

Introduced by

1 A BILL for an Act to amend and reenact section 10-04-05, subsection 1 of section 57-38-01.2,
2 and subsection 1 of section 57-38-71 of the North Dakota Century Code, relating to
3 cross-references affected by the repeal of the venture capital corporation law; to repeal
4 chapters 10-30.1 and 10-30.2 of the North Dakota Century Code, relating to venture capital
5 corporations and the Myron G. Nelson Fund, Incorporated; to provide for a study and report to
6 the legislative council; and to provide an effective date.

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

8 **SECTION 1. AMENDMENT.** Section 10-04-05 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **10-04-05. Exempt securities.** Sections 10-04-04, 10-04-07, 10-04-07.1, 10-04-08,
11 and 10-04-08.4 do not apply to any of the following securities:

- 12 1. Securities issued or guaranteed by the United States of America, or by any state,
13 territory, or insular possession thereof, or by any political subdivision of any such
14 state, territory, or insular possession, or by the District of Columbia, or by any
15 public agency or instrumentality of one or more of any of the foregoing, or payable
16 from assessments for improvements or revenues of publicly owned utilities therein;
17 or a certificate of deposit for any of the foregoing, but this exemption does not
18 include any security payable solely from revenues to be received from a
19 nongovernmental industrial or commercial enterprise unless the security is insured
20 or unconditionally guaranteed by, or the revenues are derived from, a person
21 whose securities are exempt from registration under this section.
- 22 2. Securities issued by and representing an interest in or a debt of, or guaranteed by,
23 a national bank or a national bank and trust company or bank or credit or loan or
24 savings association or savings and loan association or credit union organized

- 1 pursuant to an Act of Congress and supervised by the United States, or any
2 agency thereof, or issued or guaranteed as to both principal and interest by an
3 international bank of which the United States is a member, or issued by and
4 representing an interest in or a debt of, or guaranteed by, a state bank, trust
5 company, savings bank, savings institution, or credit union organized and
6 supervised under the laws of any state, and securities of any person subject to
7 examination by the commissioner of financial institutions of North Dakota.
- 8 3. Securities issued by a building and loan association subject to supervision by an
9 agency of the state of North Dakota, or policy contracts, including variable annuity
10 contracts, of an insurance company subject to supervision by an agency of the
11 state of North Dakota.
- 12 4. Securities issued or guaranteed as to principal, interest, or dividends by a
13 corporation or limited liability company owning or operating a railroad or other
14 public service utility, if the corporation or limited liability company is subject to
15 regulation or supervision either as to its rates and charges or as to the issue of its
16 securities by a public service commission, or by a board, body, or official having
17 like powers, of the United States or of any state, territory, or insular possession
18 thereof, or of any municipality located therein, or of the District of Columbia, or of
19 the Dominion of Canada, or any province thereof.
- 20 5. Any security issued by any person organized and operated not for private profit but
21 exclusively for religious, educational, benevolent, fraternal, charitable, social, or
22 reformatory purposes; provided that prior to any offer of such security each person
23 must meet the following conditions:
- 24 a. Apply for and obtain the written approval of the commissioner.
- 25 b. File an application, offering disclosure document, and pay a nonrefundable
26 filing fee of one hundred fifty dollars, which document and fee must
27 accompany the application.
- 28 c. File a notice identifying the basis of its qualification under this exemption with
29 such additional information as the commissioner may require.
- 30 d. Provide a copy of the offering disclosure document to each person to whom
31 an offer to sell or sale is made.

