

February 11, 1999

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1493

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact a new section to chapter 6-01, a new section to chapter 10-04, a new section to chapter 26.1-01, and a new chapter to title 26.1 of the North Dakota Century Code, relating to the transfer of duties, functions, and powers of the commissioner of banking and financial institutions, the securities commissioner, and the insurance commissioner to a director of banking and financial institutions, a director of securities, and a director of insurance and to establish a department of commerce under the direction of the insurance commissioner and a state commerce advisory board; to amend and reenact sections 6-01-01, 10-04-03, subsection 2 of section 10-04-05, and section 26.1-06-12 of the North Dakota Century Code, relating to the transfer of the duties, functions, and powers of the commissioner of banking and financial institutions, the securities commissioner, and the insurance commissioner to a director of banking and financial institutions, a director of securities, and a director of insurance; to repeal sections 6-01-03, 6-01-04, 6-01-08, 6-01-10, 6-01-11, 6-01-12, 26.1-01-02, 26.1-01-08, and 26.1-01-09 of the North Dakota Century Code, relating to the appointment and salary of the commissioner of banking and financial institutions, the bond required of the commissioner of banking and financial institutions, the state banking board and the state credit union board, and the salary and official seal of the insurance commissioner; and to provide an effective date.

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

**6-01-01. Management and control - ~~State department~~ Division of banking and financial institutions.** The ~~state department~~ division of banking and financial institutions is under the supervision of the ~~state banking board, state credit union board, and a chief officer designated as the commissioner of banking and financial institutions, and known as the state examiner. Whenever the term state examiner is used in this code, it means the commissioner of banking and financial institutions~~ director of banking and financial institutions. Neither the insurance commissioner nor the director may own, hold, or control any stock, capital, or bond, or hold the office of trustee, assignee, officer, agent, or employee of any financial institution under the director's jurisdiction, or of any corporation engaged in the business of guarantying or ensuring the fidelity or faithful performance of the duties or the solvency of public officers or of public depositories. The ~~state department of banking and financial institutions~~ division has charge of the execution of all laws relating to state banks, trust companies, credit unions, building and loan associations, mutual investment corporations, mutual savings corporations, banking institutions, and other financial corporations, ~~exclusive of~~ except the Bank of North Dakota.

**SECTION 2.** A new section to chapter 6-01 of the North Dakota Century Code is created and enacted as follows:

**Director of banking and financial institutions to be substituted for the commissioner of banking and financial institutions, the state banking board, and the state credit union board - Division of banking and financial institutions to be substituted for department of banking and financial institutions.** Whenever the terms "commissioner of banking and financial institutions", "state banking board" or "state credit union board" or any derivative of the terms when used in the context to refer to that position appears in the code, the term "director of banking and financial institutions" must be substituted therefor. Whenever the term "department of banking and financial institutions" or any derivative of the term is used, the term "division of

banking and financial institutions" must be substituted therefor. The director of banking and financial institutions shall assume the duties, functions, and powers of the commissioner of banking and financial institutions.

**SECTION 3.** A new section to chapter 10-04 of the North Dakota Century Code is created and enacted as follows:

**Director of securities 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 "director of securities" must be substituted therefor. The director of securities shall assume the duties, functions, and powers of the securities commissioner.

**SECTION 4. AMENDMENT.** If House Bill No. 1144 does not become effective, 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.**

1. ~~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 Neither the insurance commissioner nor the director of securities may not own or control any security required to be registered under this chapter and may not or 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 commissioner who fails to discharge faithfully the duties of office or who becomes disqualified under the provisions of this section.~~

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

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

3. ~~In addition to their regular compensation, the commissioner and the commissioner's employees shall be paid travel expenses necessary and actually incurred in the performance of their duties.~~
4. All fees collected under this chapter must be deposited in the general fund of the state treasury, except civil penalties collected from enforcement actions for the purpose of distribution to aggrieved investors may be deposited in a special securities protection fund. All other civil penalties collected, including those collected for the reasonable expenses for the administration of a particular case, must be deposited in the general fund.
- 5- 4. ~~The commissioner~~ director 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 5. AMENDMENT.** If House Bill No. 1144 becomes effective, 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.**

1. ~~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 Neither the insurance commissioner nor the director may not own or control any security required to be registered under this chapter and may not or 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 commissioner who fails to discharge faithfully the duties of office or who becomes disqualified under the provisions of this section.~~

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

2. ~~The commissioner shall have authority to~~ director may administer oaths in, and to prescribe forms for, all matters arising under this chapter. ~~The commissioner~~ director may from time to time make, amend, and rescind ~~such~~ rules, forms, and orders as are necessary under this chapter, including rules and forms governing registration statements, applications and reports, and defining any terms, whether or not used in this chapter, if the definitions are consistent with this chapter. ~~The commissioner~~ director

shall cooperate with the administrators of the securities laws of other states and of the United States with a view toward achieving maximum uniformity in the interpretation of like provisions of the laws administered by them and in the forms ~~which are~~ required to be filed under ~~such~~ law.

