

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2084

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Operator's Signature

Lacosta Rickford

Date

10/15/03

2003 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2084

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La Costa Rickford

Date

10/15/03

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2084

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-14-03

Tape Number	Side A	Side B	Meter #
1		xxx	1,550
Committee Clerk Signature			

Minutes: Chairman Mutch opened the hearing on SB 2084. All Senators present.

SB 2084 relates to the eligibility to be registered under the Securities Act. Karen Tyler, Securities

Commissioner introduced the bill. See testimony.

Testimony supporting SB 2084

Karen Tyler, see testimony.

Senator Nething questions page 17, line 16 on the "test the waters" exemption.

Karen simply reads the lines in answer to his question. meter no. 2583.

Senator Mutch asks what the balance in the fund.

Karen states that there is appx. \$600,000 for investor education.

Senator Mutch asks how much of it they are spending.

Karen states that they received 3.5 million back to investors while, and a private company made a contribution of \$700,000. End testimony at meter no. 3820.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number 2084

Hearing Date 1-14-03

Testimony opposing SB 2084

Marilyn Foss of the ND Banker's Assoc. testified in opposition to SB 2084. See attached testimony. Marilyn Foss also presented a proposed amendment. See attached amendments.

Testimony begins at meter no. 3830.

After written testimony Marilyn states that Tyler did not notify them of this bill.

Senator Heitkamp asks what Karen Tyler thinks of the proposed amendment from Marilyn Foss.

Karen Tyler, addresses the committee again. Karen states that the uniform securities act has the same language used in her proposed bill. She spoke at great length to say she would not draft the amendments proposed by the Banker's Assoc.

Senator Nething states that the committee is trying to chose between the two. He adds that he is getting the impression that it will be a major change for the Banker's Assoc. and asks Karen if it is worth losing the bill over and alienating the bankers.

Karen stated that is a "hot" debated issue. She stated that it has been addressed on a national level. She did not answer his question. Spoke at great length on the language of the bill.

End tape meter no. 6237. Continue on tape #2, side A beginning.

Senator Nething suggests that Banker's Assoc. and the Securities Commissioner sit down and work this out without involving the legislature. If not possible, the committee would do what they feel is right.

Back and forth discussion between Marilyn Foss and Karen Tyler. Hearing closed, no action taken at this time. Meter no. end at 474.

2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2084

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date 1-21-03

Tape Number	Side A	Side B	Meter #
1	xx		0-250
Committee Clerk Signature <i>Lisa VanBerkom</i>			

Minutes: Chairman Mutch called the committee to order. All Senators were present.

SB 2084, relating to eligibility to be registered under the Securities Act, was presented.

Marilyn Foss of the Banker's Assoc. gave the committee an update on what had taken place since the bill was heard. She stated that she and the Securities Commissioner, Karen Tyler, had met since then and discussed the bill in depth. Due to the content of the outside discussion, Marilyn withdrew the amendment she had proposed. She also stated that she is in favor of SB 2084.

Karen Tyler asked if there were any questions of her and there were none.

Senator Krebsbach moved a DO PASS. Senator Espegard seconded.

Roll Call Vote: 6 Yes. 0 No. 1 Absent.

Carrier: Senator Nething.

FISCAL NOTE
Requested by Legislative Council
03/05/2003

REVISION

Bill/Resolution No.: SB 2084

1A. **State fiscal effect:** Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	(\$24,820)		(\$1,200)		(\$1,200)	
Expenditures						
Appropriations						

1B. **County, city, and school district fiscal effect:** Identify the fiscal effect on the appropriate political subdivision.

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. **Narrative:** Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.

SECTION 3. AMENDMENT. Section 10-04-05(5) request to change the non-profit security registration fee of \$150 annually to an initial registration fee of \$150 and subsequent year registration to be changed to a renewal fee of \$100. This would decrease our General Fund Revenue collection by \$1,200 per biennium.

SECTION 8. AMENDMENT. Section 10-04-10(7) request change of the expiration for Issuer Dealer and Agent renewal fees from May 1 to December 31. This would result in a decrease in our General Fund Revenue collection of \$24,820 (Dealer fees \$18,400 and Agent fees \$6,400) in the current biennium.

3. **State fiscal effect detail:** For information shown under state fiscal effect in 1A, please:

A. **Revenues:** Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.

All changes in revenue would be to business revenue

B. **Expenditures:** Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.

C. **Appropriations:** Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Diane Lillis	Agency:	ND Securities Department
Phone Number:	701-328-4712	Date Prepared:	03/05/2003

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Operator's Signature

La Costa Rickford

10/15/03
Date

FISCAL NOTE
Requested by Legislative Council
01/03/2003

Bill/Resolution No.: SB 2084

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2001-2003 Biennium		2003-2005 Biennium		2005-2007 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	(\$24,820)	\$600,000	(\$1,200)		(\$1,200)	
Expenditures						
Appropriations						

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

SECTION 2. AMENDMENT. Section 10-04-03(4) request the establishment of a special (North Dakota Securities Department Investor Education and Technology) fund to be administered by the Securities Department. Funds for investor education and technology currently reside in the Securities Protection Fund administered by the Governor's Office. The \$600,000 is the expected fund balance in the Securities Protection Fund at the end of this biennium and this is the balance that will be transferred to the Investor Education and Technology Fund.

