

**1999 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1144**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1144

House Industry, Business and Labor Committee

Conference Committee

Hearing Date 1-27-99

Tape Number	Side A	Side B	Meter #
1	x		48 - 2576
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: **HB 1144**

Syver Vinje, ND Securities Commissioner introduced HB 1144 relating to filing requirements for federal covered securities; definitions, administration, and registration of securities under securities act of 1951, advertising of and statements about securities. He testified in support of HB 1144. (See written testimony)

Rep. Ekstrom: Have you made any provisions for people on the Internet?

Syver Vinje: Probably yes. That is an issue that needs to be addressed more.

Rep. Keiser: Could you explain what the federal areas of responsibility are?

Syver Vinje: Basically it's to make clear who's responsible for what kind of regulation.

Federal covered securities are those that are defined as being listed or authorized for listing on the NY Stock Exchange and others. It also says that we no longer regulate mutual funds. What it

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House Industry, Business and Labor Committee

Bill/Resolution Number Hb1144

Hearing Date 1-27-99

left us doing is to be the cops and regulate the sales activities and practices of those that are selling securities to the public.

Chairman Berg: On the fiscal note, where is the most substantial amount of those fees coming from?

Syver Vinje: The majority of it is under section 10-04-10.

Chairman Berg: In this bill, what is the most significant change here is?

Syver Vinje: Most significant is that we have a lot ND law that isn't consistent with federal law right now and federal law preempts us. This gives us changes that we can live with under the federal law as opposed to having some things unclear. This clarifies some of the things that we are doing.

Syver Vinje explained the amendments to the committee.

Chairman Berg closed the hearing.

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1144 2-2-99

House Industry, Business and Labor

Conference Committee

Hearing Date 2-2-99

Tape Number	Side A	Side B	Meter #
2	x		1.6-3.8
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes: Chairman Berg asked the committee to consider this bill. Amendments had been brought and were discussed.

Chairman Berg : We have been trying to clean up this bill for two sessions. We will have to rerefer this to appropriations if we pass this. What are your wishes?

ACTION : Vice Chair Kempenich made a motion DO PASS the amendments and Rep.

Severson seconded the motion. VOICE VOTE: All yes. Rep. Ekstrom made a motion to DO PASS as amended and rerefer. Rep. Severson seconded the motion.

ROLL CALL VOTE: 15 YES and 0 NO with 0 ABSENT. Passed. Rep. Glassheim will carry the bill.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1144 Amendment to: \_\_\_\_\_

Requested by Legislative Council \_\_\_\_\_ Date of Request: 1-4-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

**Narrative:**

The proposed amendments to sections providing for the payment of a fee will increase or delete the fee or have no fiscal impact as the fee is moved from one section to another with no change.

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	0	0	+724,300.	0	+724,300.	0
Expenditures:	0	0	0	0	0	0

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: None
- b. For the 1999-2001 biennium: None
- c. For the 2001-03 biennium: None

4. County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Signed *Diane Lillis*

Typed Name Diane Lillis

Date Prepared: 1-11-99

Department Securities 414

Phone Number 328-4712

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.:                      HB 1144                      Amendment to:                     

Requested by Legislative Council                      Date of Request: 1-4-99

- Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

**Narrative:**

The proposed amendments to sections providing for the payment of a fee will increase or delete the fee or have no fiscal impact as the fee is moved from one section to another with no change.

- State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds

Revenues:	<del>0</del>	<del>0</del> + 76300.	<del>0</del>	<del>0</del> + 76300.	<del>0</del>	<del>0</del>
Expenditures:	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>	<del>0</del>

- What, if any, is the effect of this measure on the appropriation for your agency or department:

- For rest of 1997-99 biennium: none
- For the 1999-2001 biennium: none
- For the 2001-03 biennium: none

- County, City, and School District fiscal effect in dollar amounts:

1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

If additional space is needed, attach a supplemental sheet.

Signed DIANE LILLIS  
 Typed Name DIANE LILLIS  
 Department SECURITIES 414  
 Phone Number 328-4712

Date Prepared: 1-8-99

PROPOSED AMENDMENTS TO HOUSE BILL 1144

Page 66, line 14, after the period, insert "Any investigation under this section may include an investigatory hearing held in accordance with section 28-32-08."

Page 66, line 17, overstrike ", but the"

Page 66, overstrike line 18

Page 66, line 19, overstrike "prescribes by rule"

Renumber accordingly

Date: 2-2-99  
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1144

House Industry, Business and Labor Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do pass as amended RR to Appropriations

Motion Made By Ekstrom Seconded By Severson

Representatives	Yes	No	Representatives	Yes	No
Chairman Berg	/		Rep. Thorpe	/	
Vice Chairman Kempenich	/				
Rep. Brekke	/				
Rep. Ekstrom	/				
Rep. Froseth	/				
Rep. Glassheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 15 No 0

Absent 0

Floor Assignment Glassheim

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



**REPORT OF STANDING COMMITTEE**

**HB 1144: Industry, Business and Labor Committee (Rep. Berg, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** and **BE REREFERRED** to the **Appropriations Committee** (15 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1144 was placed on the Sixth order on the calendar.

Page 66, line 14, after the period insert "Any investigation under this section may include an investigatory hearing held in accordance with section 28-32-08."

Page 66, line 17, overstrike ", but the"

Page 66, overstrike line 18

Page 66, line 19, overstrike "prescribes by rule"

Renumber accordingly

**1999 HOUSE APPROPRIATIONS**

**HB 1144**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1144

House Appropriations Committee

Conference Committee

Hearing Date 2/8/99

Tape Number	Side A	Side B	Meter #
1	x		12.4-38.4
Committee Clerk Signature <i>Kevin Kaur</i>			

Minutes:

**SUMMARY OF THE BILL:** A BILL for an Act to create and enact section 10-04-08.4 of the North Dakota Century Code, relating to filing requirements for federal covered securities; and to amend and reenact sections 10-04-02, subsection 4 and 5 of section 10-04-03, sections 10-04-04, 10-04-05, 10-04-06, 10-04-07.1, 10-04-08, 10-04-08.1, 10-04-08.2, 10-04-08.3, 10-04-09, 10-04-10, 10-04-10.1, 10-04-10.2, 10-04-10.3, 10-04-11, 10-04-12, 10-04-14, 10-04-16.1, 10-04-17, and 10-04-18 of the North Dakota Century code, relating to definitions, administration, and registration of securities under the Securities Act of 1951, advertising of and statements about securities, federal covered securities, suspensions and relocation of securities registrations, registration of dealers, agents, investment advisers, and investment adviser representatives, suspension and revocation of registrations dealers, agents, investment advisers and investment adviser representatives, hearing provisions, securities investigations, consent to service of process, remedies available to investors, and penalties.

