

# BANKS AND BANKING

## CHAPTER 88

### SENATE BILL NO. 2164

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

## STATE DEPARTMENT OF FINANCIAL INSTITUTIONS NAME CHANGE

AN ACT to amend and reenact sections 1-03-04 and 6-01-01, subsections 1 and 2 of section 6-01-01.1, subsections 5 and 8 of section 6-01-02, subsection 1 of section 6-01-04.1, subsection 1 of section 6-01-04.2, subsection 4 of section 6-01-10, section 6-01-13, subsection 1 of section 6-01-15, section 6-01-17.2, subsection 2 of section 6-02-01, sections 6-03-11, 6-03-13.5, 6-03-70, and 6-05-02, subsection 2 of section 6-05-04, subsections 1 and 3 of section 6-05-15.4, subsection 2 of section 6-05-15.5, section 6-05-28, subsection 1 of section 6-06-08, sections 6-06-08.2 and 6-06-08.3, subsection 2 of section 6-06-35, section 6-06-36, subsection 4 of section 6-08.1-01, section 6-08.2-02, subsection 3 of section 6-08.3-01, section 6-09-29, subsection 4 of section 6-09-35, section 6-10-06, sections 7-01-03, 7-01-09, and 7-01-11, subsection 2 of section 7-01-12, section 7-01-14, subsection 5 of section 7-02-01, subsections 1, 9, and 10 of section 7-02-08, sections 7-03-01, 7-03-03, 7-03-04, and 7-03-05, subsection 4 of section 7-03-07, sections 7-04-20, 7-05-01, 7-05-02, 7-05-03, 7-05-04, 7-05-05, 7-05-06, 7-05-07, 7-06-01, 7-06-02, 7-06-03, 7-06-04, 7-06-05, 7-06-07, 7-07-02, 7-07-03, 7-07-05, 7-07-06, 7-07-07, 7-07-08, 7-07-12, 7-08-01, 7-08-03, and 7-08-05, subsection 2 of section 10-04-05, subsection 2 of section 12.1-06.1-01, subsection 1 of section 13-03.1-01, subsection 1 of section 13-03.1-11, sections 13-04.1-01, 13-04.1-03, 13-04.1-05, 13-04.1-06, 13-04.1-08, 13-04.1-10, 13-04.1-11, 13-04.1-13, 13-05-01, 13-05-03, 13-05-05, and 13-05-06, subsection 1 of section 13-05-06.1, sections 13-05-08, 13-05-08.1, and 23-21.1-03, subsection 2 of section 51-17-02, subsection 1 of section 54-06-04, subsection 16 of section 54-11-01, and section 54-11-07 of the North Dakota Century Code, relating to the name of the department of banking and financial institutions; and to provide for legislative council correction of statutory references.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 1-03-04 of the North Dakota Century Code is amended and reenacted as follows:

**1-03-04. Business days.** All days other than those mentioned in sections 1-03-01, 1-03-02, and 1-03-02.1 are to be deemed business days for all purposes. However, any bank may remain closed on any one business day of each week, as it may from time to time elect. Any day upon which a bank is so closed shall be, with respect to such bank, a holiday and not a business day. Any act authorized, required, or permitted to be performed at or by or with respect to such bank on such

day, may be performed on the next succeeding business day, and no liability or loss of rights shall result from such delay.

Notice of intention on the part of any bank to remain closed on a business day of the week shall be posted in a conspicuous place in the lobby of the bank at least ten days prior to the establishment of such practice and similar notice shall be given when a bank elects to change the day of the week on which it remains closed. Any state bank establishing the practice, as hereinbefore provided, of closing one day a week shall give ten days' notice in writing to the commissioner of ~~banking and~~ financial institutions, in addition to posting the notice in the lobby. However, any bank may elect to remain closed on a business day of the week without any prior notice in the event of the following emergencies: any act of God, death of an officer, or a robbery.

**SECTION 2. AMENDMENT.** Section 6-01-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-01-01. Management and control - State department of ~~banking and~~ financial institutions.** The state department of ~~banking and~~ financial institutions is under the supervision of the state banking board, state credit union board, and a chief officer designated as the commissioner of ~~banking and~~ financial institutions, and known as the state examiner. Whenever the term state examiner is used in this code, it means the commissioner of ~~banking and~~ financial institutions. The state department of ~~banking and~~ financial institutions has charge of the execution of all laws relating to state banks, trust companies, credit unions, building and loan associations, mutual investment corporations, mutual savings corporations, banking institutions, and other financial corporations, exclusive of the Bank of North Dakota.

**SECTION 3. AMENDMENT.** Subsections 1 and 2 of section 6-01-01.1 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. There is hereby created a special fund designated as the financial institutions regulatory fund. The amounts received under the following chapters, and any other moneys received by the department of ~~banking and~~ financial institutions, must be deposited into this fund: chapters 6-01, 6-03, 6-05, 6-06, 6-10, 7-05, 13-03.1, 13-04.1, 13-05, and 51-17.
2. All moneys deposited in the financial institutions regulatory fund are reserved for use by the department of ~~banking and~~ financial institutions to defray the expenses of the department in the discharge of its administrative and regulatory powers and duties as prescribed by law, subject to the applicable laws relating to the appropriation of state funds and to the deposit and expenditure of state moneys. The department of ~~banking and~~ financial institutions is responsible for the proper expenditures of these moneys as provided by law.

**SECTION 4. AMENDMENT.** Subsections 5 and 8 of section 6-01-02 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

5. "Banking department" means the state department of ~~banking and~~ financial institutions.
8. "Commissioner" means the commissioner of ~~banking and~~ financial institutions.

**SECTION 5. AMENDMENT.** Subsection 1 of section 6-01-04.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The department of ~~banking and~~ financial institutions or the board may issue and serve upon any officer, director, or employee of a financial corporation or institution subject to its jurisdiction and upon the financial corporation or institution involved, a complaint stating the basis for the board's or the department's belief that the officer, director, or employee is engaging, or has engaged, in any of the following conduct:
  - a. Violating any law, regulation, board order, or written agreement with the board;
  - b. Engaging or participating in any unsafe or unsound practice; or
  - c. Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.

**SECTION 6. AMENDMENT.** Subsection 1 of section 6-01-04.2 of the North Dakota Century Code is amended and reenacted as follows:

1. The department of ~~banking and~~ financial institutions or the board may issue and serve upon a financial corporation or institution subject to its jurisdiction a complaint stating the factual basis for the ~~department~~ department's or board's belief that the financial corporation or institution is engaging in any of the following conduct:
  - a. An unsafe or unsound practice.
  - b. A violation in the past or on a continuing basis of any law, regulation, board order or written agreement entered into with the board.

**SECTION 7. AMENDMENT.** Subsection 4 of section 6-01-10 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. The biennial reports of the state banking board and the state credit union board shall be published in the form of a combined biennial report of the department of ~~banking and~~ financial institutions. The biennial report of the department shall be submitted to the governor and the secretary of state in accordance with section 54-06-04. The biennial report of the department must include all other biennial reports which the commissioner or the boards are required by law to submit to the governor and the office of management and budget.

**SECTION 8. AMENDMENT.** Section 6-01-13 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-01-13. Commissioner - Appointment of deputies.** The commissioner may appoint, remove, and assign appropriate titles to such deputy examiners and such other employees as in ~~his~~ the commissioner's judgment may be necessary for the proper discharge of the business of the department of ~~banking and~~ financial institutions. The commissioner may select and designate one of said deputy examiners to be chief deputy examiner and to act during the absence or disability of

the commissioner, and in such cases the deputy examiner so designated has charge of the office and shall administer its affairs. ~~He~~ The chief deputy examiner shall perform such duties as may be prescribed by the commissioner.

**SECTION 9. AMENDMENT.** Subsection 1 of section 6-01-15 of the North Dakota Century Code is amended and reenacted as follows:

1. No officer or employee of this department may have any interest, directly or indirectly, in any corporation or institution within the jurisdiction of the department of ~~banking and~~ financial institutions, nor in any corporation or institution engaged wholly or in part in the writing or issuing of bonds of or for any such corporation or institution or any officer or employee thereof. Provided, however, this prohibition does not apply to membership in a state-chartered credit union or savings and loan association.

**SECTION 10. AMENDMENT.** Section 6-01-17.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-01-17.2. Additional assessment of banks and interstate branches.**

Where the commissioner determines that more than one visit, inspection, or examination is necessary to promote the safety and soundness of a state banking association or a branch of an out-of-state state bank during a twelve-month period, the state banking association or branch shall pay to the state treasurer a fee for the time used by the commissioner or other person designated by the commissioner in supervising, filing, and corresponding in connection with each additional visit, inspection, or examination and report of examination and for time used by each deputy examiner, or other person in making and otherwise preparing and typing the reports of examination herein provided for. Fees for the visit, inspection, or examination must be charged by the department of ~~banking and~~ financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visit, inspection, or examination provided for by this section. A state banking association or branch of an out-of-state state bank shall pay such assessment or fee within ten days of receiving a billing from the commissioner. Fees must be deposited in the financial institutions regulatory fund. The state treasurer shall report the payments of fees to the commissioner, and if any corporation or institution or branch is delinquent more than twenty days in making the payment, the board may make an order suspending the functions of the delinquent corporation or institution or branch until payment of the amount due. The commissioner may assess a penalty of five dollars a day additional for the delay. The state banking board may waive or postpone the collection of this special assessment if the assessment would place an undue burden on the state banking association or branch.

**SECTION 11. AMENDMENT.** Subsection 2 of section 6-02-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. If any firm or corporation organized prior to July 1, 1931, has been granted a charter permitting it to use any word, words, or title contrary to the intent of this section, and by reason of its rights under such charter this section may not be enforced against it during the life of such charter, no renewal charter may be granted to such person, firm, or corporation permitting the continuance of the use of such word, words, or title contrary to or in violation of this section. Any person, firm, or corporation which, by reason of an existing charter right under any law

or statute in effect prior to July 1, 1931, may be held by the courts not to be affected by this section and which therefore refuses to comply with this section, during the period of noncompliance, shall prominently and continuously display in plain, legible, and clearly discernible lettering on all of its signs, stationery, circulars, and advertising, and in all of its printed or written matter, the following words and language: "NOT UNDER THE SUPERVISION OF THE STATE BANKING BOARD OR THE COMMISSIONER OF ~~BANKING AND~~ FINANCIAL INSTITUTIONS". Such language must be displayed as prominently thereon as is other matter therein.

**SECTION 12. AMENDMENT.** Section 6-03-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-11. Conversion, consolidation, or merger.** Any two or more banking institutions as defined in section 6-01-02 upon making application to the state banking board may consolidate or merge if authorized by the board into one banking institution under the charter of either existing banking institution on such terms and conditions as lawfully may be agreed upon by a majority of the board of directors of each banking institution proposing to consolidate or merge subject to rules adopted by the state banking board. Before becoming final, such consolidation or merger must be ratified and confirmed by the vote of the shareholders of each such banking institution owning at least two-thirds of its capital stock outstanding, at a meeting to be held on the call of the directors. Notice of such meeting and of the purpose thereof must be given to each shareholder of record by registered or certified mail at least ten days prior to the meeting. The shareholders may unanimously waive such notice and may consent to such meeting and consolidation or merger in writing. The capital stock and surplus of such consolidated banking institution must not be less than that required under this title for the organization of a banking institution of the class of the largest consolidating banking institution. Immediately after the consolidation or merger a full report thereof including a statement of the assets and liabilities of the consolidated banking institution must be made to the commissioner by the surviving banking institution. Any banking institution may without approval by any state authority convert into or merge or consolidate with a national banking association as provided by federal law. A national bank proposing to merge into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of ~~banking and~~ financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.

**SECTION 13. AMENDMENT.** Section 6-03-13.5 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-13.5. National bank, federal savings association, or state savings and loan association conversion to state bank.** A national bank, federal savings association, or state savings and loan association located in this state which follows the procedure prescribed by federal law to convert into a state bank, must be granted a state charter if it meets the provisions of the North Dakota Century Code for the incorporation and chartering of a new state bank. Any requirement that shares must be paid in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting national bank, federal savings association, or state savings and loan association, which may be valued at no more than their fair cash market value. The procedure for incorporation of a state bank may be modified by the board to the extent made necessary by the difference between an ordinary

incorporation and a conversion and no public hearing need be held on a conversion application. A national bank, federal savings association, or state savings and loan association proposing to convert into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for the examination at an hourly rate sufficient to cover all reasonable expenses of the department of banking and financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions regulatory fund.

**SECTION 14. AMENDMENT.** Section 6-03-70 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-70. Reports - Regular and special - Publication - Penalty.** Every state banking association shall respond to calls each year, the number to be determined by the commissioner. The commissioner shall prescribe the forms for such reports which must be the same forms as those for similar reports called by the federal deposit insurance corporation. The reports must exhibit in detail, under appropriate headings, the resources and liabilities of the association at the close of business on a past day specified by the commissioner, which must be the same day on which similar reports are required by the federal deposit insurance corporation. Each report must be verified by the oath of the president or the cashier and attested as correct by at least two of the directors and must be transmitted to the commissioner within thirty days after receipt of the request for the same. The commissioner may request an amended call for reports filed in error and may require republication of the call report containing material errors. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the federal deposit insurance corporation or federal reserve bank or a printout retrieved from computer facilities in the department of banking and financial institutions and connected to those of the federal deposit insurance corporation. The commissioner may call for a special report from any association whenever in the commissioner's judgment the same is necessary to obtain complete knowledge of the condition of the association. Every association which fails to make and transmit any report required by this section shall forfeit and pay to the state treasurer for deposit in the financial institutions regulatory fund a penalty of two hundred dollars for each delinquency. The commissioner may waive the penalty for reports filed late, not exceeding three business days beyond the due date required by this section.

