A BILL for an Act to create and enact a new section to chapter 10-04 of the North Dakota Century Code, relating to the exemption of an open blockchain token from specified securities transactions and dealings; and to amend and reenact section 10-04-02, subsection 19 of section 13-09-02, and section 13-09-03 of the North Dakota Century Code, relating to the definitions of an open blockchain token and virtual currency and excluding an open blockchain token and virtual currency from specified money transmission requirements.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 10-04-02 of the North Dakota Century Code is amended and reenacted as follows:

10-04-02. Definitions.

When used in this chapter, unless the context or subject matter otherwise requires:

1. "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer or an issuer or is self-employed in effecting or attempting to effect purchases or sales of securities. However, a partner, officer, or director of a broker-dealer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term.

2. "Bank" means:

   a. A bank institution organized under the laws of the United States;
   b. A member bank of the federal reserve system;
   c. Any other banking institution, whether or not incorporated, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the comptroller of the currency pursuant to section 1 of Public Law 87-722, and
which is supervised and examined by a state or federal agency having
supervision over banks, and which is not operated for the purpose of evading this
chapter; and

d. A receiver, conservator, or other liquidating agent of any institution or firm

included in subdivision a, b, or c.

3. "Broker-dealer" means a person engaged in the business of effecting transactions in
securities issued by another person or by such person for the account of others or for
the person's own account. The term does not include:

a. An agent; or

b. A person that facilitates the exchange of an open blockchain token; or

c. A bank or savings institution if its activities as a broker-dealer are limited to those

specified in subsections 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if
limited to unsolicited transactions; 3(a)(5)(B) and 3(a)(5)(C) of the Securities
Exchange Act of 1934 or a bank that satisfies the conditions described in

4. "Commissioner" means the securities commissioner of this state.

5. "Department" means the state securities department.

6. "Depository institution" means:

a. A bank; or

b. A savings institution, trust company, credit union, or similar institution that is

organized or chartered under the laws of a state or of the United States,
authorized to receive deposits, and supervised and examined by an official or
agency of a state or the United States if its deposits or share accounts are
insured to the maximum amount authorized by statute by the federal deposit
insurance corporation, the national credit union shares insurance fund, or a
successor authorized by federal law. The term does not include:

(1) An insurance company or other organization primarily engaged in the
business of insurance;

(2) A Morris plan bank; or

(3) An industrial loan company.
6. "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security pursuant to section 18(b) of the Securities Act of 1933 or rules or regulations adopted under that Act.

7. "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:
   a. A depository institution or international banking institution;
   b. An insurance company;
   c. A separate account of an insurance company;
   d. An investment company as defined in the Investment Company Act of 1940;
   e. A broker-dealer under the Securities Exchange Act of 1934;
   f. An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of ten million dollars or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this Act, a depository institution, or an insurance company;
   g. A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of ten million dollars or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;
   h. A trust, if it has total assets in excess of ten million dollars, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subdivision f or g, regardless of the size of their assets, except a trust
that includes as participants self-directed individual retirement accounts or similar self-directed plans;

i. An organization described in section 501(c)(3) of the Internal Revenue Code, corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for specific purpose of acquiring the securities offered, with total assets in excess of ten million dollars;

j. A small business investment company licensed by the small business administration under section 301(c) of the Small Business Investment Act of 1958 with total assets in excess of ten million dollars;

k. A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940 with total assets in excess of ten million dollars;

l. A federal covered investment adviser acting for its own account;

m. A qualified institutional buyer as defined in rule 144A(a)(1), other than rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933;

n. A major United States institutional investor as defined in rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934; or

o. Any other person, other than an individual, of institutional character with total assets in excess of ten million dollars not organized for the specific purpose of evading this chapter.

10. "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. The term does not include:

a. An investment adviser representative.

b. A bank, savings institution, or trust company.
A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of the person's profession.

d. A broker-dealer or its agent whose performance of these services is solely incidental to the conduct of business as a broker-dealer and who receives no special compensation for them.

e. A publisher of any bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client.

f. A federal covered adviser.

g. A person who is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser.

h. Such other persons not within the intent of this subsection as the commissioner may by rule or order designate.

11. a. "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered adviser and who:

(1) Makes any recommendation or otherwise renders advice regarding securities directly to advisory clients;

(2) Manages the accounts or portfolios of clients;

(3) Determines which recommendations or advice regarding securities should be given;

(4) Provides investment advice or holds out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or sells investment advisory services; or

(5) Immediately supervises employees in the performance of any of the foregoing.

b. The term does not include an individual who:

(1) Is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state, as that term is
defined by the securities and exchange commission pursuant to
section 203A of the Investment Advisers Act of 1940.

(2) Is an agent whose performance of investment advice is solely incidental to
the individual acting as an agent and who does not receive special
compensation for investment advisory services.

(3) Performs only clerical or ministerial acts.