- 1 The approval is effective for a period of one year from the date of approval. At
2 least thirty days prior to the expiration date, there must be filed an application,
3 offering disclosure document, and a nonrefundable fee of one hundred dollars for
4 the renewal of the filing for additional periods of one year.
- 5 6. Any note, draft, bill of exchange, or bankers' acceptance which arises out of a
6 current transaction or the proceeds of which have been or are to be used for
7 current transactions, is not the subject of a public offering, is prime quality
8 negotiable commercial paper which has at the time of issuance a definite maturity
9 of not exceeding nine months, is payable in cash only, and is not convertible into
10 and does not carry an option or right to receive payment or any bonus in any other
11 security.
- 12 7. Securities, other than common stock, providing for a fixed return, which have been
13 outstanding and in the hands of the public for not less than five years and upon
14 which no default has occurred during the five years next preceding the date of sale.
- 15 8. Securities, including patronage dividends or refunds, issued by any cooperative
16 organized under the statutes of this state.
- 17 9. Any equipment security based on a chattel mortgage, lease, or agreement for the
18 conditional sale of cars, motive power, or other rolling stock mortgaged, leased,
19 sold to, or furnished for the use of a railroad or other public service utility
20 corporation or limited liability company, and any equipment security when the
21 ownership of or title to such equipment is pledged or retained in accordance with
22 the provisions of the laws of the United States or of any state thereof, or of the
23 Dominion of Canada, to secure the payments of such equipment security whether
24 it be an equipment trust certificate, bond, or note.
- 25 10. Any bond, note, or other evidence of debt issued by a holding corporation or limited
26 liability company and secured by collateral consisting of any of the securities
27 described in subsections 4 and 9, if the collateral securities equal in fair value at
28 least one hundred twenty-five percent of the par value of the bonds, notes, or other
29 evidences of debts secured thereby.
- 30 11. The execution of orders for purchase of securities by a registered dealer provided
31 such dealer acts as agent for the purchaser, has made no solicitation of the order

1 to purchase such securities, has no direct material interest in the sale or
2 distribution of the securities ordered, receives no commission, profit, or other
3 compensation other than the commissions involved in the purchase and sale of the
4 securities and delivery to the purchaser of written confirmation of the order which
5 clearly itemizes the commissions paid to the registered dealer. Clear and complete
6 records of all transactions exempted under this subsection shall be maintained by
7 the registered dealer or broker.

- 8 12. ~~Any security issued by a venture capital corporation or limited liability company~~
9 ~~organized under and operating in compliance with chapter 10-30.1; provided that~~
10 ~~prior to any offer of such security, the issuer must meet the following conditions:~~
- 11 a. ~~Apply for and obtain written approval by the commissioner.~~
 - 12 b. ~~File an application, offering disclosure document, and pay a nonrefundable~~
13 ~~filing fee of one hundred fifty dollars. The document and fee must accompany~~
14 ~~the application.~~
 - 15 e. ~~File such additional information as the commissioner requires by rule or order~~
16 ~~or may subsequently request.~~
 - 17 d. ~~Provide a copy of the offering disclosure document to each person to whom~~
18 ~~an offer to sell or sale is made.~~
 - 19 e. ~~Not use public advertising matter or general solicitation, except tombstone~~
20 ~~advertisements approved by the commissioner, in connection with any offer or~~
21 ~~sale.~~
 - 22 f. ~~File a report of all offers and sales made in this state within thirty days after~~
23 ~~the completion of the offering.~~

24 ~~The approval is effective for a period of one year from the date of approval. There~~
25 ~~must be filed, at least thirty days prior to the expiration date, an application,~~
26 ~~disclosure document, and a nonrefundable fee of one hundred dollars for the~~
27 ~~renewal of the filing for additional periods of one year.~~

- 28 13. Any security issued or guaranteed by Canada, any Canadian province, any political
29 subdivision of any such province, or any agency or corporate or other
30 instrumentality of one or more of the foregoing, or any other foreign government
31 with which the United States currently maintains diplomatic relations, if the security

1 is recognized as a valid obligation by the issuer or guarantor. This exemption does
2 not include any security payable solely from revenues to be received from a
3 nongovernmental industrial or commercial enterprise.

4 ~~44.~~ 13. a. Any security, other than a security that is a federal covered security pursuant
5 to section 18(b)(1) of the Securities Act of 1933 and therefore not subject to
6 any filing or registration requirements under this chapter, listed or designated,
7 or approved for listing or designation upon notice of issuance on:

- 8 (1) The New York stock exchange;
- 9 (2) The American stock exchange;
- 10 (3) The national association of securities dealers automated quotation
11 national market system;
- 12 (4) Tier I of the Philadelphia stock exchange;
- 13 (5) Tier I of the Pacific stock exchange;
- 14 (6) Chicago board options exchange; or
- 15 (7) Any other stock exchange or automated quotation system which the
16 commissioner approves by rule;

17 b. Any other security of the same issuer which is of senior or substantially equal
18 rank;

19 c. Any security called for by subscription rights or warrants so listed or approved;
20 or

21 d. Any warrant or right to purchase or subscribe to any of the foregoing.

