

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

1176

2005 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1176

2005 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. **HB 1176**

House Industry, Business & Labor Committee

☐ Conference Committee

Hearing Date **26 January 05**

Tape Number	Side A	Side B	Meter #
1		X	33.9 - end
2		X	0 - 6.9

Committee Clerk Signature



Minutes:

Chairman Keiser opened the hearing on HB1176.

Karen Tyler, Commissioner of Securities, testified in favor of the bill. She presented an amendment to fix some typographical on the amendment (**Testimony and proposed amendment are attached.**) Her testimony summarized each section of the bill. She also discussed the amendment and how it related to the original bill.

Rep. Amerman: Where's your office?

Tyler: We are on the fifth floor. We welcome visitors and would be happy to sit down and visit on any of the provisions of this bill.

There was no further testimony on HB 1176.

Chairman Keiser asked the wishes of the Committee.

Rep. Froseth: I move to adopt the amendment.

Rep. Ekstrom: I second.

Page 2

House IBL Committee

Bill/Resolution Number HB 1176

Hearing Date **26 Jan 05**

A voice vote was taken. There were no dissenting votes. The amendment was adopted.

Rep. Nottestad: I move a Do Pass as Amended.

Rep. Thorpe: I second.

A roll call vote was taken.

Yes: 14 No: 0 Absent: 0. The bill as amended passed.

Rep. Amerman will carry the bill.

FISCAL NOTE
Requested by Legislative Council
01/31/2005

Amendment to: HB 1176

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$1,000	\$0	\$1,000	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Section 9, Amendment 2.d

The filing fee shall be two-hundred fifty dollars in the event the filing is not made within the time period specified in subdivision a.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The estimated increase of \$1000 is to the General Fund, Object code 42300 Registration of Securities.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

None

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

None

Name: Diane Lillis
Phone Number: 328-4712

Agency: ND Securities Department
Date Prepared: 01/31/2005

FISCAL NOTE
Requested by Legislative Council
01/03/2005

Bill/Resolution No.: HB 1176

1A. State fiscal effect: *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2003-2005 Biennium		2005-2007 Biennium		2007-2009 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$1,000	\$0	\$1,000	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

1B. County, city, and school district fiscal effect: *Identify the fiscal effect on the appropriate political subdivision.*

2003-2005 Biennium			2005-2007 Biennium			2007-2009 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

Section 9, Amendment 2.d

The filing fee shall be two-hundred fifty dollars in the event the filing is not made within the time period specified in subdivision a.

3. State fiscal effect detail: *For information shown under state fiscal effect in 1A, please:*

A. Revenues: *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

The estimated increase to business revenue object code 420300 Registration of Securities.

B. Expenditures: *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

None

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

None

Name: Diane Lillis
Phone Number: 328-4712

Agency: ND Securities Department
Date Prepared: 01/03/2005

Proposed Amendments to HB 1176

Page 1, line 5, replace the second "subsection" with "subsections", and after the second "1" insert "and 2"

Page 3, line 24, replace "and" with "an"

Page 3, line 25, replace "Adviser" with "Advisers", and replace "and" with "an"

Page 46, line 13, replace "thousand" with "million"

Page 49, line 18, replace "subparaqrph i" with "paraqrph 1"

Page 52, line 21, remove "6"

Page 67, after line 5, insert:

"SECTION 21. AMENDMENT. Subsection 2 of Section 10-04-18 of the North Dakota Century Code is amended and reenacted as follows.

2. As used in this section, the term "willfully", except as it applies to subdivisions a and b of subsection 1 of section 10-04-10.1 and ~~subsections~~ subdivisions a and c of subsection 2 ~~and 4~~ of section 10-04-15, means that the person acted intentionally in the sense that the person was aware of what the person was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required."

