

CORPORATIONS

CHAPTER 83

SENATE BILL NO. 2246
(Committee on Industry, Business and Labor)
(At the request of the Securities Commissioner)

SECURITIES ACT AMENDMENTS

AN ACT to create and enact sections 10-04-08.3, 10-04-10.1, and 10-04-16.1 of the North Dakota Century Code, relating to advisory activities, investigations and subpoenas, and unlawful representations concerning registration or exemption; to amend and reenact subsection 10 of section 10-04-02 of the North Dakota Century Code, relating to the definition of investment adviser; to amend and reenact subsection 9 of section 10-04-06 of the North Dakota Century Code, relating to a transactional exemption for limited offerings; to amend and reenact section 10-04-08.2 of the North Dakota Century Code, relating to advertising matter and regulations; to amend and reenact subsection 3 of section 10-04-10 of the North Dakota Century Code, relating to the registration of investment advisers; to amend and reenact subsection 4 of section 10-04-10 of the North Dakota Century Code, relating to refusal of registration; to amend and reenact subsection 5 of section 10-04-10 of the North Dakota Century Code, relating to record and renewal of registrations; to amend and reenact subsection 6 of section 10-04-10 of the North Dakota Century Code, relating to fees; to amend and reenact section 10-04-11 of the North Dakota Century Code, relating to suspension or revocation of dealer's, salesman's and investment adviser's registration; and to amend and reenact the introductory paragraph of section 10-04-12 of the North Dakota Century Code, relating to hearings.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 10 of section 10-04-02 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10. "Investment adviser" shall mean any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who,

for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

- a. A bank, savings institution, or trust company;
- b. A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;
- c. A broker or dealer whose performance of these services is solely incidental to the conduct of his business as a broker or dealer and who receives no special compensation for them;
- d. A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
- e. A person whose advice, analyses, or reports relate only to securities exempted by subsection 1 of section 10-04-05;
- f. A person who has no place of business in this state if his only clients in this state are other investment advisers, brokers or dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or
- g. Such other persons not within the intent of this subsection as the commissioner may by rule or order designate.

SECTION 2. AMENDMENT.) Subsection 9 of section 10-04-06 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

9. Any transaction pursuant to an offer directed by the offeror to not more than ten persons (other than those designated in subsection 5) in this state during any period of twelve consecutive months, whether or not the offeror or any of the offerees is then present in this state, if all of the following conditions are met:
 - a. The seller reasonably believes that all the buyers in this state (other than those designated in subsection 5) are purchasing for investment.

- b. No commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in subsection 5).
- c. The offeror applies for and obtains the written approval of the commissioner prior to making any offers in this state and pays a filing fee of fifty dollars, which fee must accompany the application for approval.

Provided, however, that the commissioner may by rule or order, as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase or decrease the number of offerees permitted, or waive the conditions in subdivisions a, b, and c with or without the substitution of a limitation on remuneration.

SECTION 3. AMENDMENT.) Section 10-04-08.2 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-08.2. ADVERTISING MATTER - REGULATIONS.)

1. No circular, prospectus, advertisement, form or market letter, report, document, pamphlet, leaflet, script, or other written or printed matter, or any communication by radio, television, or similar communications media, hereinafter referred to as advertising matter, used in connection with the offer, sale, or purchase of or rendering investment advice with respect to any security in this state shall be published, circulated, distributed, broadcast, or caused to be published, circulated, distributed, or broadcast in any manner unless and until such advertising matter shall have been filed with the commissioner at least five business days prior to its first publication, circulation, distribution, or broadcast.
2. The commissioner may by rule or order and subject to such terms and conditions as may be prescribed therein exempt any advertising matter from the filing requirement imposed under subsection 1 if he finds that the imposition of the filing requirement is not necessary or appropriate in the public interest or for the protection of investors.
3. The commissioner shall have the power to disapprove any advertising matter which he deems in conflict with the purposes of this chapter.
4. Nothing in this section or section 10-04-04 shall be construed to prohibit the publication or distribution to the public of preliminary prospectuses or preliminary summary prospectuses under the Securities Act of 1933,

as amended, provided that no solicitation is made or order or conditional order accepted prior to registration in this state, and provided also that the following legend appears on each such prospectus or preliminary prospectus:

A registration statement relating to these securities has been filed with the securities and exchange commission but has not yet become effective. Information contained herein is subject to completion or amendment. These securities may not be sold nor may offers to buy be accepted prior to the time the registration statement becomes effective. This prospectus shall not constitute an offer to sell or the solicitation of an offer to buy nor shall there be any sale of these securities in any state in which such offer, solicitation, or sale would be unlawful prior to registration or qualification under the securities laws of any such state.

