

Introduced by

Senators Casper, Poolman

Representatives Rick C. Becker, D. Ruby, Streyle

1 A BILL ~~for an Act to amend and reenact subsection 4 of section 6-01-07.1, subsections 4 and 5-~~
2 ~~of section 10-04-02, section 10-04-03, subsection 1 of section 10-04-16, paragraph 2 of~~
3 ~~subdivision a of subsection 1 of section 10-04-16.1, section 26.1-06-12, subsection 3 of section-~~
4 ~~43-10.1-01, subdivision a of subsection 2 of section 43-23.1-05, subsection 4 of section-~~
5 ~~51-19-02, subsection 3 of section 51-23-02, subsection 1 of section 51-23-15, subsection 1 of~~
6 ~~section 54-12-08, subsection 1 of section 54-59-22.1, subdivision b of subsection 5 of section-~~
7 ~~57-38.5-01, and subdivision b of subsection 5 of section 57-38.6-01 of the North Dakota~~
8 ~~Century Code, relating to the insurance commissioner taking over the duties of the department~~
9 ~~of securities and the securities commissioner; to provide for correction of statutory references;~~
10 ~~and to provide appropriation transfers.~~ for an Act to provide for a study by the department of
11 financial institutions and securities department and a report to the legislative management.

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

13 ~~— **SECTION 1. AMENDMENT.** Subsection 4 of section 6-01-07.1 of the North Dakota Century~~
14 ~~Code is amended and reenacted as follows:~~

15 ~~— 4. — The commissioner may furnish information and enter sharing agreements as to~~
16 ~~matters of mutual interest to an official or examiner of the federal reserve system,~~
17 ~~federal deposit insurance corporation, federal home loan bank board, national credit~~
18 ~~union administration, office of thrift supervision, comptroller of the currency, any other~~
19 ~~federal government agency, insurance commissioner, office of the securities~~
20 ~~commissioner, regulatory trade associations, any state bank or credit union~~
21 ~~supervisors or supervisors of other licensed entities of other states, or a nationwide~~
22 ~~multistate licensing system.~~

23 ~~— **SECTION 2. AMENDMENT.** Subsections 4 and 5 of section 10-04-02 of the North Dakota~~
24 ~~Century Code are amended and reenacted as follows:~~

1 ~~4. "Commissioner" means the securities~~insurance commissioner of this state.

2 ~~5. "Department" means the state securities~~insurance department.

3 ~~**SECTION 3. AMENDMENT.** Section 10-04-03 of the North Dakota Century Code is~~
4 ~~amended and reenacted as follows:~~

5 ~~**10-04-03. Administration of chapter.**~~

6 ~~1. The state securities department is under the supervision of a chief officer designated~~
7 ~~as the securities commissioner. The securities commissioner must be appointed by~~
8 ~~the governor and confirmed by the senate and shall hold office for a term of four years,~~
9 ~~beginning on the first day of July following a national presidential election and~~
10 ~~continuing until a successor has been appointed, confirmed by the senate, and has~~
11 ~~qualified, unless removed as herein provided. If the senate is not in session, the~~
12 ~~governor may make an interim appointment, and the interim appointee shall hold office~~
13 ~~until the senate confirms or rejects the appointment. The commissioner must be skilled~~
14 ~~in securities and may not be an incumbent of any other public office in the state. The~~
15 ~~commissioner may not own or control any security required to be registered under this~~
16 ~~chapter, or any security which~~that ~~is exempt based on the approval of the securities~~
17 ~~department. The commissioner may not be an officer, director, or employee of any~~
18 ~~broker-dealer, agent, investment adviser, or investment adviser representative~~
19 ~~required to be registered under this chapter, or of a federal covered adviser required to~~
20 ~~be notice-filed under this chapter. The governor may remove from office any~~
21 ~~commissioner who fails to discharge faithfully the duties of office or who becomes~~
22 ~~disqualified under the provisions of this section.~~

23 ~~It is the prime duty of the commissioner to administer the provisions of this~~
24 ~~chapter. The commissioner shall receive a salary within the amount appropriated for~~
25 ~~salaries by the legislative assembly. The commissioner shall use a seal with the words~~
26 ~~"securities commissioner, North Dakota" and such design as the commissioner may~~
27 ~~prescribe engraved thereon by which seal the commissioner may authenticate~~
28 ~~documents used in the administration of this chapter. The commissioner may employ~~
29 ~~such employees as are necessary for the administration of this chapter. In the~~
30 ~~absence or disability of the commissioner, the~~commissioner's ~~deputy or designee of~~

1 the commissioner shall administer the provisions of this chapter as acting
2 commissioner.