22 The commissioner may withdraw this exemption by order as to any exchange or
23 system, or any particular security, if the commissioner determines that it would be
24 in the public interest.

25 ~~45.~~ 14. Securities issued by the North Dakota education association dues credit trust to
26 members of the North Dakota education association.

27 **SECTION 2. AMENDMENT.** Subsection 1 of section 57-38-01.2 of the North Dakota
28 Century Code is amended and reenacted as follows:

29 1. The taxable income of an individual, estate, or trust as computed pursuant to the
30 provisions of the United States Internal Revenue Code of 1954, as amended, shall
31 be:

- 1 a. Reduced by any interest received from obligations of the United States that is
2 included in taxable income or in the computation thereof on the federal return.
- 3 b. Reduced by any other income included in the taxable income, or in the
4 computation thereof, on the federal return which is exempt from taxation by
5 this state because of the provisions of the Constitution of North Dakota or the
6 Constitution of the United States.
- 7 c. Reduced by the amount of federal income tax liability, but not social security
8 and self-employment taxes, as computed under chapter 1 of the Internal
9 Revenue Code of 1954, as amended, for the same taxable year for which the
10 North Dakota return is being filed, to the extent that such taxes are computed
11 upon income which becomes a part of the North Dakota taxable income.
12 Provided, that no adjustment to federal income taxes, paid or accrued, is
13 required because of allowable deductions to federal taxable income made
14 under the cost recovery provisions of subdivision b of subsection 5 of section
15 57-38-01. However, such federal income tax liability must be reduced by all
16 credits thereon except credits for federal income tax withholding payments,
17 estimates of federal income tax, and income taxes of foreign countries.
18 Federal income taxes for prior periods assessed against the taxpayer by
19 reason of audit or other adjustment by the internal revenue service, or
20 voluntary disclosure by the taxpayer, are not deductible except in the period in
21 which income so taxed was reported or reportable or in which an adjustment
22 was required but only after an adjustment is made by or with the office of the
23 state tax commissioner. A refund of federal income tax must be reported and
24 included in North Dakota taxable income in the year in which the tax was
25 originally deducted.
- 26 d. (1) Reduced by three hundred dollars if the return filed is a joint return by
27 husband and wife. If separate returns are filed by husband and wife, no
28 deduction can be taken under this subdivision. This subdivision shall
29 not be applicable to estates or trusts.
- 30 (2) Reduced by three hundred dollars if the return filed is the return of a
31 "head of household" as defined by the United States Internal Revenue

- 1 Code of 1954, as amended; provided, that the term "head of
2 household" shall also include a "surviving spouse" as defined by said
3 code.
- 4 (3) Reduced by seven hundred fifty dollars for each adopted child who is
5 under the age of twenty-one years and who is either irreversibly
6 mentally retarded or, on the basis of the annual findings of a licensed
7 physician, is blind or disabled as determined pursuant to the provisions
8 of title XVI of the United States Social Security Act, provided the return
9 filed is the return of the parent of an adopted child and such child
10 qualifies as a dependent of such parent for federal income tax
11 purposes.
- 12 (4) Reduced, up to a maximum of one thousand dollars, by the amount of
13 filing fees, attorney's fees, and travel costs incurred in connection with
14 an adoption and by the actual costs paid to a licensed child-placing
15 agency in making the adoptive study and in supervising and evaluating
16 the adoptive placement. Provided, however, that the reduction allowed
17 under this paragraph shall apply only to such adoption expenses of a
18 child who qualifies under the provisions of paragraph 3.
- 19 (5) Reduced by one thousand seven hundred fifty dollars for each child
20 under the age of twenty-one years adopted by the taxpayer. The
21 reduction under this paragraph may be claimed only by an adoptive
22 parent of an adopted child and the child must qualify as a dependent of
23 the adoptive parent for federal income tax purposes. The reduction
24 may be claimed by only one spouse, for spouses filing separately under
25 this chapter. The reduction provided by this paragraph may be claimed
26 for the taxable year in which the adoption becomes final and any
27 unused portion of the reduction may be carried forward by the taxpayer
28 for up to five taxable years. The reduction does not apply to the
29 adoption of children of the taxpayer's spouse.