SECTION 4.) Section 10-04-08.3 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-04-08.3. UNLAWFUL REPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION.)

1. Neither the fact that an application for registration under sections 10-04-07, 10-04-07.1, 10-04-08, or 10-04-10 has been filed nor the fact that a security or person is effectively registered constitutes a finding by the commissioner that any document filed under this chapter is true, complete, and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any security, transaction, or person.
2. It is unlawful to make, or cause to be made, to any prospective purchaser, customer, or client any representation inconsistent with subsection 1.

SECTION 5. AMENDMENT.) Subsection 3 of section 10-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

3. INVESTMENT ADVISERS.

- a. It is unlawful for any person to transact business in this state as an investment adviser unless:
 - (1) He is so registered under this chapter;
 - (2) He is registered as a dealer; provided, however,

that the commissioner shall consider that an investment adviser is not necessarily qualified solely on the basis of experience as a dealer or salesman. When he finds that an applicant for initial or renewal registration as a dealer is not qualified as an investment adviser, he may by order condition the applicant's registration as a dealer upon his not transacting business in this state as an investment adviser; or

- (3) His only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.
- b. Application for registration as an investment adviser may be made by any person eighteen years of age or older. Such application for registration shall be made in writing in a form prescribed by the commissioner, shall be signed by the applicant, duly verified by oath, shall be filed in the office of the commissioner, and shall contain the following information:
- (1) Name, residence, and business address of the applicant.
 - (2) If the applicant is a corporation or association, give full information as to agents, partners, and managing officers.
 - (3) Statement showing each individual named is of good repute and possesses essential experience and education.
 - (4) The plan and character of business, and the the proposed method of operation.
 - (5) Such other information as may be required.
- c. If the applicant is a foreign corporation or association, it shall file with its application:
- (1) A copy of its articles.
 - (2) Certificate showing authorization to transact business.
- d. The commissioner may also require such additional information as to the previous history, record, or association of the applicant, its officers, directors, employees, members, partners, managers, or trustees, as he may deem necessary to establish whether or not the applicant should be registered as an investment adviser under the provisions of this chapter.

- e. There shall be filed with such application:
- (1) A written consent to the service of process upon the commissioner in actions against such investment adviser conforming to the requirements of section 10-04-14.
 - (2) Payment of the prescribed registration fee, which shall be returned if registration is refused.
 - (3) A financial statement or balance sheet, prepared in accordance with standard accounting practice, showing the financial condition of the applicant as of the most recent practicable date prior to the date of such application, such financial statement or balance sheet to be certified to by an independent certified public accountant or by a responsible officer or member of said applicant, as the commissioner may require.
- f. The commissioner may require an indemnity bond or a deposit of cash or other properties approved by the commissioner running to the state of North Dakota conditioned for the faithful compliance by the investment adviser and his representatives with all the provisions of this law and for the faithful performance and payment of all obligations of the investment adviser and his representatives. The bond or deposit shall be of such type as may be approved by the commissioner and shall be in such amount as he shall deem necessary to protect persons in this state when there is taken into consideration the volume of business engaged in by the applicant and the number of persons who represent him. Any such bond shall have as surety thereon a surety company authorized to do business in this state.
- g. The commissioner may by rule provide for an examination, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser in doing any of the acts which make him an investment adviser.
- h. When an applicant has fully complied with the provisions of this subsection, the commissioner may register such applicant as an investment adviser unless he shall find that the applicant is not of good business reputation or is not solvent.
- i. A registrant as investment adviser shall notify the commissioner of any change of address.

SECTION 6. AMENDMENT.) Subsection 4 of section 10-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

4. REFUSAL OF REGISTRATION. If, after affording an applicant a hearing or an opportunity for a hearing as provided in section 10-04-12, the commissioner finds that there is sufficient ground to refuse to register such applicant as provided in this section, he shall enter an order refusing to register such applicant. Such order shall state specifically the grounds for its issuance. A copy of such order shall be mailed to the applicant at his business address, and if the application is for registration as a salesman, to the registered dealer or issuer who proposed to employ such applicant. If the commissioner finds that an applicant has been guilty of any act or omission which would constitute a sufficient ground for revocation of a dealer's, salesman's, or investment adviser's registration under section 10-04-11, such act or omission may constitute a sufficient ground for a finding by the commissioner that such applicant is not of "good business reputation".

