

HOUSE BILL NO. 1493

Introduced by

Representatives Dorso, Clark, B. Thoreson

Senator G. Nelson

1 A BILL for an Act to provide for a department of commerce under the direction of a commerce
2 commissioner; to create and enact a new section to chapter 6-01, a new section to chapter
3 10-04, and a new section to chapter 26.1-01 of the North Dakota Century Code, relating to the
4 transfer of duties, functions, and powers of the commissioner of banking and financial
5 institutions, the securities commissioner, and the insurance commissioner to a commerce
6 commissioner; to amend and reenact section 6-01-01, subsection 1 of section 6-01-10,
7 subsection 1 of section 10-04-02, section 10-04-03, subsection 2 of section 10-04-05, sections
8 16.1-11-26, 26.1-01-01, 26.1-06-12, 44-03-01, and 54-06-01 of the North Dakota Century Code,
9 relating to the transfer of the duties, functions, and powers of the commissioner of banking and
10 financial institutions, the securities commissioner, and the insurance commissioner to a
11 commerce commissioner; to repeal sections 6-01-08, 6-01-11, 6-01-12, 26.1-01-02, and
12 26.1-01-09 of the North Dakota Century Code, relating to the appointment and salary of the
13 commissioner of banking and financial institutions, the bond required of the commissioner of
14 banking and financial institutions, and the salary and official seal of the insurance
15 commissioner; to provide for transfers of appropriations; and to provide an effective date.

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

17 **SECTION 1. Department of commerce under direction of commerce**
18 **commissioner.** There is established a department of commerce, which is under the direction
19 of the commerce commissioner. The governor shall appoint the commissioner who shall serve
20 at the pleasure of the governor. The governor may establish the amount of compensation of
21 the commissioner within the limits of legislative appropriations. The commissioner shall employ
22 a deputy and other competent officials and employees to discharge the duties assigned to the
23 commissioner.

1 **SECTION 2. AMENDMENT.** Section 6-01-01 of the 1997 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **6-01-01. Management and control - State department of banking and financial**
4 **institutions.** The state department of banking and financial institutions is under the supervision
5 of the state banking board, state credit union board, and ~~a chief officer designated as the~~
6 commerce commissioner of banking and financial institutions, and known as the state
7 examiner. Whenever the term state examiner is used in this code, it means the commissioner
8 of banking and financial institutions. The commissioner may not own, hold, or control any
9 stock, capital, or bond, or hold the office of trustee, assignee, officer, agent, or employee of any
10 financial institution under the commissioner's jurisdiction, or of any corporation engaged in the
11 business of guarantying or ensuring the fidelity or faithful performance of the duties or the
12 solvency of public officers or of public depositaries. ~~The state department of banking and~~
13 ~~financial institutions~~ has charge of the execution of all laws relating to state banks, trust
14 companies, credit unions, building and loan associations, mutual investment corporations,
15 mutual savings corporations, banking institutions, and other financial corporations, ~~exclusive of~~
16 except the Bank of North Dakota.

17 **SECTION 3.** A new section to chapter 6-01 of the North Dakota Century Code is
18 created and enacted as follows:

19 **Commerce commissioner to be substituted for the commissioner of banking and**
20 **financial institutions and commerce department to be substituted for department of**
21 **banking and financial institutions.** Whenever the term "commissioner of banking and
22 financial institutions" or any derivative of the term when used in the context to refer to that
23 position appears in the code, the term "commerce commissioner" must be substituted therefor.
24 Whenever the term "department of banking and financial institutions" or any derivative of the
25 term is used, the term "commerce department" must be substituted therefor. The commerce
26 commissioner shall assume the duties, functions, and powers of the commissioner of banking
27 and financial institutions.

28 **SECTION 4. AMENDMENT.** Subsection 1 of section 6-01-10 of the 1997 Supplement
29 to the North Dakota Century Code is amended and reenacted as follows:

- 30 1. The ~~assistant~~ commissioner shall act as secretary and keep all proper records and
31 files pertaining to the ~~duties and work of the office of the assistant commissioner~~

and the proceedings of the board. The commissioner shall report to the board annually, touching on all the commissioner's official acts and those of the deputy examiners, giving abstracts of statistics and of the conditions of the various institutions to which the commissioner's duties relate, and making such recommendations and suggestions as the commissioner may determine proper.