**SECTION 15. AMENDMENT.** Section 6-05-02 of the North Dakota Century Code is amended and reenacted as follows:

**6-05-02. Compliance with chapter required - Penalty for noncompliance.** No person, firm, company, copartnership, or corporation, either domestic or foreign, not organized under this chapter nor subject to its provisions, except only national banking corporations, state banks authorized under this chapter, and the Bank of North Dakota, may make use of or display in connection with its business, in signs, letterheads, advertising, or in any other way, such words as "trust", "trust company", or any other word or words of like import, nor may any person or concern do or perform anything in the nature of the business of a trust company until and unless such business is regularly organized and authorized under this chapter. If any firm or corporation organized prior to July 1, 1931, has been granted a charter permitting it to use any word, words, or title contrary to the intent of this section, and by reason of its rights under such charter, the provisions of this section may not be enforced against it during the life of such charter. However, no renewal charter may be granted to such person, firm, or corporation permitting the continuance of the use of such word, words, or title contrary to or in violation of this section. Any person, firm,

or corporation which, by reason of an existing charter right under any law or statute in effect prior to July 1, 1931, may be held by the courts not to be affected by this section and which therefore refuses to comply with the provisions of this section, during the period of noncompliance, shall display, prominently and continuously in plain, legible, and clearly discernible lettering on all of its signs, stationery, circulars, and advertising, and in all of its printed or written matter the following words and language: "NOT UNDER THE SUPERVISION OF THE STATE BANKING BOARD OR THE COMMISSIONER OF ~~BANKING AND~~ FINANCIAL INSTITUTIONS", and such language must be displayed thereon as prominently as any other matter therein. Any person, firm, company, copartnership, or corporation, domestic or foreign, violating any provision of this section, shall forfeit to the state one hundred dollars for every day or part thereof during which such violation continues. In an action brought by the commissioner or any aggrieved person, the court may issue an injunction restraining such person, firm, company, copartnership, or corporation from further using such words, terms, or phrases in violation of this section or from further transacting business in such a way or manner as to lead the public to believe that its business is in whole or in part of the nature of a trust company, or that it is under the supervision of the state banking board or the commissioner.

**SECTION 16. AMENDMENT.** Subsection 2 of section 6-05-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Bonds of other states which have the approval of the commissioner of ~~banking and~~ financial institutions;

**SECTION 17. AMENDMENT.** Subsections 1 and 3 of section 6-05-15.4 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

1. A trust company may establish and maintain for itself and its operating subsidiary organizations one or more offices or places of business within this state, throughout the United States, in foreign countries, or in dependencies or insular possessions of the United States upon written application to the department of ~~banking and~~ financial institutions for approval from the state banking board. The application must include the information specified by the board.
3. Within ten business days after receipt of the application by the department of ~~banking and~~ financial institutions, the commissioner shall determine if the application is complete and shall notify the trust company of the determination. If within the ten business days the commissioner determines the application is incomplete, the commissioner shall request the additional information necessary to complete the application. Within ten days after receipt of the additional information, the commissioner shall notify the trust company by mail of the commissioner's determination of completeness. Within sixty days after the date for the mailing of a notice of completeness by the commissioner, the state banking board either shall approve the application or shall notify the trust company that a hearing on the application will be required.

**SECTION 18. AMENDMENT.** Subsection 2 of section 6-05-15.5 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. A trust company that desires to establish or acquire an operating subsidiary must submit a written notification to the department of ~~banking and~~ financial institutions not less than thirty days before the trust company's investment in the subsidiary organization is made. The notification must include the information specified by the state banking board.

**SECTION 19. AMENDMENT.** Section 6-05-28 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-05-28. Examination by commissioner - Fees - Power over business, officers, and employees.** The commissioner shall make a full, true, complete, and accurate examination and investigation of the affairs of each corporation doing business under this chapter as often as the commissioner deems necessary. Such examination must be made without previous notice to the corporation to be examined. Fees for such examinations must be charged by the department of ~~banking and~~ financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund. The commissioner, in the commissioner's discretion, may accept, in lieu of any examination authorized or required by this title to be conducted by the department of ~~banking and~~ financial institutions, the examination that may have been made of such institution within a reasonable period by the federal reserve bank or federal deposit insurance corporation, if a copy of such examination is furnished to the commissioner. The commissioner shall assume and exercise over each such corporation and its business, officers, directors, and employees all the power and authority conferred upon the commissioner over ~~banking and other~~ financial or moneyed corporations or associations.

**SECTION 20. AMENDMENT.** Subsection 1 of section 6-06-08 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Credit unions and the permanent loan funds of credit unions, if any, are under the supervision of the commissioner. Credit unions shall report to the commissioner when called by the commissioner, and at least twice each year. The commissioner shall prescribe the forms for the reports. The reports must be received by the commissioner within thirty days of the call. At the discretion of the commissioner, a call may be complied with by submission of a photocopy of the call report submitted to the national credit union administration, or a printout retrieved from computer facilities in the department of ~~banking and~~ financial institutions and connected to those of the national credit union administration. The commissioner may call for special reports from any credit union whenever in the commissioner's judgment it is necessary to obtain complete knowledge of the condition of the credit union. Every credit union that fails to make and transmit any report required in pursuance of this section shall forfeit and pay to the state a penalty of two hundred dollars for delinquency. The commissioner may waive the penalty for reports filed late, not exceeding three business days beyond the due date required by this section.

**SECTION 21. AMENDMENT.** Section 6-06-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**6-06-08.2. Failing institution - Emergency powers - Hearing - Order - Appeal.** Whenever the state credit union board determines that a merger or acquisition of any of the credit unions under its supervision is necessary because the institution's equity is impaired, it is conducting its business in an unsafe, unsound, or unauthorized manner, or it is endangering the interests of shareholders, creditors or the public, whether or not the institution is insolvent, the state credit union board may, without a hearing, declare an emergency and declare that the institution is a failing institution. Upon such declaration the state credit union board may authorize the commissioner of ~~banking and~~ financial institutions to immediately take possession of the institution. The board is authorized to do all things necessary to continue service to the affected community including any merger or acquisition under this chapter or otherwise.

An institution which is the subject of such a board declaration may ask for a hearing before the state credit union board within five days after service of the state credit union board's declaration upon it. The application for a hearing must be granted and the hearing must be held not later than ten days after the application is filed. A complete record of the hearing must be established and maintained. On the basis of the hearing, the board shall enter a final order. The institution may appeal the order to the district court of the county in which the credit union is located within ten days after the order is served upon it. The appeal is governed by chapter 28-32 except that the board has ten days after service of the notice of appeal to certify the record, and the district court shall hear the appeal as expeditiously as possible.

**SECTION 22. AMENDMENT.** Section 6-06-08.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-06-08.3. Examination of credit union computer servicers.** The commissioner may conduct an examination or inspect the records and operation of any computer servicer providing data processing services for any credit union under the department of ~~banking and~~ financial institutions' jurisdiction.

**SECTION 23. AMENDMENT.** Subsection 2 of section 6-06-35 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. a. A federal credit union, organized under the laws of the United States may be converted into a state credit union by (1) complying with all federal requirements requisite to enabling it to convert to a state credit union or to cease being a federal credit union, (2) filing with the state credit union board proof of such compliance, satisfactory to the commissioner, (3) filing with the commissioner an organization certificate and bylaws, both in triplicate, as required by section 6-06-02, and (4) granting discretionary authority to the commissioner to conduct an examination prior to the conversion date. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of ~~banking and~~ financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund.
- b. When the commissioner has been satisfied that all of such requirements, and all other requirements of the North Dakota law have been complied with, the commissioner shall notify the applicants and the state credit union board of that fact, and the

board shall instruct the secretary of state to issue a charter in accordance with section 6-06-02. Upon issuance of the charter, the federal credit union shall become a state credit union and ceases to be a federal credit union. The state credit union is vested with all of the assets and shall continue responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place.

**SECTION 24. AMENDMENT.** Section 6-06-36 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-06-36. Merger.** Any credit union chartered under this chapter or under act of Congress may merge under rules and regulations established by the state credit union board. A federal credit union proposing to merge into a state-chartered credit union shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for such examination at an hourly rate sufficient to cover all reasonable expenses of the department of ~~banking and~~ financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions' regulatory fund. The secretary of state shall charge a fee of fifty dollars for all services in connection with a merger authorized by the state credit union board, including filing of a certificate of organization or bylaws, and issuing or canceling charters.

<sup>42</sup> **SECTION 25. AMENDMENT.** Subsection 4 of section 6-08.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

4. "Financial institution regulatory agency" means any of the following:
  - a. The federal deposit insurance corporation.
  - b. The federal savings and loan insurance corporation.
  - c. The national credit union administration.
  - d. The federal reserve board.
  - e. The United States comptroller of the currency.
  - f. The department of ~~banking and~~ financial institutions.
  - g. The federal home loan bank board.

**SECTION 26. AMENDMENT.** Section 6-08.2-02 of the North Dakota Century Code is amended and reenacted as follows:

**6-08.2-02. Presentment of plan of acquiring entity to the state department of ~~banking and~~ financial institutions.** Prior to any acquisition under this chapter, the acquiring entity must present a plan to the state department of

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<sup>42</sup> Section 6-08.1-01 was also amended by section 1 of Senate Bill No. 2191, chapter 97.

~~banking and~~ financial institutions. The plan must provide that the acquiring entity commits itself to the condition that it capitalize each bank to be acquired in this state according to the applicable banking laws of this state and the requirements of the federal deposit insurance corporation or any applicable federal banking laws.

**SECTION 27. AMENDMENT.** Subsection 3 of section 6-08.3-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

3. "Commissioner" means the commissioner of ~~banking and~~ financial institutions.

**SECTION 28. AMENDMENT.** Section 6-09-29 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-09-29. Examinations and audit reports.** The state auditor shall contract with an independent certified public accounting firm for an annual audit of the Bank of North Dakota in accordance with generally accepted government auditing standards. The state auditor shall audit annually or contract for an annual audit of the separate programs and funds administered by the Bank of North Dakota. On request of the state auditor, the industrial commission shall assist the state auditor in the auditing firm selection process, but the selection of the auditing firm is the state auditor's responsibility. The auditor selected shall prepare an audit report that includes financial statements presented in accordance with the audit and accounting guide for banks and savings institutions issued by the American institute of certified public accountants. The auditor also shall prepare audited financial statements for inclusion in the comprehensive annual financial report for the state. The state auditor may conduct performance audits of the Bank of North Dakota, including the separate programs and funds administered by the Bank. The auditor shall report the results of the audit to the industrial commission and to the legislative assembly. The Bank of North Dakota or its separate programs and funds shall pay the costs of the audit. The department of ~~banking and~~ financial institutions, through the commissioner, shall examine the Bank of North Dakota at least once each twenty-four months and conduct any investigation of the Bank which may be necessary. The commissioner shall report the examination results, and the results of any necessary investigation, to the industrial commission as soon as practicable and to the legislative assembly. The department of ~~banking and~~ financial institutions shall charge a fee for any examination or investigation at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations and investigations provided for by this section.

<sup>43</sup> **SECTION 29. AMENDMENT.** Subsection 4 of section 6-09-35 of the North Dakota Century Code is amended and reenacted as follows:

4. Information obtained from the state department of ~~banking and~~ financial institutions which would not be available from that agency under section 6-01-07.1.

**SECTION 30. AMENDMENT.** Section 6-10-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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<sup>43</sup> Section 6-09-35 was also amended by section 1 of Senate Bill No. 2117, chapter 393.

**6-10-06. Duty of commissioner.** The commissioner may make an examination of the business of such licensee, and such applicant shall pay an examination fee. Fees for such examinations must be charged by the department of banking and financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

**SECTION 31. AMENDMENT.** Section 7-01-03 of the North Dakota Century Code is amended and reenacted as follows:

**7-01-03. Articles of incorporation - Contents.** Whenever any number of persons, not less than nine, desires to incorporate a building and loan association, having for their object the conduct and operation of such an association as defined in this title, they shall prepare and file articles of incorporation to that effect in the manner specified in this title. Unless otherwise provided herein the general law governing profit corporations applies to such association. The articles of incorporation must include the following:

1. The name of the association. The name must not be the same as, nor too closely resemble, that in use by any existing corporation established under the laws of this state. The words, "building and loan association" or "savings and loan association" must form a part of the name, and only corporations and associations organized under this chapter are entitled to use a name embodying either of said combinations of words. Any association in existence on July 1, 1931, may continue and renew its charter in the name under which it was then operating. Any corporation or association organized or operating under this chapter is authorized to change its name to embody the words "savings and loan association".
2. The principal office, or place of business of the association, which must be within this state.
3. The territory in which such association proposes to operate.
4. The amount of its authorized capital shares and the number of shares into which the same must be divided. Such capital must be divided into shares having a par value of fifty dollars, one hundred dollars, or two hundred dollars.
5. A provision that such association is organized under this chapter for the purpose herein expressed.
6. The name, residence, and occupation of, and a statement of the number of the shares subscribed and the amount of cash paid upon such shares by, each of the persons who subscribed and acknowledged the said articles, a majority of whom must be citizens of this state and who thereafter must be called incorporators.
7. The term of corporate existence, which may not exceed twenty years but which may be extended as provided in this chapter.
8. The number of directors of the association.

Immediately upon the preparation of such articles of incorporation, and before the same are filed in the office of the secretary of state, four copies thereof must be filed in the office of the commissioner of ~~banking and~~ financial institutions for the use of the state banking board.