SECTION 7. AMENDMENT.) Subsection 5 of section 10-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

5. RECORD AND RENEWAL OF REGISTRATIONS. The names and addresses of all persons who have been registered as dealers, salesmen, or investment advisers, and all orders with respect thereto, shall be recorded in a register of dealers, salesmen, and investment advisers in the office of the commissioner. Every registration under this section shall expire on the first day of May in each year. Registration of dealers, salesmen, and investment advisers may be renewed each year, at any time not less than fifteen and not more than sixty days before expiration thereof, by (1) the payment of the proper registration fee and (2) in the case of a dealer or investment adviser, the filing of a financial statement, prepared in accordance with standard accounting practice and certified to by an independent certified public accountant or by a responsible officer or member, showing the financial condition of such dealer or investment adviser as of the most recent practicable date. Upon any change in the proprietors, partners, officers, or directors of a registered dealer or investment adviser, such registered dealer or investment adviser shall promptly notify the commissioner in writing of such changes. The commissioner shall record such changes, without fee, in the register of dealers, salesmen, and investment advisers.

SECTION 8. AMENDMENT.) Subsection 6 of section 10-04-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

6. FEES. The fee, which must accompany the application, for registration and for each annual renewal thereof shall be:
- a. For each dealer employing five or less salesmen in this state.....\$ 75.00
 - b. For each dealer employing more than five, but not more than fifteen, salesmen in this state.....\$100.00
 - c. For each dealer employing more than fifteen, but not more than thirty, salesmen in this state.....\$150.00
 - d. For each dealer employing more than thirty salesmen in this state.....\$200.00
 - e. For each salesman
 - Uniform examination.....\$ 10.00
 - State law examination.....\$ 5.00
 - Registration fee.....\$ 12.50
 - Renewal fee.....\$ 7.50
 - f. For each investment adviser
 - General examination.....\$ 10.00
 - State law examination.....\$ 5.00
 - Registration fee.....\$ 50.00

An application to register as a dealer, salesman, or investment adviser may, with the consent of the commissioner, be withdrawn upon written application, but in no event shall any registration fees be returned.

SECTION 9.) Section 10-04-10.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-04-10.1. ADVISORY ACTIVITIES.)

1. It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:
 - a. To employ any device, scheme, or artifice to defraud the other person; or
 - b. To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.
2. It is unlawful for any investment adviser to enter into,

extend, or renew any investment advisory contract unless it provides in writing:

- a. That the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client.
- b. That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract.
- c. That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.

Subdivision a does not prohibit an investment advisory contract which provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date. "Assignment", as used in subdivision b, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

3. It is unlawful for any investment adviser to take or have custody of any securities or funds of any client if:
 - a. The commissioner by rule prohibits custody; or
 - b. In the absence of rule, the investment adviser fails to notify the commissioner that he has or may have custody.

SECTION 10. AMENDMENT.) Section 10-04-11 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-04-11. SUSPENSION OR REVOCATION OF DEALER'S, SALESMAN'S, AND INVESTMENT ADVISER'S REGISTRATION.) The commissioner may revoke the registration of any dealer, salesman, or investment adviser if, after a hearing or opportunity for hearing as provided in section 10-04-12, he finds that such registered dealer, salesman, or investment adviser:

1. Has violated or failed to comply with, any provisions of this chapter or any order or rule of the commissioner under this chapter; or
2. Is, in the case of a dealer or investment adviser, insolvent; or
3. Has been guilty of any fraudulent act or practice in connection with the purchase or sale of any securities; or
4. Conducts business in purchasing or selling securities at such variations from current market prices as, in the light of all the circumstances, are unconscionable or unfair to the purchasing public, or if such variance, including commissions on sales, unreasonably exceeds the price quoted by a recognized national quotation list as prescribed by the commissioner; or
5. Has failed to file with the commissioner any financial statement required pursuant to subsection (A) of this section, or has refused to permit an examination into his affairs as provided by subsection (A) of this section; or
6. Has filed an application for registration which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact; or
- * 7. Has been convicted of any misdemeanor involving a security or any aspect of the securities business, or any felony; or
8. Is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business; or
9. Is the subject of an order of the commissioner denying, suspending, or revoking registration as a dealer, salesman, or investment adviser; or
10. Is the subject of an order entered by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration as a dealer, salesman, or investment adviser, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the securities and exchange commission suspending or expelling him from a national securities exchange or national securities association; but the commissioner may not enter an order under this subsection on the basis of an order under

*NOTE: Subsection 7 of section 10-04-11 was also amended by section 4 of Senate Bill No. 2058, chapter 130.

another state act unless that order was based on facts which would currently constitute a ground for an order of revocation or suspension under this section; or

11. Has, in connection with the offer, sale, or purchase of any security, directly or indirectly, effected a series of transactions creating actual or apparent active trading in any security, or to raise or depress the price of a security, for the purpose of inducing the purchase of the security.