Renumber accordingly

January 26, 2005

VR
1/28/05

HOUSE AMENDMENTS TO HOUSE BILL NO. 1176 IBL 1-28-05

Page 1, line 5, replace the second "subsection" with "subsections" and after the second "1" insert "and 2"

HOUSE AMENDMENTS TO H B 1176 IBL 1-28-05

Page 3, line 24, replace "and" with "an"

Page 3, line 25, replace "Adviser" with "Advisers" and replace "and" with "an"

HOUSE AMENDMENTS TO HB 1176 IBL 1-28-05

Page 45, line 13, replace "thousand" with "million"

HOUSE AMENDMENTS TO HB 1176 IBL 1-28-05

Page 49, line 18, replace "subparagraph i" with "paragraph 1"

HOUSE AMENDMENTS TO HB 1176 IBL 1-28-05

Page 67, after line 5, insert:

"SECTION 21. AMENDMENT. Subsection 2 of section 10-04-18 of the North Dakota Century Code is amended and reenacted as follows:

2. As used in this section, the term "willfully", except as it applies to subdivisions a and b of subsection 1 of section 10-04-10.1 and subdivisions a and c of subsection 2 ~~and 4~~ of section 10-04-15, means that the person acted intentionally in the sense that the person was aware of what the person was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required."

Renumber accordingly

Date: 1-26-05
Roll Call Vote #: 1

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1176

House **INDUSTRY, BUSINESS AND LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Adopt Amendments As Presented by Security Commission

Motion Made By

Froseth

Seconded By

EKstrom

Representatives
G. Keiser-Chairman
N. Johnson-Vice Chairman
Rep. D. Clark
Rep. D. Dietrich
Rep. M. Dosch
Rep. G. Froseth
Rep. J. Kasper
Rep. D. Nottestad
Rep. D. Ruby
Rep. D. Vigasaa

Yes No

Representatives
Rep. B. Amerman
Rep. T. Boe
Rep. M. Ekstrom
Rep. E. Thorpe

Yes No

Total (Yes)

14

No

0

Absent

Floor Assignment

Amerman

If the vote is on an amendment, briefly indicate intent:

Roll Call Vote #: ^{Date: 1-26-05} 2

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1176

House **INDUSTRY, BUSINESS AND LABOR** Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken *Do Pass As Amended*

Motion Made By *Rep. Nottestad* Seconded By *Rep. Thorpe*

Representatives	Yes	No	Representatives	Yes	No
G. Keiser-Chairman	X		Rep. B. Amerman	X	
N. Johnson-Vice Chairman	X		Rep. T. Boe	X	
Rep. D. Clark	X		Rep. M. Ekstrom	X	
Rep. D. Dietrich	X		Rep. E. Thorpe	X	
Rep. M. Dosch	X				
Rep. G. Froseth	X				
Rep. J. Kasper	X				
Rep. D. Nottestad	X				
Rep. D. Ruby	X				
Rep. D. Vigasaa	X				

Total (Yes) *14* No *0*

Absent *0*

Floor Assignment *Representative Amerman*

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1176: Industry, Business and Labor Committee (Rep. Keiser, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1176 was placed
on the Sixth order on the calendar.

Page 1, line 5, replace the second "subsection" with "subsections" and after the second "1"
insert "and 2"

Page 3, line 24, replace "and" with "an"

Page 3, line 25, replace "Adviser" with "Advisers" and replace "and" with "an"

Page 45, line 13, replace "thousand" with "million"

Page 49, line 18, replace "subparagraph i" with "paragraph 1"

Page 67, after line 5, insert:

"SECTION 21. AMENDMENT. Subsection 2 of section 10-04-18 of the North
Dakota Century Code is amended and reenacted as follows:

2. As used in this section, the term "willfully", except as it applies to subdivisions a and b of subsection 1 of section 10-04-10.1 and subdivisions a and c of subsection ~~2~~^{and 4} of section 10-04-15, means that the person acted intentionally in the sense that the person was aware of what the person was doing. Proof of evil motive or intent to violate the law or knowledge that the law was being violated is not required."

