2023 SENATE INDUSTRY AND BUSINESS

SB 2060

2023 SENATE STANDING COMMITTEE MINUTES

Industry and Business Committee
Fort Union Room, State Capitol

SB 2060
1/4/2023

Relating to fees of an effective offering; relating to exempt transaction filling requirements, federal crowdfunding investment advisors', custody, postregistration recordkeeping, effectiveness of orders, and professional services for investigations.

9:15 AM Chairman D. Larsen opened the meeting.
Members Present: Chairman D. Larsen, Vice Chairman Kessel, Senator Barta, Senator Boehm, Senator Klein.

Discussion Topics:

- State Securities Act
- Improve uniformity
- Electronic processing

9:15 AM Karen Tyler, State Securities Commissioner testified on behalf of the Securities Department in favor of SB 2060. #12265

10:11 AM Senator D. Larsen closed the hearing on SB 2060.

10:12 AM Senator Klein moved Do Pass SB 2060.

10:13 AM Senator Boehm seconded Do Pass SB 2060.

Senators	Vote
Senator Doug Larsen	Y
Senator Greg Kessel	Y
Senator Jeff Barta	Y
Senator Keith Boehm	Y
Senator Jerry Klein	Y

Roll Call Vote: 5 Yes, 0 No, 0 Absent

Senator Barta will carry the bill.

10:30 AM Chairman D. Larsen adjourned.

Brenda Cook, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2060: Industry and Business Committee (Sen. Larsen, Chairman) recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2060 was placed on the Eleventh order on the calendar. This bill does not affect workforce development.

2023 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2060

2023 HOUSE STANDING COMMITTEE MINUTES

Industry, Business and Labor Committee
Room JW327C, State Capitol

SB 2060
3/7/2023

Relating to exempt transaction filing requirements, federal crowdfunding, investment advisors' custody, post registration recordkeeping, effectiveness of orders, and professional services for investigations.

Chairman Louser called meeting to order 8:00 AM

Members Present: Chairman Louser, Vice Chairman Ostlie, Representatives Boschee, Christy, Dakane, Johnson, Kasper, Koppelman, Ruby, Schauer, Thomas, Tveit, Wagner, Warrey.

Discussion Topics:

- Late filing fee
- Interest in opportunities
- Private fund advisors
- Exemption information
- Limited filing requirements
- Robust data set
- Continuing education
- Crypto currency oversight
- Crypto mining
- Digital asset intermediaries
- Crypto investigation resource
- Regulatory authority
- RFP forensic analysis
- Accredited investor changes
- Out of state professionals
- White paper on block chain
- Pier to pier intermediary
- Money transaction

In Favor:
Karen Tyler, Commissioner, ND Securities Department, #22222

Representative Schauer moved a do pass.
Representative Kasper seconded.

Roll call vote:

Representatives	Vote
Representative Scott Louser	Y
Representative Mitch Ostlie	Y

Representative Josh Boschee	Y
Representative Josh Christy	Y
Representative Hamida Dakane	Y
Representative Jorin Johnson	Y
Representative Jim Kasper	Y
Representative Ben Koppelman	Y
Representative Dan Ruby	Y
Representative Austen Schauer	Y
Representative Paul J. Thomas	Y
Representative Bill Tveit	Y
Representative Scott Wagner	Y
Representative Jonathan Warrey	Y

Motion passed 14-0-0

Representative Warrey will carry the bill.

Chairman Louser adjourned the meeting 8:50 AM

Diane Lillis, Committee Clerk

REPORT OF STANDING COMMITTEE

SB 2060: Industry, Business and Labor Committee (Rep. Louser, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2060 was placed on the Fourteenth order on the calendar.

TESTIMONY

SB 2060

Testimony in Support of SB 2060

North Dakota Securities Commissioner Karen Tyler

Senate Industry and Business Committee

January 4, 2023

Good morning Mr. Chairman and members of the Committee. For the record, I am Karen Tyler, the state Securities Commissioner. I am here to testify in support of SB 2060 which is introduced at the request of the Securities Department.