SECTION 3. AMENDMENT. Section 10-04-05(5) request to change the non-profit security registration fee of \$150 annually to an initial registration fee of \$150 and subsequent year registration to be changed to a renewal fee of \$100. This would decrease our General Fund Revenue collection by \$1,200 per biennium.

SECTION 8. AMENDMENT. Section 10-04-10(7) request change of the expiration for Issuer Dealer and Agent renewal fees from May 1 to December 31. This would result in a decrease in our General Fund Revenue collection of \$24,820 (Dealer fees \$18,400 and Agent fees \$6,400) in the current biennium.

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All changes in revenue would be to business revenue

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive*

budget. Indicate the relationship between the amounts shown for expenditures and appropriations.

Name:	Diane Lillis	Agency:	ND Securities Department
Phone Number:	701-328-4712	Date Prepared:	01/09/2003

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Lacosta Rickford
Operator's Signature

10/15/03
Date

Date: 1-21-03
Roll Call Vote #:

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 280

Senate IRL 2084 Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken DO PASS

Motion Made By Krebsbach Seconded By Espegaard

[illegible]

Total (Yes) 6 No 0

Absent

Floor Assignment Nothing

If the vote is on an amendment, briefly indicate intent:

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Operator's Signature La Costa Rickford Date 10/15/03

REPORT OF STANDING COMMITTEE (410)
January 21, 2003 11:44 a.m.

Module No: SR-11-0825
Carrier: Nothing
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2084: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends
DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2084 was placed
on the Eleventh order on the calendar.

Date: 3-12-03
Roll Call Vote #: 1

2003 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2084

Senate _____ Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Concur w/ House Amendments

Motion Made By Krebsbach Seconded By Espegard

Senators	Yes	No	Senators	Yes	No
Sen. Mutch, Chairman	X				
Sen. Klein, Vice Chairman	X				
Sen. Krebsbach	X				
Sen. Nething	X				
Sen. Heltkamp	X				
Sen. Every	X				
Sen. Espegard	X				

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

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Operator's Signature LaCosta Rickford Date 10/15/03

2003 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2084

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La Costa Rickford
Operator's Signature

10/15/03
Date

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2084

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 3, 2003

Tape Number	Side A	Side B	Meter #
1	X		0-3256

Committee Clerk Signature *Elizabeth R. Green*

Minutes: **Chair Kelser:** Opened hearing on SB 2084.

Karen Tyler (ND Securities Commissioner): Supports with written testimony. Also introduced amendments attached to testimony. The amendments would leave the current definition of "agent."

Rep. Ekstrom: How much money would we be taking in? Tyler noted that this is not a huge change because their is work involved in reviewing the applications. Tyler said she does not have an exact figure though. Rep. Ekstrom asked if there is frivolous filing now. Tyler said that there are not because usually they make inquiries first via phone

Rep. Klein: Why are you reducing the fee? Tyler said they are going to a renewal process. The original fee stays the same and a renewal will be cheaper.

Rep. Ekstrom: Can you define a reasonable time on pg. 43, line 7? Tyler said it really depends on the situation and the person. Rep. Ekstrom then asked if the process can go beyond 45-60 days. Tyler said that realistically it could if they have numerous inquiries.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number 2084

Hearing Date March 3, 2003

Rep. Kasper: Is there anything about privacy in this bill? Tyler said there is not. Rep. Kasper then asked if there is a change in the licensing requirements to investment advisors. Tyler said they waive the exam if they have other qualification. Kasper asked if they waive for all types of experience or just for certifications. Tyler said there is some latitude on the issue.

Rep. Keiser: Asked if this is a revenue increase or just a transfer of funds. Tyler said the funds actually come through the Governor's office, so one fund loses and another will gain. It does not come from the general fund though.

Rep. Ruby asked what is repealed in Section 16. Tyler said this was a redundant section.

Rep. Ekstrom asked why the emergency clause. Tyler said they need the emergency because there is a change in the filing due date (pg. 38, line 4).

Rep. Klein: What convictions are we talking about? Tyler said they do not actually speak to the type of conviction. They are actually looking at if the person is rehabilitated or not. Rep. Klein asked if that is too vague and whether or not they shouldn't determine the convictions. Tyler said that if that track record exists, they could not be registered anyway.

Rep. Keiser: Asked if this will impact the taxing structure and whether people will jump classifications to get the exemptions. Tyler said that she does not see anything presenting itself.

