

HOUSE BILL NO. 1043

Introduced by

Representative Toman

1 A BILL for an Act to create and enact a new section to chapter 10-04 of the North Dakota
2 Century Code, relating to the exemption of an open blockchain token from specified securities
3 transactions and dealings; and to amend and reenact section 10-04-02, subsection 19 of
4 section 13-09-02, and section 13-09-03 of the North Dakota Century Code, relating to the
5 definitions of an open blockchain token and virtual currency and excluding an open blockchain
6 token and virtual currency from specified money transmission requirements.

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

8 **SECTION 1. AMENDMENT.** Section 10-04-02 of the North Dakota Century Code is
9 amended and reenacted as follows:

10 **10-04-02. Definitions.**

11 When used in this chapter, unless the context or subject matter otherwise requires:

- 12 1. "Agent" means an individual, other than a broker-dealer, who represents a
13 broker-dealer or an issuer or is self-employed in effecting or attempting to effect
14 purchases or sales of securities. However, a partner, officer, or director of a
15 broker-dealer, or an individual having a similar status or performing similar functions is
16 an agent only if the individual otherwise comes within the term.
- 17 2. "Bank" means:
 - 18 a. A bank institution organized under the laws of the United States;
 - 19 b. A member bank of the federal reserve system;
 - 20 c. Any other banking institution, whether or not incorporated, doing business under
21 the laws of a state or of the United States, a substantial portion of the business of
22 which consists of receiving deposits or exercising fiduciary powers similar to
23 those permitted to be exercised by national banks under the authority of the
24 comptroller of the currency pursuant to section 1 of Public Law 87-722, and

- 1 which is supervised and examined by a state or federal agency having
2 supervision over banks, and which is not operated for the purpose of evading this
3 chapter; and
- 4 d. A receiver, conservator, or other liquidating agent of any institution or firm
5 included in subdivision a, b, or c.
- 6 3. "Broker-dealer" means a person engaged in the business of effecting transactions in
7 securities issued by another person or by such person for the account of others or for
8 the person's own account. The term does not include:
- 9 a. An agent; or
- 10 b. A person that facilitates the exchange of an open blockchain token; or
- 11 c. A bank or savings institution if its activities as a broker-dealer are limited to those
12 specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if
13 limited to unsolicited transactions; 3(a)(5)(B) and 3(a)(5)(C) of the Securities
14 Exchange Act of 1934 or a bank that satisfies the conditions described in
15 subsection 3(a)(4)(E) of the Securities Exchange Act of 1934.
- 16 4. "Commissioner" means the securities commissioner of this state.
- 17 5. "Department" means the state securities department.
- 18 6. "Depository institution" means:
- 19 a. A bank; or
- 20 b. A savings institution, trust company, credit union, or similar institution that is
21 organized or chartered under the laws of a state or of the United States,
22 authorized to receive deposits, and supervised and examined by an official or
23 agency of a state or the United States if its deposits or share accounts are
24 insured to the maximum amount authorized by statute by the federal deposit
25 insurance corporation, the national credit union shares insurance fund, or a
26 successor authorized by federal law. The term does not include:
- 27 (1) An insurance company or other organization primarily engaged in the
28 business of insurance;
- 29 (2) A Morris plan bank; or
- 30 (3) An industrial loan company.

- 1 7. "Federal covered adviser" means a person who is registered under section 203 of the
2 Investment Advisers Act of 1940.
- 3 8. "Federal covered security" means a security that is, or upon completion of a
4 transaction will be, a covered security pursuant to section 18(b) of the Securities Act of
5 1933 or rules or regulations adopted under that Act.
- 6 9. "Institutional investor" means any of the following, whether acting for itself or for others
7 in a fiduciary capacity:
- 8 a. A depository institution or international banking institution;
- 9 b. An insurance company;
- 10 c. A separate account of an insurance company;
- 11 d. An investment company as defined in the Investment Company Act of 1940;
- 12 e. A broker-dealer under the Securities Exchange Act of 1934;
- 13 f. An employee pension, profit-sharing, or benefit plan if the plan has total assets in
14 excess of ten million dollars or its investment decisions are made by a named
15 fiduciary, as defined in the Employee Retirement Income Security Act of 1974,
16 that is a broker-dealer registered under the Securities Exchange Act of 1934, an
17 investment adviser registered or exempt from registration under the Investment
18 Advisers Act of 1940, an investment adviser registered under this Act, a
19 depository institution, or an insurance company;
- 20 g. A plan established and maintained by a state, a political subdivision of a state, or
21 an agency or instrumentality of a state or a political subdivision of a state for the
22 benefit of its employees, if the plan has total assets in excess of ten million
23 dollars or its investment decisions are made by a duly designated public official or
24 by a named fiduciary, as defined in the Employee Retirement Income Security Act
25 of 1974, that is a broker-dealer registered under the Securities Exchange Act of
26 1934, an investment adviser registered or exempt from registration under the
27 Investment Advisers Act of 1940, an investment adviser registered under this
28 chapter, a depository institution, or an insurance company;
- 29 h. A trust, if it has total assets in excess of ten million dollars, its trustee is a
30 depository institution, and its participants are exclusively plans of the types
31 identified in subdivision f or g, regardless of the size of their assets, except a trust