It shall be sufficient cause for revocation of registration of a dealer or investment adviser as provided in this section, in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be sufficient ground for revoking the registration of an individual dealer.

- (A) The commissioner may require any registered dealer, salesman, or investment adviser to make and keep such accounts, correspondence, memoranda, papers, books, and other records as he deems necessary to efficiently administer this chapter. Such records shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records. The commissioner may at any time require a registered dealer or investment adviser to file with him a financial statement showing the financial condition of such dealer or investment adviser as of the most recent practicable date, and may require that such financial statement be verified by a certified public accountant; provided, however, that the commissioner shall not require any registered dealer or investment adviser to file such a financial statement more than twice in any one year. If the commissioner has reasonable grounds to believe that the registration of any registered dealer, salesman, or investment adviser should be revoked upon any grounds specified in this section, the commissioner or his agent may conduct an examination into the affairs of any such registered dealer, salesman, or investment adviser. In making any such examination, the commissioner or his agent shall have access to and may compel the production of all the books and papers of a registered dealer, salesman, or investment adviser, and may administer oaths to and examine the officers and employees of such dealer or investment adviser as to his business and affairs
- (B) If the commissioner has reasonable grounds to believe that a registered dealer, salesman, or investment adviser has been guilty of any act or omission which would be sufficient ground for revoking the registration of such dealer, salesman, or investment adviser, he may enter

an order suspending the registration of such dealer, salesman, or investment adviser pending an examination into the affairs of such dealer, salesman, or investment adviser or pending a hearing or opportunity for hearing as provided in section 10-04-12; provided, that no such order shall be effective for more than thirty days, and such order, if not withdrawn by the commissioner within thirty days, shall automatically terminate thirty days after the date of its issuance. Such suspension order shall state specifically the grounds for its issuance. Upon the entry of such suspension order, or of an order withdrawing a suspension order previously entered, the commissioner shall send a copy of such order by registered or certified mail to the dealer, salesman, or investment adviser whose registration is affected thereby at his business address, and, if such order affects the registration of a salesman, to the registered dealer who employs such salesman.

- (C) If the commissioner finds, after affording a registered dealer, a registered salesman, or a registered investment adviser a hearing or opportunity for hearing as provided in section 10-04-12, that there are grounds to revoke the registration of such dealer, salesman, or investment adviser, he may enter an order in the register of dealers, salesmen, and investment advisers, revoking the registration of such dealer, salesman, or investment adviser. Such order shall state specifically the grounds for its issuance. A copy of such order shall be sent by registered mail to the dealer, salesman, or investment adviser whose registration is revoked thereby at his business address and, if the revocation is of the registration of a salesman, to the registered dealer who employs such salesman. Suspension or revocation of the registration of a dealer shall also suspend or revoke the registration of all of his salesmen. Suspension or revocation of the registration of a salesman solely because he was employed by a dealer whose registration was suspended or revoked shall not prejudice subsequent applications for registration by such salesman.

SECTION 11. AMENDMENT.) The introductory paragraph to section 10-04-12 is hereby amended and reenacted to read as follows:

10-04-12. HEARINGS.) Before entering an order revoking the registration of any securities as provided in section 10-04-09, the commissioner shall send to the issuer of such securities, and if the application for registration of such securities was filed by a registered dealer, to such registered dealer, a notice of opportunity for hearing. Before entering an order refusing to register any person as a dealer, salesman, or investment adviser, as provided in section 10-04-10, or revoking the registration of any

person as a registered dealer, salesman, or investment adviser as provided in section 10-04-11, the commissioner shall send to such person, and if such person is a salesman or an applicant for registration as a salesman, to the registered dealer who employs or proposes to employ such salesman, a notice of opportunity for hearing.

SECTION 12.) Section 10-04-16.1 of the North Dakota Century Code is hereby created and enacted to read as follows:

10-04-16.1. INVESTIGATIONS AND SUBPOENAS.)

