

Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2214

Introduced by

Senators Patten, Rummel, Hogue

Representatives Stemen, Swiontek, Warrey

1 A BILL for an Act to amend and reenact subsection 4 of section 6-01-07.1, subsections 4 and 5
2 of section 10-04-02, sections 10-04-03 and 10-04-16, paragraph 2 of subdivision a of
3 subsection 1 of section 10-04-16.1, section 26.1-06-12, subsection 3 of section 43-10.1-01,
4 subsection 2 of section 43-23.1-05, subsection 4 of section 51-19-02, subsection 3 of section
5 51-23-02, subsection 1 of section 51-23-15, subsection 1 of section 54-12-08, subsection 1 of
6 section 54-59-22.1, subsection 4 of section 57-38.5-01, and subsection 5 of section 57-38.6-01
7 of the North Dakota Century Code, relating to the insurance commissioner assuming the duties
8 of the securities commissioner; and to provide an appropriation.

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

10 **SECTION 1. AMENDMENT.** Subsection 4 of section 6-01-07.1 of the North Dakota Century
11 Code is amended and reenacted as follows:

12 4. The commissioner may furnish information and enter sharing agreements as to
13 matters of mutual interest to an official or examiner of the federal reserve system,
14 federal deposit insurance corporation, federal home loan bank board, national credit
15 union administration, office of thrift supervision, comptroller of the currency, any other
16 federal government agency, insurance commissioner, ~~office of the securities~~
17 ~~commissioner~~, regulatory trade associations, any state bank or credit union
18 supervisors or supervisors of other licensed entities of other states, or a nationwide
19 multistate licensing system.

20 **SECTION 2. AMENDMENT.** Subsections 4 and 5 of section 10-04-02 of the North Dakota
21 Century Code are amended and reenacted as follows:

22 4. "Commissioner" means the ~~securities~~insurance commissioner of this state.
23 5. "Department" means the ~~state securities~~insurance department.

1 **SECTION 3. AMENDMENT.** Section 10-04-03 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **10-04-03. Administration of chapter.**

4 1. ~~The state securities department is under the supervision of a chief officer designated~~
5 ~~as the securities commissioner. The securities commissioner must be appointed by~~
6 ~~the governor and confirmed by the senate and shall hold office for a term of four years,~~
7 ~~beginning on the first day of July following a national presidential election and~~
8 ~~continuing until a successor has been appointed, confirmed by the senate, and has~~
9 ~~qualified, unless removed as herein provided. If the senate is not in session, the~~
10 ~~governor may make an interim appointment, and the interim appointee may hold office~~
11 ~~until the senate confirms or rejects the appointment. The commissioner may not own~~
12 ~~or control any security required to be registered under this chapter, or any security~~
13 ~~which is exempt based on the approval of the securities department. The~~
14 ~~commissioner may not be an officer, director, or employee of any broker-dealer, agent,~~
15 ~~investment adviser, or investment adviser representative required to be registered~~
16 ~~under this chapter, or of a federal covered adviser required to be notice filed under this~~
17 ~~chapter. The governor may remove from office any commissioner who fails to~~
18 ~~discharge faithfully the duties of office or who becomes disqualified under the~~
19 ~~provisions of this section.~~

20 a. ~~It is the prime duty of the commissioner to administer the provisions of this~~
21 ~~chapter. The commissioner shall receive a salary within the amount appropriated~~
22 ~~for salaries by the legislative assembly. The commissioner shall use a seal with~~
23 ~~the words "securities commissioner, North Dakota" and such design as the~~
24 ~~commissioner may prescribe engraved thereon by which seal the commissioner~~
25 ~~may authenticate documents used in the administration of this chapter.~~

26 b. ~~The commissioner may employ such employees as are necessary for the~~
27 ~~administration of this chapter. In the absence or disability of the commissioner,~~
28 ~~the deputy or designee of the commissioner may administer the provisions of this~~
29 ~~chapter as acting commissioner.~~

30 c. The commissioner may not:

- 1 (1) Own or control any security required to be registered under this chapter or
2 any security that is exempt based on the approval of the department; or
3 (2) Be an officer, director, or employee of any broker-dealer, agent, investment
4 adviser, or investment adviser representative required to be registered
5 under this chapter, or of a federal covered adviser required to be notice-filed
6 under this chapter.
- 7 2. The commissioner ~~shall have authority to administer~~may:
- 8 a. Administer oaths in, and ~~to~~ prescribe forms for, all matters arising under this
9 chapter. ~~The commissioner may from time to time make;~~ and
10 b. Adopt, amend, and rescind such rules, forms, and orders as are necessary under
11 this chapter, including rules and forms governing registration statements,
12 applications and reports, and defining any terms, whether or not used in this
13 chapter, if the definitions are consistent with this chapter.
- 14 3. The commissioner shall cooperate with the administrators of the securities laws of
15 other states and of the United States with a view toward achieving maximum
16 uniformity in the interpretation of like provisions of the laws administered by them and
17 in the forms which are required to be filed under such law.
- 18 ~~3.~~ ~~In addition to their regular compensation, the commissioner and the commissioner's~~
19 ~~employees shall be paid travel expenses necessary and actually incurred in the~~
20 ~~performance of their duties.~~
- 21 4. a. A special fund is established in the state treasury and designated as the investor
22 education and technology fund. The commissioner may deposit the following
23 moneys into the investor education and technology fund:
- 24 a. (1) Payments for tuition or other costs associated with educational services or
25 materials provided by the department.
- 26 b. (2) Grants or donations for the purpose of investor education received by the
27 commissioner from any public or private source.
- 28 e. (3) Civil penalties assessed by the commissioner under the Securities Act of
29 1951, if the commissioner finds ~~that~~the violations or alleged violations
30 underlying the assessment of civil penalties:

(1) ~~The violations or alleged violations underlying the assessment of civil penalties involve~~

(a) Involve repeat violations, involve numerous investors, or appear to have been perpetrated on a systematic basis; and

(2) ~~The violations or alleged violations underlying the assessment of civil penalties could~~

(b) Could have been prevented or significantly curtailed had the individual investors involved in the matter been more knowledgeable about financial concepts in general, or about any specific laws, practices, or procedures relating to the securities industry.

b. The commissioner shall maintain and administer the investor education and technology fund. The moneys in the fund are appropriated to provide education services to the public relating to any of the financial services industries, including the securities industry, and to provide for the technology needs of the department, including the purchase or rental of equipment or software, servicing of the equipment or software, and training the commissioner's staff in the use of the equipment or software.

5. A special fund is established in the state treasury and designated as the securities ~~department~~ special fund. All fees, civil penalties, or other moneys collected under this chapter must be deposited in the securities ~~department~~ special fund, except funds permitted to be deposited into the investor education and technology fund under subsection 4 or civil penalties collected from enforcement actions for the purpose of distribution to aggrieved investors, which may be deposited in the investor restitution fund. Funds in the investor restitution fund are appropriated to the ~~securities-~~ commissioner on a continuing basis for distribution to aggrieved investors.

a. The moneys deposited in the securities ~~department~~ special fund are reserved for use by the ~~securities department~~ commissioner to defray the expenses of the department in the discharge of administrative and regulatory powers and duties of the department ~~as prescribed by law~~ under this chapter. Deposits under this subdivision are subject to the applicable laws relating to the appropriations of state funds and to the deposit and expenditure of state moneys. The ~~securities-~~

1 commissioner is responsible for the proper expenditure of these moneys as
2 provided by law.

3 b. ~~The office of management and budget shall transfer any balance in the securities-~~
4 ~~department special fund in excess of the amounts necessary for department~~
5 ~~expenditures pursuant to the department's biennial appropriation to the general~~
6 ~~fund. Except as otherwise provided by law, after the fiscal year has been closed~~
7 ~~and all expenses relating to the fiscal year have been accounted for, the office of~~
8 ~~management and budget shall transfer any balance remaining in the securities~~
9 ~~special fund that exceeds one million dollars to the general fund.~~

10 6. The commissioner may honor requests from interested persons for the issuance of a
11 statement or opinion concerning the applicability of this chapter or the rules adopted
12 under this chapter to any transaction or proposed transaction ~~which~~that may be
13 subject to this chapter. Any such request must be accompanied by a nonrefundable
14 fee of one hundred fifty dollars.