- 1 that includes as participants self-directed individual retirement accounts or similar
2 self-directed plans;
- 3 i. An organization described in section 501(c)(3) of the Internal Revenue Code,
4 corporation, Massachusetts trust or similar business trust, limited liability
5 company, or partnership, not formed for specific purpose of acquiring the
6 securities offered, with total assets in excess of ten million dollars;
- 7 j. A small business investment company licensed by the small business
8 administration under section 301(c) of the Small Business Investment Act of 1958
9 with total assets in excess of ten million dollars;
- 10 k. A private business development company as defined in section 202(a)(22) of the
11 Investment Advisers Act of 1940 with total assets in excess of ten million dollars;
- 12 l. A federal covered investment adviser acting for its own account;
- 13 m. A qualified institutional buyer as defined in rule 144A(a)(1), other than rule
14 144A(a)(1)(i)(H), adopted under the Securities Act of 1933;
- 15 n. A major United States institutional investor as defined in rule 15a-6(b)(4)(i)
16 adopted under the Securities Exchange Act of 1934; or
- 17 o. Any other person, other than an individual, of institutional character with total
18 assets in excess of ten million dollars not organized for the specific purpose of
19 evading this chapter.
- 20 10. "Investment adviser" means ~~any~~any a person who, for compensation, engages in the
21 business of advising others, either directly or through publications or writings, as to the
22 value of securities or as to the advisability of investing in, purchasing, or selling
23 securities, or who, for compensation and as a part of a regular business, issues or
24 promulgates analyses or reports concerning securities. The term includes financial
25 planners and other persons who, as an integral component of other financially related
26 services, provide the foregoing investment advisory services to others for
27 compensation and as part of a business or who hold themselves out as providing the
28 foregoing investment advisory services to others for compensation. The term does not
29 include:
- 30 a. An investment adviser representative.
- 31 b. A bank, savings institution, or trust company.

- 1 c. A lawyer, accountant, engineer, or teacher whose performance of these services
2 is solely incidental to the practice of the person's profession.
- 3 d. A broker-dealer or its agent whose performance of these services is solely
4 incidental to the conduct of business as a broker-dealer and who receives no
5 special compensation for them.
- 6 e. A publisher of any bona fide newspaper, news column, newsletter, news
7 magazine, or business or financial publication or service, whether communicated
8 in hard copy form, or by electronic means, or otherwise, that does not consist of
9 the rendering of advice on the basis of the specific investment situation of each
10 client.
- 11 f. A federal covered adviser.
- 12 g. A person who is excluded by the Investment Advisers Act of 1940 from the
13 definition of investment adviser.
- 14 h. Such other persons not within the intent of this subsection as the commissioner
15 may by rule or order designate.
- 16 11. a. "Investment adviser representative" means an individual employed by or
17 associated with an investment adviser or federal covered adviser and who:
18 (1) ~~Makes any recommendations~~ a recommendation or otherwise renders
19 advice regarding securities directly to advisory clients;
20 (2) Manages the accounts or portfolios of clients;
21 (3) Determines which recommendations or advice regarding securities should
22 be given;
23 (4) Provides investment advice or holds out as providing investment advice,
24 receives compensation to solicit, offer, or negotiate for the sale of or sells
25 investment advisory services; or
26 (5) Immediately supervises employees in the performance of any of the
27 foregoing.
- 28 b. The term does not include an individual who:
29 (1) Is employed by or associated with a federal covered investment adviser,
30 unless the individual has a "place of business" in this state, as that term is

1 defined by the securities and exchange commission pursuant to
2 section 203A of the Investment Advisers Act of 1940.

3 (2) Is an agent whose performance of investment advice is solely incidental to
4 the individual acting as an agent and who does not receive special
5 compensation for investment advisory services.

6 (3) Performs only clerical or ministerial acts.