Pat Ward (State Farm): Supports and opposes with written testimony. Passed out an amendment that takes him support the bill.

Connie Haufland (American Council of Life Insurers): Opposed with written testimony.

Offered an amendment that would allow for support of the bill.

Page 3

House Industry, Business and Labor Committee

Bill/Resolution Number 2084

Hearing Date March 3, 2003

Rep. Kasper: This removes the variable annuity contract from the oversight of the securities commissioner, but it does not remove the requirement of an agent to be licensed for securities. Is that correct. Haufland said that yes, that is correct

Chair Keiser: Closed hearing on SB 2084

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Operator's Signature

La Costa Rickford

Date

10/15/03

2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 2084

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 3, 2003

Tape Number	Side A	Side B	Meter #
2		X	1456-1982
Committee Clerk Signature <i>Elizabeth R. Linn</i>			

Minutes: **Chair Keiser:** Opened discussion on SB 2084

Rep. Ekstrom: Passed out amendment, which combined earlier amendments into one.

Rep. Kasper: Discussed subcommittee discussion. All involved parties agreed to the amendments.

Rep. Kasper moved to adopt the amendments. 2nd by Rep. Ekstrom. Voice vote: Adopted.

Rep. Keiser: We will need a new fiscal note issued on this bill.

Rep. Severson moved DP as amended. 2nd by Rep. Thorpe.

Vote: **13** Yes **0** No **1** Absent and not voting.

Carrier: Kasper

38069.0101
Title.0200

Prepared by the Legislative Council staff for
Representative Ekstrom
March 3, 2003

VF
3/4/03

HOUSE AMENDMENTS TO SENATE BILL NO. 2084 IBL 3-04-03

Page 1, line 22, remove the overstrike over "and"

Page 1, line 23, remove the overstrike over "~~18(b)(4)~~"

HOUSE AMENDMENTS TO SB 2084 IBL 3-04-03
Page 5, line 22, remove "variable annuity"

Page 5, line 23, remove "contract:"

Renumber accordingly

Page No. 1

38069.0101

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Operator's Signature

La Costa Rickford

Date

10/15/03

Date: 3/ 3 /03
Roll Call Vote #:)

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2084

House INDUSTRY BUSINESS & LABOR Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 3306A.0101 .0200

Action Taken DP as amended

Motion Made By Severson Seconded By Thorpe

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Boe	✓	
Vice-Chair Severson	✓		Ekstrom	✓	
Dosch	✓		Thorpe	✓	
Froseth	✓		Zaiser	Absent	
Johnson	✓				
Kasper	✓				
Klein	✓				
Nottestad	✓				
Ruby	✓				
Tieman	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Kasper

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 4, 2003 2:18 p.m.

Module No: HR-38-3884
Carrier: Kasper
Insert LC: 38069.0101 Title: .0200

REPORT OF STANDING COMMITTEE

SB 2084: Industry, Business and Labor Committee (Rep. Kelser, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2084 was placed on the Sixth order on the calendar.

Page 1, line 22, remove the overstrike over "and"

Page 1, line 23, remove the overstrike over "18(b)(4)"

Page 5, line 22, remove "variable annuity"

Page 5, line 23, remove "contract;"

Renumber accordingly

2003 TESTIMONY

SB 2084

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Salvatore Rickford
Operator's Signature

10/15/03
Date

SB 2084

Testimony of North Dakota Securities Commissioner Karen Tyler

Before the Senate Industry, Business and Labor Committee

January 14, 2003

Senate Bill 2084 is introduced to improve operating efficiencies for this agency, to reduce regulatory and expense burdens for North Dakota companies that are engaging in the capital formation process, and to enhance protections for North Dakota issuers and investors.

Senate Bill 2084 changes the name of this agency from the Office of the North Dakota Securities Commissioner to the North Dakota Securities Department. This name change will eliminate an element of confusion for industry and the public, and will more accurately reflect the fact that a team of professionals, not just one individual, serve the issuers, investors and future investors of our state. This name change also introduces uniformity with the state banking and insurance regulators, with whom we work effectively to protect the integrity of financial markets in North Dakota.

Senate Bill 2084 creates a special fund, the North Dakota Securities Department Investor Education and Technology Fund, into which the assets that are currently held in our Securities Protection Fund will be transferred. The special fund, like the Securities Protection Fund before it, will receive contributions that are specifically designated for investor education and financial literacy. These designated contributions fund the critically important and very effective financial education programs that are developed and delivered by this agency. The centerpiece of our education programs is the Invest North Dakota Teacher Training Event, a program so well respected on a national level that it is being utilized as a development blueprint by other states. It is as a result of the quality and success of this agency's financial education programs that I was appointed to chair the Investor Education Section for the North American Securities Administrators

Association, (NASAA). NASAA is an association made up of all state and provincial securities regulators. Also as a result of North Dakota's reputation for supporting financial education programs, I now have the privilege to work with my colleagues at the SEC, the NASD, and the New York Stock Exchange to structure a system for managing and distributing the 85 million dollars that has been allocated to financial education through the global settlement of the Wall Street Analyst Conflict of Interest Investigations. This is truly a monumental event in the quest to improve the level of financial literacy in every state across this country, and North Dakota, as a result of its outstanding financial education programs, will play a significant role in this process.