Renumber accordingly

2005 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1176

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1176

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 9, 2005

Tape Number	Side A	Side B	Meter #
1		X	5520-END
2	X		1-947

Committee Clerk Signature



Minutes: **Chairman Mutch** called the hearing on HB 1176 to order. All Senators were present.

Karen Tyler, ND Securities Commissioner appeared before the committee in support of the bill. See written testimony.

Senator Espgaard- Is there anything in the bill that strengthens your authority?

Karen- I don't think there is anything significant in that area.

Senator Krebsbach- I recall in the last session that we allowed it to be easier for smaller enterprises to raise more capital. Is this unique for ND?

Karen- Some of the exemptions we have created are varying and are unique compared to other states.

Chairman Mutch closed the hearing on HB 1176.

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number HB 1176

Hearing Date March 9, 2005

Action taken:

Senator Espegard moved for a Do Pass recommendation. Seconded by Senator

Krebsbach. The vote was 7-0-0. Senator Espegard is the carrier of the bill.

Date: 3-9-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1176

Senate Industry, Business, and Labor

Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

Dolass

Motion Made By

Espesgard

Seconded By

Krubs

Senators
Chairman Mutch
Senator Klein
Senator Krebsbach
Senator Espesgard
Senator Nething

Yes

No

X
X
X
X
X

Senators
Senator Fairfield
Senator Heitkamp

Yes

No

X
X

Total (Yes)

7

No

0

Absent

0

Floor Assignment

Espesgard

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 9, 2005 2:20 p.m.

Module No: SR-43-4548
Carrier: Espegard
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1176, as engrossed: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1176 was placed on the Fourteenth order on the calendar.

2005 TESTIMONY

HB 1176

HB 1176

Testimony of Securities Commissioner Karen Tyler

Before the House Industry, Business and Labor Committee

January 26, 2005

Mr. Chairman and members of the Committee, Good Morning to you all. I am Karen Tyler, the state Securities Commissioner. I am here this morning to testify in favor of House Bill 1176.

Before I move into my remarks, I would note that the Department is submitting amendments to correct typographical errors that have been identified in the bill.

House Bill 1176 amends and re-enacts various sections and sub-sections of chapter 10-04 of the North Dakota Century Code relating to definitions under the securities laws, securities exemptions and exempt transactions, the registration and sale of securities, and the registration of broker-dealers, agents, investment advisers, and investment adviser representatives.

The bill you have before you is the result of 14 months of comprehensive comparative analysis between the existing North Dakota Securities Act and the new Uniform Securities Act of 2002, which I will from this point on in my testimony refer to as the USA. In addition to the 2002 USA, there are two other versions of a Uniform Securities Act in effect today: The Uniform Securities Act of 1956 which has been adopted, in whole or in part, by 37 United States jurisdictions; and the Revised Uniform Securities Act of 1985 which has been adopted in only a handful of states. North Dakota has never adopted a uniform act. The offer and sale of

securities in North Dakota is currently regulated by the Securities Act of 1951 ("1951 Act"), found in chapter 10-04 of the North Dakota Century Code.

Generally, regulation of the offer and sale of securities takes three forms: (a) registration of securities; (b) registration of those persons who offer, sell, or render investment advice with respect to securities; and (c) prohibition of fraudulent practices in connection with the offer, sale, or purchase of securities.

In regard to uniform law, this agency recognizes the benefits of improving uniformity in state securities regulation. We also recognize the importance of preserving provisions of law that are of unique value to our constituents here in North Dakota. And we are also mindful of the fact that invoking the concept of uniformity does not prove its need.

Our goal in the analysis process I mentioned earlier and in the ultimate drafting of this legislation, was to improve uniformity without compromising protections for ND investors, and without eliminating capital formation provisions that have been carefully crafted over the years, and that are of significant benefit to the North Dakota small business. At the conclusion of our analysis we determined we could best achieve this goal by amending our existing Act, versus a repeal of the existing Act and an introduction of the USA. Through the amendments set forth in HB 1176, we believe we will enhance uniformity in substance, although there will remain some deviations in form.