**SECTION 32. AMENDMENT.** Section 7-01-09 of the North Dakota Century Code is amended and reenacted as follows:

**7-01-09. Issuance of certificate by state banking board - Filing of articles.** If the state banking board is satisfied from its investigation that a certificate should issue, it, within sixty days after the articles of incorporation and bylaws have been presented to it, shall instruct the commissioner of ~~banking and~~ financial institutions to issue, under ~~his~~ the commissioner's hand and official seal, a certificate reciting in substance: that the articles of incorporation and bylaws have been filed in ~~his~~ the commissioner's office; that said articles and bylaws conform to all the requirements of this title; that the board has approved the same; that the incorporators are fit and proper persons to conduct the business of a building and loan association as defined in this title; that there is a reasonable need for the existence of said building and loan association; and that the public convenience and advantage will be promoted thereby. Such certificate must be made in quadruplicate and attached to each copy of the articles of incorporation, one of which must be retained by the commissioner, and the other three must be returned to the incorporators who forthwith shall file one copy thereof in the office of the secretary of state, one in the office of the register of deeds of the county in which the principal place of business of said association is located, and the other must be retained by the association. Immediately upon the receipt of said certified copy, the secretary of state shall issue a certificate of incorporation, whereupon the incorporation of the association is deemed complete.

**SECTION 33. AMENDMENT.** Section 7-01-11 of the North Dakota Century Code is amended and reenacted as follows:

**7-01-11. Consolidation authorized.** Any building and loan association, with the consent and approval of the commissioner of ~~banking and~~ financial institutions, may consolidate with or be taken over by any other association upon such terms as may be authorized by the respective boards of directors of such associations after being authorized to enter into such consolidation by a majority vote of their respective shareholders at any regular or special meeting. This section must be construed to include any association taken over by the commissioner whether in process of liquidation or otherwise.

**SECTION 34. AMENDMENT.** Subsection 2 of section 7-01-12 of the North Dakota Century Code is amended and reenacted as follows:

2. A copy of the minutes of such meeting of the shareholders verified by the affidavit of the president or vice president and the secretary of the meeting must be filed within ten days after said meeting in the office of the commissioner of ~~banking and~~ financial institutions. Such verified copy of the minutes of such meeting when so filed is presumptive evidence of the holding and of the action of such meeting; and

**SECTION 35. AMENDMENT.** Section 7-01-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**7-01-14. State savings and loan association conversion to state bank.** A state savings and loan association located in this state which follows the procedure

prescribed by the board to convert into a state bank, must be granted a state charter if it meets the provisions of the North Dakota Century Code for the incorporation and chartering of a new state bank. Any requirement that shares must be paid in cash may be satisfied by the exchange of shares of the converted state bank for those of the converting state savings and loan association, which may be valued at no more than their fair cash market value. The procedure for incorporation of a state bank may be modified by the board to the extent made necessary by the difference between an ordinary incorporation and a conversion and no public hearing need be held on a conversion application. A state savings and loan association proposing to convert into a state-chartered bank shall grant the commissioner discretionary authority to conduct an examination. The commissioner shall set fees for the examination at an hourly rate sufficient to cover all reasonable expenses of the department of ~~banking and~~ financial institutions associated with the examination. Fees must be collected by the commissioner, transferred to the state treasurer, and deposited in the financial institutions regulatory fund.

**SECTION 36. AMENDMENT.** Subsection 5 of section 7-02-01 of the North Dakota Century Code is amended and reenacted as follows:

5. To acquire, hold, encumber, and convey such real estate and personal property as may be necessary for the transaction of its business, or to enforce or protect its securities, but not over two percent of the assets of any association may be invested in its home office, lot, and building, and furniture and fixtures; provided, however, that ten percent of the assets of any association may be invested in its home office, lot, building, and furniture and fixtures, when authorized by a vote of two-thirds of its directors and the written approval of the commissioner of ~~banking and~~ financial institutions.

**SECTION 37. AMENDMENT.** Subsections 1, 9, and 10 of section 7-02-08 of the North Dakota Century Code are amended and reenacted as follows:

1. To borrow money when deemed necessary, and to issue its promissory notes therefor, and to pledge its assets as security for such notes, but the assets and securities of an association must not be pledged or hypothecated to secure its borrowed money in an amount exceeding twenty-five percent of its assets without the consent of the commissioner of ~~banking and~~ financial institutions.
9. To loan its idle funds to other domestic building and loan associations when authorized by a vote of two-thirds of its directors and the written approval of the commissioner of ~~banking and~~ financial institutions.
10. To invest its idle funds in bonds and other obligations of the United States; in bonds and other obligations of foreign countries when first approved by the commissioner of ~~banking and~~ financial institutions; in bonds or evidences of debt of this state or any political subdivision thereof; in bonds or evidences of debt of any other state in the Union; or in bonds or evidences of debt of any county, city, or school district having a population according to the last state or federal census of ten thousand or more inhabitants, in any such other state of the Union.

**SECTION 38. AMENDMENT.** Section 7-03-01 of the North Dakota Century Code is amended and reenacted as follows:

**7-03-01. Directors and officers - Election - Qualification - Duties - Meetings.** The conduct and management of the affairs and business of such association is vested in a board of directors which must consist of an uneven number of members, not less than five nor more than eleven. The incorporators of the association shall possess the qualifications of directors and shall serve as directors until the first meeting of the shareholders, and until their successors are elected and qualified. The directors thereafter must be elected by the shareholders of the association in accordance with the provisions of this title and the bylaws of the association. No person is eligible to election as a director or an officer unless ~~he~~ that person is the owner in good faith and in ~~his~~ that person's own right on the books of the association of shares upon which at least two hundred dollars have been paid. The directors shall hold their office for not less than one year nor more than three years, and if the term of office is for a longer period than one year, the bylaws must provide that the terms of an equal number thereof, as nearly as possible, expire each year. Each director, when appointed or elected, shall take an oath that ~~he~~ the director, so far as the duty devolves upon ~~him~~ the director, diligently and honestly will administer the affairs of such association, that ~~he~~ the director will not knowingly or willingly violate or permit to be violated, any of the provisions of this title; that ~~he~~ the director is a bona fide owner of the number of shares required by this section to become a director, standing in ~~his~~ the director's own name on the books of the association, and that said shares are not hypothecated nor in any way pledged as security for any debt. Such oath, subscribed by the director making it and certified by the officer before whom it was taken, must be filed in the office of the commissioner of ~~banking and~~ financial institutions as a part of the qualification of such director. Meetings of the board of directors must be held at least once each month. Any person elected to be a director who, after such election, hypothecates, pledges, or ceases to be the owner in ~~his~~ that person's own right of the necessary qualifying shares thereupon shall vacate ~~his~~ that person's office. The board of directors, when authorized to do so by the bylaws, may elect the officers or any of them and fill vacancies until the next annual meeting of the shareholders.

**SECTION 39. AMENDMENT.** Section 7-03-03 of the North Dakota Century Code is amended and reenacted as follows:

**7-03-03. Removal of directors, officers, or employees by commissioner.** Any director, officer, or employee of any association found by the commissioner of ~~banking and~~ financial institutions to be incompetent or dishonest may be removed by ~~him~~ the commissioner from such office or position upon the failure of the board of directors to act.

**SECTION 40. AMENDMENT.** Section 7-03-04 of the North Dakota Century Code is amended and reenacted as follows:

**7-03-04. Agents and solicitors - Licenses and revocation thereof.** No person receiving compensation from a building and loan association may act as solicitor or agent for the sale of the shares of stock, shares of membership, certificates, or other securities or forms of investment issued by such association, except shares issued in connection with and not exceeding the amount of any loan as made, until ~~he~~ that person first has procured a license therefor from the commissioner of ~~banking and~~ financial institutions. No license, however, may be required by any officer or director of such association. To obtain such license there must be filed with the commissioner a duplicate of the authorization or appointment issued to such person, together with a request from a licensed association that a license be issued to ~~him~~ that person to act as an agent or solicitor for it, accompanied by a fee of two dollars. All such licenses expire by limitation on the thirty-first day of December succeeding their issue, and may be renewed from time to

time for an additional period of one year upon a request therefor from the association originally applying and upon payment of a renewal fee of two dollars. Any such license may be revoked at any time, on the application of the association for whom it was issued, or may be revoked by the commissioner for cause. The commissioner shall keep an alphabetical list of the names of persons to whom such licenses are issued with the date of issue and renewal, and the name of the association for whom such licensee is authorized to act. All such licenses must be issued under rules and regulations to be prescribed by the state banking board.

**SECTION 41. AMENDMENT.** Section 7-03-05 of the North Dakota Century Code is amended and reenacted as follows:

**7-03-05. Bonds of directors, officers, agents, and employees.** Every officer, director, employee, or agent handling or having the custody or charge of funds, securities, books, or records belonging to a building and loan association, before entering upon the discharge of ~~his~~ that person's duties, shall give a good and sufficient bond in such sum and upon such conditions as may be required by the board of directors in keeping with rules and regulations relative thereto established by the commissioner of ~~banking and~~ financial institutions. All such bonds must be approved by the board of directors of such association and are subject to the approval of the commissioner. In lieu of individual bonds, a blanket bond covering all active officers and employees of such association may be executed, subject to the provisions as to approval of surety, amount, and form specified herein. The board of directors, at its discretion, may require any other bond or bonds in addition to the bond herein required. Officers of an association who do not handle the association's funds or securities are not required to give bond. Bonds must be executed in duplicate-original, one of which must be filed with the commissioner and the other must be retained by an officer or custodian of the association. All directors and officers of such association, on being reelected to office, and all agents and employees, upon their reappointment, shall renew their bonds.

**SECTION 42. AMENDMENT.** Subsection 4 of section 7-03-07 of the North Dakota Century Code is amended and reenacted as follows:

4. Having the custody or control of its books, willfully refuses or fails to make any proper entry in the books of such association as required by law, or to exhibit or allow the same to be inspected and extracts to be taken therefrom by the commissioner of ~~banking and~~ financial institutions, ~~his~~ the commissioner's chief deputy, or any of ~~his~~ the commissioner's examiners,

**SECTION 43. AMENDMENT.** Section 7-04-20 of the North Dakota Century Code is amended and reenacted as follows:

**7-04-20. Reduction of liability to shareholders.** Whenever the losses of any association resulting from depreciation in value of its securities or otherwise exceed its reserve, undivided profits, and current earnings so that the estimated value of its assets is less than the total amount due its members, the commissioner of ~~banking and~~ financial institutions, upon petition of such building and loan association, may order a reduction of its liability to shareholders in such manner as to distribute the loss equitably among such shareholders. If thereafter such association realizes from such assets a greater amount than was fixed in the order of reduction, such excess must be divided among shareholders whose credits were so reduced, but to the extent of such reduction only.

**SECTION 44. AMENDMENT.** Section 7-05-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**7-05-01. Examination and fees therefor.** The commissioner of ~~banking and~~ financial institutions, at least once each year or oftener if the commissioner deems it necessary or expedient, shall examine into the affairs of all domestic associations doing business in this state. Whenever persons holding ten percent or more of the subscribed shares of any association file a written application with the commissioner requesting the commissioner to make an examination of any such association, the commissioner shall make such examination forthwith. Upon the completion of any examination of any association made by the commissioner or under the direction of the commissioner, the association so examined shall pay to the state treasurer a fee. Fees for such examination must be charged by the department of ~~banking and~~ financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. The commissioner shall report such payment to the state banking board, and if any such association is delinquent more than twenty days in making such payment, the state banking board may make an order suspending the functions of such association until payment of the amount due. The commissioner may assess a penalty of five dollars additional for each day of delay in payment. In lieu of the examinations herein required, the commissioner may accept any examination made by a federal home loan bank, the federal home loan bank board, or by the federal savings and loan insurance corporation. The commissioner may in ~~his or her~~ the commissioner's discretion conduct a joint examination with said described federal agencies. Fees and penalties under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

**SECTION 45. AMENDMENT.** Section 7-05-02 of the North Dakota Century Code is amended and reenacted as follows:

**7-05-02. Powers of commissioner.** The commissioner of ~~banking and~~ financial institutions has power to prescribe for and supervise a uniform system of reports for all associations and has access to and may compel the production of all books, papers, securities, and moneys of any association under examination. ~~He~~ The commissioner has power to administer oaths to and examine the officers, employees, agents, and shareholders of such association relative to its business and affairs.

**SECTION 46. AMENDMENT.** Section 7-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**7-05-03. Building and loan associations.** The commissioner of ~~banking and~~ financial institutions shall keep and preserve in permanent form a full record of the proceedings of the commissioner, including a concise statement of each association examined, and the commissioner shall report to the state banking board as provided by section 6-01-10.

**SECTION 47. AMENDMENT.** Section 7-05-04 of the North Dakota Century Code is amended and reenacted as follows:

**7-05-04. Reports confidential - Exceptions - Penalty.** Information obtained in the course of an examination by the commissioner of ~~banking and~~ financial institutions is confidential information. However, the above provision does not apply when the public duty of such officer requires ~~him~~ the commissioner to report upon or take official action regarding the condition of an association that ~~he~~

the commissioner has examined. This section must not be construed to prevent the said officer from fully disclosing to any federal agency any information which such commissioner may have in ~~his~~ the commissioner's office pertaining to such associations. Nothing in this section prevents the proper exchange of information relating to building and loan associations and the business thereof with the representatives of building and loan departments of other states, but in no case may the private business or affairs of any individual association or company be disclosed. This section must not be construed to prevent the said officer from fully disclosing to the federal home loan bank board at Washington, D.C., or to the federal home loan bank of this district, or to any other federal agency, any information which such commissioner may have in ~~his~~ the commissioner's office pertaining to such associations. It is a class C felony for the commissioner, ~~his~~ the commissioner's deputy, or any of ~~his~~ the commissioner's employees to willfully make a false report as to the condition of any association.