(12.4) Chairman Dalrymple opened the hearing on HB 1144 in the Roughrider Room.

(13.1) Syver Vinge of the Securities Commission testified in support of HB 1144. (see attached testimony)

HB 1144 was acted on as a DO PASS AS AMENDED.

ENGROSSED

Date: 2/8/99  
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1144

House \_\_\_\_\_ Committee \_\_\_\_\_

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS AS AMENDED

Motion Made By Carlisle Seconded By Wentz

Representatives	Yes	No	Representatives	Yes	No
Chairman Dalrymple	X		Nichols	X	
Vice-Chairman Byerly	X		Poolman		X
Aarsvold	X		Svedjan	X	
Bernstein	X		Timm	X	
Boehm	X		Tollefson	X	
Carlson	X		Wentz	X	
Carlisle	X				
Delzer		X			
Gulleson		X			
Hoffner	X				
Huether	X				
Kerzman		X			
Lloyd		X			
Monson	X				

Total (Yes) 15 *Click here to type Yes Vote* No 5 *Click here to type No Vote*

Absent 0

Floor Assignment *Click here to type Floor Assignment* Carlisle

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

REPORT OF STANDING COMMITTEE (410)  
February 8, 1999 3:40 p.m.

Module No: HR-25-2226  
Carrier: Carlisle  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HB 1144, as engrossed: Appropriations Committee (Rep. Dalrymple, Chairman)  
recommends **DO PASS** (15 YEAS, 5 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1144 was placed on the Eleventh order on the calendar.

**1999 SENATE INDUSTRY, BUSINESS AND LABOR**

**HB 1144**

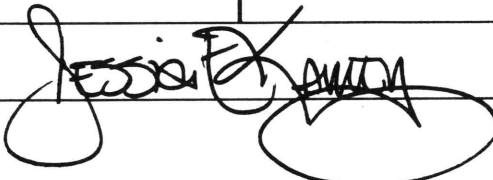
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1144

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date March 1, 1999

Tape Number	Side A	Side B	Meter #
2	x		700-2110
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on HB1144. All senators were present.

Syver Vinje testified in support of HB1144. His testimony is included.

Senator Mutch closed the hearing on HB1144.

Committee discussion took place on March 2, 1999.

Senator Klein motioned for a do pass committee recommendation on HB1144. Senator Mathern seconded his motion. The motion carried with a 7-0-0 vote.

Senator Klein will carry the bill.

Date: 3/1  
Roll Call Vote #: 1

~~3283970~~  
SR383970

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
HOUSE BILL/RESOLUTION NO. 1144

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

- Subcommittee on \_\_\_\_\_
- or
- Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By KLEIN Seconded By MATHEMN

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp	X				
Senator Thompson	X				

Total (Yes) 7 No 0

Absent 0

Floor Assignment MATHEMN



REPORT OF STANDING COMMITTEE (410)  
March 3, 1999 3:29 p.m.

Module No: SR-38-3970  
Carrier: D. Mathern  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1144: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends DO PASS and BE REREFERRED to the Appropriations Committee (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1144 was rereferred to the Appropriations Committee.**

**1999 SENATE APPROPRIATIONS**

**HB 1144**

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. ENGROSSED HB1144

Senate Appropriations Committee

Conference Committee

Hearing Date March 11, 1999; 3/17/99

Tape Number	Side A	Side B	Meter #
1	X		100-725
3/17/99 2	3027-3155		
Committee Clerk Signature <i>Ketting C. Kotteleroch</i>			

Minutes:

**SENATOR NETHING:** A BILL FOR AN ACT TO CREATE AND ENACT SECTION 10-04-08.4 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO FILING REQUIREMENTS FOR FEDERAL COVERED SECURITIES; AND TO AMEND AND REENACT SECTIONS 10-04-02, SUBSECTIONS 4 AND 5 OF SECTION 10-04-03, SECTIONS 10-04-04, 10-04-05, 10-04-06, 10-04-07.1, 10-04-08, 10-04-08.1, 10-04-08.2, 10-04-08.3, 10-04-09, 10-04-10, 10-04-10.1, 10-04-10.2, 10-04-10.3, 10-04-11, 10-04-12, 10-04-14, 10-04-16.1, 10-04-17, AND 10-04-18 OF THE NORTH DAKOTA CENTURY CODE, RELATING TO DEFINITIONS, ADMINISTRATION, AND REGISTRATION OF SECURITIES UNDER THE SECURITIES ACT OF 1951, ADVERTISING OF AND STATEMENTS ABOUT SECURITIES, FEDERAL COVERED SECURITIES, SUSPENSIONS AND REVOCATION OF SECURITIES REGISTRATIONS, REGISTRATION OF DEALERS, AGENTS, INVESTMENT ADVISERS, AND INVESTMENT ADVISER REPRESENTATIVES, SUSPENSION AND REVOCATION OF REGISTRATIONS OF DEALERS, AGENTS, INVESTMENT ADVISERS AND INVESTMENT ADVISER REPRESENTATIVES, HEARING PROVISIONS, SECURITIES INVESTIGATIONS, CONSENT TO SERVICE OF PROCESS, REMEDIES AVAILABLE TO INVESTORS , AND PENALTIES.

