

STATE SECURITIES COMMISSION

CHAPTER 255

(S. B. No. 126—Sathre, by Request)

DUTIES OF STATE SECURITIES COMMISSION

An Act to Amend and Re-enact Sections 2, 3, 5, 6, 10, 12, 14 and 21 of Chapter 182, Session Laws 1923, the Same Being Sections 5235a2, 5235a3, 5235a5, 5235a6, 5235a10, 5235a12, 5235a14 and 5235a21 of the Supplement to the 1913 Compiled Laws of North Dakota 1913-1925, Relating to the Definition of Securities, Indemnity Bond and Fees Collected by the State Securities Commission.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

AMENDMENT.] That sections 2, 3, 5, 6, 10, 12, 14 and 21, of Chapter 182, Session Laws of 1923, the same being Sections 5235a2, 5235a3, 5235a5, 5235a6, 5235a10, 5235a12, 5235a14 and 5235a21 of the Supplement to the 1913 Compiled Laws of North Dakota 1913-1925, relating to the definition of securities, indemnity bond and fees collected by the state securities commission, are hereby amended and re-enacted to read as follows:

§ 5235a2. The term "Securities" as used in this act shall be taken to mean stock certificates, shares, bonds, debentures, certificates of participation, contracts, service contracts, pre-organization certificates and subscriptions, certificates evidencing shares of or interest in trust estates or associations, profit sharing agreements or certificates; or any certificate contract, or instrument whatsoever representing or constituting evidence of, or secured by, title to, or interest in, or any lien or charge upon the capital or any property or assets of the issuer thereof, or any oil, gas or mining lease; and interests, units or shares in any such lease or leases; contracts or bonds for the sale and conveyance of land on deferred payments or installment plan, or other instruments in the nature thereof by whatsoever name they may be known or called.

§ 5235a3. It shall be hereafter unlawful for any person, partnership, association or corporation, hereinafter called the Investment Company, either as principal or through agents, to sell, or offer for sale, or by means of any advertisement, circulars, or prospectus, or by any other form of public offering, to attempt to promote the sale of any securities in this state, unless there first shall have been filed with the Securities Commission: (1) A copy of the securities so to be promoted; (2) A statement in substantial detail of the assets and liabilities of the person or company making and issuing such securities and of any person or company guaranteeing

the same, including specifically the total amount of such securities and of any securities prior thereto in interest or lien, authorized or issued by any such person or company; (3) If such securities are secured by mortgage or other lien, a copy of such mortgage or of the instrument creating such lien, and a competent appraisal or valuation of the property covered thereby, with a specific statement of all prior liens thereon, if any; (4) A full statement of facts showing the gross and net earnings, actual or estimated, of any person, or company making and issuing or guaranteeing such securities, or of any property covered by any such mortgage or liens; (5) All knowledge or information in the possession of such Investment Company relative to the character or value of such securities, or of the property or earning power of the person or company making and issuing or guaranteeing the same; (6) A copy of any general or public prospectus or advertising matter which is to be used in connection with such promotion, and no such prospectus or advertising matter shall be used unless the same has been filed hereunder; (7) The names, addresses and selling territory in this state of any agents by or through whom any such securities are to be sold, including a statement giving the qualifications, occupations and business experience of each of such agents for a period of five years prior to the filing, the names and addresses of each employer, the period of employment and reason for resignation or discharge, and no such agents shall be employed unless such statement with respect to them has been filed hereunder, and there shall have been paid to the commission a registration fee of Three dollars (\$3.00) for each such agent. The payment of such fee shall be payment in full of all fees for registration of such agent from January 1st to January 1st of the following year; (8) The name and address of such promoter, including the names and addresses of all partners, if the Investment Company be a partnership, and the names and addresses of the directors or trustees, and of any person owning ten per centum, or more, of the capital stock, if the promoter be a corporation or association; (9) A statement showing in detail the plan on which the business or enterprise is to be transacted; (10) The articles of co-partnership or association, and all other papers pertaining to its organization, if the securities be insured or guaranteed by a co-partnership or unincorporated association; (11) A copy of its charter and by-laws if the securities be issued or guaranteed by a corporation; (12) A filing fee of one-twentieth of one per cent of the amount of the securities authorized to be sold in this state, but in no case shall the fee be less than twenty-five dollars (\$25.00). In case of denial of the application, all of that part of fees, above the twenty-five dollars (\$25.00) will be returned to the applicant.