7 12. a. "Issuer" means ~~every~~a person ~~who~~that issues or proposes to issue ~~any~~a security,
8 except that:

9 a. (1) With respect to certificates of deposit, voting-trust certificates, collateral trust
10 certificates, or shares in an unincorporated investment trust, issuer means
11 the person or persons performing the acts and assuming the duties of
12 depositor or manager pursuant to the provisions of the trust or other
13 agreement or instrument under which such securities are issued.

14 b. (2) With respect to equipment trust certificates or like securities serving the
15 same purpose, issuer means the person by whom the equipment or
16 property is or will be used or to which the property or equipment is or will be
17 leased or conditionally sold or that is otherwise contractually responsible for
18 assuring payment of the certificate.

19 e. (3) With respect to fractional interests in an oil, gas, or other mineral lease or in
20 payments out of production under a lease, right, or royalty, issuer means the
21 owner of any such right or ~~any~~an interest in such lease or in payments out
22 of production under a lease, right, or royalty, whether whole or fractional,
23 ~~that creates~~creating fractional interests for the purpose of sale.

24 d. (4) With respect to a fractional or pooled interest in a viatical settlement
25 contract, issuer means the person who creates, for the purpose of sale, the
26 fractional or pooled interest. The issuer of a viatical settlement contract that
27 is not fractionalized or pooled means the person effecting the transactions
28 with the investors in such contracts.

29 b. "Issuer" does not include a developer or seller of an open blockchain token
30 unless otherwise provided under section 2 of this Act.

1 13. "Offer for sale" or "offer to sell" means everyan attempt or offer to dispose of, or
2 solicitation of an order or offer to buy, a security or interest in a security for value.

3 14. "Open blockchain token" means a digital unit:

4 a. Created in response to the verification or collection of a specified number of
5 transactions relating to a digital ledger or database or which is based on random
6 selection or the possession or age of existing units, or a combination of those
7 methods.

8 b. Recorded in a digital ledger or database that is chronological, consensus-based,
9 decentralized, and mathematically verified in nature, especially relating to the
10 supply of units and their distribution; and

11 c. Capable of being traded or transferred without an intermediary or custodian of
12 value.

13 15. "Person" means an individual, corporation, limited liability company, partnership,
14 association, joint venture, trust, government, governmental subdivision, agency, or
15 instrumentality or any other legal or commercial entity.

16 ~~15-16.~~ "Place of business" of a broker-dealer, an investment adviser, or a federal covered
17 investment adviser means:

18 a. An office at which the broker-dealer, investment adviser, or federal covered
19 investment adviser regularly provides brokerage or investment advice or solicits,
20 meets with, or otherwise communicates with customers or clients; or

21 b. Any other location that is held out to the general public as a location at which the
22 broker-dealer, investment adviser, or federal covered investment adviser provides
23 brokerage or investment advice or solicits, meets with, or otherwise
24 communicates with customers or clients.

25 ~~16-17.~~ "Principal place of business" of a broker-dealer or an investment adviser means the
26 executive office of the broker-dealer or investment adviser from which the officers,
27 partners, or managers of the broker-dealer or investment adviser direct, control, and
28 coordinate the activities of the broker-dealer or investment adviser.

29 ~~17-18.~~ "Record" except in phrases "of record", "official record", and "public record" means
30 information that is inscribed on a tangible medium or that is stored in an electronic or
31 other medium and is retrievable in perceivable form.

1 ~~18-19.~~ "Sale" or "sell" means everya sale, contract to sell, or disposition of a security or
2 interest in a security for value, and everya contract to make any such sale or
3 disposition. The term includes:

4 a. AnyA security given or delivered with, or as a bonus on account of anya purchase
5 of securities or any other thing, must be conclusively presumed to constitute a
6 part of the subject of such purchase and to have been sold for value.

7 b. A sale or offer of a warrant or right to purchase or subscribe to another security of
8 the same or another issuer and a sale or offer of a security ~~that gives~~giving the
9 holder a present or future right or privilege to convert the security into another
10 security of the same or another issuer, including an offer of the other security.