**SECTION 48. AMENDMENT.** Section 7-05-05 of the North Dakota Century Code is amended and reenacted as follows:

**7-05-05. Annual statement - Filing - Publication.** Every association authorized to do business in this state, annually on the thirty-first day of December or within thirty days thereafter, shall file with the commissioner of ~~banking and~~ financial institutions a full and detailed report, in writing, of the affairs and business of the association for the fiscal year ending on December thirty-first, showing its financial condition at the end of said year. The report must be in such form and must contain such information as may be prescribed by the commissioner. It must be sworn to by the secretary of the association, and its correctness must be attested by at least three directors or by an auditing committee appointed by the board of directors. Such report, in such form as the commissioner may require, must be published once in a newspaper published in the city in which the association is located, or if no newspaper is published therein, in the one published nearest thereto in the same county. Proof of such publication must be furnished at such times and in such manner as may be required by the commissioner.

**SECTION 49. AMENDMENT.** Section 7-05-06 of the North Dakota Century Code is amended and reenacted as follows:

**7-05-06. Report to commissioner.** Every association shall make a report of its condition to the commissioner of ~~banking and~~ financial institutions whenever requested by ~~him~~ the commissioner to do so, and such report may be in addition to the report required under section 7-05-05. Such report must be in the form prescribed by the commissioner and must be verified by the oath or affirmation of the president, vice president, or secretary of the association and attested by at least two of the directors who shall sign such report. The report must exhibit in detail, under appropriate headings, the resources and liabilities of the association at the close of business on any past day specified by the commissioner, and must be transmitted to the commissioner within fifteen days after the receipt of a request therefor from ~~him~~ the commissioner.

**SECTION 50. AMENDMENT.** Section 7-05-07 of the North Dakota Century Code is amended and reenacted as follows:

**7-05-07. Communications from commissioner.** Each official communication directed by the commissioner of ~~banking and~~ financial institutions or one of ~~his~~ the commissioner's examiners or deputies to a building and loan association, or an officer thereof, relating to an investigation or examination conducted by the commissioner or containing suggestions or recommendations as to

the conduct of the business of the association must be submitted by the officer receiving it to the board of directors at the next meeting of the board and noted in the minutes of the meeting of such board.

**SECTION 51. AMENDMENT.** Section 7-06-01 of the North Dakota Century Code is amended and reenacted as follows:

**7-06-01. Voluntary liquidation and settlement.** Any domestic association doing business in this state may go into liquidation, with the consent of the commissioner of ~~banking and~~ financial institutions, if the shareholders deem it advisable. Such liquidation must be initiated by a resolution declaring that such association intends to go into liquidation and to discontinue business as a building and loan association, and such resolution requires a two-thirds affirmative vote of the shareholders at any regular meeting, or at a special meeting called for the purpose of liquidation. A copy of the resolution, certified by the president and secretary of the association and under the seal thereof, must be transmitted to the commissioner within ten days after the adoption thereof. Thereupon, the commissioner may issue ~~his~~ the commissioner's certificate reciting that such association is in liquidation. After the issuance of such certificate, it is unlawful for the association to issue shares or to loan or advance its money to shareholders or to any person or persons. All of the income and receipts of the association, in excess of the actual expense of managing the same, must be applied thereafter to pay off the indebtedness of the association. Any moneys not required for payment of indebtedness must be paid pro rata on the shares in the association upon which no loans have been made. The board of directors of an association in liquidation may adopt such rules and make such orders as are just and equitable for the sale and disposition of all property held by the association and for the division of its assets. An association in liquidation is subject to examination by and is under the supervision of the commissioner.

**SECTION 52. AMENDMENT.** Section 7-06-02 of the North Dakota Century Code is amended and reenacted as follows:

**7-06-02. Duties of commissioner when association operates unlawfully or is insolvent.** Whenever the commissioner of ~~banking and~~ financial institutions, from any examination made by ~~him~~ the commissioner or from any report made to ~~him~~ the commissioner or to the shareholders, finds that any association operating under this title is violating the provisions of its charter or of this title, or is conducting its business in an unsafe or unauthorized manner, ~~he~~ the commissioner, by an order addressed to the association so offending, shall direct a discontinuance of such violations or unsafe practices and a conformity to all requirements of the law. If such association refuses or neglects to comply with such order within the time specified therein, or if it appears to the commissioner that the association is in an unsafe condition, or is conducting its business in an unsafe manner such as to render its further proceeding hazardous to the public or to those having funds in its custody, or if ~~he~~ the commissioner finds that its assets are impaired to such an extent that after providing for all liabilities other than to shareholders, they do not exceed in volume the dues or principal payments paid in by shareholders and accredited to or on account of all classes of shares issued and outstanding, ~~he~~ the commissioner, in order to prevent waste and diversion of assets, shall assume and take charge of the affairs and business of such association, and possession of all its books, records, and assets of every description, and ~~he~~ the commissioner shall hold and retain the possession thereof pending the further proceedings as specified in this chapter.

**SECTION 53. AMENDMENT.** Section 7-06-03 of the North Dakota Century Code is amended and reenacted as follows:

**7-06-03. Refusal of association to deliver assets to commissioner.**

Should the board of directors, secretary, or person in charge of any association refuse to permit the commissioner of ~~banking and~~ financial institutions to take possession of the association and its books, assets, and records as provided in section 7-06-02, the commissioner shall communicate such fact to the attorney general. It then is the duty of the attorney general immediately to institute such proceedings as may be necessary to place the commissioner in immediate possession of the property of such association.

**SECTION 54. AMENDMENT.** Section 7-06-04 of the North Dakota Century Code is amended and reenacted as follows:

**7-06-04. Commissioner's duties upon taking over association.**

Immediately upon securing possession of the effects of an association as provided in this chapter, the commissioner of ~~banking and~~ financial institutions shall prepare a full and true statement of the affairs and condition of such association, and shall include in such statement an itemized list of its assets and liabilities. ~~He~~ The commissioner shall proceed to receive and collect all debts, dues, and claims belonging to the association, and shall pay the immediate and reasonable expenses of ~~his~~ the commissioner's trust. When the condition of the association has been ascertained fully, if it appears that its affairs are in fact in an unsound condition, the commissioner at once shall notify the board of directors of the association of ~~his~~ the commissioner's decision, in writing, and shall give the directors twenty days in which to restore the affairs of the association to a sound condition. During such period, the commissioner shall remain in charge of the books, records, and assets of every description of the association, and shall attend personally, or be represented, at all meetings of the directors or shareholders. ~~He~~ The commissioner shall suggest such steps as ~~he~~ the commissioner may deem necessary to restore such association to a sound condition, and if it is not restored to a sound condition within the twenty-day period herein limited, ~~he~~ the commissioner shall report the facts to the attorney general. Thereupon it is the duty of the attorney general immediately to institute proceedings in the district court of the county in which such association has its principal place of business for the appointment of the commissioner as receiver.

**SECTION 55. AMENDMENT.** Section 7-06-05 of the North Dakota Century Code is amended and reenacted as follows:

**7-06-05. Duty and authority of receiver.** The commissioner of ~~banking and~~ financial institutions as such receiver, after having furnished a good and sufficient surety bond in an amount to be set by the court, shall proceed to liquidate the association's affairs. ~~He~~ The commissioner is authorized to collect all moneys due such association and to do and perform all acts necessary to conserve its assets and business. ~~He~~ The commissioner has general power and authority, except as otherwise limited by this chapter, to do any and all acts and to take any and all steps which ~~he~~ the commissioner deems necessary or desirable for the protection of the property and assets of such association, the speedy and economical liquidation of its assets and affairs, and the payment of its creditors, or for the reopening and resumption of business by the association where that is practicable or desirable. ~~He~~ The commissioner may institute, either in ~~his~~ the commissioner's name as receiver or in the name of the association, such legal proceedings as ~~he~~ the commissioner deems expedient for the purposes set forth in this title.

**SECTION 56. AMENDMENT.** Section 7-06-07 of the North Dakota Century Code is amended and reenacted as follows:

**7-06-07. Receivership where association insured under federal act.** If the association is an insured association within the provisions of the National Housing Act as now or hereafter amended, a signed and sealed copy of each order and certificate of the commissioner of ~~banking and~~ financial institutions mentioned in sections 7-06-02, 7-06-03, and 7-06-04 must be sent promptly by the commissioner by registered or certified mail to the federal savings and loan insurance corporation, Washington, D.C., and if the association has such insurance protection, the federal savings and loan insurance corporation is empowered, at its option, to act as receiver or coreceiver in the liquidation of the affairs of the association, and, if it desires, must be appointed as such receiver or as coreceiver with the commissioner. If it serves as receiver or coreceiver, it has all the rights, privileges, and powers granted to the commissioner as receiver, and also has all the rights, privileges, and powers conferred upon it by federal statutes now or hereafter enacted. It may advance money and make loans on the security of assets in liquidation or may purchase such assets or any part thereof at public or private sale, and it may bid for and purchase at any receiver's sale, and otherwise may liquidate or sell any part of the assets of the association of which it is receiver or coreceiver. In the event of purchase of any of such assets by said federal savings and loan insurance corporation, it shall bid and pay a fair and reasonable price therefor.

**SECTION 57. AMENDMENT.** Section 7-07-02 of the North Dakota Century Code is amended and reenacted as follows:

**7-07-02. Instruments to be filed.** Any foreign corporation as defined in this title, before doing business within this state, shall file in the office of the secretary of state and in the office of the commissioner of ~~banking and~~ financial institutions a duly authenticated copy of its charter, articles of incorporation, or articles of agreement, a copy of its bylaws and other rules and regulations showing the method of conducting its business, and also a statement verified by oath of the president and secretary of such corporation, or by oath of its managing officials if it is other than a corporation, showing:

1. The name of the corporation and the location of its principal office or place of business without this state, and the location of the place of business or principal office within this state.
2. The names and residences of the officers, trustees, or directors.
3. The amount of paid-in capital stock or outstanding shares.
4. The amount invested in the state of North Dakota.
5. The names, addresses, and the total cash credits of all of its stockholders, shareholders, investors, and customers who reside in the state of North Dakota.

A similar statement must be filed annually thereafter as of December thirty-first with the commissioner within twenty days after December thirty-first of each year.

The corporation shall file, at the same time and in the same offices, a certificate signed by its president, vice president, or other acting head, and its secretary, if there is one, certifying: that the corporation has consented to all the license laws and other laws of the state of North Dakota relative to foreign corporations; that it has consented to be sued in the courts in this state upon all claims for relief arising against it in this state; that service of process in any action or

proceeding brought against it may be made upon the secretary of state of North Dakota; and that service of process, when so made upon the secretary of state, is valid service on the corporation.

**SECTION 58. AMENDMENT.** Section 7-07-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**7-07-03. Securities to be deposited - Surety bond.** A foreign corporation before doing business in this state shall deposit with the Bank of North Dakota, any federal reserve bank, or any other custodian approved by the commissioner one hundred thousand dollars in cash or bonds of the United States, bonds of any state of the United States, bonds of any county or municipal corporation in the state of North Dakota, or mortgages which are first liens on improved and productive real estate located within this state worth at least twice the amount of the liens. Such securities must be approved in advance by the commissioner of ~~banking and~~ financial institutions. The commissioner has authority to require such foreign corporation to deposit additional securities and to order a change in any of the securities so deposited, at any time. Such deposit must be held as security for all claims of residents of this state against such foreign corporation, and is liable for all judgments or decrees against such corporation. Said securities may not be released until all its obligations to residents of this state have been fully performed and discharged. Such foreign corporation may collect and use the interest on any securities so deposited as long as it fulfills its obligations and complies with the provisions of this title. It also may exchange them for other securities of equal value, if such exchange is approved by the commissioner. Any foreign corporation, in lieu of the deposit of securities as herein provided, may deposit with the commissioner a surety company bond, satisfactory to ~~him~~ the commissioner, in the sum of one hundred thousand dollars, which must be conditioned for the payment of any judgment entered against such foreign corporation by any court of competent jurisdiction in this state, in favor of any resident of this state. Such judgment creditor has the right to bring suit on such bond in ~~his~~ the creditor's own name in the county in which such judgment is rendered, and any resident of this state having a claim against such foreign corporation may bring suit in ~~his~~ that person's own name against the surety company by joining such surety company and such foreign building and loan corporation as parties defendant.

**SECTION 59. AMENDMENT.** Section 7-07-05 of the North Dakota Century Code is amended and reenacted as follows:

**7-07-05. Certificate to do business.** Whenever a foreign corporation has complied with the provisions of this chapter, it shall furnish to the commissioner of ~~banking and~~ financial institutions a full and complete statement of its financial affairs duly sworn to by its president and secretary, or by its officers holding like position. The commissioner immediately shall make an examination, either in person or by ~~his~~ the commissioner's duly authorized representative, of the corporation's assets and records to determine whether or not its financial status meets the requirements of this title. The foreign corporation shall pay the same fees for such examination as are provided in section 7-05-01. The commissioner, if ~~he~~ the commissioner is satisfied that such foreign corporation is in sound financial condition, that it is conducting its business in accordance with the laws of this state, and that it is safe, reliable, and entitled to public confidence, shall issue a certificate of authority to do business in this state to such foreign corporation upon the payment by it of the fees provided for in this chapter. Such certificate must be for one year and must be renewed each year. The commissioner, in ~~his~~ the commissioner's discretion, may accept a report of an examination of the affairs of such foreign corporation made under lawful

authority by a supervising officer of the jurisdiction in which the association or corporation is organized or chartered.

**SECTION 60. AMENDMENT.** Section 7-07-06 of the North Dakota Century Code is amended and reenacted as follows:

**7-07-06. Fees to be paid.** All foreign building and loan corporations shall pay to the commissioner of ~~banking and~~ financial institutions the following fees, which must be paid to the state treasurer by ~~him~~ the commissioner as hereinbefore provided: for filing each application for admission to do business in this state, five hundred dollars; for each certificate of authority and annual renewal of the same, two hundred dollars.