15 **SECTION 4. AMENDMENT.** Section 10-04-16 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **10-04-16. Orders, injunctions, and prosecutions for violations - Civil penalty.**

18 If it appears to the commissioner, either upon complaint or otherwise, that any person has
19 engaged in, or is engaging in, or is about to engage in any act or practice or transaction ~~that is~~
20 prohibited by this chapter or by any order of the commissioner issued under this chapter or
21 which is declared to be illegal ~~in~~under this chapter, the commissioner may:

22 1. Issue any order, including cease and desist, rescission, stop, and suspension orders,
23 which the commissioner deems necessary or appropriate in the public interest or for
24 the protection of investors. An order of the commissioner is effective upon issuance.
25 The commissioner may, in addition to any other remedy authorized by this chapter,
26 impose by order and collect a civil penalty against any person found in an
27 administrative action to have violated any provision of this chapter, or any rule or order
28 adopted or issued under this chapter, in an amount not to exceed ten thousand dollars
29 for each violation. The commissioner may bring actions to recover penalties pursuant
30 to this section in district court. A person aggrieved by an order issued pursuant to this
31 subsection may request a hearing before the commissioner if a written request is

made within fifteen days after receipt of the order. If a request for hearing is made under this subsection, the commissioner shall schedule a hearing within a reasonable time. Subsections 3 and 4 of section 10-04-12 apply to any hearing conducted under this subsection. If, after a hearing, the commissioner sustains an order previously issued, the sustaining order is subject to appeal to the district court of Burleigh County according to the procedures set forth in chapter 28-32. Any order issued under this subsection is a final order if it is properly served and no hearing was requested within the required timeline. If an order issued under this subsection is sustained or modified after a hearing held in accordance with section 10-04-12, the order sustaining or modifying that order is a final order. If the final order is not appealed in accordance with the procedures set forth in chapter 28-32 or if the final order is sustained on appeal, the ~~securities department~~commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

2. Apply to the district court of any county in this state for an injunction restraining the person and the person's agents, employees, partners, officers, and directors from continuing the act, practice, or transaction or engaging ~~therein~~ or doing any acts ~~in furtherance thereof~~that further the practice or transaction, and for such other and further relief as the facts warrant. In any proceeding for an injunction, the commissioner may apply for and on due showing be issued the court's subpoena requiring the appearance ~~forthwith~~ of any defendant and the defendant's agents, employees, partners, officers, or directors, and the production of the documents, books, and records necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant the injunction as the facts warrant, and a receiver or conservator may be appointed for the defendant or the defendant's assets, and the court may assess civil penalties in an amount not to exceed ten thousand dollars for each violation of this chapter, and any rules ~~promulgated thereunder~~adopted or orders issued ~~thereunder~~under this chapter. The court ~~shall~~may not require the commissioner to post a bond.

3. Refer any evidence available concerning the act, practice, or transaction to the appropriate criminal prosecutor who may, with or without the reference, institute the necessary criminal proceedings. The prosecutor may apply for and on due showing be issued the court's subpoena requiring the appearance ~~forthwith~~ of any defendant and the defendant's agents, employees, partners, officers, and directors, and the production of any documents, books, and records necessary for the prosecution of the criminal proceedings.

SECTION 5. AMENDMENT. Paragraph 2 of subdivision a of subsection 1 of section 10-04-16.1 of the North Dakota Century Code is amended and reenacted as follows:

- (2) ~~No~~A person is not liable to a broker-dealer, agent, investment adviser, federal covered adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required or requested by the securities department ~~pursuant to~~under this subsection or required to be maintained under section 10-04-10.3, unless the person knew, or should have known at the time the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

SECTION 6. 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~~provided in the securities laws of this state.

SECTION 7. AMENDMENT. Subsection 3 of section 43-10.1-01 of the North Dakota Century Code is amended and reenacted as follows:

3. "Commissioner" means the ~~securities~~insurance commissioner.

SECTION 8. AMENDMENT. Subsection 2 of section 43-23.1-05 of the North Dakota Century Code is amended and reenacted as follows:

2. Unless the method of disposition is adopted for the purpose of evasion of this chapter, the registration provisions of this chapter do not apply to:
- a. Offers and dispositions of securities currently registered with the North Dakota ~~securities commissioner~~insurance department;

- 1 b. A subdivision as to which the plan of disposition is to dispose to ten or fewer
2 persons; or
3 c. A subdivision as to which the commission has granted an exemption as provided
4 in section 43-23.1-11.

5 **SECTION 9. AMENDMENT.** Subsection 4 of section 51-19-02 of the North Dakota Century
6 Code is amended and reenacted as follows:

- 7 4. "Commissioner" means the ~~securities~~insurance commissioner.

8 **SECTION 10. AMENDMENT.** Subsection 3 of section 51-23-02 of the North Dakota
9 Century Code is amended and reenacted as follows:

- 10 3. "Commissioner" means the ~~securities~~insurance commissioner ~~of this state~~.