In addition to the desire to preserve certain investor protection provisions that we believe to be superior to those found in the USA, and in addition to the desire to preserve certain capital formation provisions important to ND small business, there are other factors that influenced our decision to amend our existing act versus introducing the new uniform act, and I would like to briefly mention two:

The first is budget related. This agency has recently spent approximately \$50,000 to bring certain mission critical software into the 21st century. We had been operating off of an old DOS based system to support our securities and franchise registration function, and we have now completed the process of converting this program to a windows based system. The program specifically supports our existing chapter and would have to be modified at additional expense if the USA were adopted. We are averse to significant additional expenditures in this area.

Although we will still need to make minor modifications to both this registration program and our website with the amendment of our existing act, it is still the more fiscally prudent approach. Also in regard to budget, we estimate that we would see a decrease in registration revenue in several categories, such as issuer-dealer, broker-dealer, and agent registration if the USA were adopted.

The other factor I want to mention is that the new USA relies on administrative rulemaking and the issuance of orders to clarify ambiguous provisions of the Act. With no model rules to draw from, as states move through the process of adopting administrative rules, the potential exists for the re-introduction of non-uniformity. Additionally, our department has been attempting to limit the number administrative rules adopted under the securities act, and we have made progress in

this area as, over the years, legislation has been passed that then allows certain administrative rules to be deleted. Adoption of the USA, with its accompanying rulemaking requirements, would be inconsistent with this objective and direction.

Section 1 of the bill (page 1 line 12 – page 10 line 5) deals with definitions. Several new definitions from the USA have been added: “Bank”, “Depository Institution”, “Institutional Investor”, “Place of Business”, “Principle Place of business”, “Record”, and “State”. The amendments included in this section also modify certain existing definitions to be more consistent with the Uniform Act. This section also deals with terminology change as the term “broker-dealer” is now universally used and recognized in place of the term “dealer”. I would point out that this simple yet necessary change is to some extent responsible for the bulk of the bill as it appears in the bill 118 times.

Section 2 of the bill (page 10 line 6 – page 11 line 4) introduces additional restrictions on the ability of the Securities Commissioner to have ownership interests in certain regulated entities.

Section 3 of the bill (page 11 line 5 – page 16 line 27) deals with exempt securities. The amendments herein add a new exemption for foreign issued margin securities, an exemption found in the USA, and also modify several existing exemptions for greater consistency with the USA.

Section 4 of the bill (page 16 line 28 – page 32 line 23) deals with exempt transactions. These are types of securities transactions that do not require registration with our agency. Here we

make several modifications to existing exemptions to improve uniformity. We also add a new exempt transaction provision for private sales of mortgage backed debt instruments (page 32 line 13) and we add an exempt transaction provision for transactions by Federal Covered Investment Advisers (these are advisers registered with the SEC) who have more than \$100,000,000 in assets under management and who are purchasing securities for clients for whom they have discretionary authority (page 32 line 21).

It is in the exempt transaction section of our chapter that we find the provisions we maintain are of great importance to the North Dakota small business. Amendments made to our securities laws during the last several legislative sessions have created mechanisms that allow the North Dakota small business to raise capital in a more efficient and cost effective manner. Examples of exemptions unique to or important to our capital markets here in North Dakota include: limited offeree and limited offering, (these are securities offerings restricted as to number of investors or size of offering), the test the waters exemption, (this allows for the gathering of indications of interest to help the business determine if an actual offering would be successful), incorporation stage offerings, and offerings by community development entities. The foregoing exempt transaction provisions have been carefully crafted to respond to the needs of the small business, while at the same time preserving protections for investors.

Section 5, 6 & 7 of the bill (page 32 line 24 to page 39 line 2) result from the earlier change of the term "dealer" to "broker-dealer". (technical changes to enhance uniformity.)

Section 8 of the bill (page 39 line 4-17) is necessary to delete reference to a section of our chapter that is being repealed.