Senate Bill 2084 expands the applicability of certain securities registration exemptions beyond corporations and limited liability companies, to include limited partnerships and limited liability limited partnerships. It expands the category of qualified investors to whom securities can be sold without registration thereof, and it expands the Test-The-Waters exemption to allow non-profit and North Dakota-organized cooperatives to utilize this effective and cost-saving tool to gather indications of interest in their securities offering.

The majority of the amendments in Senate Bill 2084 are minor changes that relate to the name change of the agency. Senate Bill 2084 also contains technical corrections and clarifications which provide greater uniformity with federal and state securities laws.

This testimony serves to provide an overview the proposed amendments contained in Senate Bill 2084, but I would gladly cover any specific amendment in greater detail.

Mr. Chairman, this agency respectfully recommends a "do-pass" on Senate Bill 2084. I would be pleased to answer any questions at this time.

Oposing Bill 2084

TESTIMONY OF MARILYN FOSS PROPOSING AMENDMENTS TO SB 2084
(On Behalf Of The North Dakota Bankers Association)

Chairman Mutch, members of the IBL Committee, I am Marilyn Foss, general counsel for the North Dakota Bankers Association. I am appearing to propose amendments to SB 2084 so that the bank exemption from the definition of dealer is the same as that which is included in the federal Gramm Leach Bliley Act. The securities commissioner has proposed exemptions which are narrower than those in federal law, but I'm not sure I understand why, other than to assert broader jurisdiction over bank activities than the federal SEC asserts over them. In the absence of any demonstrated abuse or problems which are caused by conforming exemptions we believe that North Dakota's state "dealer" exemption should mirror the federal exemption.

The premise for the federal "dealer" exception is that there should be appropriate functional regulation and a preservation of an exemption for longstanding traditional bank, securities related activities. That law recognizes traditional bank activities include the private placements and a certain level of securities activities for customers without regard to whether the transaction is solicited or not. The commissioner hasn't identified any public policy interests to be served by denying banks the ability to provide banking products in the most effective and efficient distribution system, thereby depriving consumers and businesses of these benefits.

see tape
4440

insert federal references -
Congress included the de minimis power to permit accommodation trades for certain bank customers. Community banks and others have advised us that this is critical to them and their customers, particularly where no registered broker is located in the

town. With respect to private placements, there is historical precedent for this authority. Banks have long been permitted to engage in private placement activities as an adjunct to granting credit to customers. Federal law imposes significant safety and soundness type limits on banks' use of the power, including compliance with numerous federal laws and regulations, restrictions on affiliation, and and capital limits. Additionally, with GLB, there is regulation of recordkeeping and confirmation requirements, securities trading policies, insider trading, and government securities suitability standards. In short, the exemptions do not mean that banks' activities are unregulated.

The exemptions as I propose them merely allow banks to provide their traditional services and products without registering as a dealer at the state or federal level and without "pushing" them out to a registered subsidiary. It is not feasible for a bank to register as a broker-dealer at the federal level because the SEC's net capital rule imposes a 100% deduction for illiquid assets such as loans. Moreover, it is impractical for many small banks to establish dealer affiliates. Significantly, the SEC also believes that it is not a viable option for a bank to register as a broker-dealer because of the disparate capital and regulatory requirements applicable to banks and securities firms.

The definitional change which is recommended by the commissioner comes from the Uniform Securities Act. Previous versions of the USA exclude banks (or depository institutions in the 1985 Act) ENTIRELY from the broker-dealer definition. The newest version of the USA recognizes there are many states which will choose to adopt the GLB approach which respects traditional bank activities and provides alternate language to do so. That is the language I am proposing with my amendments.

LaCosta Rickford
Operator's Signature

10/15/03
Date

209

ND Bank
ASSOC.

With the amendments I propose the exemption would read:

"The term does not include a bank or savings institution if its activities as a dealer are limited to those specified in subsections 3(a)(4) or 3(a)(5) of the Securities Exchange Act of 1934 or a bank that satisfies the conditions described in subsection 3(a)(4)(E) of the Securities Act of 1934."