11 **SECTION 11. AMENDMENT.** Subsection 1 of section 51-23-15 of the North Dakota Century
12 Code is amended and reenacted as follows:

- 13 1. This chapter must be administered by the ~~securities~~insurance commissioner.

14 **SECTION 12. AMENDMENT.** Subsection 1 of section 54-12-08 of the North Dakota
15 Century Code is amended and reenacted as follows:

- 16 1. After consultation with the head of the state department or institution or with the state
17 board, commission, committee, or agency affected, the attorney general may appoint
18 assistant or special assistant attorneys general to represent the state board,
19 commission, committee, or agency. A state officer, head of any state department,
20 whether elected or appointed, or state department, board, commission, committee, or
21 agency may not employ legal counsel, and ~~no person may~~ a person may not act as
22 legal counsel in any matter, action, or proceeding in which the state or any state
23 department, board, commission, committee, or agency is interested or is a party,
24 except upon written appointment by the attorney general. Workforce safety and
25 insurance, the department of transportation, the state tax commissioner, the public
26 service commission, the insurance commissioner, and the agriculture commissioner,
27 ~~and the securities commissioner~~ may employ attorneys to represent them. These
28 entities shall pay the salaries and expenses of the attorneys they employ within the
29 limits of legislative appropriations. The attorneys that represent these entities must be
30 special assistant attorneys general appointed by the attorney general pursuant to this
31 section. Absent good cause, the attorney general shall appoint as special assistant

1 attorneys general licensed attorneys selected by these entities. The attorney general
2 may revoke the appointment only for good cause or upon the request of the entity.
3 Good cause means an inadequate level of experience, competence, or ethical
4 standards.

5 **SECTION 13. AMENDMENT.** Subsection 1 of section 54-59-22.1 of the North Dakota
6 Century Code is amended and reenacted as follows:

7 1. The following state agencies shall obtain centralized desktop support services from
8 the information technology department:

- 9 a. Office of administrative hearings.
- 10 b. Office of the governor.
- 11 c. Commission on legal counsel for indigents.
- 12 d. Public employees retirement system.
- 13 e. North Dakota university system office.
- 14 f. Department of career and technical education.
- 15 g. Department of financial institutions.
- 16 h. Department of veterans' affairs.
- 17 i. Aeronautics commission.
- 18 j. Council on the arts.
- 19 k. Agriculture commissioner.
- 20 l. Department of labor and human rights.
- 21 m. Indian affairs commission.
- 22 n. Protection and advocacy project.
- 23 o. Secretary of state.
- 24 p. State treasurer.
- 25 q. State auditor.
- 26 ~~r. Securities department.~~

27 **SECTION 14. AMENDMENT.** Subsection 4 of section 57-38.5-01 of the North Dakota
28 Century Code is amended and reenacted as follows:

29 4. "Qualified business" means a business other than a real estate investment trust which
30 is a primary sector business that:

- 1 a. Is incorporated or its satellite operation is incorporated as a for-profit corporation,
2 passthrough entity, or joint venture;
- 3 b. Is in compliance with the requirements for filings with the securitiesinsurance
4 commissioner under the securities laws of this state;
- 5 c. Has North Dakota residents as a majority of its employees in the North Dakota
6 principal office or the North Dakota satellite operation;
- 7 d. Has its principal office in this state and has the majority of its business activity
8 performed in this state, except sales activity, or has a significant operation in
9 North Dakota that has or is projected to have more than ten employees or one
10 hundred fifty thousand dollars of sales annually; and
- 11 e. Relies on innovation, research, or the development of new products and
12 processes in its plans for growth and profitability.

13 **SECTION 15. AMENDMENT.** Subsection 5 of section 57-38.6-01 of the North Dakota
14 Century Code is amended and reenacted as follows:

- 15 5. "Qualified business" means a cooperative, corporation, partnership, or limited liability
16 company that:
 - 17 a. Is incorporated or organized in this state after December 31, 2000, for the
18 primary purpose of being an agricultural commodity processing facility;
 - 19 b. Has been certified by the securitiesinsurance commissioner to be in compliance
20 under the securities laws of this state; and
 - 21 c. Has an agricultural commodity processing facility, or intends to locate one, in this
22 state.

23 **SECTION 16. APPROPRIATION - TRANSFER.** The office of management and budget
24 shall transfer the securities department's appropriation into the insurance department's
25 appropriation for the biennium beginning July 1, 2025, and ending June 30, 2027.