Section 9 (page 39 line 18 – page 40 line 6) changes the penalty that applies if a notice filing pertaining to a federal covered security is made late, (\$250 v \$100) and clarifies who may sell Regulation D Rule 506 securities offerings without dealer and agent registration.

Section 10 (page 39 line 7 – 42 line 3) provides technical changes for uniformity purposes

Section 11 (page 42 line 4 – page 52 line 15) This section of the bill addresses the registration of broker-dealers, agents, investment advisers, investment adviser representatives, and federal covered investment advisers. The amendments provide for modifications that enhance uniformity.

Section 12 (page 52 line 16 – page 55 line 8) sets forth record keeping requirements for registered broker-dealers and investment advisers. This new language does not come from the USA, as this is one of the areas in which the USA provides only for rulemaking authority with respect to books and records requirements. As mentioned earlier, we have been attempting to reduce the number of administrative rules promulgated by the department. Our current administrative rule dealing with recordkeeping by registered entities is out of date, and it could be deleted if this provision is approved by the legislature.

Section 13 (page 55 line 9 – page 55 line 13) technical changes only, dealer to broker-dealer

Section 14 (page 55 line 14 – page 59 line 16) addresses the suspension or revocation of the registration of a broker-dealer, agent, investment adviser, and investment adviser representative. Here again you will find technical changes, dealer to broker-dealer. This section also provides a clarification of the law, consistent with the Uniform Securities Act, that identifies certain events as violations of the securities act and as grounds for suspension or revocation of a registration.

Section 15 (page 59 line 17 – page 60 line 18) technical changes only, dealer to broker-dealer

Section 16 (page 60 line 19 – page 61 line 21) This section addresses fraudulent practices and makes modifications consistent with the USA. It also defines fraud in the context of the investment adviser.

Section 17 (page 61 line 22 – page 63 line 19) This section deals with orders, injunctions, and prosecutions for violations, and the assessment of civil penalties. Amendments presented enhance consistency with the USA, and allow civil penalties to be assessed by the Court.

Section 18 (page 63 line 20 – page 64 line 21) addresses investigations and subpoenas. The amendments herein are consistent with USA language and provide for limited immunity for providing information to regulators.

Section 19 (page 64 line 22 – page 66 line 28) this section deals with remedies and has been modified for uniformity with the USA. It also provides for remedies related to investment advisory services as well as sales related violations.

Section 20 (page 66 line 29 – page 67 line 5) This section removes the criminal sanctions for failure to submit notice filings on certain federal covered securities.

Section 21 (page 67 line 6 & 7) this is a repeal of a securities registration provision that is rarely if ever utilized, is unnecessary and also not found in the Uniform Securities Act

In closing, I would reiterate that our objective in amending the North Dakota Securities Act through HB 1176 is to introduce useful provisions of the new Uniform Securities Act and significantly enhance uniformity in substance, while at the same time preserving investor protection provisions of existing law interpreted to be superior to the USA, and while preserving capital formation provisions that are of particular benefit to North Dakota small business.

My comments have provided an abridged description of the amendments set forth in each section of HB 1176. I would be happy at this time to answer any questions you may have and to cover any amendment in greater detail.

Mr. Chairman and members of the committee, thank you for your time and attention this morning. I respectfully recommend a “do-pass” on HB 1176, with amendments presented by the Securities Department to correct typographical errors.

Engrossed HB 1176

Testimony of Securities Commissioner Karen Tyler

Before the Senate Industry, Business and Labor Committee

March 9, 2005

House Bill 1176 amends and re-enacts various sections and sub-sections of chapter 10-04 of the North Dakota Century Code relating to the offer and sale of securities. Generally, regulation of the offer and sale of securities takes three forms: (a) registration of securities; (b) registration of those persons who offer, sell, or render investment advice with respect to securities; and (c) prohibition of fraudulent practices in connection with the offer, sale, or purchase of securities.