3 ~~2.~~ The commissioner shall have authority ~~to~~ administer oaths in, and to prescribe
4 forms for, all matters arising under this chapter. The commissioner may from time to
5 time make, amend, and rescind such rules, forms, and orders as are necessary under
6 this chapter, including rules and forms governing registration statements, applications
7 and reports, and defining any terms, whether or not used in this chapter, if the
8 definitions are consistent with this chapter. The commissioner shall cooperate with the
9 administrators of the securities laws of other states and of the United States with a
10 view toward achieving maximum uniformity in the interpretation of like provisions of the
11 laws administered by them and in the forms which are required to be filed under such
12 law.

13 ~~3.~~ In addition to their regular compensation, the commissioner and the commissioner's
14 employees shall be paid travel expenses necessary and actually incurred in the
15 performance of their duties.

16 ~~4.~~ A special fund is established in the state treasury and designated as the investor
17 education and technology fund. The commissioner may deposit the following moneys
18 into the investor education and technology fund:

19 ~~a.~~ Payments for tuition or other costs associated with educational services or
20 materials provided by the department.

21 ~~b.~~ Grants or donations for the purpose of investor education received by the
22 commissioner from any public or private source.

23 ~~c.~~ Civil penalties assessed by the commissioner under the Securities Act of 1951, if
24 the commissioner finds that:

25 ~~(1)~~ The violations or alleged violations underlying the assessment of civil
26 penalties involve repeat violations, involve numerous investors, or appear to
27 have been perpetrated on a systematic basis; and

28 ~~(2)~~ The violations or alleged violations underlying the assessment of civil
29 penalties could have been prevented or significantly curtailed had the
30 individual investors involved in the matter been more knowledgeable about

1 financial concepts in general, or about any specific laws, practices, or
2 procedures relating to the securities industry.

3 ~~4. The commissioner shall maintain and administer the investor education and
4 technology fund. The moneys in the fund are appropriated to provide education
5 services to the public relating to any of the financial services industries, including the
6 securities industry, and to provide for the technology needs of the department,
7 including the purchase or rental of equipment or software, servicing of the equipment
8 or software, and training the commissioner's staff in the use of the equipment or
9 software.~~

10 ~~5. All fees, civil penalties, or other moneys collected under this chapter must be
11 deposited in the general fund of the state treasury, except funds permitted to be
12 deposited into the investor education and technology fund under subsection 4this
13 section or civil penalties collected from enforcement actions for the purpose of
14 distribution to aggrieved investors, which may be deposited in the investor restitution
15 fund. Funds in the investor restitution fund are appropriated to the securities
16 commissioner on a continuing basis for distribution to aggrieved investors.~~

17 ~~6. The commissioner may honor requests from interested persons for the issuance of a
18 statement or opinion concerning the applicability of this chapter or the rules adopted
19 under this chapter to any transaction or proposed transaction which may be subject to
20 this chapter. Any such request must be accompanied by a nonrefundable fee of one
21 hundred fifty dollars.~~

22 ~~**SECTION 4. AMENDMENT.** Subsection 1 of section 10-04-16 of the North Dakota Century
23 Code is amended and reenacted as follows:~~

24 ~~1. Issue any order, including cease and desist, rescission, stop, and suspension orders,
25 which the commissioner deems necessary or appropriate in the public interest or for
26 the protection of investors. The commissioner may, in addition to any other remedy
27 authorized by this chapter, impose by order and collect a civil penalty against any
28 person found in an administrative action to have violated any provision of this chapter,
29 or any rule or order adopted or issued under this chapter, in an amount not to exceed
30 ten thousand dollars for each violation. The commissioner may bring actions to
31 recover penalties pursuant to this section in district court. A person aggrieved by an~~