§ 5235a5. It shall be the duty of the commission as soon as is practical to examine the statement and documents so filed and if said commission shall deem advisable, they shall make, or have made, a detailed inspection, examination, audit and investigation of the affairs of the makers or guarantors of such securities which said inspection, examination, audit and investigation shall be at the applicant's expense. As a part of the aforesaid inspection, examination, audit and investigation, the commission may cause an appraisal to be made of the property of the maker or guarantor, including the value of patents, formulae, and good-will, promotion, and intangible assets and shall furnish a full and complete statement or report of his inspection and investigation aforesaid to the Securities Commission. If the statement shall disclose that any of such securities shall have been or shall be intended to be issued for any patent right, copyright, trademark, process or good-will, or for promotion fees or expenses, or for other intangible assets, the amount and nature thereof shall be fully set forth, and securities issued in payment of such patent right, copyright, trademark, process or good-will, or for promotion fees or expenses, or for other intangible assets, shall be delivered in escrow to such bank or trust company as shall be designated by the commission under an escrow agreement that the owners of such securities shall in case of dissolution or insolvency not participate in the assets of the corporation until after the owners of all other securities shall have been paid in full. Such escrow agreement shall remain in full force until the securities of the issuer thereof are on a dividend paying basis. The State Securities Commission shall, within ten days thereafter, examine the statement or report, and give the promoter a hearing if he so desires. If the Securities Commission finds no legal objection to the enterprise, or securities, it shall direct the secretary to acknowledge compliance with Section 3 of this act. But if, from the statements, papers and documents on file, and the investigations and report of the secretary, or from other evidence submitted, it shall appear, and the State Securities Commission shall find: (1) That the makers and guarantors of said securities are insolvent, or that the applicant's plan for business is dishonest, or fraudulent; (2) Or that the applicant's literature or advertising is misleading and calculated to deceive purchasers or investors; (3) Or that the securities offered or to be offered are issued or are to be issued in payment for property, patents, formulae, good-will or promotion and intangible assets, in excess of the reasonable value thereof; (4) Or that the enterprise of the applicant is unlawful or against public policy; (5) Or is a mere scheme of a promoter or promoters to get rich quick at the expense of the purchasers of the aforesaid

securities, the said commission shall reduce its said findings to writing and attest the same by the signature of the chairman and secretary thereof. Notice of such finding, or findings shall immediately be given to the applicant by registered mail, and it shall thereafter be unlawful for the promoter or any agent of said company or promoter to sell, offer the sale, or by means of any advertisement, circular, or prospectus, or by any other form of public offering to attempt to promote the sale of any such security or securities in this state.

§ 5235a6. The State Securities Commission shall at any time have the authority and jurisdiction to investigate the affairs of any enterprise, the securities of which are being sold or offered for sale in this state and after giving the company or promoter a hearing, may, if the evidence warrants, make any of the adverse findings enumerated in Section 5 of this act, and it shall thereafter be unlawful for any person, co-partnership, association or corporation to sell, offer for sale, or by means of any advertisement, circular, or prospectus or by any other form of public offering to attempt to promote the sale of the securities of such enterprise in this state.

§ 5235a10. The general accounts of every person, co-partnership, association or corporation, issuing or guaranteeing any securities subject to the provisions of this act, shall be kept in a businesslike and intelligent manner and in sufficient detail so that the commission can ascertain at any time the financial condition of such person, co-partnership, association or corporation, and the books of account and affairs of any such person, co-partnership, association or corporation shall be subject to examination by the commission or upon their direction by their assistants, accountants, or examiners at any time said Securities Commission shall deem it advisable, and in the same manner as is now provided for the examination of state banks; and such person, co-partnership, association or corporation shall pay a fee for each such examination, of not to exceed fifteen dollars (\$15.00) for each day or fraction thereof, plus the actual traveling and hotel expenses of said examiner, assistant, accountant, that he is absent from the capitol of the state for the purpose of making such examination. And it is provided further that every person, co-partnership, association or corporation making or guaranteeing any securities subject to the provisions of this act, shall file at the close of business December 31st and June 30th of each year, and at such other times as may be required by the commission, a statement certified by the oath of some person having actual knowledge of the fact therein stated, setting forth in such form as may be prescribed by said commission the financial

condition, amount of property and liabilities of such person, co-partnership, association or corporation and such other information as said Securities Commission may require. Each statement shall be accompanied by a filing fee of five dollars (\$5.00). It shall be unlawful for any person, co-partnership, association or corporation subject to the provisions of this act, failing or refusing to comply with the provisions of this section within ten days after compliance is required, to thereafter sell or offer for sale in this state any securities which said person, co-partnership, association or corporation is selling or offering for sale in this state.