**HAROLD KOCHER:** To testify in support of HB1144 (testimony attached (tape 1, side A, meter 100-460).

**SENATOR NAADEN:** How much more does this bring in compared to past Legislation?

**HAROLD KOCHER:** About \$720,000 per biennium.

**SENATOR NAADEN:** Was this bill amended by the House?

**HAROLD KOCHER:** About four words were misspelled, it didn't change the intent of the bill.

**SENATOR TALLACKSON:** Was this heard in IBL?

**HAROLD KOCHER:** Yes, a couple of weeks ago.

**SENATOR KRAUTER:** What is the total number of agents?

**HAROLD KOCHER:** 35,000 agents, a 1000 are residents of the State.

**SENATOR NAADEN:** Closed the hearing on HB1144.

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3/17/99

TAPE 2, a, 3027-3155

**SENATOR NETHING** Reopened the hearing engrossed HB 1144, and called for the motion.

**SENATOR KRAUTER:** Moved do pass engrossed HB 1144.

**SENATOR ROBINSON:** Seconded the motion.

**ROLL CALL:** 14 yeas; 0 nays; 0 absent & not voting.

**MOTION PASSED TO DO PASS ENGROSSED HB 1144.**

**CARRIER:** Senator Klein

**SENATOR NETHING:** Closed the hearing on engrossed HB 1144.

Date: 3-18-99  
Roll Call Vote #: \_\_\_\_\_

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. HB 1144

Senate APPROPRIATIONS Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By SENATOR KRAUTER Seconded By SENATOR ROBINSON

Senators	Yes	No	Senators	Yes	No
Senator Nething, Chairman	✓				
Senator Naaden, Vice Chairman	✓				
Senator Solberg	✓				
Senator Lindaas	✓				
Senator Tallackson	✓				
Senator Tomac	✓				
Senator Robinson	✓				
Senator Krauter	✓				
Senator St. Aubyn	✓				
Senator Grindberg	✓				
Senator Holmberg	✓				
Senator Kringstad	✓				
Senator Bowman	✓				
Senator Andrist	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment SENATOR KLEIN

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

REPORT OF STANDING COMMITTEE (410)  
March 18, 1999 3:38 p.m.

Module No: SR-49-5137  
Carrier: Klein  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HB 1144, as engrossed: Appropriations Committee (Sen. Nething, Chairman)  
recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
Engrossed HB 1144 was placed on the Fourteenth order on the calendar.

**1999 TESTIMONY**

**HB 1144**



INVESTMENT COMPANY INSTITUTE

RECEIVED

JAN 26 1999

January 22, 1999

SECURITIES COMMISSIONER  
STATE OF NORTH DAKOTA

Syver Vinje, Commissioner  
North Dakota Securities Commission  
State Capitol, 5th Floor  
600 East Boulevard  
Bismarck, North Dakota 58505-0510

Re: Proposed House Bill 1144

Dear Commissioner Vinje:

The Investment Company Institute<sup>1</sup> is writing to you to express our support for House Bill 1144, which has been introduced for consideration during the 1999 legislative session. This bill would amend the North Dakota Securities Act to conform it to federal law. This bill is necessitated by the enactment of the National Securities Markets Improvement Act of 1996 ("NSMIA"), which was signed into law by President Clinton effective October 11, 1996. The sweeping reforms contained within NSMIA, which include the most substantial revisions to the federal securities acts since these laws were enacted over fifty years ago, dramatically impacted state securities law. House Bill 1144 would conform North Dakota's law to NSMIA.

In addition to conforming North Dakota law to federal law, the Institute supports House Bill 1144 because it is consistent with changes enacted by North Dakota's sister states in response to NSMIA and, most importantly, because it will enhance the ability of your office to protect North Dakota's investors from fraudulent or unscrupulous conduct. The Institute would like to commend you and your staff for its work on this legislation.

The Institute would be pleased to support your efforts to have this bill enacted. Accordingly, please let me know how we can be helpful in this process, including, if necessary, providing any oral or written testimony in support of this it. I may be reached at 202/326-5825.

Sincerely,

Tamara Cain Reed  
Associate Counsel

<sup>1</sup> The Investment Company Institute is the national association of the American investment company industry. Its membership includes 7,390 open-end investment companies ("mutual funds"), 450 closed-end investment companies and 9 sponsors of unit investment trusts. Its mutual fund members have assets of about \$5.306 trillion, accounting for approximately 95% of total industry assets, and over 62 million individual shareholders. The Investment Company Institute is the national association of the American investment company industry. Many of the Institute's investment adviser members render investment advice to both investment companies and other clients. In addition, the Institute's membership includes 482 associate members that render investment management services exclusively to non-investment company clients. A substantial portion of the total assets managed by registered investment advisers are managed by these Institute members and associate members. With respect to North Dakota, members of the Institute have approximately 85,000 shareholders in the state with assets under management of approximately \$9.7 billion. The North Dakota mutual fund industry manages approximately \$345.3 million and employs, directly and indirectly, approximately 940 persons.



PLAIN LANGUAGE SUMMARY

HB 1144

10-04-02 Definitions

1. "Agent" – replaces definition of "Salesman" – Agent replaces salesman throughout the chapter. This will not create any substantive change and will not require companies to refer to their salesmen as agents. The national trend to refer use the term "agent".
2. "Dealer" – Housekeeping – no substantive changes
3. "Federal Covered Adviser" – necessary to conform with federal law – states cannot require investment advisory registration for federal covered advisers.
4. "Federal Covered Security" – necessary to conform with federal law – states cannot require securities registration or exemption from registration for federal covered securities.
5. "Investment Adviser" – necessary to conform with federal law
6. "Investment Adviser Representative" – necessary to conform with federal law
7. all other amendments to this section are housekeeping and not intended as a substantive change

10-04-03 Fee changed statutorily for interpretative opinions. This is consistent with fee currently charged by the Commissioner for

interpretative opinions and no-action letters. No practical change is anticipated. All other amendments are housekeeping in nature and not intended as substantive changes.