The purpose of the bill is to amend the Securities Act (NDCC 10-04) to create capital formation-related efficiencies for both businesses and the Department, improve regulatory uniformity with other states and the SEC, modernize our Securities Act to reflect the on-going shift to electronic based processes in the investment industry, improve access to investigative resources, and correct an error from last session.

The Securities Department is a regulatory agency that has the primary policy objective of protecting investors who are willing to take on risk and put their money to work in our country's capital markets. It is the investor's willingness to take on risk, as long as the risk is fair, that makes our capital markets the strongest, most transparent, most efficient, and most successful in the world.

The Department's work to protect investors can be broken out into two categories –

1. **regulating the capital formation process**
2. **regulating the conduct of investment industry firms and professionals**

Securities regulation is also a dual federal/state system with each state having a securities regulator and on the federal level the role is carried out by the Securities and Exchange Commission. Uniformity among states and between the state and federal systems is exceedingly important to the investment industry.

The first 3 changes I will cover today fall into the first category of regulating the capital formation process. The next 5 changes pertain to regulation of the conduct of investment industry firms and professionals. And the last 2 changes apply to both categories.

Section 1

When a company is issuing securities in order to raise capital for its operations or in order to fund growth, as a threshold matter the securities offering must be registered with securities regulators. The most common example of this would be an initial public offering of stock registered with the SEC. But securities laws at both the federal and state level also provide for numerous exemptions from the

registration process, when appropriate, in order to make it less burdensome and costly for a company issuing securities. All of these registration exemptions are based on some type of limitation, such as limiting the amount of money that will be raised, or limiting the number of investors involved in the capital raise, or limiting the capital raise to accredited investors only.

Section 1 of the bill addresses the **state level accredited investor exemption**. This exemption is available to an issuer of securities that is raising money only from "accredited investors" – generally high net worth and institutional investors. It does require the filing of some limited information with the Department as well as paying a filing fee.

Page 4, Lines 11 & 12

The amendment on page 4 lines 11 and 12 creates the ability to assess a late fee in the event the issuer using the state level accredited investor exemption does not timely comply with the filing requirements. Currently the only recourse for addressing non-compliance is requiring a rescission offer by the issuer (the issuer must offer to buy the securities back from the investors). Depending on the facts and circumstances, providing for a late fee gives the Commissioner what might be a more reasonable alternative to address a non-compliance matter.

Section 2

Page 4, Lines 20 through 23

Section 2 of the bill addresses a type of securities registration called Registration by Coordination. This allows an issuer of securities to submit a registration on a parallel track with both state regulators and the SEC, and "coordinate" the review process and effective date of the filing at the state and federal level. This type of registration is commonly used by non-traded Real Estate Investment Trusts. With this type of registration, the issuer will pay a filing fee that is based on the dollar amount of the securities they want to sell. Sometimes an issuer will come back to us after the offering is registered and want to increase the dollar amount that will be sold. The language at lines 20-23 provides for the ability to increase the offering amount an also provides for a fee.

Section 3

This section of the bill pertains to a federal securities registration exemption called Regulation Crowdfunding. You are likely familiar with donation-based crowdfunding through portals like Gofundme, Kickstarter, and Indiegogo. A number of years ago Congress adopted the crowdfunding concept as a way for companies, usually start-ups, to raise small amounts of capital from large

numbers of investors (from the crowd), in exchange for the issuance of securities, typically stock in the company. If a North Dakota company chooses to use this federal exemption, the Department can require that they put us on notice.

When this requirement was put this in place last session, the language that is found on page 5, line 22 through 26 should not have been included, and this change simply corrects that error.

The next several changes I will cover pertain to our regulation of the **conduct of investment industry firms and professionals** who act as intermediaries, facilitate investment transactions, and provide investment advice to North Dakotans. These firms and professionals fall into two categories: Broker-Dealer Firms and their Securities Agents (more commonly known as stockbrokers) and Investment Adviser Firms their Investment Adviser Representatives.

Section 4

Generally, all investment industry firms and professionals who want to operate in North Dakota must be registered with the Department. There are some limited exemptions for this registration requirement.