§ 5235a12. Any dealer desiring to sell or offer for sale within this state any stocks, bonds or other securities not exempted under the terms of this act, shall first register with the North Dakota Securities Commission and shall furnish said commission, upon oath, in such form as the commission shall prescribe, the following information, to-wit: the dealer's name, residence and business address, the general character of the securities to be dealt in, the place or places where the business is to be conducted within the state, and where the business in this state is not to be conducted by the dealer in person, then the name and addresses of all persons in charge thereof, and shall furnish said commission with such other information in addition to that above specified as said commission shall deem necessary in order to thoroughly acquaint such commission with the character of the business of said dealer. All authorized agents of any dealer shall be registered with the commission and the name of any agent shall be stricken from the register by the commission upon the written request of the dealer and additional agents may be registered by the commission upon like request of the dealer; Provided, That no agent shall act as such until his name and address shall be registered with the commission. If the dealer shall be a non-resident of this state or a corporation other than a domestic corporation, he shall at the time he registers with the commission, file with the commission a written duly authenticated appointment of the Secretary of State of this state as his or its agent in North Dakota upon whom the process or pleadings may be served for and on behalf of the dealer, which appointment shall be irrevocable. Every such dealer shall file with his application an indemnity bond in such amount as the commission may require, running to the State of North Dakota, the form of bond used to be approved by the commission and to be conditioned upon the faithful compliance with all the provisions of this act by the dealer, and all agents licensed by him and for the faithful performance and payment of the obligations of such dealer or his

agents. Such bond shall be executed as surety by a surety company authorized to do business in this state. Upon compliance by such dealer with the provisions of this act, the said commission shall issue to such dealer a license under the seal of said commission and signed by the secretary thereof, which said license shall expire on the 31st day of December in each year, but new licenses for the succeeding year shall be issued upon written application and upon the payment of the fee as hereinafter provided, without the filing of further statements or the furnishing of any further information, unless specifically required by the Commission. Applications for renewals must be made not less than fifteen nor more than forty-five days before the first of the ensuing year, otherwise they shall be treated as original applications. The fee for such license shall be fifty (\$50.00) dollars, and for each renewal thereof, the sum of fifteen (\$15.00) dollars, in the case of dealers and three (\$3.00) dollars annually in the case of agents. If said dealer's license is issued after July 1st of any year, the fee shall be reduced one-half.

§ 5235a14. No dealer within the meaning of this act shall sell or offer for sale within this State any of the stock, bonds or other securities of any investment company unless such investment company shall have fully complied with all the provisions of this act, nor until said dealer shall have registered with the Commission, under the terms of this act; Provided however, That should any dealer desire to sell or offer for sale within the State the stocks, bonds or other securities of an investment company which has not itself complied with the provisions of this act, said dealer shall file a notification of each issue of securities they are about to sell, giving the following information:

- (a) Name of Issuer.
- (b) Amount of issue covered by the notification.
- (c) A descriptive circular or statement briefly describing the securities.
- (d) The price at which the securities are to be sold.

The Commission shall have twenty-four (24) hours from and after receipt of such notification in which to take formal action and in case the Commission does not take such action within this given time, such securities shall be considered registered subject to the terms of such notification.

The Commission shall have the power to approve or deny the sale of said securities upon such registration or to require that the dealer qualify said securities under Section 3 of this act. In case the dealer is required to comply with Section 3 of this act there shall be a fee of one-twentieth of one per cent, of the total amount so qualified, with the minimum of \$10.00 for any one issue.

§ 5235a21. This Act shall not apply to the owner of any security who is not the maker or issuer thereof, who shall acquire

and sell the same for his own account in the usual and ordinary course of business and not for the direct or indirect promotion of any enterprise or scheme within the purview of this Act, providing, that such ownership is in good faith. Repeated or successive sales of any such security or securities shall be prima facie evidence that the claim of ownership is not bona fide, but is a mere shift or device to evade the provisions of this Act.

Approved March 7, 1927.

CHAPTER 256

(S. B. No. 25—Committee on Appropriations)

FEES STATE SECURITIES COMMISSION

An Act to Amend and Re-enact Section 22 of Chapter 182, Session Laws 1923, the Same Being Section 5235a22 of the Supplement to the 1913 Compiled Laws of North Dakota, 1913-1925, Relating to the Disposition of Fees Collected by the State Securities Commission.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AMENDMENT.] That Section 22 of Chapter 182, Session Laws 1923, the same being Section 5235a22 of the Supplement to the 1913 Compiled Laws of North Dakota, 1913-1925, is hereby amended and re-enacted to read as follows:

§ 5235a22. All fees herein provided for shall be collected by the Securities Commission and by them shall be paid into the general fund of the State Treasury, monthly. All money actually and necessarily paid out by the Securities Commission for traveling or incidental expenses on duties performed under this act shall be audited as other claims against the state and paid out of the appropriation made for the purpose of carrying this act into effect.

Approved, February 3, 1927.

STATE EDUCATIONAL INSTITUTIONS

CHAPTER 257

(S. B. No. 217—Schlosser and Hamilton)

CONSTRUCTION RESIDENCE HALLS OR DORMITORIES AT STATE EDUCATIONAL INSTITUTIONS

An Act Defining the Powers and Duties of the Board of Administration Relating to the Construction of Residence Halls or Dormitories on Lands of the Educational Institutions Under its Control.

Be It Enacted by the Legislative Assembly of the State of North Dakota:

§ 1. AUTHORITY OF STATE BOARD OF ADMINISTRATION.] For the purpose of providing dormitories or residence halls to be used