12. a. "Issuer" means every person that issues or proposes to issue any security,
except that:

a. (1) With respect to certificates of deposit, voting-trust certificates, collateral trust
certificates, or shares in an unincorporated investment trust, issuer means
the person or persons performing the acts and assuming the duties of
depositor or manager pursuant to the provisions of the trust or other
agreement or instrument under which such securities are issued.

b. (2) With respect to equipment trust certificates or like securities serving the
same purpose, issuer means the person by whom the equipment or
property is or will be used or to which the property or equipment is or will be
leased or conditionally sold or that is otherwise contractually responsible for
assuring payment of the certificate.

c. (3) With respect to fractional interests in an oil, gas, or other mineral lease or in
payments out of production under a lease, right, or royalty, issuer means the
owner of any such right or any interest in such lease or in payments out
of production under a lease, right, or royalty, whether whole or fractional,
that creates fractional interests for the purpose of sale.

d. (4) With respect to a fractional or pooled interest in a viatical settlement
contract, issuer means the person who creates, for the purpose of sale, the
fractional or pooled interest. The issuer of a viatical settlement contract that
is not fractionalized or pooled means the person effecting the transactions
with the investors in such contracts.

b. "Issuer" does not include a developer or seller of an open blockchain token
unless otherwise provided under section 2 of this Act.
13. "Offer for sale" or "offer to sell" means every attempt or offer to dispose of, or solicitation of an order or offer to buy, a security or interest in a security for value.

14. "Open blockchain token" means a digital unit:
   - Created in response to the verification or collection of a specified number of transactions relating to a digital ledger or database or which is based on random selection or the possession or age of existing units, or a combination of those methods.
   - Recorded in a digital ledger or database that is chronological, consensus-based, decentralized, and mathematically verified in nature, especially relating to the supply of units and their distribution; and
   - Capable of being traded or transferred without an intermediary or custodian of value.

15. "Person" means an individual, corporation, limited liability company, partnership, association, joint venture, trust, government, governmental subdivision, agency, or instrumentality or any other legal or commercial entity.

16. "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:
   - An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or
   - Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

17. "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

18. "Record" except in phrases "of record", "official record", and "public record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
"Sale" or "sell" means every sale, contract to sell, or disposition of a security or interest in a security for value, and every contract to make any such sale or disposition. The term includes:

a. Any security given or delivered with, or as a bonus on account of any purchase of securities or any other thing, must be conclusively presumed to constitute a part of the subject of such purchase and to have been sold for value.

b. A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security giving the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

"Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical or life settlement contract or a fractionalized or pooled interest therein; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor when the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; foreign currency commodity contract, as used in chapter 51-23; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

The term does not include an open blockchain token.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
“Viatical or life settlement contract” means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. “Viatical or life settlement contract” does not include:

a. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by the owner to the provider pursuant to chapter 26.1-33.4;
b. The assignment of a life insurance policy to a bank or depository institution; or
c. The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with the insurance laws of this state.

SECTION 2. A new section to chapter 10-04 of the North Dakota Century Code is created and enacted as follows:

Open blockchain token exemption.

1. A developer or seller of an open blockchain token is not the issuer of a security and is not subject to the provisions of this chapter if:

a. The token has not been marketed by the developer or seller as an investment;
b. The token is exchangeable for goods or services; and
c. The developer or seller of the token has not entered a repurchase agreement or entered an agreement to locate a buyer for the token.

2. A person that facilitates the exchange of an open blockchain token is not a broker-dealer or a person that otherwise deals in securities under this chapter and is not subject to this chapter if:

a. The person has a reasonable and good-faith belief a token subject to exchange:

   (1) Conforms to the requirements of subdivisions a and b of subsection 1; and
   (2) Is not the subject of a repurchase agreement or the subject of an agreement to locate a buyer for the token; and
b. The person takes reasonably prompt action to terminate the exchange of a token not conforming to the requirements of this subsection.

SECTION 3. Subsection 19 of section 13-09-02 of the North Dakota Century Code is created and enacted as follows:
19. "Virtual currency" means a type of digital representation of value that is:
   a. Used as a medium of exchange, unit of account, or store of value; and
   b. Not recognized as legal tender by the United States government.

**SECTION 4. AMENDMENT.** Section 13-09-03 of the North Dakota Century Code is amended and reenacted as follows:

13-09-03. Exclusions.

This chapter does not apply to:

1. The United States or any department, agency, or instrumentality thereof;
2. The United States post office;
3. The state or any political subdivisions thereof;
4. Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, or savings banks or mutual banks organized under the laws of any state or the United States, but this exemption does not extend to any other person acting on behalf of any such excluded entity;
5. The provision of electronic transfer of government benefits for any federal, state, or county governmental agency as defined in federal reserve board regulation E, by a contractor for and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof; and
6. Authorized delegates of a licensee, acting within the scope of authority conferred by a written contract as described in section 13-09-15;

7. A person that develops, sells, or facilitates the exchange of an open blockchain token as defined in section 10-04-02; or
8. A person that buys, sells, issues, or takes custody of payment instruments or stored value in the form of virtual currency, or receives virtual currency for transmission to a location within or outside the United States by any means.