- 1 e. Reduced by the actual amount of the medical expenses that were incurred but
2 not allowed on the federal return by reason of the federal medical deduction
3 limitation.
- 4 f. Increased by the amount of any income taxes, or franchise or privilege taxes
5 measured by income, to the extent that such taxes were deducted to
6 determine federal taxable income.
- 7 g. Increased by the amount of any interest and dividends from foreign securities
8 and from securities of state and their political subdivisions exempt from
9 federal income tax; provided, that interest upon obligations of the state of
10 North Dakota or any of its political subdivisions shall not be included.
- 11 h. Except for residents, reduced by the amount of net income not allocated and
12 apportioned to this state under the provisions of chapter 57-38.1, but only to
13 the extent that the amount of net income not allocated and apportioned to this
14 state under the provisions of that chapter is not included in any adjustment
15 made pursuant to the preceding subdivisions.
- 16 i. ~~Repealed by S.L. 2003, ch. 529, § 3.~~
- 17 j. Reduced by any amount, up to a maximum of five thousand dollars, received
18 pursuant to the firefighters relief associations authorized by chapters 18-05
19 and 18-11, policemen's pension funds authorized by chapter 40-45, or the
20 highway patrolmen's retirement system authorized by chapter 39-03.1;
21 provided, however, that the adjustment provided in this subdivision shall be
22 reduced by any amount received pursuant to the federal Social Security Act.
- 23 ~~k.~~ j. Reduced by any amount, up to a maximum of one thousand dollars, received
24 by any person as payment for services performed while on active duty in the
25 armed forces of the United States or as payment for attending periodic
26 training meetings for drill and instruction as a member of the national guard or
27 of a reserve unit of the armed forces of the United States. However, persons
28 serving in the armed forces of the United States, except field grade and
29 general officers, who are stationed outside of any state of the United States or
30 the District of Columbia for not less than thirty days during the tax year shall
31 be allowed an additional reduction of up to three hundred dollars per month

1 for each month or portion of a month received as payment for services
2 performed while on active duty at such location.

3 ~~t.~~ k. Reduced by any amount, up to a maximum of five thousand dollars, received
4 by any person fifty years of age or older as retired military personnel pay for
5 service in the United States army, navy, air force, coast guard, or marine
6 corps or reserve components thereof; provided, however, that the adjustment
7 provided in this subdivision shall be reduced by any amount received
8 pursuant to the federal Social Security Act.

9 ~~m.~~ l. Reduced by the amount of interest received during that taxable year on a
10 contract for deed on the sale of eighty or more acres [32.37 or more hectares]
11 of agricultural land to a beginning farmer. The contract for deed must extend
12 for not less than ten years and have an annual interest rate equal to or less
13 than the minimum rate allowed by the internal revenue service before interest
14 is imputed. In order for an individual, estate, or trust to qualify for this
15 reduction, the taxpayer must obtain a statement from the buyer stating that
16 the buyer meets all requirements of the beginning farmer definition, together
17 with such other information as the state tax commissioner may require. The
18 value placed on any real property located in North Dakota and owned by the
19 buyer must be the amount listed as the true and full value on the most recent
20 real estate tax statement for that particular piece of property. In determining
21 the net worth of any person, including the person's dependents and spouse, if
22 any, for purposes of this subdivision, the value of their equity in their principal
23 residence, the value of one personal or family motor vehicle, and the value of
24 their household goods, including furniture, appliances, musical instruments,
25 clothing, and other personal belongings may not be included. This statement
26 must be filed along with the income tax return. For the purposes of this
27 subdivision, "beginning farmer" means any person who is:
28 (1) A resident of this state.
29 (2) Receiving more than one-half of that person's gross annual income
30 from farming, unless the person initially commences farming during the
31 tax year for which an adjustment will be claimed under this subdivision.

