

Fifty-sixth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1493

Introduced by

Representatives Dorso, Clark, B. Thoreson

Senator G. Nelson

1 A BILL for an Act to create and enact a new section to chapter 6-01, a new section to chapter
2 10-04, a new section to chapter 26.1-01, and a new chapter to title 26.1 of the North Dakota
3 Century Code, relating to the transfer of duties, functions, and powers of the commissioner of
4 banking and financial institutions, the securities commissioner, and the insurance commissioner
5 to a director of banking and financial institutions, a director of securities, and a director of
6 insurance and to establish a department of commerce under the direction of the insurance
7 commissioner and a state commerce advisory board; to amend and reenact sections 6-01-01,
8 10-04-03, subsection 2 of section 10-04-05, and section 26.1-06-12 of the North Dakota
9 Century Code, relating to the transfer of the duties, functions, and powers of the commissioner
10 of banking and financial institutions, the securities commissioner, and the insurance
11 commissioner to a director of banking and financial institutions, a director of securities, and a
12 director of insurance; to repeal sections 6-01-03, 6-01-04, 6-01-08, 6-01-10, 6-01-11, 6-01-12,
13 26.1-01-02, 26.1-01-08, and 26.1-01-09 of the North Dakota Century Code, relating to the
14 appointment and salary of the commissioner of banking and financial institutions, the bond
15 required of the commissioner of banking and financial institutions, the state banking board and
16 the state credit union board, and the salary and official seal of the insurance commissioner; and
17 to provide an effective date.

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

20 **6-01-01. Management and control - ~~State department~~ Division of banking and**
21 **financial institutions.** The ~~state department~~ division of banking and financial institutions is
22 under the supervision of the ~~state banking board, state credit union board, and a chief officer~~
23 ~~designated as the commissioner of banking and financial institutions, and known as the state~~
24 ~~examiner. Whenever the term state examiner is used in this code, it means the commissioner~~
25 ~~of banking and financial institutions~~ director of banking and financial institutions. Neither the

1 insurance commissioner nor the director may own, hold, or control any stock, capital, or bond,
2 or hold the office of trustee, assignee, officer, agent, or employee of any financial institution
3 under the director's jurisdiction, or of any corporation engaged in the business of guarantying or
4 ensuring the fidelity or faithful performance of the duties or the solvency of public officers or of
5 public depositories. The ~~state department of banking and financial institutions~~ division has
6 charge of the execution of all laws relating to state banks, trust companies, credit unions,
7 building and loan associations, mutual investment corporations, mutual savings corporations,
8 banking institutions, and other financial corporations, ~~exclusive of~~ except the Bank of North
9 Dakota.

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

12 **Director of banking and financial institutions to be substituted for the**
13 **commissioner of banking and financial institutions, the state banking board, and the**
14 **state credit union board - Division of banking and financial institutions to be substituted**
15 **for department of banking and financial institutions.** Whenever the terms "commissioner of
16 banking and financial institutions", "state banking board" or "state credit union board" or any
17 derivative of the terms when used in the context to refer to that position appears in the code,
18 the term "director of banking and financial institutions" must be substituted therefor. Whenever
19 the term "department of banking and financial institutions" or any derivative of the term is used,
20 the term "division of banking and financial institutions" must be substituted therefor. The
21 director of banking and financial institutions shall assume the duties, functions, and powers of
22 the commissioner of banking and financial institutions.

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

25 **Director of securities to be substituted for securities commissioner.** Whenever
26 the term "securities commissioner" or any derivative of the term when used in the context to
27 refer to that position appears in the code, the term "director of securities" must be substituted
28 therefor. The director of securities shall assume the duties, functions, and powers of the
29 securities commissioner.

1 **SECTION 4. AMENDMENT.** If House Bill No. 1144 does not become effective, section
2 10-04-03 of the 1997 Supplement to the North Dakota Century Code is amended and
3 reenacted as follows:

4 **10-04-03. Administration of chapter.**

5 1. ~~The securities commissioner must be appointed by the governor and confirmed by~~
6 ~~the senate and shall hold office for a term of four years, beginning on the first day~~
7 ~~of July following a national presidential election and continuing until a successor~~
8 ~~has been appointed, confirmed by the senate, and has qualified, unless removed~~
9 ~~as herein provided. If the senate is not in session, the governor may make an~~
10 ~~interim appointment, and the interim appointee shall hold office until the senate~~
11 ~~confirms or rejects the appointment. The commissioner must be skilled in~~
12 ~~securities and may not be an incumbent of any other public office in the state. The~~
13 ~~Neither the insurance commissioner nor the director of securities may not own or~~
14 ~~control any security required to be registered under this chapter and may not or~~
15 ~~be an officer, director, or employee of any dealer, salesman, investment adviser, or~~
16 ~~investment adviser representative required to be registered under this chapter.~~
17 ~~The governor may remove from office any commissioner who fails to discharge~~
18 ~~faithfully the duties of office or who becomes disqualified under the provisions of~~
19 ~~this section.~~

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

29 2. ~~The commissioner shall have authority to~~ director may administer oaths in, and to
30 prescribe forms for, all matters arising under this chapter. ~~The commissioner~~
31 director may from time to time make, amend, and rescind ~~such~~ rules, forms, and

1 orders as are necessary under this chapter, including rules and forms governing
2 registration statements, applications and reports, and defining any terms, whether
3 or not used in this chapter, if the definitions are consistent with this chapter. The
4 ~~commissioner~~ director shall cooperate with the administrators of the securities
5 laws of other states and of the United States with a view toward achieving
6 maximum uniformity in the interpretation of like provisions of the laws administered
7 by them and in the forms ~~which are~~ required to be filed under ~~such~~ law.

8 3. ~~In addition to their regular compensation, the commissioner and the~~
9 ~~commissioner's employees shall be paid travel expenses necessary and actually~~
10 ~~incurred in the performance of their duties.~~

11 4. All fees collected under this chapter must be deposited in the general fund of the
12 state treasury, except civil penalties collected from enforcement actions for the
13 purpose of distribution to aggrieved investors may be deposited in a special
14 securities protection fund. All other civil penalties collected, including those
15 collected for the reasonable expenses for the administration of a particular case,
16 must be deposited in the general fund.

17 ~~5.~~ 4. The ~~commissioner~~ director may honor requests from interested persons for the
18 issuance of a statement or opinion concerning the applicability of this chapter or
19 the rules adopted under this chapter to any transaction or proposed transaction
20 ~~which~~ that may be subject to this chapter. ~~Any such~~ A request must be
21 accompanied by a fee to be set by the commissioner by rule, which may not
22 exceed two hundred fifty dollars.

23 **SECTION 5. AMENDMENT.** If House Bill No. 1144 becomes effective, section
24 10-04-03 of the 1997 Supplement to the North Dakota Century Code is amended and
25 reenacted as follows:

26 **10-04-03. Administration of chapter.**

27 1. ~~The securities commissioner must be appointed by the governor and confirmed by~~
28 ~~the senate and shall hold office for a term of four years, beginning on the first day~~
29 ~~of July following a national presidential election and continuing until a successor~~
30 ~~has been appointed, confirmed by the senate, and has qualified, unless removed~~
31 ~~as herein provided. If the senate is not in session, the governor may make an~~

1 ~~interim appointment, and the interim appointee shall hold office until the senate~~
2 ~~confirms or rejects the appointment. The commissioner must be skilled in~~
3 ~~securities and may not be an incumbent of any other public office in the state. The~~
4 ~~Neither the insurance commissioner nor the director may not own or control any~~
5 ~~security required to be registered under this chapter and may not or be an officer,~~
6 ~~director, or employee of any dealer, salesman, investment adviser, or investment~~
7 ~~adviser representative required to be registered under this chapter. The governor~~
8 ~~may remove from office any commissioner who fails to discharge faithfully the~~
9 ~~duties of office or who becomes disqualified under the provisions of this section.~~

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

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

- 29 3. ~~In addition to their regular compensation, the commissioner and the~~
30 ~~commissioner's employees shall be paid travel expenses necessary and actually~~
31 ~~incurred in the performance of their duties.~~

1 4- All fees collected under this chapter must be deposited in the general fund of the
2 state treasury, except civil penalties collected from enforcement actions for the
3 purpose of distribution to aggrieved investors may be deposited in a special
4 securities protection fund. All other civil penalties collected, including those
5 collected for the reasonable expenses for the administration of a particular case,
6 must be deposited in the general fund.