3. ~~In addition to their regular compensation, the commissioner and the commissioner's employees shall be paid travel expenses necessary and actually incurred in the performance of their duties.~~
4. All fees collected under this chapter must be deposited in the general fund of the state treasury, except civil penalties collected from enforcement actions for the purpose of distribution to aggrieved investors may be deposited in a special securities protection fund. All other civil penalties collected, including those collected for the reasonable expenses for the administration of a particular case, must be deposited in the general fund.
- 5- 4. The ~~commissioner~~ director 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 6. 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~~ director of banking and financial institutions of North Dakota.

**SECTION 7.** A new section to chapter 26.1-01 of the North Dakota Century Code is created and enacted as follows:

**Director of insurance to be substituted for insurance commissioner and division of insurance to be substituted for insurance department.** Whenever the term "insurance commissioner" or any derivative of the term is used, except as it relates to section 8 of this Act, the term "director of insurance" must be substituted therefor. Whenever the term "insurance department" or any derivative of the term is used, the term "division of insurance" must be substituted therefor.

**SECTION 8.** A new chapter to title 26.1 of the North Dakota Century Code is created and enacted as follows:

**Definitions.**

1. "Board" means the state commerce advisory board.
2. "Commerce commissioner" or "commissioner" means the insurance commissioner of this state.
3. "Department" means the commerce department.

4. "Directors" means the director of banking and financial institutions, the director of securities, and the director of insurance.

**Department of commerce under direction of insurance commissioner.**

There is established a department of commerce under the direction of the insurance commissioner. The commissioner shall employ a director of banking and financial institutions, a director of securities, a director of insurance, and other competent officials and employees to discharge the duties assigned to the commissioner. Each of the directors must be paid through funds appropriated to the commissioner by the legislative assembly. The commissioner and the commissioner's employees, including the directors and employees of any of the divisions, are also entitled to travel expenses necessary and actually incurred in the performance of their duties.

**Appointment of directors.** The director of banking and financial institutions, the director of securities, and the director of insurance must be appointed by the insurance commissioner and confirmed by the senate and shall hold office for the term of the insurance commissioner who makes the appointment. If the senate is not in session, the insurance commissioner may make an interim appointment and the interim appointee may hold office until the senate confirms or rejects the appointment. Any director appointed under this section serves at the pleasure of the commissioner.

**Duties of the commissioner.** The commissioner has the authority and the duty to oversee the administration of all law subject to the authority to the director of banking and financial institutions, the director of securities, and the director of insurance. The commissioner has the authority to implement procedures and policies and to create, amend, and revoke administrative rules in accordance with the authority granted to the directors appointed by the commissioner. All rulemaking authority granted to any of the directors is vested solely in the commissioner. The commissioner shall execute the commissioner's duties within the limits of the funds appropriated to the commissioner by the legislative assembly.

**Salary of commissioner.** The annual salary of the commissioner is fifty-seven thousand one hundred twenty dollars.

**State commerce advisory board.** There is established a state commerce advisory board that shall advise the commissioner on issues of the banking, insurance, and securities industries and regulations. The commissioner shall serve as chairman of the board.

1. Appointment to the board. The board consists of twelve members appointed by the insurance commissioner who shall hold office for the term of the insurance commissioner who makes the appointment. Any board member appointed under this section serves at the pleasure of the commissioner.
  - a. Three members must be affiliated with and must represent the interests of persons regulated by the division of banking and financial institutions. At least one of these members must be affiliated with and represent the interests of state-chartered banks and at least one of these members must be affiliated with the represent the interests of state-chartered credit unions.
  - b. Three members must be affiliated with and must represent the interests of persons regulated by the division of securities. At least one of these members must be a registered agent with a series seven examination and at least one of these members must be a registered agent with a series six examination.
  - c. Three members must be affiliated with and must represent the interests of persons regulated by the office of the insurance

commissioner. At least one of these members must be a licensed property and casualty insurance agent and at least one of these members must be a licensed life and health insurance agent.

- d. Three members must be members of the general public and may not be associated with any of the persons regulated under any of the foregoing and are knowledgeable consumers of the financial services, securities, and insurance industries.
2. Compensation of board members - Expenses. Each appointed member of the board is entitled to receive sixty-two dollars and fifty cents per day as compensation for the time actually spent devoted to the duties of the board and is entitled to receive necessary expenses in the same manner and amounts as state officials for attending meetings and performing other duties of the board.
  3. Duties. The duties of the board include:
    - a. Conducting meetings on at least a semi-annual basis;
    - b. Reviewing and discussing the statutes, rules, policies, and procedures administered by the commissioner;
    - c. Reviewing and discussing new developments and trends in the industries regulated by the commissioner;
    - d. Reviewing and discussing consumer and investor education and protection for residents of this state; and
    - e. Making recommendations to the commissioner regarding potential legislative or administrative changes.

**SECTION 9. 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 10. REPEAL.** Sections 6-01-11, 6-01-12, 26.1-01-02, and 26.1-01-08 of the North Dakota Century Code and sections 6-01-03, 6-01-04, 6-01-08, 6-01-10, and 26.1-01-09 of the 1997 Supplement to the North Dakota Century Code are repealed.

**SECTION 11. EFFECTIVE DATE.** This Act becomes effective July 1, 2001."

Renumber accordingly