10-04-04 Housekeeping – no substantive change

10-04-05 Exempt Securities

1. Subsection 4 is amended to remove the requirement of PSC registration, or the filing of a registration statement. The filing fee of \$25 is also removed.
2. Subsection 5 is amended to require a filing and the approval of the Commissioner for the charitable securities exemption. The filing will provide a filing fee of \$150. No commissions may be charged for the sale of these securities. This is necessary because of increased fraud activities with bogus charity-issued securities.
3. Subsection 6 – “Blue-Chip exemption” – removed because it is not necessary – Most if not all blue-chip companies qualify for an exemption under 10-04-15 (listing exemption).
4. Subsection 7 – This exemption is amended to exclude the requirement that the commercial paper be eligible for discounting by federal reserve banks. This change is necessary because federal reserve banks have stopped discounting commercial paper.
5. Subsection 8 – amended to remove the filing requirement and the filing fee associated with this exemption.

6. Subsection 11 – amended to remove the filing requirement and the filing fee associated with this exemption
7. Subsection 14 – expands the foreign government securities exemption to foreign nations with which the united states maintains diplomatic relations
8. Subsection 15 – adds additional exchanges to the listing exemption – does not change current law, but it is consistent with current administrative law. This change would also give the Commissioner greater discretion with regard to withdrawing the exemption of a particular security.
9. All other changes are not intended to be substantive.

10-04-06 Exempt Transactions

1. Subsection 2 – removes the approval of the Commissioner to qualify for the exemption
2. Subsection 8 – amends the manual exemption to include the names of the manuals approved for the exemption. This does not change current law
3. Subsection 9 –  
Subdivision a – amended to allow for this exemption to apply to 35 or fewer offerees, and this amendment would permit the payment of commissions to registered agents or salesmen. This amendment also increases the filing fee to \$150.

Subdivision b – amended to increase the availability of the exemption for offerings up to \$1,000,000 and to remove the requirement that 80% of the funds must be used for the operations in this state. This amendment also increases the filing fee to \$150.

Subdivision c – the amendment would take away the Commissioner’s special rule-making authority for limited offering exemptions. This exemption would also require reports to be made regarding exemptions filed under a and b above, which simply codifies existing administrative law.

Subdivision e – the amendment would codify the standards for the applicability of the exemption. The amendment could codify the so-called “bad boy” provisions, which exclude the applicability of the exemptions to persons who have been the subject of significant disciplinary actions.

Subdivision f permits the Commissioner’s discretion to overturn a rigid reading of those standards. This would permit the Commissioner to make exceptions to subdivision e in the public interest.

4. Subsection 11 – the amendment removes the requirement that securities which fund pension plans be exempt from registration
5. Subsection 17 – New language – Creates a pre-organization exemption to help permit in the formation of new companies in this state. This would codify an exemption set forth in the administrative code.

6. Subsection 18 – New language – Creates an exemption applicable to accredited investors (generally, persons with a net worth in excess of \$1,000,000). This exemption brings state law in better compliance with federal law. This exemption is also similar to an exemption which exists in 33 states. In order to qualify for the exemption, the following must apply
  - a. the company must have a business plan
  - b. the investors must be purchasing for investment
  - c. the issuer does not have prior disciplinary history
  - d. general solicitations are permitted, as are solicitations through AceNet – no solicitations are permitted via telephone unless the solicitor has reason to believe that the recipient of the call is an accredited investor
  - e. the issuer must file documents with the Commissioner and pay a filing fee of \$100 within 15 days after the first sale
  
7. Subsection 19 – New language – creates an exemption for organizations organized and operated under chapter 10-06.1. This amendment codifies existing administrative rules which exempts securities issued by family corporate farming operations which operates in accordance with state law.

10-04-07.1 Housekeeping and modernizing – no substantive change

10-04-08 2(b) is amended to remove the requirement of registration of mutual funds as required by federal law. Mutual funds will be subject to a notice filing under 10-04-08.4. All other changes are housekeeping in nature.

10-04-08.1 Housekeeping – no substantive change

- 10-04-08.2 The amendment reduces the filing requirement for advertising matters.
- 10-04-08.3 Housekeeping – no substantive change
- 10-04-08.4 New language – The amendment creates an exemption from registration for federal covered securities and to provide for a notice filing it clarifies the filing fee structure for federal covered securities. Federal law prohibits any state from requiring registration for federal covered securities. This amendment also codifies the current practice regarding Rule 506 offerings.
- 10-04-09 Housekeeping and modernization – no substantive change
- 10-04-10 This amendment creates an exemption for federal covered advisers so long as they make a notice filing with the Commissioner and pay a filing fee of \$100. This amendment also creates an exemption for investment advisers of other jurisdictions which have fewer than 6 clients who are residents of this state. These changes are required by federal law. This amendment would also codify the renewal date for all investment advisers as May 1. These changes help to bring our law in better accordance with federal law. Additionally this amendment would change the filing fees for agents to \$60 and for investment adviser representatives to \$50. Other changes are housekeeping changes.
- 10-04-10.1 Advisory Activities – changes required due to federal law changes – all other changes are housekeeping in nature.
- 10-04-10.2 Housekeeping – no substantive change

- 10-04-10.3 Housekeeping – no substantive change
- 10-04-11 The amendment would permit the Commissioner to suspend registrations as a punitive, rather than a remedial, nature for a period not to exceed 12 months. This provides the Commissioner with more flexibility in dealing with violations of the securities laws.
- 10-04-12 The amendment would permit the extension of time to request a hearing and would provide more time in which to hold a hearing. This would also allow additional time to reach mutual settlements.
- 10-04-14 Housekeeping – no substantive change
- 10-04-16.1 Housekeeping – no substantive change
- 10-04-17 Federal law prohibits any state law from allowing investors a rescission for failing to make a notice filing with the state. The current version of §10-04-17 is unenforceable as it relates to violations of 10-04-08.4. This amendment simply clarifies the law and makes it enforceable.
- 10-04-18 The amendment removes criminal sanctions from issuers of federal covered securities and federal covered advisers who fail to make filings as required by state law.