**SECTION 61. AMENDMENT.** Section 7-07-07 of the North Dakota Century Code is amended and reenacted as follows:

**7-07-07. Certificate may be revoked.** Should the commissioner of ~~banking and~~ financial institutions find upon examination that a foreign corporation or association to which a certificate has been granted does not conduct its business in accordance with law, or that the affairs of such foreign corporation are in an unsound condition, or if such foreign corporation refuses to permit examination to be made, ~~he~~ the commissioner may revoke its certificate of authority. Upon such revocation, ~~he~~ the commissioner shall mail a notice thereof to the home office of such foreign corporation, and shall cause a similar notice to be published once in a newspaper published in the city of Bismarck, North Dakota. After publication of said notice, it is unlawful for any agent of such foreign corporation to transact any business in this state except to receive payments to apply on loan contracts then in effect.

**SECTION 62. AMENDMENT.** Section 7-07-08 of the North Dakota Century Code is amended and reenacted as follows:

**7-07-08. Examinations.** Every foreign building and loan corporation doing business in this state is subject to the same examinations as a domestic association. The expense of all such examinations must be paid by the corporation or association examined upon bills approved by the commissioner of ~~banking and~~ financial institutions, and such expense shall include only necessary traveling expenses of the examiners and a sum of not to exceed twenty-five dollars per day for each examiner for each day actually required to make the examination. Such corporations need not be examined more often than once each year, and the commissioner may accept the result of any similar examination made and certified by the constituted authority of any foreign jurisdiction having laws of supervision similar to those of this state.

**SECTION 63. AMENDMENT.** Section 7-07-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**7-07-12. Unsatisfied judgments - Sale of securities.** If any resident of this state recovers judgment against a foreign corporation and such judgment is not satisfied within thirty days after the entry thereof, the judgment creditor or ~~his~~ the creditor's attorney may prepare and file with the commissioner of ~~banking and~~ financial institutions an affidavit setting forth the fact of the recovery of the judgment, that the same has remained unpaid for thirty days, and that no proceedings are pending for the vacation of such judgment or for an appeal therefrom, together with the petition of such creditor for the sale of the securities of the judgment debtor on deposit with the Bank of North Dakota, any federal reserve bank, or any other custodian approved by the commissioner sufficient to satisfy said judgment. The judgment creditor or ~~his~~ the creditor's attorney shall serve a copy of such affidavit

and petition on the foreign corporation by registered or certified mail addressed to its principal office or place of business, and proof of such mailing must be filed with the commissioner. Unless such foreign corporation furnishes to the commissioner satisfactory proof of the payment of the judgment within ten days after the filing of the affidavit and petition herein mentioned, the commissioner, or a designated agent, shall issue an order for the sale of the securities of such corporation, at current market prices, to pay the judgment in full, together with five percent thereon to cover ~~his~~ the commissioner's services and expenses. After a sale of securities as herein provided, such foreign corporation shall transact no new business in this state until the deficiency of securities caused by such sale has been made good by further deposit.

**SECTION 64. AMENDMENT.** Section 7-08-01 of the North Dakota Century Code is amended and reenacted as follows:

**7-08-01. Operation without authority prohibited - Penalty.** No association or corporation, whether foreign or domestic, may do business or attempt to do business as defined in this title without first complying with its provisions and without having received a certificate of authority to do business from the commissioner of ~~banking and~~ financial institutions as provided in this title. Any association or corporation violating any of the provisions of this title is guilty of a class C felony.

**SECTION 65. AMENDMENT.** Section 7-08-03 of the North Dakota Century Code is amended and reenacted as follows:

**7-08-03. Evidence of corporate existence or capacity.** The certificate issued by the secretary of state in accordance with this title, or a certificate issued by the commissioner of ~~banking and~~ financial institutions setting forth that any domestic association or foreign corporation has fully complied with the provisions of this title and is lawfully authorized to transact business in this state, must be admitted in evidence in all courts in this state, and is prima facie evidence of the corporate character and capacity of such association or corporation and of its right to transact business in this state except in actions prosecuted by the state in the nature of quo warranto.

**SECTION 66. AMENDMENT.** Section 7-08-05 of the North Dakota Century Code is amended and reenacted as follows:

**7-08-05. Penalties - How recovered.** All penalties provided for in this title, to which any association or corporation, either domestic or foreign, or any individual, may become subject, shall be recovered on complaint of the commissioner of ~~banking and~~ financial institutions in any court of competent jurisdiction, and all penalties so recovered must be paid into the state treasury.

**SECTION 67. AMENDMENT.** Subsection 2 of section 10-04-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. Securities issued by and representing an interest in or a debt of, or guaranteed by, a national bank or a national bank and trust company or bank or credit or loan or savings association or savings and loan association or credit union organized pursuant to an act of Congress and supervised by the United States, or any agency thereof, or issued or guaranteed as to both principal and interest by an international bank of which the United States is a member, or issued by and representing an interest in or a debt of, or guaranteed by, a state bank, trust company,

savings bank, savings institution, or credit union organized and supervised under the laws of any state, and securities of any person subject to examination by the commissioner of ~~banking and~~ financial institutions of North Dakota.

**SECTION 68. AMENDMENT.** Subsection 2 of section 12.1-06.1-01 of the North Dakota Century Code is amended and reenacted as follows:

2. For the purposes of sections 12.1-06.1-02 through 12.1-06.1-07, unless the context otherwise requires:
  - a. "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.
  - b. "Enterprise" means any corporation, limited liability company, association, labor union, or other legal entity or any group of persons associated in fact although not a legal entity.
  - c. "Financial institution" means any bank, trust company, savings and loan association, credit union, or money lender under the jurisdiction of the state department of ~~banking and~~ financial institutions or its commissioner, or the state banking board, or the state credit union board.
  - d. "Illegal transportation or disposal of radioactive waste material or hazardous waste" means the transportation or disposal into a nonhazardous waste landfill or the intentional and unlawful dumping into or on any land or water of radioactive waste material in violation of section 23-20.2-09 or rules adopted pursuant to that section which were in effect on January 1, 1997, or hazardous waste in willful violation of chapter 23-20.3 or the rules adopted pursuant to that chapter which were in effect on January 1, 1997, except for the handling of conditionally exempt small quantities of hazardous waste as referenced in section 33-24-02-05 of the North Dakota Administrative Code.
  - e. "Pattern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after July 8, 1987, and the last of which occurred within ten years, excluding any period of imprisonment, after the commission of a prior act of racketeering activity.
  - f. "Racketeering" means any act including any criminal attempt, facilitation, solicitation, or conspiracy, committed for financial gain, which is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable by imprisonment for more than one year, regardless of whether such act is charged or indicted, involving:
    - (1) Homicide.
    - (2) Robbery.
    - (3) Kidnapping.

- (4) Forgery.
- (5) Theft.
- (6) Bribery.
- (7) Gambling.
- (8) Usury.
- (9) Extortion.
- (10) Unlawful delivery of controlled substances.
- (11) Trafficking in explosives, weapons, or stolen property.
- (12) Leading a criminal association.
- (13) Obstructing or hindering criminal investigations or prosecutions.
- (14) Asserting false claims including, but not limited to, false claims asserted through fraud or arson.
- (15) Fraud.
- (16) Sale of unregistered securities or real property securities and transactions involving such securities by unregistered dealers or salesmen.
- (17) Obscenity.
- (18) Child pornography.
- (19) Prostitution.

- g. "Records" means any book, paper, writing, record, computer program, or other material.

**SECTION 69. AMENDMENT.** Subsection 1 of section 13-03.1-01 of the North Dakota Century Code is amended and reenacted as follows:

1. "Administrator" means the commissioner of ~~banking and~~ financial institutions.

**SECTION 70. AMENDMENT.** Subsection 1 of section 13-03.1-11 of the North Dakota Century Code is amended and reenacted as follows:

1. At least once each thirty months the administrator or a duly authorized representative shall make an examination of the loans, business, and records of every licensee. In addition, for the purpose of discovering violations of this chapter or securing information lawfully required, the administrator may at any time investigate the loans, business, and records of any lender. For these purposes the administrator shall have free and reasonable access to the offices, places of business, and records of the lender. Fees for such examinations must be charged by

the department of ~~banking and~~ financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examinations provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

**SECTION 71. AMENDMENT.** Section 13-04.1-01 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-01. Administration.** The department of ~~banking and~~ financial institutions shall use its facilities to administer and enforce this chapter. Any person or persons delegated to administer this chapter may not have financial interests directly or indirectly in any business which is subject to this chapter. The department has the power to promulgate rules and regulations having the force and effect of law, reasonably necessary to carry out the provisions of this chapter, in accordance with chapter 28-32. Any hearing held and any orders issued pursuant to this chapter must be in accordance with chapter 28-32. In addition to those powers set forth in chapter 28-32, the department has additional powers as set forth in this chapter.

**SECTION 72. AMENDMENT.** Section 13-04.1-03 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-03. Application for money broker license.** Every application for a money broker license, or for a renewal thereof, must be made upon forms designed and furnished by the department of ~~banking and~~ financial institutions and must contain any information which the department shall deem necessary and proper. The department may further require any application to provide additional information which is not requested on the application form.

**SECTION 73. AMENDMENT.** Section 13-04.1-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-05. Expiration and renewal of license.** All licenses required herein expire on June thirtieth of each year and may be renewed. Renewals are effective the succeeding July first. Applications for renewal must be submitted on or before the preceding thirtieth of June and must be accompanied by the required annual fees. The form and content of renewal applications must be determined by the department of ~~banking and~~ financial institutions, and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing the licensee's license, the department may charge an additional fee of five dollars for the renewal of such license. A money broker license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a money broker license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The money broker license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

**SECTION 74. AMENDMENT.** Section 13-04.1-06 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-06. Powers of the department of banking and financial institutions.** Insofar as consistent with the provisions of law, the department of banking and financial institutions has the power to:

1. Determine the qualifications of all applicants based on financial responsibility, character and fitness, and issue license if approved.
2. Establish codes of ethical conduct for licensees.

**SECTION 75. AMENDMENT.** Section 13-04.1-08 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-08. Revocation of license - Suspension of license - Surrender of license.**

1. The department of banking and financial institutions may, if it has reason to believe that grounds for revocation of a license exist, send by registered or certified mail to the licensee, a notice of hearing stating the contemplated action and in general the grounds thereof and setting the time and place for a hearing thereon. Such hearing must be held in accordance with chapter 28-32 as must any appeal therefrom.
2. If the department of banking and financial institutions finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may, upon written notice, enter an order suspending such license for a period not exceeding thirty days, pending the holding of a hearing as prescribed in this chapter.
3. Any licensee may surrender the licensee's license by delivering it to the department of banking and financial institutions with written notice of its surrender, but such surrender does not affect the licensee's civil or criminal liability for acts committed prior thereto.

**SECTION 76. AMENDMENT.** Section 13-04.1-10 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-10. Orders and injunctions.** Whenever it appears to the department of banking and financial institutions either upon complaint or otherwise, that any person has engaged in, is engaging in, or is about to engage in any act or practice or transaction which is prohibited by this chapter, or by any order of the department issued pursuant to any section of this chapter or which is declared to be illegal in this chapter, the department may, in its discretion:

1. Issue any order, including cease and desist, stop, and suspension orders, which it deems necessary or appropriate in the public interest or for the protection of the public; provided, however, that any person aggrieved by an order issued pursuant to this subsection may request a hearing before the department if such request is made within ten days after receipt of the order. Such hearing must be held in accordance with chapter 28-32 as must any appeal therefrom.
2. Apply to the district court of any county in this state for an injunction restraining such person and the agents, employees, partners, officers, and directors of such person from continuing such act, practice, or transaction of engaging therein or doing any acts in furtherance thereof,

and for such other and further relief as the facts may warrant. In any proceeding for an injunction, the department may apply for and on due showing be entitled to have issued the court's subpoena requiring the appearance forthwith of any defendants and their agents, employees, partners, officers, or directors, and the production of such documents, books, and records as may appear necessary for the hearing upon the petition for an injunction. Upon proof of any of the offenses described in this section, the court may grant such injunction as the facts may warrant. The court may not require the department to post a bond.

**SECTION 77. AMENDMENT.** Section 13-04.1-11 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-11. Investigations and subpoenas.**

1. The department of ~~banking and~~ financial institutions in its discretion:
  - a. May make such public or private investigation within or outside this state as it deems necessary to determine whether any person has violated or is about to violate any provision of this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder. The licensee shall pay an investigation fee and must be charged by the department of ~~banking and~~ financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the visitation provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.
  - b. May require or permit any person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated.
  - c. May publish information concerning any violation of this chapter or any rule or order hereunder.
2. For the purpose of any investigation or proceeding under this chapter, the department of ~~banking and~~ financial institutions may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the department deems relevant or material to the inquiry.
3. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court, upon application by the department of ~~banking and~~ financial institutions, may issue to the person an order requiring such person to appear before the department, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.
4. No person is excused from attending and testifying or from producing any document or record before the department of ~~banking and~~ financial institutions, or in obedience to the subpoena of the department, or in any proceeding instituted by the department, on the ground that the testimony or evidence (documentary or otherwise) required of such

person may tend to incriminate such person or subject such person to a penalty forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which such person is compelled, after claiming the privilege against self-incrimination, to testify or produce evidence (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

**SECTION 78. AMENDMENT.** Section 13-04.1-13 of the North Dakota Century Code is amended and reenacted as follows:

**13-04.1-13. Penalty.** Any person violating any of the provisions of this chapter or any rule or order of the department of ~~banking and~~ financial institutions made pursuant to the provisions of this chapter or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful is guilty of a class C felony.

**SECTION 79. AMENDMENT.** Section 13-05-01 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-01. Administration.** The department of ~~banking and~~ financial institutions shall use its facilities to administer and enforce this chapter. Any person or persons delegated to administer this chapter may not have financial interests directly or indirectly in any business which is subject to this chapter.