1 order issued pursuant to this subsection may request a hearing before the
2 commissioner if a written request is made within fifteen days after receipt of the order.
3 If a request for hearing is made under this subsection, the commissioner shall
4 schedule a hearing within a reasonable time. Subsections 3 and 4 of section 10-04-12
5 apply to any hearing conducted under this subsection. If, after a hearing, the
6 commissioner sustains an order previously issued, the sustaining order is subject to
7 appeal to the district court of Burleigh County according to the procedures set forth in
8 chapter 28-32. Any order issued under this subsection is a final order if it is properly
9 served and no hearing was requested within the required timeline. If an order issued
10 under this subsection is sustained or modified after a hearing held in accordance with
11 section 10-04-12, the order sustaining or modifying that order is a final order. If the
12 final order is not appealed in accordance with the procedures set forth in chapter
13 28-32 or if the final order is sustained on appeal, the securities
14 department commissioner may file a certified copy of the final order with the clerk of a
15 court of competent jurisdiction. The order so filed has the same effect as a judgment of
16 the court and may be recorded, enforced, or satisfied in the same manner as a
17 judgment of the court.

18 **SECTION 5. AMENDMENT.** Paragraph 2 of subdivision a of subsection 1 of section
19 10-04-16.1 of the North Dakota Century Code is amended and reenacted as follows:

20 (2) ~~No~~ A person is not liable to a broker-dealer, agent, investment adviser,
21 federal covered adviser, or investment adviser representative for defamation
22 relating to a statement that is contained in a record required or requested by
23 the securities department commissioner pursuant to this subsection or
24 required to be maintained under section 10-04-10.3, unless the person
25 knew, or should have known at the time the statement was made, that it was
26 false in a material respect or the person acted in reckless disregard of the
27 statement's truth or falsity.

28 **SECTION 6. AMENDMENT.** Section 26.1-06-12 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 ~~— **26.1-06-12. Securities laws.**~~

2 ~~— This chapter does not limit or modify in any way any responsibility, authority, power, or~~
3 ~~jurisdiction of the securities commissioner or of regarding the securities laws of this state.~~

4 ~~— **SECTION 7. AMENDMENT.** Subsection 3 of section 43-10.1-01 of the North Dakota~~
5 ~~Century Code is amended and reenacted as follows:~~

6 ~~— 3. "Commissioner" means the securities insurance commissioner.~~

7 ~~— **SECTION 8. AMENDMENT.** Subdivision a of subsection 2 of section 43-23.1-05 of the~~
8 ~~North Dakota Century Code is amended and reenacted as follows:~~

9 ~~— a. Offers and dispositions of securities currently registered with the North Dakota~~
10 ~~securities commissioner insurance department;~~

11 ~~— **SECTION 9. AMENDMENT.** Subsection 4 of section 51-19-02 of the North Dakota Century~~
12 ~~Code is amended and reenacted as follows:~~

13 ~~— 4. "Commissioner" means the securities insurance commissioner.~~

14 ~~— **SECTION 10. AMENDMENT.** Subsection 3 of section 51-23-02 of the North Dakota~~
15 ~~Century Code is amended and reenacted as follows:~~

16 ~~— 3. "Commissioner" means the securities insurance commissioner of this state.~~

17 ~~— **SECTION 11. AMENDMENT.** Subsection 1 of section 51-23-15 of the North Dakota Century~~
18 ~~Code is amended and reenacted as follows:~~

19 ~~— 1. This chapter must be administered by the securities insurance commissioner.~~

20 ~~— **SECTION 12. AMENDMENT.** Subsection 1 of section 54-12-08 of the North Dakota~~
21 ~~Century Code is amended and reenacted as follows:~~

22 ~~— 1. After consultation with the head of the state department or institution or with the state~~
23 ~~board, commission, committee, or agency affected, the attorney general may appoint~~
24 ~~assistant or special assistant attorneys general to represent the state board,~~
25 ~~commission, committee, or agency. A state officer, head of any state department,~~
26 ~~whether elected or appointed, or state department, board, commission, committee, or~~
27 ~~agency may not employ legal counsel, and no person may act as legal counsel in any~~
28 ~~matter, action, or proceeding in which the state or any state department, board,~~
29 ~~commission, committee, or agency is interested or is a party, except upon written~~
30 ~~appointment by the attorney general. Workforce safety and insurance, the department~~
31 ~~of transportation, the state tax commissioner, the public service commission, and the~~