Withdrawn

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Salvatore Rickford
Operator's Signature

10/15/03
Date

PROPOSED AMENDMENTS TO SB 2084

Page 2, line 8 remove "(B)(i) through (iv), (vii) through (x), and (xi) if limited to"

Page 2, line 9 remove "unsolicited transactions:"

Page 2, line 9, remove "(B) and" and insert "or"

Page 2, line 9, remove "(C)"

Page 2, line 10 after "bank" insert "or savings institution"

Renumber accordingly



"Tyler, Karen"
 <ktyler@state.nd.us>
 03/05/2003 09:11 AM

To: "Kasper, Jim M." <jkasper@state.nd.us>
 cc:
 Subject: FW: Amended Fiscal Note on SB 2084

Good Morning Jim -
 Attached please find the revised fiscal note on 2084. I went back to legislative council and this time around they determined the \$600,000 should be taken out altogether as this is simply a transfer of funds from the Securities Protection Fund to the new special fund. Let me know if you have any questions on this. I will be sending you the summary on 2084 shortly. Thanks -
 kt

Karen Tyler
 North Dakota Securities Commissioner
 State Capitol - 5th Floor
 600 East Boulevard Avenue
 Bismarck ND 58505
 701-328-2910

-----Original Message-----
 From: Lillis, Diane
 Sent: Wednesday, March 05, 2003 8:59 AM
 To: Tyler, Karen
 Subject: Amended Fiscal Note

FISCAL NOTE

Requested by Legislative Council
 03/05/2003

REVISION

Bill/Resolution No.: ~~SB 2084~~

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

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Expenditures						
Appropriations						

La Costa Rickford
 Operator's Signature

10/15/03
 Date

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2001-2003 Biennium			2003-2005 Biennium			2005-2007 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

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3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

All changes in revenue would be to business revenue

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

Name: Diane Lillis
Phone Number: 701-328-4712

Agency: ND Securities Department
Date Prepared: 01/09/2003

SB 2084

Testimony of North Dakota Securities Commissioner Karen Tyler

Before the House Industry, Business and Labor Committee

March 3, 2003

Mr. Chairman and Members of the Committee, good morning. I am Karen Tyler, the North Dakota Securities Commissioner. I appreciate the opportunity to share some time with you this morning to discuss Senate Bill 2084, and answer any questions you may have.

As a brief introduction, the primary mission of this regulatory agency is to protect the North Dakota Investor. We support this mission through our efforts in four functional areas:

1. Regulation of the Capital Formation Process and Franchise Registration
2. Registration of Securities Industry Firms and Professionals
3. Investigation and Enforcement
4. Investor Education and Financial Literacy Initiatives

As an overview, Senate Bill 2084 is introduced to improve operating efficiencies for the agency, to reduce regulatory and expense burdens for North Dakota companies that are engaging in the capital formation process, and to enhance protections for North Dakota issuers and investors.

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SB 2084 changes the name of this agency from the Office of the North Dakota Securities Commissioner to the North Dakota Securities Department. This name change will eliminate an element of confusion for industry and the public, and will more accurately reflect the fact that a team of professionals, not just one individual, serve the issuers, investors and future investors of our state. This name change also introduces an element of uniformity with the Department of Financial Institutions and the North Dakota Insurance Department, with whom we work to protect the integrity of financial markets in North Dakota. Although SB 2084 appears to be a rather lengthy bill, the majority of the changes to our chapter presented herein pertain to the agency name change.

At the request of the Office of Management and Budget, Senate Bill 2084 creates a special fund, the North Dakota Securities Department Investor Education and Technology Fund, into which the assets that are currently held in our Securities Protection Fund will be transferred. (The attached fiscal note reflects the monetary transfer). The new special fund, like the Securities Protection Fund before it, will receive contributions that are specifically designated for investor education and financial literacy programs and initiatives that are developed and delivered by this agency.

I would like to emphasize that while the investigative and enforcement efforts of this agency are critical and effective, these efforts most commonly take place after the fact -- after the fraud or violation has occurred and the financial harm has been done. The best

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defense against financial fraud and abuse is to prevent it from occurring in the first place, by educating investors and working to raise the level of financial literacy in the state.

Improving the level of financial literacy in North Dakota results in educated consumers making good personal financial choices, which in turn strengthens the economic health of North Dakota families and the economic health of the State overall. A strong and flexible economy means that resources are directed to the areas of greatest need, productivity and innovation are supported, and the ability to withstand inevitable economic turbulence is greatly enhanced.

It is a goal of this agency to help foster the formation of capital for business growth and economic development. It is imperative that the regulations governing this process serve to exact high standards of those who seek to use the money of others, protect honest enterprise from dishonest competition, and require adequate and consistent disclosures to potential investors so an informed investment decision can be made. In the area of capital formation, the amendments proposed by Senate Bill 2084 enhance the ability of North Dakota companies to raise capital in a more efficient and cost effective manner, while keeping the aforementioned regulatory objectives in place.