1. The commissioner in his discretion:
 - a. May make such public or private investigations within or outside of this state as he deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder.
 - b. May require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter to be investigated.
 - c. May publish information concerning any violation of this chapter or any rule or order hereunder.
2. For the purpose of any investigation or proceeding under this chapter, the commissioner or any officer designated by him may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry.
3. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court, upon application by the commissioner, may issue to the person an order requiring him to appear before the commissioner, or the officer designated by him, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.
4. No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence (documentary or otherwise) required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be

prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Approved April 21, 1977

CHAPTER 84

HOUSE BILL NO. 1463
(Strinden)

NUMBER OF DIRECTORS OF COOPERATIVES

AN ACT to amend and reenact subsection 2 of section 10-15-25 of the North Dakota Century Code, relating to the number of directors of cooperative associations.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Subsection 2 of section 10-15-25 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

2. The number of directors shall not be less than five, provided that in a cooperative with less than fifty members, the number of directors shall not be less than three. However, the number of directors required of a cooperative association shall never be greater than the number of members of the association. Subject to such limitation, the number shall be fixed in the articles, or if the articles so provide, in the bylaws.

Approved March 19, 1977

CHAPTER 85

SENATE BILL NO. 2527
(Fritzell)

DEPOSIT OF SECURITIES WITH THE FEDERAL RESERVE BANK

AN ACT to create and enact section 10-18.1-12 of the North Dakota Century Code, relating to deposit of securities with the federal reserve bank under certain conditions.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1.) Section 10-18.1-12 of the North Dakota Century Code is hereby created and enacted to read as follows:

* 10-18.1-12. DEPOSIT OF UNITED STATES GOVERNMENT AND AGENCY SECURITIES WITH A FEDERAL RESERVE BANK.) Any bank or trust company, when acting as fiduciary, or when holding securities as custodian for a fiduciary, is authorized to deposit with its district federal reserve bank any securities the principal and interest of which the United States or any department, agency, or instrumentality thereof has agreed to pay, or has guaranteed payment, to be credited to one or more accounts on the books of said federal reserve bank in the name of such bank or trust company, to which account other similar securities may be credited. A bank or trust company so depositing securities with a federal reserve bank shall be subject to such rules and regulations with respect to the making and maintenance of such deposit as, in the case of state-chartered institutions, the commissioner of banks, and, in the case of national banking associations, the comptroller of the currency, may from time to time issue. Ownership of, and other interests in, the securities credited to such account may be transferred by entries on the books of said federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand by the fiduciary, certify in writing to the fiduciary the securities so deposited by such bank or trust company with such federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for such party, certify in writing to such party the securities deposited by such fiduciary with such federal reserve bank for its account as such fiduciary. This section shall apply to all fiduciaries, and custodians for fiduciaries, acting on the effective date of this section or who thereafter may act regardless of the date of the instrument or court order by which they are appointed.

*NOTE: This section is codified as North Dakota Century Code Section 10-18.1-04.1.

Approved April 6, 1977

CHAPTER 86

HOUSE BILL NO. 1591
(Weber)

STATE DEVELOPMENT CORPORATION LOANS
AND INVESTMENTS

AN ACT to amend and reenact sections 10-30-10, 10-30-12 and 10-30-14 of the North Dakota Century Code, relating to loans by and investments in a state development corporation.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE
STATE OF NORTH DAKOTA:

SECTION 1. AMENDMENT.) Section 10-30-10 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30-10. OBLIGATION LIMITATION.) At no time shall the total obligations of the corporation exceed twenty times the amount of the paid-in capital and surplus, not including earned surplus.

SECTION 2. AMENDMENT.) Section 10-30-12 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30-12. LOANS - INVESTMENT BY APPLICANT.) Any person or firm who applies for a loan or obtains money from the development corporation shall be required to invest in the stock of the corporation in an amount to be fixed by the board of directors of not less than two percent nor more than five percent of the funds obtained. The requirement of this section may be waived by a majority vote of the board of directors for unusual circumstances or when a loan or obligation is insured or guaranteed in whole or in part by the state or federal government or any agency of either. The board may provide for repurchase of a borrower's stock when the loan has been repaid in full.

SECTION 3. AMENDMENT.) Section 10-30-14 of the North Dakota Century Code is hereby amended and reenacted to read as follows:

10-30-14. NOTES OR OBLIGATIONS - LEGAL INVESTMENTS.) Notwithstanding any other statute, the notes or other interest-bearing obligations of state development corporations, issued in accordance with this chapter and the articles of incorporation and the bylaws of the corporation, shall be legal investments for any banks, savings banks, savings and loan associations, trust

companies, stock or mutual insurance companies, or other financial institutions which become members of the corporation. The Bank of North Dakota and the North Dakota mill and elevator are each authorized to purchase capital stock and become members of the corporation.

Approved March 19, 1977