Back in August of 2002, the National Conference of Commissioners on Uniform State Law created a new uniform securities act. In addition to the new 2002 Uniform Securities Act there are two other versions of a Uniform Securities Act in effect in various jurisdictions today (1956 and 1985), however, no uniform act has been adopted by all US jurisdictions, and North Dakota has never had a uniform securities act.

The bill you have before you is the result of a comprehensive comparative analysis between the existing North Dakota Securities Act and the new Uniform Securities Act of 2002, which I will from this point on in my testimony refer to as the USA.

Our goal in the analysis process and in the ultimate drafting of this legislation, was to improve uniformity without compromising protections for ND investors, and without eliminating capital

formation provisions that have been carefully crafted over the years, and that are of significant benefit to the North Dakota small business. At the conclusion of our analysis we determined we could best achieve this goal by amending our existing Act, versus a repeal of the existing Act and an introduction of the USA. Through the amendments set forth in HB 1176, we believe we will enhance uniformity in substance, although there will remain some deviations in form.

In addition to the desire to preserve certain investor protection provisions that we believe to be superior to those found in the USA, and in addition to the desire to preserve certain capital formation provisions important to ND small business, there are other factors that influenced our decision to amend our existing act versus introducing the new uniform act, and I would like to briefly mention two:

The first is budget related. This agency has recently spent approximately \$50,000 to bring certain mission critical software into the 21st century. We had been operating off of an old DOS based system to support our securities and franchise registration function, and we have now completed the process of converting this program to a windows based system. The program specifically supports our existing chapter and would have to be modified at additional expense if the USA were adopted. We are averse to significant additional expenditures in this area.

The other factor I want to mention is that the new USA relies on administrative rulemaking and the issuance of orders to clarify ambiguous provisions of the Act. With no model rules to draw from, as states move through the process of adopting administrative rules, the potential exists for the re-introduction of non-uniformity. Additionally, our department has been attempting to limit

the number administrative rules adopted under the securities act, and we have made progress in this area as, over the years, legislation has been passed that then allows certain administrative rules to be deleted. Adoption of the USA, with its accompanying rulemaking requirements, would be inconsistent with this objective and direction.

Section 1 of the bill (page 1 line 12 – page 10 line 5) deals with definitions. Several new definitions from the USA have been added: “Bank”, “Depository Institution”, “Institutional Investor”, “Place of Business”, “Principle Place of business”, “Record”, and “State”. The amendments included in this section also modify certain existing definitions to be more consistent with the Uniform Act. This section also deals with terminology change as the term “broker-dealer” is now universally used and recognized in place of the term “dealer”. I would point out that this simple yet necessary change is to some extent responsible for the bulk of the bill as it appears in the bill 118 times.

Section 2 of the bill (page 10 line 6 – page 11 line 4) introduces additional restrictions on the ability of the Securities Commissioner to have ownership interests in certain regulated entities.

Section 3 of the bill (page 11 line 5 – page 16 line 30) deals with exempt securities. The amendments herein add a new exemption for foreign issued margin securities, an exemption found in the USA, and also modify several existing exemptions for greater consistency with the USA.

Section 4 of the bill (page 17 line 1 – page 32 line 23) deals with exempt transactions. These are types of securities transactions that do not require registration with our agency. Here we make several modifications to existing exemptions to improve uniformity. We also add a new exempt transaction provision for private sales of mortgage backed debt instruments (page 32 line 13) and we add an exempt transaction provision for transactions by Federal Covered Investment Advisers (these are advisers registered with the SEC) who have more than \$100,000,000 in assets under management and who are purchasing securities for clients for whom they have discretionary authority (page 32 line 21).

It is in the exempt transaction section of our chapter that we find the provisions we maintain are of great importance to the North Dakota small business. Amendments made to our securities laws during the last several legislative sessions have created mechanisms that allow the North Dakota small business to raise capital in a more efficient and cost effective manner. Examples of exemptions unique to or important to our capital markets here in North Dakota include: limited offeree and limited offering, (these are securities offerings restricted as to number of investors or size of offering), the test the waters exemption, (this allows for the gathering of indications of interest to help the business determine if an actual offering would be successful), incorporation stage offerings, and offerings by community development entities. The foregoing exempt transaction provisions have been carefully crafted to respond to the needs of the small business, while at the same time preserving protections for investors.