- 1 (3) Intending to use any farmland to be purchased or rented for agricultural
2 purposes.
- 3 (4) Except for contracts for deed entered into prior to July 1, 1985, having
4 adequate training by education in the type of farming operation which
5 the person wishes to begin through satisfactory participation in the adult
6 farm management education program of the state board for career and
7 technical education or an equivalent program approved by the
8 agriculture commissioner.
- 9 (5) Having, including the net worth of any dependents and spouse, a net
10 worth of less than one hundred thousand dollars.
- 11 ~~n~~. m. Reduced by the amount of interest received during that taxable year on a
12 contract on the sale of any land, buildings, improvements, and equipment
13 associated with the land, buildings, or improvements, used or useful in
14 connection with a revenue-producing enterprise to a beginning businessman,
15 excluding beginning farmers as defined in subdivision ~~m~~ l. The contract must
16 extend for not less than ten years and have an annual interest rate equal to or
17 less than the minimum rate allowed by the internal revenue service before
18 interest is imputed. In order for an individual, estate, or trust to qualify for this
19 reduction, the taxpayer must obtain a statement from the buyer containing a
20 list of the buyer's assets and debts and giving the buyer's net worth, together
21 with any other information required by the state tax commissioner. The value
22 placed on any real property located in North Dakota and owned by the buyer
23 shall be the amount listed as the current market value on the most recent real
24 estate tax statement for that particular piece of property. In determining the
25 net worth of any person, including that person's dependents and spouse, if
26 any, the value of their equity in their principal residence, the value of one
27 personal or family motor vehicle, and the value of their household goods,
28 including furniture, appliances, musical instruments, clothing, and other
29 personal belongings is not to be included. This statement is to be filed along
30 with the income tax return. For the purposes of this subdivision, "beginning

- 1 businessman", excluding beginning farmers as defined in subdivision ~~m~~ l,
2 means any person who is:
- 3 (1) A resident of this state.
4 (2) Receiving more than one-half of that person's gross annual income
5 from a revenue-producing enterprise, unless the person initially
6 commences business during the tax year for which an adjustment will
7 be claimed under this subdivision.
8 (3) Intending to use any revenue-producing enterprise purchased or rented
9 for business purposes.
10 (4) Adequately trained, by experience or education, in the type of
11 revenue-producing enterprise which that person wishes to begin.
12 (5) The owner of property with a net worth, including the net worth of
13 property of that person's dependents and spouse, if any, of less than
14 one hundred thousand dollars.
- 15 ~~e~~. n. Reduced by any amount, up to a maximum of three hundred dollars received
16 by any person or six hundred dollars if a joint return is filed, as interest earned
17 from a financial institution located in this state. For purposes of this
18 subdivision, "financial institution" means any organization authorized to do
19 business under state or federal laws relating to financial institutions, including
20 banks and trust companies, savings banks, building and loan associations,
21 savings and loan companies or associations, and credit unions.
- 22 ~~p~~. ~~Repealed by S.L. 1999, ch. 487, § 3.~~
- 23 ~~q~~. ~~Reduced by the amount, up to a maximum of five thousand dollars for any~~
24 ~~person or ten thousand dollars if a joint return is filed, of investment made~~
25 ~~after January 1, 1989, in a venture capital corporation organized pursuant to~~
26 ~~chapter 10-30.1. This deduction may only be taken in the tax year in which~~
27 ~~the taxpayer qualifies for a credit pursuant to chapter 10-30.1. However, a~~
28 ~~taxpayer that makes an investment in a venture capital corporation on or after~~
29 ~~July 1, 1989, is only entitled to a deduction if the venture capital corporation~~
30 ~~uses the funds it receives from the taxpayer to invest or provide financing to~~