SECTION 5. AMENDMENT. Subsection 1 of section 10-04-02 of the North Dakota Century Code is amended and reenacted as follows:

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

SECTION 6. A new section to chapter 10-04 of the North Dakota Century Code is created and enacted as follows:

Commerce commissioner to be substituted for securities commissioner.

Whenever the term "securities commissioner" or any derivative of the term when used in the context to refer to that position appears in the code, the term "commerce commissioner" must be substituted therefor. The commerce commissioner shall assume the duties, functions, and powers of the securities commissioner.

SECTION 7. AMENDMENT. Section 10-04-03 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

10-04-03. Administration of chapter.

~~4. The securities commissioner must be appointed by the governor and confirmed by the senate and shall hold office for a term of four years, beginning on the first day of July following a national presidential election and continuing until a successor has been appointed, confirmed by the senate, and has qualified, unless removed as herein provided. If the senate is not in session, the governor may make an interim appointment, and the interim appointee shall hold office until the senate confirms or rejects the appointment. The commissioner must be skilled in securities and may not be an incumbent of any other public office in the state. The commissioner may not own or control any security required to be registered under this chapter and may not be an officer, director, or employee of any dealer, salesman, investment adviser, or investment adviser representative required to be registered under this chapter. The governor may remove from office any~~

1 ~~commissioner who fails to discharge faithfully the duties of office or who becomes~~
2 ~~disqualified under the provisions of this section.~~

3 ~~It is the prime duty of the~~ The commissioner ~~to shall~~ administer the provisions
4 of this chapter. ~~The commissioner shall receive a salary within the amount~~
5 ~~appropriated for salaries by the legislative assembly. The commissioner shall use~~
6 ~~a seal with the words "securities commissioner, North Dakota" and such design as~~
7 ~~the commissioner may prescribe engraved thereon by which seal the~~
8 ~~commissioner may authenticate documents used in the administration of this~~
9 ~~chapter. The commissioner may employ such employees as are necessary for the~~
10 ~~administration of this chapter. In the absence or disability of the commissioner, the~~
11 ~~deputy shall administer the provisions of this chapter as acting commissioner.~~

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

22 3- ~~In addition to their regular compensation, the commissioner and the~~
23 ~~commissioner's employees shall be paid travel expenses necessary and actually~~
24 ~~incurred in the performance of their duties.~~

25 4- All fees collected under this chapter must be deposited in the general fund of the
26 state treasury, except civil penalties collected from enforcement actions for the
27 purpose of distribution to aggrieved investors may be deposited in a special
28 securities protection fund. All other civil penalties collected, including those
29 collected for the reasonable expenses for the administration of a particular case,
30 must be deposited in the general fund.

5- The commissioner may honor requests from interested persons for the issuance of a statement or opinion concerning the applicability of this chapter or the rules adopted under this chapter to any transaction or proposed transaction ~~which that~~ may be subject to this chapter. ~~Any such~~ A request must be accompanied by a fee to be set by the commissioner by rule, which may not exceed two hundred fifty dollars.

SECTION 8. AMENDMENT. Subsection 2 of section 10-04-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Securities issued by and representing an interest in or a debt of, or guaranteed by, a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an act of Congress and supervised by the United States, or any agency thereof, or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member, or issued by and representing an interest in or a debt of, or guaranteed by, a state bank, trust company, savings bank, savings institution, or credit union organized and supervised under the laws of any state, and securities of any person subject to examination by the commissioner ~~of banking and financial institutions of North Dakota.~~

SECTION 9. AMENDMENT. Section 16.1-11-26 of the North Dakota Century Code is amended and reenacted as follows:

16.1-11-26. Order in which names of offices shall appear on ballot. The primary election ballot for party nominations shall contain the following offices in the following order under each party column:

1. Congressional:

United States senator
representative in Congress

2. Legislative:

state senator _____ district
member of house of representatives _____ district

3. State offices:

governor and lieutenant governor
secretary of state
state auditor
state treasurer
attorney general
~~commissioner of insurance~~
~~commissioner of agriculture~~ commissioner
public service commissioner
tax commissioner

SECTION 10. AMENDMENT. Section 26.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

26.1-01-01. Commissioner defined. Unless the context or subject matter otherwise requires, in this title the ~~word~~ terms "commissioner" ~~means~~, "commissioner of insurance", or "insurance commissioner" mean the commerce commissioner of insurance. Whenever the terms "commissioner of insurance" or "insurance commissioner" or any derivative of those terms when used in the context to refer to that position appears in the code, the term "commerce commissioner" must be substituted therefor. The commerce commissioner shall assume all the duties, functions, and powers of the commissioner of insurance.