Page 11, Lines 18 and 19

The change proposed on page 11 at lines 18 and 19 creates rulemaking authority consistent with the Uniform Securities Act, that allows for the Commissioner to create a limited registration exemption for certain investment advisers. This is generally used to facilitate an exemption for advisers to what are known as "private funds" such as private equity or venture capital funds. This "private fund adviser" exemptive relief is found in many states and at the federal level. It is very conservatively applied and is based on model rulemaking.

Page 14, Lines 20 and 21

Before becoming registered with state and federal securities regulators, investment professionals must pass qualifying examinations. Additionally, the investment professionals who work for brokerage firms, subsequent to passing their qualifying examinations and securing registration, must also complete continuing education requirements on a regular cadence. This proposed change brings that continuing education requirement to the professionals who work for investment adviser firms as well.

Section 5

Page 17, Lines 11 through 30 and Page 18, Lines 1 through 21

The changes in this section clarify what custody means in the context of an Investment Adviser's business, and clearly identify what type of financial firm is a qualified custodian for the purpose of an Investment Advisor's business. This is largely uniform language from state to state, and also uniform between the state and federal regulatory systems.

Section 6

Page 20, lines 24 through 31 and Page 21, Lines 1 through 3

The changes in this section of the bill relate to record-keeping requirements. The changes modernize the Securities Act to account for changes in the form – called Form ADV - that is used by investment advisers when getting registered with a state or federal regulator, and then also addresses record-keeping changes that recognize the process by which most investors deposit money to their investment accounts – fewer paper checks and much more use of electronic money transfer alternatives.

Section 7

Page 22 Line 9

This change clarifies that an Order of the Commissioner is effective upon issuance. An order will not be a final order until the administrative or civil process is complete, but that the order is effective upon issuance is an important clarification.

Section 8

Page 23, Lines 23 and 24

This section deals with the investigative powers of the Department and allows the Department to expediently secure expert forensic analytics services outside of the current procurement process. The urgent nature of our investigations coupled with limited supply of certain forensic analytics services drives this requested change.

The investigation of investment fraud and misconduct conducted by the Department is the most resource intensive aspect of our work. This work continues to change with the constant evolution of the industry and the influence of financial technology on the products and services available to consumers and investors. Robo-advisors, app-based stock trading platforms, crowdfunding

platforms, cryptocurrency and digital or crypto asset derivative products, digital asset intermediaries, crypto interest accounts, securities token offerings, and the proliferation of social media and internet driven investment fraud have altered our investigative work and impacted the resources needed to conduct it.

Our investigations are time sensitive - to limit investor harm, stop further financial damages and trace and recover stolen assets, the department needs readily available access to cryptocurrency and blockchain forensic analytics resources. The current imbalance between the limited number of forensic blockchain analytics services and the enormity of the crypto fraud case volume worldwide leaves demand for these services far outweighing supply. This change appropriately supports expedited access to mission critical services.

Testimony in Support of SB 2060

North Dakota Securities Commissioner Karen Tyler

House Industry, Business and Labor Committee

March 7, 2023

Good morning Mr. Chairman and members of the Committee. For the record, I am Karen Tyler, the state Securities Commissioner. I am here to testify in support of SB 2060 which was introduced at the request of the Securities Department.

The purpose of the bill is to amend the Securities Act (NDCC 10-04) to create capital formation-related efficiencies for both businesses and the Department, improve regulatory uniformity with other states and the SEC, modernize our Securities Act to reflect the on-going shift to electronic based processes in the investment industry, improve access to investigative resources, and correct an error from last session.

The Securities Department is a regulatory agency that has the primary policy objective of protecting investors who are willing to take on risk and put their money to work in our country's capital markets. It is the investor's willingness to take on risk, as long as the risk is fair, that makes our capital markets the strongest, most transparent, most efficient, and most successful in the world.

The Department is a revenue generating agency and we project revenues of approximately $23 million this biennium on a budget of $2.8 million. The Department's work to protect investors can be broken out into two categories –

1. **regulating the capital formation process**
2. **regulating the conduct of investment industry firms and professionals**

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