- 1 ~~qualified entities, which entities do not include a business or an affiliate of a~~
2 ~~business that owns tax exempt securities.~~
- 3 ~~f.~~ o. Reduced by any amount, up to a maximum of five thousand dollars, received
4 as retirement benefits paid by the United States, a territory or possession or
5 political subdivision thereof, the government of the District of Columbia, or an
6 agency or instrumentality of one or more of the foregoing, other than retired
7 military personnel pay, as exempted in subdivision ~~l~~ k; provided, however, that
8 the adjustment provided in this subdivision must be reduced by any amount
9 received pursuant to the federal Social Security Act.
- 10 ~~s.~~ p. Reduced by the portion of a distribution from a qualified investment fund
11 described in section 57-38-01 which is attributable to investments by the
12 qualified investment fund in obligations of the United States, obligations of
13 North Dakota or its political subdivisions, and any other obligation the interest
14 from which is exempt from state income tax under federal statute or United
15 States or North Dakota constitutional provisions; provided the amount of the
16 distribution excluded under this subdivision is included in federal taxable
17 income.
- 18 ~~t.~~ q. Reduced by an amount equal to the earnings that are passed through to a
19 taxpayer in connection with an allocation and apportionment to North Dakota
20 under chapter 57-35.3.
- 21 ~~u.~~ r. Reduced by the amount received by the taxpayer as payment for services
22 performed when called or ordered to title 10 United States Code federal
23 service as a member of the national guard or reserve member of the armed
24 forces of the United States. An individual claiming the reduction under this
25 subdivision may not also claim the reduction under subdivision ~~k~~ j for the time
26 the individual was under federal orders for active duty and may not claim a
27 reduction on income already excluded from federal taxation due to service in
28 a combat or hazardous duty zone. This subdivision does not apply to federal
29 service while attending annual training, basic military training, professional
30 military education, or active guard and reserve tours for which the member
31 has volunteered.

1 Provided, however, that each adjustment in the above subdivisions authorized
2 under law shall be allowed only to the extent that the adjustment is allocated and
3 apportioned to North Dakota income.

4 **SECTION 3. AMENDMENT.** Subsection 1 of section 57-38-71 of the North Dakota
5 Century Code is amended and reenacted as follows:

- 6 1. "Beginning entrepreneur", excluding beginning farmers as defined in subdivision ~~m~~
7 l of subsection 1 of section 57-38-01.2, means any person who:
- 8 a. Is a resident of this state.
 - 9 b. Receives more than one-half of that person's gross annual income from a
10 revenue-producing enterprise, unless the person initially commences
11 business during the tax year for which a deduction will be claimed under
12 sections 57-38-71 through 57-38-74.
 - 13 c. Intends to use any revenue-producing enterprise purchased or rented for
14 business purposes.
 - 15 d. Has had adequate training, by experience or education, in the type of
16 revenue-producing enterprise which that person wishes to begin.
 - 17 e. Has, including the net worth of that person's dependents and spouse, if any, a
18 net worth of less than one hundred thousand dollars, not including the value
19 of their equity in their principal residence, the value of one personal or family
20 motor vehicle, and the value of their household goods, including furniture,
21 appliances, musical instruments, clothing, and other personal belongings.

22 **SECTION 4. REPEAL.** Chapters 10-30.1 and 10-30.2 of the North Dakota Century
23 Code are repealed.

24 **SECTION 5. RISK CAPITAL STUDY - REPORT TO LEGISLATIVE COUNCIL.** During
25 the 2005-06 interim, [the department of commerce] [the Bank of North Dakota] [a third party
26 with which the legislative council or state agency contracts] shall study risk capital gaps and
27 prospective means to address these gaps and report to the legislative council the results of this
28 study. The purpose of the study is to further define the types of projects for which private risk
29 capital is not readily available and for which there is no public sector program. This study and
30 resulting report must include a review of the status and utilization of existing state risk capital
31 programs administered by the state, including the availability of risk capital for large projects

1 requiring more than twenty million dollars of capital; consideration of possible consolidation,
2 reorganization, repeal, or privatization of state risk capital programs; a review of the eligibility
3 criteria for state risk capital programs; a review of best practices of other states that have
4 successfully addressed risk capital gaps; and recommendations regarding how to strengthen
5 the availability of risk capital in this state.

6 **SECTION 6. EFFECTIVE DATE.** Section 4 of this Act becomes effective on August 1,
7 2007, and sections 1, 2, and 3 of this Act are effective for taxable years beginning after
8 December 31, 2008.