization must comply with subsections 2 through 9.
- 11 2. The purpose of a venture capital corporation or limited liability company must be
12 solely to raise funds to be used to make investments in, and provide financing to,
13 qualified entities in a manner that will encourage capital investment in the state,
14 encourage the establishment or expansion of business and industry, provide
15 additional jobs within the state, and encourage research and development activities
16 in the state.
- 17 3. Each director of a venture capital corporation or each governor of a venture capital
18 limited liability company must be a North Dakota resident, and must have a
19 minimum investment in the venture capital corporation or limited liability company
20 of one thousand dollars.
- 21 4. A venture capital corporation or limited liability company shall provide financing to
22 qualified entities to be used solely for the purpose of enhancing the production
23 capacity of the qualified entity or the ability of the qualified entity to do business in
24 this state. The venture capital corporation or limited liability company may

1 establish and regulate terms and conditions, consistent with this chapter, with
2 respect to the financing. The financing may include any combination of equity
3 investments, loans, guarantees, and commitments for financing, but no more than
4 ~~twenty~~ twenty-five percent of the stated capital of a venture capital corporation or
5 limited liability company may be invested in any one qualified entity. For purposes
6 of this chapter, "one qualified entity" means a single entity or a group of affiliated
7 entities that are engaged in a unitary business.

8 5. Business may not be transacted or indebtedness incurred by the venture capital
9 corporation or limited liability company, except such as is incidental to the venture
10 capital corporation's or limited liability company's organization or to obtaining
11 subscriptions to or payment for the venture capital corporation's or limited liability
12 company's shares or membership interests, until the venture capital corporation or
13 limited liability company receives consideration for such shares or membership
14 interests equal to at least ~~five~~ two hundred fifty thousand dollars, which amount is
15 the initial stated capital of the venture capital corporation or limited liability
16 company.

17 6. All consideration received from the sale of shares or membership interests must be
18 placed in an interest-bearing escrow account in the Bank of North Dakota, except
19 up to ten percent of the proceeds may be withheld for use in activities incidental to
20 the venture capital corporation's or limited liability company's organization or to
21 obtaining subscriptions to or payment for the venture capital corporation's or limited
22 liability company's shares or membership interests.

23 7. If at any time within one year of the issuance of the certificate of incorporation of
24 the venture capital corporation or certificate of organization of the limited liability
25 company, the venture capital corporation's or limited liability company's stated
26 capital equals at least ~~five~~ two hundred fifty thousand dollars, or such greater
27 amount established by the articles of incorporation, the articles of organization, or
28 bylaws, the funds held in escrow pursuant to subsection 6 must be released to the
29 venture capital corporation or limited liability company for use and disposition
30 according to the venture capital corporation's or limited liability company's articles
31 of incorporation, articles of organization, or the bylaws.

- 1 8. If within one year of the issuance of the certificate of incorporation of the venture
2 capital corporation or the certificate of organization of the venture capital limited
3 liability company, the venture capital corporation's or limited liability company's
4 stated capital has not at any time equaled at least ~~five~~ two hundred fifty thousand
5 dollars, or such greater amount established by the articles of incorporation, the
6 articles of organization, or the bylaws, the venture capital corporation's or limited
7 liability company's certificate of incorporation or certificate of organization must be
8 dissolved or terminated, and all funds held in escrow pursuant to subsection 6, and
9 all other remaining funds, must be returned to the investors in proportion to the
10 investor's investments.
- 11 9. Before any investment in a venture capital corporation or limited liability company,
12 the venture capital corporation or limited liability company shall make written
13 disclosure of the provisions contained in subsections 5 through 8 to the potential
14 investor.
- 15 10. If a venture capital corporation or limited liability company does not invest or
16 provide financing with eighty percent of the funds received from investors within
17 two years of receiving the funds, the venture capital corporation or limited liability
18 company must be dissolved or terminated and all funds held by the corporation or
19 limited liability company must be returned to the investors in proportion to the
20 investor's investments.