7 5- 4. The ~~commissioner~~ director may honor requests from interested persons for the
8 issuance of a statement or opinion concerning the applicability of this chapter or
9 the rules adopted under this chapter to any transaction or proposed transaction
10 which ~~that~~ may be subject to this chapter. ~~Any such~~ A request must be
11 accompanied by a fee to be set by the commissioner by rule, which may not
12 exceed two hundred fifty dollars.

13 **SECTION 6. AMENDMENT.** Subsection 2 of section 10-04-05 of the North Dakota
14 Century Code is amended and reenacted as follows:

15 2. Securities issued by and representing an interest in or a debt of, or guaranteed by,
16 a national bank or a national bank and trust company or bank or credit or loan or
17 savings association or savings and loan association or credit union organized
18 pursuant to an act of Congress and supervised by the United States, or any
19 agency thereof, or issued or guaranteed as to both principal and interest by an
20 international bank of which the United States is a member, or issued by and
21 representing an interest in or a debt of, or guaranteed by, a state bank, trust
22 company, savings bank, savings institution, or credit union organized and
23 supervised under the laws of any state, and securities of any person subject to
24 examination by the ~~commissioner~~ director of banking and financial institutions of
25 North Dakota.

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

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

1 department" or any derivative of the term is used, the term "division of insurance" must be
2 substituted therefor.

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

5 **Definitions.**

- 6 1. "Board" means the state commerce advisory board.
7 2. "Commerce commissioner" or "commissioner" means the insurance commissioner
8 of this state.
9 3. "Department" means the commerce department.
10 4. "Directors" means the director of banking and financial institutions, the director of
11 securities, and the director of insurance.

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

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

28 **Duties of the commissioner.** The commissioner has the authority and the duty to
29 oversee the administration of all law subject to the authority to the director of banking and
30 financial institutions, the director of securities, and the director of insurance The commissioner
31 has the authority to implement procedures and policies and to create, amend, and revoke

1 administrative rules in accordance with the authority granted to the directors appointed by the
2 commissioner. All rulemaking authority granted to any of the directors is vested solely in the
3 commissioner. The commissioner shall execute the commissioner's duties within the limits of
4 the funds appropriated to the commissioner by the legislative assembly.

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

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

10 1. Appointment to the board. The board consists of twelve members appointed by
11 the insurance commissioner who shall hold office for the term of the insurance
12 commissioner who makes the appointment. Any board member appointed under
13 this section serves at the pleasure of the commissioner.

14 a. Three members must be affiliated with and must represent the interests of
15 persons regulated by the division of banking and financial institutions. At
16 least one of these members must be affiliated with and represent the interests
17 of state-chartered banks and at least one of these members must be affiliated
18 with the represent the interests of state-chartered credit unions.

19 b. Three members must be affiliated with and must represent the interests of
20 persons regulated by the division of securities. At least one of these
21 members must be a registered agent with a series seven examination and at
22 least one of these members must be a registered agent with a series six
23 examination.

24 c. Three members must be affiliated with and must represent the interests of
25 persons regulated by the office of the insurance commissioner. At least one
26 of these members must be a licensed property and casualty insurance agent
27 and at least one of these members must be a licensed life and health
28 insurance agent.

29 d. Three members must be members of the general public and may not be
30 associated with any of the persons regulated under any of the foregoing and

- 1 are knowledgeable consumers of the financial services, securities, and
2 insurance industries.
- 3 2. Compensation of board members - Expenses. Each appointed member of the
4 board is entitled to receive sixty-two dollars and fifty cents per day as
5 compensation for the time actually spent devoted to the duties of the board and is
6 entitled to receive necessary expenses in the same manner and amounts as state
7 officials for attending meetings and performing other duties of the board.
- 8 3. Duties. The duties of the board include:
- 9 a. Conducting meetings on at least a semi-annual basis;
10 b. Reviewing and discussing the statutes, rules, policies, and procedures
11 administered by the commissioner;
12 c. Reviewing and discussing new developments and trends in the industries
13 regulated by the commissioner;
14 d. Reviewing and discussing consumer and investor education and protection
15 for residents of this state; and
16 e. Making recommendations to the commissioner regarding potential legislative
17 or administrative changes.

18 **SECTION 9. AMENDMENT.** Section 26.1-06-12 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **26.1-06-12. Securities laws.** This chapter does not limit or modify ~~in any way any~~
21 ~~responsibility, authority, power, or jurisdiction of the securities commissioner or of the securities~~
22 laws of this state.

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

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