Senate Bill 2084 expands the applicability of certain securities registration exemptions beyond corporations and limited liability companies, to include limited partnerships and limited liability limited partnerships. (Page 11, lines 9 through 17 and lines 24 through 30). It expands the category of qualified investors to whom securities can be sold without

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the registration thereof (Page 11, lines 18 through 23), and it expands the Test-The-Waters exemption to allow non-profit and North Dakota-organized cooperatives to utilize this effective and cost-saving tool to gather indications of interest in their securities offering before actually dedicating the time and resources to making the offering. (Page 17, lines 16 through 19).

SB 2084 amends the definition of "dealer" to incorporate language that has been adopted in the new Uniform Securities Act recently passed by the National Conference of Commissioners on Uniform State Law. The new definition identifies certain excepted securities related activities that banks can engage in without falling under the definition of a dealer. (Page 2, lines 6 through 11).

Also at the request of the Office of Management and Budget, SB 2084 creates a continuing appropriation for the agency's Investor Restitution Fund. This fund is simply a conduit through which dollars collected from violators are repaid to the harmed investor. (Page 8, lines 30 and 31).

Senate Bill 2084 amends an existing registration exemption for venture capital corporations that have organized under Chapter 10-30.1 of the NDCC, changing it from a self-executing exemption to an exemption for which application must be made. (Page 10, lines 1 through 21).

As I stated earlier, the majority of the amendments proposed by Senate Bill 2084 are minor changes that relate to the name change of the agency. The bill also contains technical corrections and clarifications, which primarily serve to provide greater uniformity with federal and state securities laws.

In regard to the amendment we are introducing on Senate Bill 2084, I would refer you to the definition of "Agent" found on page 1, beginning on line 19, and specifically the overstrike found on line 23. Our amendment simply removes the overstrike, leaving the definition as it currently stands. We have determined that the specific concern we had regarding this definition can be alleviated through language found elsewhere in our chapter. (10-04-08.1).

This testimony serves to provide an overview of the amendments proposed by Senate bill 2084, but I would gladly address any specific amendment in greater detail.

I appreciate your time and attention this morning, and respectfully request your favorable consideration on Senate Bill 2084.

La Costa Rickford
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Proposed Amendments to SB 2084

Page 1, line 22, remove the overstrike over "and"

Page 1, line 23, remove the overstrike over "18(b)(4)"

Renumber accordingly

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Testimony of Patrick Ward in Requesting Amendment of SB 2084 in the Industry,
Business and Labor Committee

My name is Patrick Ward. I am an attorney with the law firm of Zuger Kirmis & Smith of Bismarck. I represent State Farm Insurance Company in opposition to a portion of SB 2084.

The SB 2084 contains revisions to the Securities Act. Senate Bill 2084 proposes to amend the definition of the term "agent" to delete the exemption for an individual who represents an issuer in effecting transactions in federal covered securities as described in section 18(b)(4) of the Securities Act of 1933. If this measure is passed as it is, agents who sell CDs for State Farm Bank, who are currently exempt from registration, will be required to register.

We object to this deletion of this exemption. We think the exemption serves a useful purpose, and elimination of the exemption is unnecessary.

Before I explain our opposition, I will give you some background on State Farm Bank and its sales agents.

Background on State Farm Bank

State Farm Bank is a federal bank subsidiary of State Farm Mutual Automobile Insurance Company, and is FDIC-insured and chartered, regulated and

examined by the OTS (Office of Thrift Supervision) according to federal law. State Farm Bank provides deposit and loan products and services to North Dakota customers, through its 41 exclusive independent insurance agents in North Dakota. The products and services are available through the mail, internet and call center.

Agents do not accept any cash deposits or make any withdrawals on behalf of State Farm Bank Customers. Agents receive a \$25 fee from State Farm Bank for each deposit account that is opened, regardless of the amount of the deposit. Currently, the deposit products offered by State Farm Bank through the agents are conventional FDIC-insured deposits, namely, checking accounts, savings accounts, money market accounts, and non-negotiable CDs.

Current Regulatory Framework for CDs

The securities act governs registration of all securities in North Dakota, making it illegal to sell any security unless it is either registered, an exempt security or a federal covered security. The securities act also requires registration of all persons who sell securities, unless they are covered by an exemption.

The commissioner has determined CDs fall within the definition of a security, however, CDs fall under the exemption for securities issued by banks and savings and loan associations supervised by an agency of the U.S. (OTS). So, CDs issued by State Farm Bank are exempt from registration in North Dakota.

The definition of "agents" includes the agents selling CDs, however currently the act contains an important exclusion from the definition of agent – it excludes from "agent" an individual who represents an issuer in effecting transactions in a covered security as defined by section 18(b)(3) and 18(b)(4) of the Securities Act of 1933. Section 18(b)(4) includes securities issued by a savings and loan association supervised and examined by a state or federal authority. Because State Farm Bank qualifies as a savings and loan association and since it is supervised by the OTS, the securities it issues are exempt from registration. Accordingly, the bank-certified agents who sell these CDs are currently exempt.