Section 5, 6 & 7 of the bill (page 32 line 24 to page 39 line 3) result from the earlier change of the term “dealer” to “broker-dealer”. (technical changes to enhance uniformity.)

Section 8 of the bill (page 39 line 4-17) is necessary to delete reference to a section of our chapter that is being repealed.

Section 9 (page 39 line 18 – page 40 line 6) changes the penalty that applies if a notice filing pertaining to a federal covered security is made late, (\$250 v \$100) and clarifies who may sell Regulation D Rule 506 securities offerings without dealer and agent registration. It is this amendment that is responsible for the small fiscal note on this bill.

Section 10 (page 40 line 7 – 42 line 3) provides technical changes for uniformity purposes

Section 11 (page 42 line 4 – page 52 line 15) This section of the bill addresses the registration of broker-dealers, agents, investment advisers, investment adviser representatives, and federal covered investment advisers. The amendments provide for modifications that enhance uniformity.

Section 12 (page 52 line 16 – page 55 line 8) sets forth record keeping requirements for registered broker-dealers and investment advisers. This new language does not come from the USA, as this is one of the areas in which the USA provides only for rulemaking authority with respect to books and records requirements. As mentioned earlier, we have been attempting to reduce the number of administrative rules promulgated by the department. Our current administrative rule dealing with recordkeeping by registered entities is out of date, and it could be deleted if this provision is approved by the legislature.

Section 13 (page 55 line 9 – page 55 line 13) technical changes only, dealer to broker-dealer

Section 14 (page 55 line 14 – page 59 line 16) addresses the suspension or revocation of the registration of a broker-dealer, agent, investment adviser, and investment adviser representative. Here again you will find technical changes, dealer to broker-dealer. This section also provides a clarification of the law, consistent with the Uniform Securities Act, that identifies certain events as violations of the securities act and as grounds for suspension or revocation of a registration.

Section 15 (page 59 line 17 – page 60 line 18) technical changes only, dealer to broker-dealer

Section 16 (page 60 line 19 – page 61 line 21) This section addresses fraudulent practices and makes modifications consistent with the USA. It also defines fraud in the context of the investment adviser.

Section 17 (page 61 line 22 – page 63 line 19) This section deals with orders, injunctions, and prosecutions for violations, and the assessment of civil penalties. Amendments presented enhance consistency with the USA, and allow civil penalties to be assessed by the Court.

Section 18 (page 63 line 20 – page 64 line 22) addresses investigations and subpoenas. The amendments herein are consistent with USA language and provide for limited immunity for providing information to regulators.

Section 19 (page 64 line 23 – page 66 line 28) this section deals with remedies and has been modified substantially for uniformity with the USA, and provides for remedies related to investment advisory services as well as sales related violations.

Section 20 (page 66 line 29 – page 67 line 5) This section removes the criminal sanctions for failure to submit notice filings on certain federal covered securities.

Section 21 (page 67 line 6 - 13) cleans up a drafting mistake (subsection was used in place of subdivision)

Section 22 (page 67 line 14 & 15) this is a repeal of a securities registration provision that is rarely if ever utilized, is unnecessary and also not found in the Uniform Securities Act

In closing, I would reiterate that our objective in amending the North Dakota Securities Act through HB 1176 is to introduce useful provisions of the new Uniform Securities Act and significantly enhance uniformity in substance, while at the same time preserving investor protection provisions of existing law interpreted to be superior, and while preserving capital formation provisions that are of particular benefit to North Dakota small business.

My comments have provided an abridged description of the amendments set forth in each section of HB 1176. I would be happy at this time to answer any questions you may have and to cover any amendment in greater detail.