1 insurance commissioner, and the securities commissioner may employ attorneys to
2 represent them. These entities shall pay the salaries and expenses of the attorneys
3 they employ within the limits of legislative appropriations. The attorneys that represent
4 these entities must be special assistant attorneys general appointed by the attorney
5 general pursuant to this section. Absent good cause, the attorney general shall appoint
6 as special assistant attorneys general licensed attorneys selected by these entities.
7 The attorney general may revoke the appointment only for good cause or upon the
8 request of the entity. Good cause means an inadequate level of experience,
9 competence, or ethical standards.

10 ~~SECTION 13. AMENDMENT.~~ Subsection 1 of section 54-59-22.1 of the North Dakota
11 Century Code is amended and reenacted as follows:

12 ~~1. The following state agencies shall obtain centralized desktop support services from~~
13 ~~the information technology department:~~

- 14 ~~a. Office of administrative hearings.~~
- 15 ~~b. Office of the governor.~~
- 16 ~~c. Commission on legal counsel for indigents.~~
- 17 ~~d. Public employees retirement system.~~
- 18 ~~e. North Dakota university system office.~~
- 19 ~~f. Department of career and technical education.~~
- 20 ~~g. Department of financial institutions.~~
- 21 ~~h. Department of veterans' affairs.~~
- 22 ~~i. Aeronautics commission.~~
- 23 ~~j. Tobacco prevention and control executive committee.~~
- 24 ~~k. Council on the arts.~~
- 25 ~~l. Agriculture commissioner.~~
- 26 ~~m. Department of labor and human rights.~~
- 27 ~~n. Indian affairs commission.~~
- 28 ~~o. Protection and advocacy project.~~
- 29 ~~p. Secretary of state.~~
- 30 ~~q. State treasurer.~~
- 31 ~~r. State auditor.~~

1 ~~_____ s. Securities department.~~

2 ~~— **SECTION 14. AMENDMENT.** Subdivision b of subsection 5 of section 57-38.5-01 of the~~
3 ~~North Dakota Century Code is amended and reenacted as follows:~~

4 ~~_____ b. Is in compliance with the requirements for filings with the securities~~
5 ~~commissioner under the securities laws of this state;~~

6 ~~— **SECTION 15. AMENDMENT.** Subdivision b of subsection 5 of section 57-38.6-01 of the~~
7 ~~North Dakota Century Code is amended and reenacted as follows:~~

8 ~~_____ b. Has been certified by the securities~~
9 ~~commissioner to be in compliance~~
under the securities laws of this state; and

10 ~~— **SECTION 16. LEGISLATIVE COUNCIL CORRECTION OF STATUTORY REFERENCES.**~~

11 ~~— The legislative council may replace references to "securities commissioner" and "state~~
12 ~~securities department" and any variation of these terms as appropriate, in any measure enacted~~
13 ~~by the sixty-fifth legislative assembly.~~

14 ~~— **SECTION 17. APPROPRIATION -- TRANSFER.**~~

15 ~~— As of the effective date of this Act, the securities department is abolished and any funds~~
16 ~~appropriated to this agency by the sixty-fourth and sixty-fifth legislative assemblies are~~
17 ~~transferred to the insurance commissioner.~~

18 **SECTION 1. DEPARTMENT OF FINANCIAL INSTITUTIONS AND SECURITIES**

19 **DEPARTMENT STUDY OF OPERATIONS - REPORT TO LEGISLATIVE MANAGEMENT.**

20 During the 2017-18 interim, the commissioner of financial institutions and the securities
21 commissioner shall undertake a comprehensive study of the operations of the department of
22 financial institutions and the securities department to evaluate and determine whether
23 cost-savings and increased efficiency may be achieved by combining the agencies into a single
24 department. Before August 1, 2018, the commissioner of financial institutions and the securities
25 commissioner shall present to the legislative management the findings of the study and any
26 recommendations, together with any legislation required to implement the recommendations.