11 ~~19-20.~~ "Security" means anya note; stock; treasury stock; bond; debenture; evidence of
12 indebtedness; certificate of interest or participation in any profit-sharing agreement;
13 certificate of interest or participation in an oil, gas, or mining title or lease or in
14 payments out of production under such a title or lease; collateral trust certificate;
15 preorganization certificate or subscription; transferable share; investment contract;
16 viatical or life settlement contract or a fractionalized or pooled interest therein;
17 program, contract, or other arrangement in which persons invest in a common
18 enterprise the returns of which depend to any extent upon inducing other persons to
19 participate or invest in the enterprise; investment of money or money's worth including
20 goods furnished or services performed in the risk capital of a venture with the
21 expectation of profit or some other form of benefit to the investor when the investor
22 has no direct control over the investment or policy decisions of the venture;
23 voting-trust certificate; certificate of deposit for a security; foreign currency commodity
24 contract, as used in chapter 51-23; or beneficial interest in title to property, profits, or
25 earnings; or, in general, any interest or instrument commonly known as a "security"; or
26 any certificate of interest or participation in, temporary or interim certificate for, receipt
27 for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.
28 The term does not include an open blockchain token.

29 ~~20-21.~~ "State" means a state of the United States, the District of Columbia, Puerto Rico, the
30 United States Virgin Islands, or any territory or insular possession subject to the
31 jurisdiction of the United States.

- 1 ~~21-22.~~ "Viatical or life settlement contract" means an agreement for the purchase, sale,
2 assignment, transfer, devise, or bequest of any portion of the death benefit or
3 ownership of a life insurance policy or certificate, for consideration that is less than the
4 expected death benefit of the life insurance policy or certificate. ~~"Viatical or life-~~
5 ~~settlement contract"~~The term does not include:
- 6 a. The assignment, transfer, sale, devise, or bequest of a death benefit, life
7 insurance policy, or certificate of insurance by the owner to the provider pursuant
8 to chapter 26.1-33.4;
 - 9 b. The assignment of a life insurance policy to a bank or depository institution; or
 - 10 c. The exercise of accelerated benefits pursuant to the terms of a life insurance
11 policy issued in accordance with the insurance laws of this state.

12 **SECTION 2.** A new section to chapter 10-04 of the North Dakota Century Code is created
13 and enacted as follows:

14 **Open blockchain token exemption.**

- 15 1. A developer or seller of an open blockchain token is not the issuer of a security and is
16 not subject to the provisions of this chapter if:
 - 17 a. The token has not been marketed by the developer or seller as an investment;
 - 18 b. The token is exchangeable for goods or services; and
 - 19 c. The developer or seller of the token has not entered a repurchase agreement or
20 entered an agreement to locate a buyer for the token.
- 21 2. A person that facilitates the exchange of an open blockchain token is not a broker-
22 dealer or a person that otherwise deals in securities under this chapter and is not
23 subject to this chapter if:
 - 24 a. The person has a reasonable and good-faith belief a token subject to exchange:
 - 25 (1) Conforms to the requirements of subdivisions a and b of subsection 1; and
 - 26 (2) Is not the subject of a repurchase agreement or the subject of an agreement
27 to locate a buyer for the token; and
 - 28 b. The person takes reasonably prompt action to terminate the exchange of a token
29 not conforming to the requirements of this subsection.

30 **SECTION 3.** Subsection 19 of section 13-09-02 of the North Dakota Century Code is
31 created and enacted as follows:

- 1 19. "Virtual currency" means a type of digital representation of value that is:
2 a. Used as a medium of exchange, unit of account, or store of value; and
3 b. Not recognized as legal tender by the United States government.

4 **SECTION 4. AMENDMENT.** Section 13-09-03 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **13-09-03. Exclusions.**

7 This chapter does not apply to:

- 8 1. The United States or ~~any~~a department, agency, or instrumentality thereof;
9 2. The United States post office;
10 3. The state or ~~any~~a political subdivisions thereof;
11 4. Banks, bank holding companies, credit unions, building and loan associations, savings
12 and loan associations, or savings banks or mutual banks organized under the laws of
13 ~~any~~a state or the United States, but this exemption does not extend to any other
14 person acting on behalf of ~~any such~~the excluded entity;
15 5. The provision of electronic transfer of government benefits for ~~any~~a federal, state, or
16 county governmental agency as defined in federal reserve board regulation E, by a
17 contractor for and on behalf of the United States or ~~any~~a department, agency, or
18 instrumentality thereof, or ~~any~~a state or any political subdivisions thereof; ~~and~~
19 6. Authorized delegates of a licensee, acting within the scope of authority conferred by a
20 written contract as described in section 13-09-15-;.
21 7. A person that develops, sells, or facilitates the exchange of an open blockchain token
22 as defined in section 10-04-02; or
23 8. A person that buys, sells, issues, or takes custody of payment instruments or stored
24 value in the form of virtual currency, or receives virtual currency for transmission to a
25 location within or outside the United States by any means.