RE: FISCAL IMPACT DUE TO LEGISLATION

The sections or subsections referenced are taken from the proposed bill:

Section 10-04-03(5) - Moving language from the rule to the statute imposing a fee for opinion requests. No fiscal impact.

Section 10-04-05(4) - Deletes the filing fee of \$25.00. Estimate 20 filings during the biennium will not be made for a revenue decrease of \$500.00.

Section 10-05-05(5) - Will provide for an approval filing by persons organized and operated not for profit, imposition of a \$150.00 filing fee. Estimate 30 filings during the biennium for a revenue increase for the biennium of \$4,500.00.

Section 10-04-05(7) - Deletes the filing fee of \$10.00. No filings during the last 10-15 years. No fiscal impact.

Section 10-04-05(10) - Deletes the filing fee of \$25.00. No filings during the last 12-15 years. No fiscal impact.

Section 10-04-06(9) - Provides for an increase in the filing fee from \$100.00 to \$150.00. Based upon past filings the increase will result in a revenue increase during the biennium of \$5,000.00.

Section 10-04-06(11) - This section does not provide for the payment of a filing fee but due to an amendment the number of filings under Section 10-04-06(9) may decrease by 12 during the biennium resulting in a revenue decrease of \$1,200.00.

Section 10-04-06(18) - This exemption is new and provides for a filing fee of \$100.00. It is estimated that 25 filings will be made during the biennium for a revenue increase of \$2,500.00.

Section 10-04-08 - The language relating to fees paid for filings by unit investment trusts and open-end management companies was moved to a newly created section, Section 10-04-08.4. This will result in no fiscal impact. The filing of a fee for the termination of a filing having an indefinite amount is being deleted. It is estimated there will be a revenue decrease during the biennium of \$6,000.00.

Section 10-04-08.4 - The fees in Subsection 1 was addressed in the preceding paragraph. The fee in Subsection 2 does not change as the fee is required in Section 10-04-06(9) but due to federal legislative the filing requirements changed as the security is a federal covered security. No fiscal impact.

The net result of the changes for filings under Sections 10-04-03, 10-04-05, 10-04-06, 10-04-08, and 10-04-08.4 is for an estimated revenue increase of \$4,300.00 for the next biennium.



**FISCAL NOTE ESTIMATES FOR CHANGES TO SECURITIES ACT**

July 1, 1999 – June 30, 2001

**BD AGENTS:** (Increase of \$10 per agent per year)

**New Agents:**

July 1, 1999 – December 31, 1999 (4,000 x \$10) \$ 40,000  
(Actual 7/1/98 – 12/31/98 – 5,436)

Jan. 1, 2000 – December 31, 2000 (8,000 x \$10) 80,000  
(Actual 1/1/98 – 12/31/98 – 13,973)

Jan. 1, 2001 – June 30, 2001 (4,000 x \$10) 40,000

**Renewals:**

January 1, 2000 (28,000 x \$10) 280,000  
(Actual 1/1/1999 – 29,960)

January 1, 2001 (28,000 x \$10) 280,000

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TOTAL ESTIMATE INCREASE \$720,000

**Investment Advisers** (Reps increase of \$15 per agent per year)  
(Federally covered firms notice filing \$100 per firm)

Will not estimate income as it is very subjective at this point.

During 1997-98:

263 firms became notice filers amounting to \$26,300

2,650 representatives were affiliated with these firms - \$92,750

While we will receive the firm fees of \$26,300, only representatives that have a place of business in our state will be required to register. Very difficult to determine how many that will be. Suspect it will be no more than about 300.

(Fiscal Note – Gen. Office)

10-04-05(4)	-	500
10-05-05(5)	+	4500
10-04-06(9)	+	5000
10-04-06(11)	-	1200
10-05-06(18)	+	2500
10-05-08	-	6000
10-04-10	+	720000

Total		
Increase		\$724300

**DRAFT**

**"PLAIN LANGUAGE SUMMARY"**  
**of the**  
**NORTH DAKOTA SECURITIES ACT OF 1951**  
**Chapter 10-04--North Dakota Century Code**

**Legal Notice.** The following is a summary of the Securities Act. It is not intended to be a complete and accurate restatement of the Securities Act. This is not a legal opinion of the Securities Commissioner. All readers are advised not to rely on this document. Instead, the statutes in chapter 10-04 N.D.C.C. set forth the securities laws in this state, and your rights and responsibilities, as applicable, are set forth in that act. It is no defense to any enforcement action, or civil or criminal proceeding, that you relied on this summary.

10-04-01 Title

10-04-02 Definitions

1. Commissioner
2. Dealer – a company which buys and/or sells securities for clients or for its own account
3. Investment Adviser – a company which provides investment advisory services for a fee. Investment advisory services include recommendations to buy, sell or hold securities and reports or analysis as to the value of securities or a securities portfolio. The term "Investment Adviser" does not include financial institutions or publishers of general circulation publications. It also does not

include any incidental investment advise provided by lawyers, accounts, engineers, teachers or dealers and salesmen.

4. Investment Adviser Representative – an agent of an investment adviser.
5. Issuer – The person who issues a security. In the case of bonds or other debt instruments, the issuer is the person who owes the debt on the instrument. In the case of stock or other equity instruments, the issuer is the corporation or enterprise which authorized the stock to exist, and in which the stock is provided with the voting rights and payments of dividends, as applicable. The issuer of the security is usually a different person than the dealer who offers and sells the security.
6. Offer – any attempt to sell or dispose of a security. A grant of options for the purchase of a security is not an offer of the security if; 1) it is limited to officers, directors and employees, 2) no money is paid for the options, and 3) the option is not transferable except through will, trust, or probate.
7. Person-a natural person or organized business entity.
8. Registered dealer -- a dealer registered under this act.
9. Registered salesman -- a salesman registered under this act.
10. Sale or Sell – any sale of a security for value, or a contract for the same. Any security delivered with the purchase of another item is a sale under this definition.