Why We Oppose this Change

If SB 2084 passes and is enacted, bank-certified agents in North Dakota will have to stop selling CDs until State Farm can determine how to register these people as agents under the Act. To register as an agent, you have to pass the NASD Series 63 exam plus one other exam. There is no NASD exam that specifically covers CDs, therefore the commissioner may determine the exclusive agents would need to pass a NASD Series 7 exam, which is a comprehensive exam relating to a broad range of securities products. Or the Commissioner may determine passing the NASD Series 6 exam is sufficient to meet the other exam requirement. The NASD Series 6 exam covers variable insurance products and mutual funds. In addition to the exam requirements, the exclusive agents will have to pay an annual registration fee of \$60 to register as agents to sell CDs.

We oppose this portion of SB 2084 because requiring exclusive agents to register as agents under the act does not result in greater protection for CD investors in North Dakota. The sale of CDs are already subject to comprehensive federal regulations, CDs are covered by FDIC insurance, the exclusive agents play a limited role in the CDs sales process, the availability of CDs will decrease because the number of agents selling CDs will decrease, the commissioner already has jurisdiction over CD sales by Exclusive Agents that may be considered fraudulent, and requiring agents to pass two securities exams will result in little extra benefit to North Dakota investors.

The sale of deposit products by federal savings banks is sufficiently regulated today, without additional regulation by the North Dakota Securities Commissioner. To the best of our knowledge, State Farm customers located in North Dakota have not alleged sales practice violations in connection with agents' sales of CDs issued by State Farm Bank.

We urge the exemption from the definition of "agent" for an individual who represents an issuer from selling a covered security to remain in its current form.

We recommend Page 1, lines 22-23 be amended to remove overstrike over "and 18(b)(4)."

PROPOSED AMENDMENTS TO SB 2084

Page 1, line 22, remove overstrike over "and"

Page 1, line 23, remove overstrike over "18(b)(4)"

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Connie Hildebrand
Testimony of Patrick Ward Requesting Amendment of SB 2084 in the Industry,
Business and Labor Committee

My name is Patrick Ward. I am an attorney with the law firm of Zuger Kirmis & Smith of Bismarck. I represent the American Council of Life Insurers in opposition to a portion of SB 2084 as currently written. We would like to propose a few simple amendments to this bill.

SB 2084 contains revisions to the Securities Act. Senate Bill 2084 includes variable annuities in the definition of the term "security," which would permit duplicate regulation of the same product. The proposed language is not included in the current Uniform Securities Act, in fact, it was specifically revised to exclude variable annuities because of the duplicate regulation caused by including variable annuities in the definition of securities.

With the proposed change, the North Dakota Securities Commissioner would have unnecessary duplicative jurisdiction over variable annuities. Annuity salespersons would have the additional requirement of registering under this revised Securities Act. Variable annuities are currently subject to the jurisdiction of all state insurance departments, the Securities Exchange Commission and the NASD.

Including variable annuities in the definitions of securities imposes a fourth layer of regulation on variable annuities on top of comprehensive SEC, NASD and state insurance regulation.

Variable annuities are already one of the most heavily regulated financial products in today's broad marketplace. Including these products into the state securities codes provides no added regulatory value. Rather, it creates expensive, unnecessary burdens for life insurers and sales persons. The need for this fourth layer of regulation has not been justified or properly explained. Including variable annuities in the definitions of securities does not advance the goal of uniformity, nor does it improve tangible consumer protection. Variable annuities already fulfill a comprehensive state and federal system of regulation including state insurance regulation of unfair trade practices acts, fraud laws, market conduct examination, agent licensing and testing, and continuing education requirements. Federal level regulations providing protection for consumers include ERISA, DOL disclosures initiatives for qualified plans, and federal acts over sales practices within the insurance industry.

Additionally, the majority of states exclude all insurance, endowment, and annuity contracts from the definition of security, and only eight define variable annuities as a security. Two states do not exclude any type of insurance, endowment, or annuity contract and another six, which includes North Dakota, do not exclude categories of any kind from the definition of securities.

The Uniform Securities Act (2002) specifically excludes variable annuities from the definition of "security." This definition was revised by the NCCUSL on July 30, 2002, to exclude variable annuities in response to the concerns about duplicative redundant regulation. Section 102(28)(B) of the Uniform Securities Act (2002) provides:

2) **"Security"** means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract.....

(B) The term does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed [or variable] sum of money either in a lump sum or periodically for life or other specified period.

Additionally, NCOIL just passed a resolution opposing state efforts to define variable annuities as securities for purposes of state securities commissioner oversight, and supports exclusive jurisdiction of insurance commissioners over variable annuities.

Excluding variable annuities from the definition of securities helps put the North Dakota market on equal footing with other states and furthers the goal of uniformity.

We urge SB2084 be amended to delete the term "variable annuities" from the definition of "securities."