**SECTION 80. AMENDMENT.** Section 13-05-03 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-03. Application for a collection agency license.** Every application for a collection agency license, or for a renewal thereof, must be made upon blanks furnished by the department of ~~banking and~~ financial institutions and must contain the following information:

1. The full name and proposed business name of the applicant.
2. The address where the business is to be conducted.
3. The names and addresses of the applicant and those associated with the applicant. If the applicant is a corporation, the application must contain the names of the officers of the corporation. If the applicant is a limited liability company, the application must contain the names of the managers of the limited liability company.
4. Such additional information which the department of ~~banking and~~ financial institutions shall require.

**SECTION 81. AMENDMENT.** Section 13-05-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**13-05-05. Expiration and renewal of license.** All licenses required herein expire on June thirtieth of each year and must be renewed on the succeeding first day of July upon payment of required annual fees. The department of ~~banking and~~ financial institutions may charge an additional fee of five dollars for the renewal of a license after June thirtieth. A collection agency license is not transferable. If the commissioner determines that an ownership change has occurred in a sole

proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a collection agency license, the commissioner may require a new application from the purchaser. The application must be filed within forty-five days from the date change of ownership is consummated. The department shall act on the application within sixty days from the date the application is received but may extend the review period for good cause. The collection agency license granted to the previous owner continues in effect to the new purchaser until the application is either granted or denied.

**SECTION 82. AMENDMENT.** Section 13-05-06 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-06. Powers of the department of banking and financial institutions.** Insofar as consistent with other provisions of law, the department of ~~banking and~~ financial institutions has the power to:

1. Determine the qualifications of all applicants based on financial responsibility, character, and fitness and issue license if approved.
2. Conduct investigations and make an examination of any licensee or licensee's place of business, including all records of such business, and to subpoena witnesses any time they have reason to believe such is necessary. The licensee shall pay an examination or visitation fee and must be charged by the department of ~~banking and~~ financial institutions at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examination or visitation provided for by this section. Fees must be paid to the state treasurer and deposited in the financial institutions regulatory fund.
3. Establish codes of ethical conduct for licensees.
4. Adopt any and all rules and regulations necessary to carry out the purpose of this chapter.
5. Issue and serve upon any person, or licensed collection agency, an order to cease and desist to take corrective action when the department has reason to believe the person or agency is violating, has violated, or is about to violate the provisions of this chapter. An interested party may appeal issuance of a cease and desist order under the provisions of chapter 28-32 by filing written notice of appeal within twenty days after service of the order.
6. Impose civil money penalties against persons or agencies willfully violating an order to cease and desist in an amount not to exceed five hundred dollars for each violation. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing written notice of appeal within twenty days after service of the assessment of civil money penalties. Any civil money penalties collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

**SECTION 83. AMENDMENT.** Subsection 1 of section 13-05-06.1 of the North Dakota Century Code is amended and reenacted as follows:

1. The commissioner of ~~banking and~~ financial institutions may issue and serve upon any collection agency officer or employee and upon the collection agency involved, a complaint stating the basis for the commissioner's belief that the officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
  - a. Violating any law, rule, order, or written agreement with the commissioner;
  - b. Engaging in any harassment or abuse, the making of false or misleading representations, or engaging in unfair practices involving collection activity; or
  - c. Performing any act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.

**SECTION 84. AMENDMENT.** Section 13-05-08 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-08. Revocation of license - Suspension of license - Surrender of license - Preexisting contracts.**

1. The department of ~~banking and~~ financial institutions may, if it has reason to believe that grounds for revocation of a license exist, send by registered or certified mail to the licensee, a notice of hearing stating the contemplated action and in general the grounds thereof and setting the time and place for a hearing thereon. Such hearing may not be held less than ten nor more than thirty days from the date of mailing such notice. Within ten days after such hearing, the department of ~~banking and~~ financial institutions shall issue a written order either dismissing the charges or suspending or revoking the license and the grounds therefor. A copy of such written order must be sent to the licensee. A license may be revoked for one or more of the following reasons:
  - a. The licensee has failed to pay the annual license fee.
  - b. The licensee, either knowingly or without the exercise of due care to prevent the same, has violated any provision of this chapter or any regulation or order lawfully made pursuant to and within the authority of this chapter.
  - c. Any fact or condition existing at the time of the original application for such license which clearly would have warranted the department of ~~banking and~~ financial institutions in refusing originally to issue such license.
2. If the department of ~~banking and~~ financial institutions finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, it may, upon written notice, enter an order suspending such license for a period not exceeding thirty days, pending the holding of a hearing as prescribed in this chapter.
3. Any licensee may surrender the licensee's license by delivering it to the department of ~~banking and~~ financial institutions with written notice of its

surrender, but such surrender does not affect the licensee's civil or criminal liability for acts committed prior thereto.

**SECTION 85. AMENDMENT.** Section 13-05-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**13-05-08.1. Biennial report.** The commissioner of ~~banking and~~ financial institutions shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

**SECTION 86. AMENDMENT.** Section 23-21.1-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**23-21.1-03. Creation of perpetual care fund.** Any organization subject to this chapter which is organized or commences business in this state and desires to operate as a perpetual care cemetery, before selling or disposing of any interment space or lots, shall establish a minimum perpetual care and maintenance guarantee fund of twenty-five thousand dollars in cash, except that the minimum perpetual care and maintenance guarantee fund for organizations in operation on July 1, 1963, must be five thousand dollars. The perpetual care and maintenance guarantee fund must be permanently set aside in trust to be administered under the jurisdiction of the district court of the county wherein the cemetery is located. The district court shall have jurisdiction over the approval of trustees, reports and accounting of trustees, amount of surety bond required, and investment of funds as provided by chapter 59-04 relating to the administration of trust estates. Only the income from such fund may be used for the care and maintenance of the cemetery for which it was established. All such organizations shall submit at least annually, to the district court, such reports as are required. The clerks of each of the district courts shall transmit copies of all reports, and rules and regulations enacted by the organization, to the state department of health and the commissioner of ~~banking and~~ financial institutions.

To continue to operate as a perpetual care cemetery, any such organization shall set aside and deposit in the perpetual care fund not less than the following amounts for lots of interment space thereafter sold or disposed of:

1. A minimum of twenty percent of the gross selling price with a minimum of twenty dollars for each adult space, whichever is the greater.
2. A minimum of twenty percent of the gross selling price for each child's space with a minimum of five dollars for each space up to forty-two inches [1066.8 millimeters] in length or ten dollars for each space up to sixty inches [1524 millimeters] in length, whichever is the greater.
3. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars for each space or crypt in a mausoleum, whichever is the greater, except a mausoleum located in a cemetery covered by a perpetual care fund which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community mausoleum itself shall contain a minimum of twenty percent of the cost of the construction of such public or community mausoleum.
4. A minimum of twenty percent of the gross selling price with a minimum of ten dollars for each inurnment niche in a columbarium, except a columbarium located in a cemetery covered by a perpetual care fund

which consists of at least twenty percent of the proceeds received by the cemetery from the sale of cemetery lots, in which event, the perpetual care fund for the public or community columbarium itself shall contain a minimum of twenty percent of the cost of the construction of such public or community columbarium.

5. A minimum of twenty percent of the gross selling price with a minimum of one hundred dollars, whichever is the greater, for each interment space in crypt gardens or any other structure or device by whatever name, established or constructed wholly or partially above the natural surface of the ground, for the interment of any dead human body.

There is no required perpetual care fund deposit on spaces provided without charge for paupers and infants.

**SECTION 87. AMENDMENT.** Subsection 2 of section 51-17-02 of the North Dakota Century Code is amended and reenacted as follows:

2. "Commissioner" means the commissioner of ~~banking and~~ financial institutions.

<sup>44</sup> **SECTION 88. AMENDMENT.** Subsection 1 of section 54-06-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The following executive and administrative officers and departments shall submit to the governor and the secretary of state reports covering their operations for the two preceding fiscal years, except as otherwise provided by law, not later than the first day of December each year after the regular session of the legislative assembly:
  - a. Secretary of state.
  - b. State auditor.
  - c. Insurance commissioner.
  - d. Attorney general.
  - e. Agriculture commissioner.
  - f. Superintendent of public instruction.
  - g. State tax commissioner.
  - h. Public service commission.
  - i. Department of corrections and rehabilitation.
  - j. Department of transportation.

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<sup>44</sup> Section 54-06-04 was also amended by section 25 of Senate Bill No. 2032, chapter 488, and section 12 of Senate Bill No. 2424, chapter 503.

- k. State department of health.
- l. Department of human services.
- m. Workers compensation bureau.
- n. Office of management and budget.
- o. State treasurer.
- p. Commissioner of labor.
- q. Department of ~~banking and~~ financial institutions.
- r. Department of economic development and finance.
- s. Game and fish department.
- t. Industrial commission.
- u. Job service North Dakota.
- v. Board of university and school lands.

**SECTION 89. AMENDMENT.** Subsection 16 of section 54-11-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 16. Keep books of the state treasurer open at all times for the inspection of the governor, the state auditor, the commissioner of ~~banking and~~ financial institutions, the office of management and budget, and any committee appointed to examine them by either house of the legislative assembly.

**SECTION 90. AMENDMENT.** Section 54-11-07 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**54-11-07. Suspension of treasurer by governor - Appointment.** When a certificate is made to the governor by the state auditor under section 54-11-06, the governor, with the state auditor and the commissioner of ~~banking and~~ financial institutions, shall examine the books, papers, and all matters connected with the office of the state treasurer so suspended. If it appears to the governor, state auditor, and commissioner of ~~banking and~~ financial institutions on examination that the state treasurer has embezzled or converted to the treasurer's own use the public moneys, or has been negligent in keeping the books, or in taking care of public moneys, the governor on the certificate of the state auditor and the commissioner of ~~banking and~~ financial institutions to that effect may remove the state treasurer and appoint another person to fill the place of the suspended state treasurer. The person so appointed shall enter upon the office of state treasurer as provided by law. The governor shall report the removal of the state treasurer to the next succeeding legislative assembly. The state treasurer so appointed shall hold office until the suspended state treasurer is reinstated or a successor is elected and qualified.

**SECTION 91. LEGISLATIVE COUNCIL CORRECTION OF STATUTORY REFERENCES.** The legislative council may replace appropriate references to the "department of banking and financial institutions" in any measure enacted by the fifty-seventh legislative assembly with references to the "department of financial institutions", as appropriate.

Approved March 20, 2001

Filed March 20, 2001

## CHAPTER 89

### HOUSE BILL NO. 1082

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

## BANKING INFORMATION-SHARING AGREEMENTS

AN ACT to amend and reenact subsections 3 and 4 of section 6-01-07.1 of the North Dakota Century Code, relating to information-sharing agreements between the department of banking and financial institutions and other state agencies.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Subsections 3 and 4 of section 6-01-07.1 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

3. The commissioner may, ~~in the commissioner's discretion,~~ furnish information to the attorney general, other state agencies, any prosecuting officials requiring the information for use in pursuit of official duties, and legislative investigations under chapter 54-03.2. Information furnished by the commissioner to any third party which is confidential in the commissioner's possession remains confidential in the possession of the third party. Information received by the commissioner from any third party which is confidential in the third party's possession remains confidential in the commissioner's possession.
4. The commissioner may, ~~in the commissioner's discretion,~~ furnish information and enter into sharing agreements as to matters of mutual interest to an official or examiner of the federal reserve system, federal deposit insurance corporation, federal home loan bank board, national credit union administration, office of thrift supervision, comptroller of the currency, insurance commissioner, office of the securities commissioner, or any state bank or credit union supervisors of other states.

Approved March 6, 2001

Filed March 6, 2001

## CHAPTER 90

### HOUSE BILL NO. 1080

(Industry, Business and Labor Committee)

(At the request of the Department of Banking and Financial Institutions)

### BANKING FACILITY RELOCATION FACTORS

AN ACT to amend and reenact section 6-03-13.3 of the North Dakota Century Code, relating to factors the state banking board must consider for a banking facility relocation.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 6-03-13.3 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-13.3. Facts considered for approval.** Whenever any bank desires to maintain and operate a facility separate and apart from its banking house, pursuant to section 6-03-13.1, or to move a facility previously established to another location, it shall apply to the state banking board or the comptroller of the currency, as the case may be, for such authority and provide the board with such relevant information as the board may reasonably request. In determining whether or not to approve the application for such facility, the banking board shall take into consideration the following facts:

1. The convenience, needs, and welfare of the people of the community and area served.
2. The financial strength of the bank in relation to the cost of establishing and maintaining such separate facility.
3. Whether other banks will be seriously injured by the approval of the application.

When considering an application for relocating an existing facility to another location within the same corporate city limits, the state banking board may consider only subsection 2 as a factor for approval.