11. Salesman – any person who represents a dealer in buying or selling securities
12. Securities Act of 1933 – A federal act relating to the regulation of Securities sold to the public.
13. Security – Intended to be very broad in interpretation. It includes stocks, bonds and other things commonly referred to as securities. It also includes “investment contracts” which have been defined by case law as 1) an investment of money 2) in a common enterprise 3) with the expectation of profits 4) based on the efforts of others. Most securities can be understood according to that definition.

10-04-03 Administration of Chapter

1. The Commissioner is appointed by the governor and confirmed by the senate. The Commissioner is charged with administering the provisions of chapter 10-04 of the North Dakota Century Code.
2. The Commissioner may issue and rescind rules or forms, and may administer oaths. One role of the Commissioner is to administer the law so that like provisions are interpreted similarly with laws of other jurisdictions.
3. The travel expenses of the Commissioner and the staff are paid from appropriated funds.
4. Fees collected are deposited in the general fund except civil penalties collected for the purposes of repayment to aggrieved investors.

5. For a fee, the Commissioner may issue written opinions as to the proper interpretation of the securities laws of this state.

10-04-04 Registration of Securities. All securities sold in North Dakota or sold to North Dakota residents must be registered unless exempted under 10-04-05 or 10-04-06.

10-04-05 Exempt Securities. The registration requirements set forth 10-04-04 do not apply to any of the following:

1. Government securities –
  - a. securities which are guaranteed against loss of principal and interest by a the United States government, any state government or any political subdivision of any state; or,
  - b. securities issued by the United States government, any state government or any political subdivision of a state so long as the obligation for the payment of principal and interest on the securities rests on an entity whose securities are exempt under 10-04-05.
2. Financial Institution Exemption – securities issued by and representing a debt of a national or state chartered financial institution, or an international bank which has an American based branch.
3. Securities issued by a building and loan association and fixed and variable annuity contracts issued by insurance companies.
4. Railroad/Utilities exemption – Securities issued or guaranteed by a company which owns or operates an railroad or public utility subject

to regulation by the public service commission or like body in other jurisdictions, so long as the offer of securities is

- a. presented to the public service commission in this state for approval of the securities offering; or,
  - b. a copy of the registration statement filed with the Securities and Exchange Commission, along with a \$25 filing fee, are provided to the Commissioner.
5. Charitable securities exemption – securities issued by charitable organizations are generally exempt from registration
6. Blue Chip Exemption – very rarely used. Provides an exemption for very stable, strong, financially sound companies. Securities of these companies are almost always exempt under other provisions of this act.
7. Commercial Paper Exemption – Any note, draft, bill of exchange or banker's acceptance which relates to a current debt and is:
- a. not made in a public offering;
  - b. prime quality commercial paper which is eligible for discounting by the federal reserve banks;
  - c. subject to maturity of less than nine months;
  - d. payable in cash; and
  - e. is not convertible to an option or another security
8. Five year bond exemption – very rarely used -- fixed income securities which has been issued and have been held in the hands of the public for five years or more and which have not been the subject of any default.

Filing Requirement – in order to qualify for this exemption, the person claiming the exemption must provide evidence of applicability of the exemption to the Commissioner with a filing fee of \$10.

9. Cooperative Securities -- securities issued by cooperatives are exempt under the act.
10. Securities based on collateral leased to, sold to, or furnished to public utilities or railroads.
11. Securities issued by a public utility holding company, or railroad holding company, consistent with the provisions of subsections 4 or 10 above.
12. Unsolicited Purchase Order exemption – securities subject to an unsolicited purchase order so long as the following conditions are met:
  - a. purchase is executed by a registered dealer which acts as an agent for the purchaser;
  - b. the dealer has no direct material interest in the sale or distribution of the securities ordered;
  - c. the dealer receives no commission, profit or other compensation other than the commission on the purchase or sale;
  - d. the dealer provides a confirmation statement which clearly states the commissions paid for the purchase of the security; and,
  - e. clear and complete records are kept of all transactions exempted under this subsection.



13. Securities issued by a North Dakota venture capital corporation or a North Dakota venture limited liability company under provisions of Chapter 10-30.1 N.D.C.C. "Venture Capital Corporations"
14. Canadian Government Exemption. Securities issued by and which are the valid obligations of Canada, any Canadian Province, or any political subdivision thereof.
15. National Exchange exemption. Securities listed or approved for listing on the NYSE, AMEX, NASDAQ or other approved exchanges. This exemption includes senior or equal ranked non-listed securities, or warrants to purchase any of the same securities. The Commissioner has the authority to approve additional exchanges or to remove any exchange from this exemption by Order.
16. Securities issued by the North Dakota Education Association Dues Credit Trust.

10-04-06 The registration provisions contained in 10-04-04 and 10-04-10 do not apply to the following securities transactions:

1. Any judicial sale or sale by a bankruptcy trustee.
2. The transfer of securities which are exempt under 10-04-05, pledged to pay for a bone fide debt. This exemption does not permit the sale of more than 2% of an issue of securities.
3. An isolated sale by an owner of securities, not the issuer, underwriter, dealer or salesman. This exemption does not apply to an agent of the owner.

4. Dividend reinvestment by a corporation or limited liability company so long as the corporation or limited liability company does not charge a commission on the transaction.
5. Securities sold to a financial institution, institutional buyer or a dealer.
6. A transaction, voted on by shareholders, based on a merger, consolidation, reclassification of securities, or sale of company assets.
7. Securities issued pursuant to a right of conversion of the original security, provided that the original security was not sold in violation of North Dakota law.
8. Manual exemption -- Securities sold by registered dealers and salesmen and listed in a nationally recognized securities manual approved by the Commissioner; if
  - a. securities are sold at or near market price;
  - b. transactions are not an unsold allotment of issued securities;
  - c. the securities must be issued by companies organized by a state or territory of the United States; and
  - d. this exemption does not apply to securities in open-end management companies, mutual funds, unit investment trusts, contractual plans, and face amount certificate companies.
9.
  - a. Limited Offeree exemption. Securities offered to 25 or fewer persons, except for financial institutions and Institutional

buyers, during a 12 month period, if all the following conditions are met:

- 1) no commission is paid to the company or the salesman;
  - 2) filing fee of \$100 is paid to the Commissioner; and
  - 3) approval of the Commissioner is granted.
- b. Any offer of stock or limited partnership interests w/n a 12 month period, if all the following conditions are met;
- 1) no commission is paid to the company or the salesman;
  - 2) the company is organized in and maintains its principle place of business in North Dakota
  - 3) 80% of the proceeds must be used for the operations of the organization in North Dakota
  - 4) no advertising or general solicitation
  - 5) gross proceeds must not exceed \$500,000
  - 6) all moneys received are escrowed until total offering has been sold
  - 7) offering disclosure and application filed with and approved by the Commissioner. \$100 filing fee.