SECTION 11. A new section to chapter 26.1-01 of the North Dakota Century Code is created and enacted as follows:

Commerce commissioner or department to be substituted for insurance department. Whenever the term "insurance department" or any derivative of the term when used to refer to the "commissioner of insurance" or the office of the commissioner of insurance appears in the code, the term "commerce commissioner", or "commerce department", whichever is appropriate, must be substituted therefor.

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

26.1-06-12. Securities laws. This chapter does not limit or modify ~~in any way any responsibility, authority, power, or jurisdiction of the securities commissioner or of the securities laws of this state.~~

SECTION 13. AMENDMENT. Section 44-03-01 of the North Dakota Century Code is amended and reenacted as follows:

44-03-01. Deputies may be appointed by certain officers. The secretary of state, state auditor, state treasurer, superintendent of public instruction, ~~commissioner of insurance,~~ ~~commissioner of agriculture~~ commissioner, commissioner of labor, district assessor, and city assessor each may appoint a deputy for whose acts as such ~~he shall be~~ the deputy is responsible. Each officer required to give a bond may require a bond from any deputy appointed by ~~him~~ that officer. ~~Any such~~ The bond must be in the penal sum of not more than half the penal sum of the appointing officer's own bond and may be retained by the officer for ~~his~~ the officer's own protection. ~~Such~~ The appointment must be in writing and is revocable in writing at the pleasure of the principal, and ~~such~~ the appointment and revocation must be filed as the bond and oath of the principal are filed.

SECTION 14. AMENDMENT. Section 54-06-01 of the 1997 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-06-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Appointed or appointive state officers and members of appointive state boards, bureaus, and commissions, and deputies, assistants, secretaries, clerks, and employees" includes all persons whose office or employment is held by virtue of any appointment or employment however made, other than an election by the voters of the state, whether or not ~~such~~ the office or employment is created by an act of the legislative assembly.
2. "Elected and elective state officers" includes the governor, the lieutenant governor, the attorney general, the secretary of state, the state auditor, the state treasurer, the superintendent of public instruction, the ~~commissioner of agriculture~~ commissioner, ~~the commissioner of insurance,~~ the tax commissioner, and three public service commissioners.

SECTION 15. REPEAL. Sections 6-01-11 and 6-01-12 of the North Dakota Century Code and section 6-01-08 of the 1997 Supplement to the North Dakota Century Code are repealed.

1 **SECTION 16. REPEAL.** Section 26.1-01-02 of the North Dakota Century Code and
2 section 26.1-01-09 of the 1997 Supplement to the North Dakota Century Code are repealed.

3 **SECTION 17. APPROPRIATIONS - TRANSFER.** As of the effective date of this Act,
4 the office of the securities commissioner and the office of the commissioner of banking and
5 financial institutions are abolished and any funds appropriated to those offices or officers by the
6 fifty-sixth legislative assembly are transferred to the commerce commissioner.

7 **SECTION 18. APPROPRIATIONS - TRANSFER.** As of the effective date of sections 9
8 through 14 and sections 16 and 18 of this Act, any funds appropriated to the insurance
9 commissioner by the fifty-sixth legislative assembly are transferred to the commerce
10 commissioner.

11 **SECTION 19. EFFECTIVE DATE.** Sections 9 through 14 and sections 16 and 18 of
12 this Act are contingent on the approval by the electors of this state in 2000 of a constitutional
13 amendment to remove the insurance commissioner as a constitutional elected officer effective
14 January 1, 2001. If sections 9 through 14 and sections 16 and 18 of this Act take effect, those
15 sections become effective on January 1, 2001.