Approved March 6, 2001  
Filed March 6, 2001

## CHAPTER 91

### HOUSE BILL NO. 1351

(Representatives N. Johnson, Mahoney)

(Senators Espegard, C. Nelson)

### BANK POWERS

AN ACT to amend and reenact section 6-03-38 of the North Dakota Century Code, relating to the powers of state-chartered banks.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 6-03-38 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-03-38. Assets not to be used in other business - Exceptions - Penalty.** No bank, except as otherwise authorized in this title, may employ its money or other assets as principal, directly or indirectly, in trade or commerce, nor may it employ or invest any of its assets or funds in the stock of any corporation, limited liability company, bank, partnership, firm, or association. However, a state bank may, to the extent that banks subject to the laws of the federal government are permitted to do so, purchase shares of stocks, or any other type of securities offered by small business investment companies organized and licensed under Public Law No. 85-699, known as the Small Business Investment Company Act of 1958 [72 Stat. 689; 15 U.S.C. 661 et seq.], and the Small Business Equity Enhancement Act of 1992 [Pub. L. 102-366; 106 Stat. 1007-1020; 15 U.S.C. 661 et seq.], and any amendments thereto, or chapter 10-30, but in no event may any state bank hold securities of small business investment companies in an amount aggregating more than two percent of the bank's capital and surplus, nor in speculative margins of stock, bonds, grain, provisions, produce, or other commodities, except that it is lawful for a bank to make advances for grain or other products in store or in transit to market, and to invest in ~~stocks of subsidiary corporations~~ organizations, when the activities of such ~~corporations~~ organizations are incidental or complementary to banking the bank's activities, with the specific approval of the state banking board for each such subsidiary. The state banking board has the same power to make rules for the subsidiary ~~corporations~~ organizations, and to examine its records and affairs, as it has for other financial corporations under section 6-01-04. If the state banking board determines that such investments would be detrimental to the interests of a bank's depositors, it may direct the bank to divest itself of such subsidiary investments. In addition, the state banking board has power to authorize state banks to engage directly or indirectly in any ~~banking~~ activity in which such banks could engage were they operated as national banks at the time such authority is granted, notwithstanding any restriction elsewhere contained in this code. Any officer, director, or employee of any bank who invests or uses its funds contrary to this title is guilty of a class A misdemeanor.

Approved March 14, 2001

Filed March 14, 2001

**CHAPTER 92****HOUSE BILL NO. 1290**  
(Representatives Nottestad, Cleary)**CREDIT UNION INVESTMENTS**

AN ACT to amend and reenact subdivision e of subsection 5 of section 6-06-06 of the North Dakota Century Code, relating to the limitation on credit union investment in certain notes or bonds.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Subdivision e of subsection 5 of section 6-06-06 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- e. In notes or bonds secured by a security interest or lien upon unencumbered personal property ~~in this state~~, if ~~such the~~ investment does not exceed ~~seventy-five~~ ninety percent of the actual cash value of the property secured.

Approved March 16, 2001  
Filed March 16, 2001

**CHAPTER 93****SENATE BILL NO. 2065**

(Industry, Business and Labor Committee)  
(At the request of the Department of Banking and Financial  
Institutions)

**CORPORATE CENTRAL CREDIT UNION RECORD  
ACCESS**

AN ACT to create and enact a new section to chapter 6-06 of the North Dakota Century Code, relating to access to corporate central credit union records.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1.** A new section to chapter 6-06 of the North Dakota Century Code is created and enacted as follows:

**Corporate central credit union records.** A North Dakota federally chartered corporate credit union must allow access or produce any records requested by the commissioner which the commissioner determines necessary to conduct an examination of the state-chartered credit union. A federally chartered corporate credit union is entitled to be reimbursed for any search and processing time at the rate of ten dollars per hour per person and for copies made of any records at the rate of fifteen cents per page.

Approved March 14, 2001  
Filed March 15, 2001

## CHAPTER 94

### SENATE BILL NO. 2265 (Senators Flakoll, Lee, Lyson, Traynor)

### BAD CHECK OR DRAFT PENALTY

AN ACT to amend and reenact subsection 2 of section 6-08-16 and subsection 4 of section 6-08-16.2 of the North Dakota Century Code, relating to the civil penalty for issuing a bad check or draft.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>45</sup> **SECTION 1. AMENDMENT.** Subsection 2 of section 6-08-16 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient funds checks, drafts, electronic funds transfer authorizations, or orders. The person is also liable for collection fees or costs, not in excess of twenty dollars, which are recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. A collection agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars if recovered by the collection agency. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of ~~one~~ two hundred dollars or three times the amount of the instrument. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.

<sup>46</sup> **SECTION 2. AMENDMENT.** Subsection 4 of section 6-08-16.2 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

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<sup>45</sup> Section 6-08-16 was also amended by section 1 of Senate Bill No. 2190, chapter 95.

<sup>46</sup> Section 6-08-16.2 was also amended by section 2 of Senate Bill No. 2190, chapter 95.

4. A person who issues an instrument under subsection 2 or 3 also is liable for collection fees or costs, not in excess of twenty dollars per instrument, which are recoverable by civil action by the holder of the instrument, or the holder's agent or representative. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of ~~one~~ two hundred dollars or three times the amount of the instrument.

Approved April 13, 2001

Filed April 13, 2001

## CHAPTER 95

### SENATE BILL NO. 2190 (Senators Krebsbach, Watne) (Representative Keiser)

## NONSUFFICIENT FUNDS AND NO ACCOUNT CHECKS

AN ACT to amend and reenact subsections 2 and 4 of section 6-08-16 and subsections 4 and 6 of section 6-08-16.2 of the North Dakota Century Code, relating to issuing a check or draft without sufficient funds or account and notice of dishonor.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>47</sup> **SECTION 1. AMENDMENT.** Subsections 2 and 4 of section 6-08-16 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

2. The grade of an offense under this section may be determined by individual or aggregate totals of insufficient funds checks, drafts, electronic funds transfer authorizations, or orders. The person is also liable for collection fees or costs, not in excess of ~~twenty~~ twenty-five dollars, which are recoverable by ~~civil action~~ by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. A collection agency shall reimburse the original holder of the check, draft, electronic funds transfer authorization, or order any additional charges assessed by the depository bank of the check, draft, electronic funds transfer authorization, or order not in excess of two dollars if recovered by the collection agency. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the check, draft, electronic funds transfer authorization, or order. The civil penalty consists of payment to the holder, or its agent or representative, of the instrument of the lesser of one hundred dollars or three times the amount of the instrument. The court may order an individual convicted under this section to undergo an evaluation by a licensed gaming, alcohol, or drug addiction counselor.
  
4. A notice of dishonor may be mailed by the holder, or the holder's agent or representative, of the check upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

Notice of Dishonored Check

Date \_\_\_\_\_  
Name of Issuer \_\_\_\_\_

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<sup>47</sup> Section 6-08-16 was also amended by section 1 of Senate Bill No. 2265, chapter 94.

Street Address \_\_\_\_\_  
 City and State \_\_\_\_\_  
 You are according to law notified that a check dated \_\_\_\_\_,  
 \_\_\_\_\_, drawn on the \_\_\_\_\_ Bank of  
 \_\_\_\_\_ in the amount of \_\_\_\_\_ has been  
 returned unpaid with the notation the payment has been refused  
 because of nonsufficient funds. Within ten days from the  
 receipt of this notice, you must pay or tender to

\_\_\_\_\_  
 (Holder or Agent or Representative)  
 sufficient moneys to pay such instrument in full and any  
 collection fees or costs not in excess of ~~twenty~~  
twenty-five dollars.

The notice of dishonor also may contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs or civil penalty authorized by this section.

<sup>48</sup> **SECTION 2. AMENDMENT.** Subsections 4 and 6 of section 6-08-16.2 of the 1999 Supplement to the North Dakota Century Code are amended and reenacted as follows:

4. A person who issues an instrument under subsection 2 or 3 also is liable for collection fees or costs, not in excess of ~~twenty~~ twenty-five dollars per instrument, which are recoverable by ~~civil action~~ by the holder of the instrument, or the holder's agent or representative. A civil penalty is also recoverable by civil action by the holder, or its agent or representative, of the instrument. The civil penalty consists of payment to the holder of the instrument of the lesser of one hundred dollars or three times the amount of the instrument.
6. A notice of dishonor may be mailed by the holder, or the holder's agent or representative, of the instrument upon dishonor. Proof of mailing may be made by return receipt or by an affidavit of mailing signed by the individual making the mailing. The notice must be in substantially the following form:

#### Notice of Dishonored Instrument

Date \_\_\_\_\_  
 Name of Issuer \_\_\_\_\_  
 Street Address \_\_\_\_\_  
 City and State \_\_\_\_\_  
 You are according to law notified that an instrument dated  
 \_\_\_\_\_, \_\_\_\_\_, drawn on the \_\_\_\_\_  
 Bank of \_\_\_\_\_ in the amount of \_\_\_\_\_  
 has been returned unpaid with the notation the payment has  
 been refused because (of nonsufficient funds) (the drawer does  
 not have an account). Within ten days from the receipt of

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<sup>48</sup> Section 6-08-16.2 was also amended by section 2 of Senate Bill No. 2265, chapter 94.

this notice, you must pay or tender to \_\_\_\_\_

(Holder)

sufficient moneys to pay such instrument in full and any collection fees or costs not in excess of ~~twenty~~ twenty-five dollars.

The notice may also contain a recital of the penal provisions of this section and the possibility of a civil action to recover any collection fees or costs authorized by this section.

Approved April 5, 2001

Filed April 5, 2001

## CHAPTER 96

### HOUSE BILL NO. 1375

(Representative Boucher)

## FUNDS TRANSFER DISCLOSURE AND LIABILITY

AN ACT to provide for disclosures of funds transfers by wire or automated clearinghouse to a financial institution and liability for funds transfers that are not authorized by the financial institution.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. Funds transfers - Disclosure to financial institution required.** A person may not direct, cause, arrange, or permit a transfer of funds by wire or automated clearinghouse into a financial institution account that is not owned by the intended beneficiary of the funds transfer unless the person has first disclosed to the financial institution the fact that the account is not owned by the intended beneficiary of the funds transfer and has obtained the express, written consent of the financial institution for each transfer. A person who directs, causes, arranges, or permits a transfer of funds by wire or automated clearinghouse into a financial institution account that is not owned by the intended beneficiary of the funds transfer may not withdraw the funds without the written consent of the account holder and may not recover from the financial institution any damages, costs, or expenditures, including reasonable attorney fees, incurred in connection with the transfer or the use or withdrawal of the transferred funds by the owner of the account.

**SECTION 2. Unauthorized funds transfer - Liability.** A person who directs, causes, arranges, or permits a transfer of funds by wire or automated clearinghouse into a financial institution account that is not owned by the beneficiary of the funds transfer is liable to the financial institution for all damages, costs, or expenditures, including reasonable attorney fees, which the financial institution suffers or incurs in connection with the unauthorized funds transfer transaction or any use or withdrawal of the funds by the owner of the account.

Approved March 19, 2001

Filed March 19, 2001

## CHAPTER 97

### SENATE BILL NO. 2191 (Senators Krebsbach, Traynor)

#### FINANCIAL INFORMATION DISCLOSURE

AN ACT to create and enact a new subsection to section 6-08.1-02 and a new section to chapter 6-08.1 of the North Dakota Century Code, relating to disclosure of financial information by financial institutions and notification of privacy policies; to amend and reenact section 6-08.1-01 of the North Dakota Century Code, relating to the definition of a customer and customer information; to provide an effective date; to provide an expiration date; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

<sup>49</sup> **SECTION 1. AMENDMENT.** Section 6-08.1-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

##### **6-08.1-01. Definitions.** As used in this chapter:

1. "Customer" means, with respect to a financial institution, any person who has transacted or is transacting business with, or has used or is using the services of, individual or authorized representative of an individual to whom a financial institution, or for whom a financial institution has acted provides a product or service for personal, family, or household use, including that of acting as a fiduciary with respect to trust property.
2. "Customer information" means ~~either of the following:~~
  - a. ~~Any original or any copy of any records held by a financial institution pertaining to a customer's relationship with the financial institution.~~
  - b. Any information derived from a record described in this subsection nonpublic personal information maintained by or for a financial institution which is derived from a customer relationship between the financial institution and a customer of the financial institution and is identified with the customer.
3. "Financial institution" means any organization authorized to do business under state or federal laws relating to financial institutions, including, without limitation, a bank, including the Bank of North Dakota, a savings bank, a trust company, a savings and loan association, or a credit union.
4. "Financial institution regulatory agency" means any of the following:

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<sup>49</sup> Section 6-08.1-01 was also amended by section 25 of Senate Bill No. 2164, chapter 88.

- a. The federal deposit insurance corporation.
  - b. The federal savings and loan insurance corporation.
  - c. The national credit union administration.
  - d. The federal reserve board.
  - e. The United States comptroller of the currency.
  - f. The department of banking and financial institutions.
  - g. The federal home loan bank board.
5. "Governmental agency" means any agency or department of this state, or any authorized officer, employee, or agent of an agency or department of this state.
  6. "Law enforcement agency" means any agency or department of this state or of any political subdivision of this state authorized by law to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
  7. "Person" means any individual, partnership, corporation, limited liability company, association, trust, or other legal entity.

**SECTION 2.** A new subsection to section 6-08.1-02 of the 1999 Supplement to the North Dakota Century Code is created and enacted as follows:

A disclosure of customer information by a financial institution to a nonaffiliated third party, if the disclosure is subject to federal law on the date of the disclosure and the financial institution complies with applicable federal law in making the disclosure.

**SECTION 3.** A new section to chapter 6-08.1 of the North Dakota Century Code is created and enacted as follows:

**Agricultural and commercial accounts.**

1. A financial institution shall notify the financial institution's agricultural and commercial customers in this state of the financial institution's privacy policies and practices relating to agricultural and commercial accounts.
2. If the financial institution discloses nonpublic information about agricultural or commercial accounts to nonaffiliated third parties, the financial institution shall annually allow agricultural and commercial customers to not agree to disclosing that information. An agricultural or commercial customer also may agree to the disclosure of nonpublic information.
3. The exceptions in section 502(b)(2) of the Gramm Leach Bliley Financial Service Modernization Act [Pub. L. 106-102; 113 Stat. 1437; 15 U.S.C. 6802] and section 6-08.1-02 apply to agricultural and commercial accounts.

**SECTION 4. EFFECTIVE DATE.** This Act becomes effective on July 1, 2001.

**SECTION 5. EXPIRATION DATE.** Section 3 of this Act is effective through July 31, 2003, and after that date is ineffective.