10. The sale of stock or membership interests in a small company organized under chapter 10-30 N.D.C.C. or approved by the SBA for Section 502 loans; or a non-profit community development company organized under chapter 10-24 N.D.C.C.

11. Employee' stock purchase plan – the securities which fund the plan must be exempt under 10-04-05

12. Governmental security that are sold by:

- a. the government entity which issues the security; or

b. the Bank of North Dakota or other bank as a benefit to customers and not to receive any commission or other consideration except for an accommodation fee of \$50.

13. Sale of venture capital corporation stock organized under Chapter 10-30.1 N.D.C.C.

14. Sale of professional corporation or LLC stock organized under Chapter 10-31 N.D.C.C.

15. NDEA securities offered to NDEA members.

16. "Test the Waters" exemption -- Provides a low-cost means for issuers to determine if there is sufficient investor interest to go forward with a securities offering.

10-04-06.1 Suspension and revocation of exemptions -- The Commissioner may suspend or revoke an exemption under Sections 10-04-05 or 10-04-06 for cause.

10-04-07 Registration by description.

1. Securities described in subsection 2. may be registered by description.

2. Applies to securities issued by an issuer which:

a. has been in business for the past three years, and

b. has shown net earnings, in the past three to five year period, in an amount equal to or more than

1)  $1\frac{1}{2}$  times the value of interest to be paid on any interest bearing securities issued or to be issued

- 2) 1½ times the value of dividends promised to be paid on any securities issued or to be issued
  - 3) 5% of the value of all securities issued or to be issued which do not have a specified rate of return or a specified dividend
3. Securities entitled to be registered by description shall be registered by the issuer or dealer by filing with the Commissioner
  - a. registration statement
  - b. filing fee – between \$100 and \$500 dollars – 1/20 of the total offering
  - c. Consent to service of process, unless registered with the secretary of state
4. Registration by description is valid for one year.
5. Establishes fees for registration by description.
6. Approval by the Commissioner is not required, but if the Commissioner determines that the information provided by the issuer does not provide sufficient evidence that the issuer qualifies for this form of registration, the Commissioner may require such evidence.

10-04-07.1 Registration by announcement – Secondary

1. Applies to
  - a. securities which have been held by the public for more than one year and have been previously registered in North Dakota or with the SEC, and which has not been revoked or denied registration by the Commissioner.

b. voting stock in life insurance companies provided the company has been in operation for the past 20 years, and the applicant provides the following information:

- 1) certified balance sheet
- 2) certified earnings statement

2. Applicant must be a dealer registered with the commissioner and must file an announcement with the Commissioner.

3. Automatic registration with \$25 filing fee, unless the Commissioner requests further information w/n 48 hours of the filing of the announcement. Registration shall be effective for one year.

10-04-08 Registration by Qualification -- Applies to all other securities.

1. Provides rules for full and fair disclosure of all material facts regarding a securities offering.

2. Filing fee for most securities – minimum of \$100.

- a. 1/10 of one percent of the first \$750,000 of the security to be offered, and
- b. 1/20 of one percent of any amount in excess of \$750,000
- c. annual \$100 renewal fee

Filing fee for mutual funds \$500 – renewal of \$100-250. 1/20<sup>th</sup> of one percent of the public offering

3. Non-resident issuers must file consent to service of process.

4. The Commissioner must accept a prospectus filed with the SEC, but may require the issuer to provide additional information. The prospectus must be provided to any potential purchasers.

10-04-08.1 Authority of the Commissioner -- The Commissioner can deny any securities application, or do almost anything reasonable to protect investors and the public with regard to a securities registration.

10-04-08.2 Advertising Regulations --

1. Advertising materials must be pre-filed with the Commissioner.
2. The Commissioner may exempt advertising materials from filing requirements.
3. The Commissioner can disapprove advertising materials.
4. Preliminary prospectuses may be distributed if a registration statement has been filed with the SEC, but not yet approved.

10-04-08.3 Unlawful representations. The fact of a registration under the Act is not an approval by the Commissioner of the security, and any statement to the contrary is unlawful.

10-04-09 Suspension or revocation of registration of securities. The Commissioner may revoke a registration of securities if the Commissioner finds that:

1. the securities are part of a fraud on the public
2. the issuer is insolvent

3. the issuer has made fraudulent representations about the security
4. the issuer has refused to permit an examination by this office
5. securities registered by description did not qualify for that registration

The Commissioner may suspend a registration if the Commissioner has reason to believe that are sufficient grounds for a revocation. Hearings under this section are held in accordance with chapter 28-32.

10-04-10 Registration of dealers, salesmen, and investment advisers, and investment adviser representatives.

1. Dealers. File an application with the Commissioner which contains financial information, disciplinary information, and information demonstrating that persons with the company are knowledgeable in the business. There is a \$200 filing fee with each application.
2. Salesmen. File an application stating information about the education and employment of the applicant, that the person has taken the required examinations, and information about the person's disciplinary history. A salesman application must demonstrate that the prospective salesman is affiliated with a registered dealer. There is a \$50 filing fee with each application.
3. Investment Advisers. File an application with the Commissioner which contains financial information, disciplinary information, and



information demonstrating that persons with the company are knowledgeable in the business. There is a \$100 filing fee with each application.