AMENDMENTS TO SB 2084

Page 5, line 22, overstrike "variable annuity"

Page 5, line 23, overstrike "contract;"

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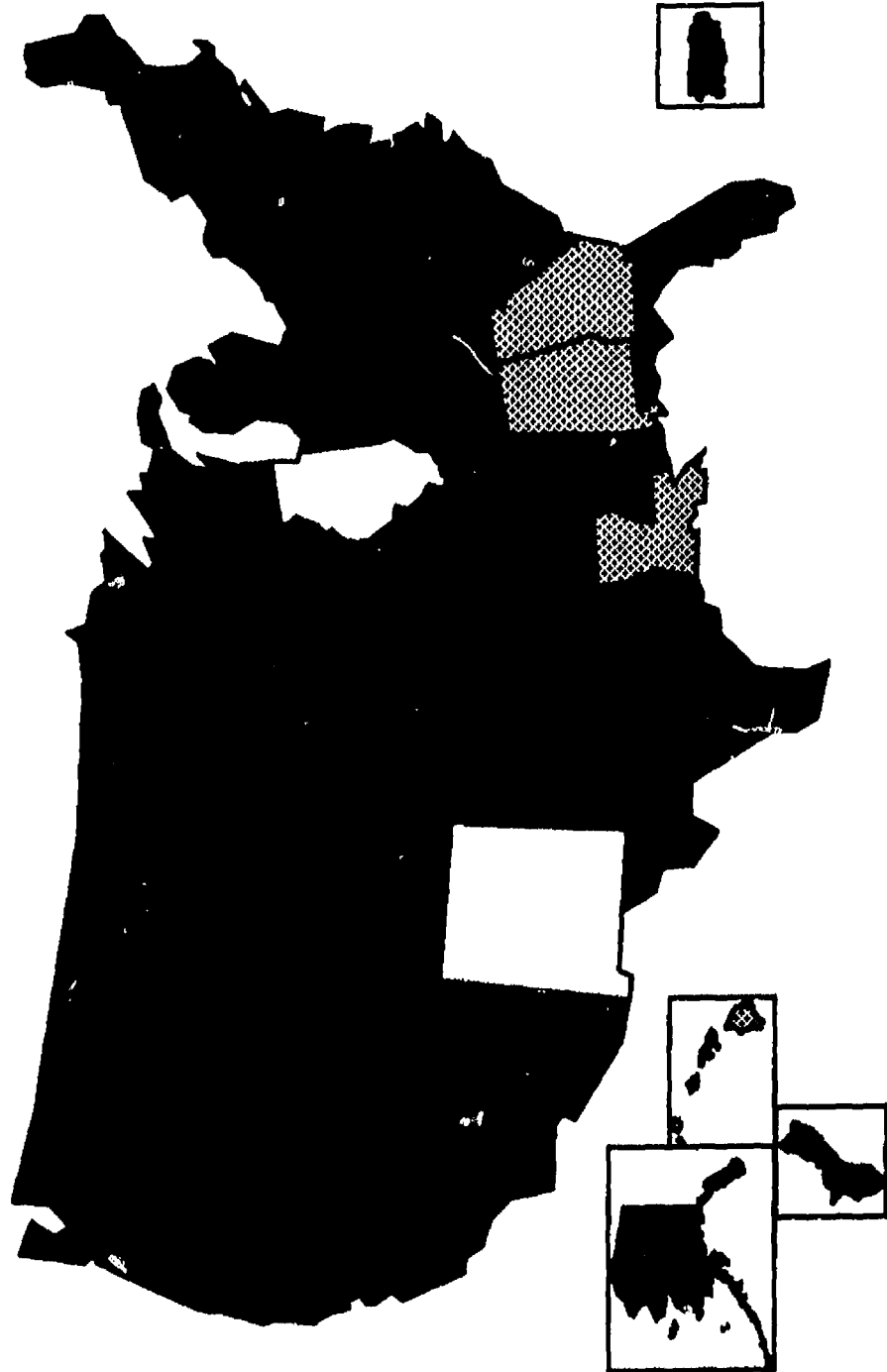
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Status of Variable Contracts Under State Securities Laws



<input checked="" type="checkbox"/>	Excludes all insurance, endowment, and annuity contracts from definition of security	<input checked="" type="checkbox"/>	No categories of any kind are excluded from the definition of security
<input checked="" type="checkbox"/>	Excludes insurance, endowment, or annuity contracts from definition of security, but not all 3	<input type="checkbox"/>	No exclusion from the definition of security for any type of insurance, endowment or annuity contract
<input checked="" type="checkbox"/>	Defines variable annuity and variable life insurance contracts as a security		

A.C.L.I.
AMERICAN COUNCIL OF LIFE INSURERS

By Carl B. Wilkerson, Chief Counsel - Securities & Litigation, American Council of Life Insurers
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