4. Investment Adviser Representatives. File an application stating information about the education and employment of the applicant, that the person has taken the required examinations, and information about the person's disciplinary history. An investment adviser representative application must demonstrate that the perspective representative is affiliated with a registered investment adviser. There is a \$35 filing fee with each application.
5. Refusal of registration. Any of the above applications may be denied if the person's registration could be revoked under 10-04-11.
6. Registration is effective for a one year period.

#### 10-04-10.1 Advisory Activities

1. Investment Advisory Fraud. If you receive compensation for providing advisory services, it is illegal to engage in any fraudulent act or to provide any untrue statements, or to engage in any dishonest or unethical practice.
2. In solicitation of an advisory client, a person cannot make an untrue statement of material fact, or fail to state a material fact.
3. Investment Advisory contracts. An investment advisory contract must provide that:

- a. The investment advisor cannot collect his fee based on the performance of the assets under management.
- b. The investment advisor cannot assign the contract w/o the consent of the client.
- c. The investment advisor must notify the client if there is a change of ownership.

4. Custody of funds -- The Investment adviser must provide notice to the Commissioner if the adviser has custody of customer funds.

10-04-10.2 Conviction not bar to registration -- Conviction of an offense does not bar a person from registration under this Chapter, unless the Commissioner determines that the offense has a direct bearing on the persons ability to serve the public in the securities industry, or that following a conviction, the person is not sufficiently rehabilitated.

10-04-10.3 Postregistration provisions.

1. registered persons must maintain books and records
2. file financial reports required by the Commissioner
3. promptly update filings
4. the Commissioner may conduct examinations and coordinate with other jurisdictions in the examination and investigation process
5. Commissioner may copy records

10-04-11 Suspension or revocation of dealer's, salesman's, investment adviser's and investment adviser representative's registration.

1. Grounds for revocation
  - a. violated securities laws
  - b. dealer or salesman is insolvent
  - c. engaged in dishonest or unethical practices
  - d. selling securities at unfair prices
  - e. failing to provide information to the Commissioner as required by law
  - f. filing false applications or other false information with
  - g. conviction of any criminal offense
  - h. injunction from engaging in any aspect of the securities business
  - i. has been denied, suspended or revoked registration in this state
  - j. has been denied, suspended or revoked registration in any jurisdiction, the person is the subject of an order expelling them from an Self-regulatory organization, or is the subject of a postal fraud order
  - k. has manipulated the price of securities
  - l. not qualified based on training, experience and knowledge
  - m. subject to an insurance commissioner's order, denying or revoking registration
  
2. If any of the above apply to any control person for a dealer or an investment adviser, the above apply to the dealer or investment adviser.
  
3. The Commissioner may conduct an examination to determine whether the above criteria apply to that person.

4. The Commissioner may summarily suspend a registration, for up to 30 days, if the Commissioner believes there is sufficient evidence to uphold a revocation of the said registration.
5. The Commissioner may revoke a registration based on the above grounds after they have been proven in a hearing in accordance with 10-04-12.
6. A ten year statute of limitations applies to the enforcement of this section.

10-04-12. Hearings. Before issuing a final order, the Commissioner must provide a hearing or opportunity for hearing to any person aggrieved by that final order. The hearing procedures are set forth as follows:

1. The Commissioner must issue a proposed order and the grounds for issuing that Order. The order must be served on the respondent.
2. If a hearing is requested within ten days of the respondents' receipt of the order, a hearing must be immediately set and held within 15 days unless the parties agree otherwise.
3. Hearings are conducted under chapter 28-32.
4. If no request for a hearing, the order is a final order.

10-04-14 Service of process.

1. Every applicant for registration appoints the Commissioner as his agent for the purposes of service of process.
2. Every person who violates the securities act appoints the Commissioner as his agent for the purposes of service of process.
3. If service is made upon the Commissioner, a court or the Commissioner shall grant reasonable continuance as required to afford the respondent or defendant the opportunity to defend the action.

10-04-15 Fraudulent Practices. It is illegal to:

1. make any false or misleading statements to the Commissioner
2. engage in a device, scheme or artifice to defraud
3. make any false or misleading statements in the offer and/or sale of securities
4. engage in any course of business which would operate as a fraud on the purchasers or the public
5. manipulate the price of a stock

A 6 year statute of limitations applies to this section.

10-04-16 Orders, injunctions and prosecutions for violations. The Commissioner has the authority to:

1. issue cease and desist orders, subject to the hearing provisions of 10-04-12
2. seek injunctive action by a district court
3. refer a case for criminal prosecution

10-04-16.1 Investigations and Subpoenas.

1. The Commissioner has the authority to:
  - a. make investigations inside and outside of this state
  - b. require and permit statements, under oath
  - c. publish information for the protection investors
2. The Commissioner may subpoena witness to:
  - a. require the production of documents
  - b. require testimony of witness, under oath
3. If a party fails to comply with a subpoena, the Commissioner may seek to have it enforced in district court.
4. No person shall refuse to testify under a subpoena, but if a person makes a valid claim of privilege, no testimony taken may be used against that person to seek civil or criminal penalties.

10-04-17 Remedies. An investor who purchases a security which was offered in violation of chapter 10-04 is entitled to a rescission of the purchase price plus interest. The interest will be the fixed rate on all fixed rate instruments and will be 6% on all variable rate or equity instruments.

Collection of attorney's fees is permitted under this section.

If a rescission offer is made according to the above terms, that offer must be accepted within 30 days by the investor, or the investor is not entitled to seek rescission under this section.

A five year statute of limitations applies to this section.

This does not limit other rights of action which may be available to an investor.

10-04-18 Penalties.

1. It is a Class B felony to engage in a willful violation, meaning that the person knew what they were doing, of this chapter.
2. Any criminal charges under this section must be brought within 5 years of the offense.
3. 5 year statute of limitations also runs against the Commissioner in a civil action.

10-04-19 Evidentiary Matters.

1. the defense has the duty of proving the applicability of the exemption
2. A Commissioner's signed certificate is evidence of compliance or non-compliance with the provisions of this chapter.