**SECTION 6. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 19, 2001  
Filed April 19, 2001

## CHAPTER 98

### HOUSE BILL NO. 1329

(Representatives Jensen, Ekstrom, Kingsbury)  
(Senators Christenson, Espegard)

## FINANCIAL INSTITUTION EMPLOYEE REPORT IMMUNITY

AN ACT to provide immunity from suit for a financial institution or financial institution employee that makes a good-faith report of suspected exploitation of a disabled or vulnerable elderly adult; and to create and enact a new subsection to section 6-08.1-03 of the North Dakota Century Code, relating to the disclosure by a financial institution of suspected exploitation of a disabled or vulnerable elderly adult to a government agency or law enforcement agency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new subsection to section 6-08.1-03 of the North Dakota Century Code is created and enacted as follows:

For purposes of reporting suspected exploitation of a disabled adult or vulnerable elderly adult as defined by section 12.1-31-07. Nothing in this subsection may be construed to impose upon a financial institution a duty to investigate an alleged or suspected exploitation of a disabled adult or vulnerable elderly adult or to make any report to a government agency or law enforcement agency.

**SECTION 2. Immunity from liability.** A financial institution or financial institution employee participating in good faith in the making of a report of suspected exploitation of a disabled adult or vulnerable elderly adult to a government agency or law enforcement agency, assisting in an investigation of suspected exploitation of a disabled adult or vulnerable elderly adult by a government agency or law enforcement agency, or furnishing information to a government agency or law enforcement agency about suspected exploitation of a disabled adult or vulnerable elderly adult is immune from any liability, civil or criminal, that might otherwise result from reporting a suspected case of exploitation of a disabled adult or vulnerable elderly adult. For purposes of any proceeding, civil or criminal, the good faith of a financial institution making a report of suspected exploitation of a disabled adult or vulnerable elderly adult to a government agency or law enforcement agency must be presumed.

Approved March 27, 2001  
Filed March 27, 2001

## CHAPTER 99

### SENATE BILL NO. 2194 (Senators Klein, Kroeplin, Nichols) (Representatives D. Johnson, Weisz)

### BEGINNING FARMER LOANS

AN ACT to amend and reenact section 6-09-15.5 of the North Dakota Century Code, relating to Bank of North Dakota loans to beginning farmers.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 6-09-15.5 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

#### **6-09-15.5. Bank loans to beginning farmers - Revolving loan fund - Requirements.**

1. A revolving loan fund must be maintained in the Bank of North Dakota for the purpose of making or participating in loans to North Dakota beginning farmers for the purchase of agricultural real estate, equipment, and livestock. All moneys transferred into the fund, interest upon moneys in the fund, and payments to the fund of principal and interest on loans made from the fund are ~~hereby~~ appropriated for the purpose of providing loans and to supplement the interest rate on loans to beginning farmers made by the Bank of North Dakota under subdivision c of subsection 1 of section 6-09-15 and in accordance with ~~the provisions of~~ this section.
2. The revolving loan fund and loans made from the fund must be administered and supervised by the Bank of North Dakota. The Bank may deduct a service fee for administering the fund from interest payments received on loans. An application for a loan from the fund must be made to the Bank and, upon approval, a loan must be made from the fund in accordance with ~~the provisions of~~ this section.
3. A loan made from the fund may not exceed eighty percent of the appraised value of the agricultural ~~real estate to be acquired with the loan proceeds~~ collateral, with the actual percentage to be determined by the Bank. The Bank may do all things and acts and may establish additional terms and conditions ~~as deemed~~ necessary to make a loan under this section. ~~The Bank shall take a first mortgage as security for a loan from the fund~~ A loan made from the fund must have a first security interest.
4. A loan made from the fund must have the interest rate fixed at one percent below the Bank's then current base rate for the first five years with a maximum rate of six percent per year and variable at one percent below the Bank's then current base rate for the second five years. During the second five years, the variable rate must be adjusted annually on the anniversary date. The rate during the remaining term of the loan floats at the Bank's base rate as in effect from time to time.

5. The maximum term of a real estate loan is twenty-five years. The maximum term of a farm equipment or livestock loan is seven years.
6. The industrial commission is ~~responsible for contracting~~ shall contract with a certified public accounting firm to audit the fund as necessary. The cost of the audit, and any other actual costs incurred by the Bank on behalf of the fund, must be paid for by the fund.
7. The Bank shall adopt policies to implement this section.

Approved April 17, 2001  
Filed April 17, 2001

**CHAPTER 100****HOUSE BILL NO. 1339**  
(Representative Klemin)**BANK OF NORTH DAKOTA REAL ESTATE SALES AND  
LEASING**

AN ACT to amend and reenact section 6-09-37 of the North Dakota Century Code, relating to the sale and leasing of agricultural real estate by the Bank of North Dakota.

**BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

**SECTION 1. AMENDMENT.** Section 6-09-37 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-09-37. Sale and leasing of acquired agricultural real estate.** The sale and leasing of agricultural real estate with an appraised value of ten thousand dollars or more acquired by the Bank of North Dakota through foreclosure or deed in lieu of foreclosure must be done in accordance with chapter 15-07 or 15-09 and ~~rules of the board of university and school lands~~ policies adopted by the industrial commission. The sale and leasing of agricultural real estate with an appraised value of less than ten thousand dollars, acquired by the Bank of North Dakota through foreclosure or deed in lieu of foreclosure, may be done in a manner as the Bank determines is appropriate given the circumstances. In the case of a lease by the party holding the right of redemption, that party has the right to purchase at any time.

Approved March 16, 2001  
Filed March 16, 2001

## CHAPTER 101

### SENATE BILL NO. 2085

(Government and Veterans Affairs Committee)  
(At the request of the Municipal Bond Bank)

## MUNICIPAL BOND BANK LOAN AND BOND AGREEMENTS

AN ACT to create and enact a new section to chapter 6-09.4 of the North Dakota Century Code, relating to administrative agreements for loans and the issuance of bonds by the municipal bond bank on behalf of state agencies authorized to make loans or to allocate or issue bonds.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1.** A new section to chapter 6-09.4 of the North Dakota Century Code is created and enacted as follows:

**Administrative agreements with state agencies.** The bond bank and any state agency authorized by state or federal law to make an allocation of bonds or bonding authority or to make loans, or to issue bonds to obtain funds for the purpose of making loans, to political subdivisions may enter into an administrative agreement, which may authorize the bond bank to administer the loan or bond program for the state agency. The agreement may delegate to the bond bank the authority to make loans, or to issue bonds to obtain funds for the purpose of making loans, to political subdivisions.

Approved March 22, 2001

Filed March 22, 2001

## CHAPTER 102

### SENATE BILL NO. 2216 (Senators Wanzek, Tomac) (Representatives D. Johnson, Mueller)

## AGRICULTURAL MEDIATION SERVICE EXTENSION

AN ACT to amend and reenact section 6-09.10-03 of the North Dakota Century Code, relating to the expiration date for the North Dakota agricultural mediation service; and to declare an emergency.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 6-09.10-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-09.10-03. North Dakota agricultural mediation service - Powers - Compensation and expenses - Fees.** The board shall meet at the call of the chair, as is necessary to fulfill its duties under this chapter. The agriculture commissioner shall administer the agricultural mediation service. The commissioner shall establish an agricultural mediation service to disseminate information to farmers concerning farm credit problems and to provide assistance to seek to resolve farm credit problems. The commissioner shall appoint an administrator of the agricultural mediation service. The commissioner shall hire staff, negotiators, and mediators who may mediate disputes involving farmers and others, either of whom may request assistance. The board may charge the farmer and others a reasonable fee for any assistance, provided the fees are used to continue the service ~~until June 30, 2004~~. Fees charged to the farmer's creditors are limited to twenty-five dollars per hour, each, for the time spent in mediation sessions. The board shall adopt policies governing the negotiators, staff, and mediators hired under this section. Board members are entitled to receive sixty-five dollars for each day of official service, as directed by the board. The board members are entitled to expenses as provided in sections 44-08-04 and 54-06-09. The expenses provided under this section may be paid from any funds available in the home-quarter purchase fund.

**SECTION 2. EMERGENCY.** This Act is declared to be an emergency measure.

Approved April 9, 2001  
Filed April 10, 2001

## CHAPTER 103

### SENATE BILL NO. 2349

(Senators Holmberg, Bowman, Espegard, Grindberg, Heitkamp, Krebsbach)

### BEGINNING ENTREPRENEUR PROGRAM LOANS

AN ACT to amend and reenact section 6-09.15-03 of the North Dakota Century Code, relating to loans under the beginning entrepreneur loan guarantee program; to provide for reports on the beginning entrepreneur loan guarantee program; to provide a statement of legislative intent; and to declare an emergency.

#### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. AMENDMENT.** Section 6-09.15-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**6-09.15-03. Application for guarantee - Term - Annual fee.** A lender may apply to the Bank of North Dakota for a loan guarantee for a loan of up to ~~seventy five~~ one hundred thousand dollars. The Bank may approve a guarantee of a loan of up to five thousand dollars to a beginning entrepreneur for use by the beginning entrepreneur for accounting, legal, and business planning and other consulting or advisory services in planning for the establishment of a qualified revenue-producing enterprise. The Bank may approve a guarantee of a loan of up to twenty-five thousand dollars to a beginning entrepreneur without requiring the beginning entrepreneur to provide collateral for the loan. The term of a loan guarantee may not exceed five years. The Bank may charge a lender an annual fee during the term of a loan guarantee. The Bank may not guarantee more than ~~five hundred thousand~~ four million dollars in loans outstanding under the beginning entrepreneur loan guarantee program.

**SECTION 2. REPORT ON THE BEGINNING ENTREPRENEUR LOAN GUARANTEE PROGRAM.** The Bank of North Dakota shall report the status of the beginning entrepreneur loan guarantee program to the standing appropriations committee of each house of the fifty-eighth legislative assembly at the time of the Bank's appropriations hearing.

**SECTION 3. LEGISLATIVE INTENT - BUSINESS STARTUP INFORMATION.** It is the intent of the legislative assembly that the Bank of North Dakota provide each beginning entrepreneur who requests a loan guarantee information regarding other resources and services provided by local, state, federal, or private entities that are available to assist in the startup of a new business.

**SECTION 4. EMERGENCY.** This Act is declared to be an emergency measure.

Approved March 14, 2001  
Filed March 14, 2001

## CHAPTER 104

### SENATE BILL NO. 2211

(Senators Klein, D. Mathern)

(Representative Wald)

## SELF-CRITICAL FINANCIAL INSTITUTION ANALYSIS PRIVILEGE

AN ACT to create and enact a new chapter to title 6 of the North Dakota Century Code, relating to the provision of a self-critical financial institution analysis privilege.

### BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

**SECTION 1. Definitions.** In this chapter, unless the context or subject matter otherwise requires:

1. "Commissioner" means the commissioner of banking and financial institutions.
2. "Compliance audit" means a voluntary, internal evaluation, review, assessment, audit, or investigation for the purpose of identifying or preventing noncompliance with, or promoting compliance with, laws, regulations, orders, or industry or professional standards, which is conducted by or on behalf of a financial institution.
3. "Compliance self-critical analysis audit document" means a document prepared as a result of or in connection with a financial institution's compliance audit. A compliance self-critical analysis audit document may include a written response to the findings of a compliance audit. A compliance self-critical analysis audit document may include, as applicable, field notes and records of observations, work papers, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, exhibits, computer-generated or electronically recorded information, phone records, maps, charts, graphs, and surveys, provided this supporting information is collected or developed for the primary purpose and in the course of a compliance audit. A compliance self-critical analysis audit document also includes:
  - a. A compliance audit report prepared by an auditor, who may be an employee of the financial institution or an independent contractor, which may include the scope of the audit, the information gained in the audit, and conclusions and recommendations, with exhibits and appendices;
  - b. Memoranda and documents analyzing portions or all of the compliance audit report and discussing potential implementation issues;
  - c. An implementation plan that addresses correcting past noncompliance, improving current compliance, and preventing future noncompliance; or

- d. Analytic data generated in the course of conducting the compliance audit.
4. "Financial institution" means any organization authorized to do business under state and federal laws relating to financial institutions, including a bank, including the Bank of North Dakota, a savings bank, a trust company, a savings and loan association, or a credit union.

**SECTION 2. Self-critical analysis privilege created - Scope.** A compliance self-critical analysis privilege is created to protect the confidentiality of compliance self-critical analysis documents or communications in regard to their content relating to voluntary internal compliance audits conducted by financial institutions and persons in regard to activities regulated under title 6 or federal law, both to conduct voluntary internal audits of its compliance programs and management systems, and to assess and improve compliance with state and federal statutes, rules, and orders. The compliance self-critical analysis privilege applies to all litigation or administrative proceedings pending on August 1, 2001.

**SECTION 3. Compliance self-critical analysis document not discoverable or admissible.** Except as provided in this chapter, a compliance self-critical analysis audit document is privileged information and is not discoverable or admissible evidence in any legal action in any civil, criminal, or administrative proceeding. The privilege is a matter of substantive law of this state and is not merely a procedural matter governing administrative, civil, or criminal procedures in the courts of this state.

**SECTION 4. Application of privilege.** If a financial institution, person, or entity performs or directs the performance of a compliance audit, an officer, employee, or agent involved with the compliance audit, or any consultant who is hired for the purpose of performing the compliance audit, may not be examined in any civil, criminal, or administrative proceeding as to the compliance audit or any compliance self-critical analysis audit document. This section does not apply if it is determined under sections 6 or 7 of this Act that the privilege does not apply.

**SECTION 5. Submission to commissioner.**

1. Upon request of the commissioner, a financial institution must submit a compliance self-critical analysis audit document to the commissioner, or the commissioner's designee, as a confidential document under the provisions of section 6-01-07, without waiving the privilege set forth in this chapter to which the financial institution would otherwise be entitled. However, the provisions of section 6-01-07 permitting the commissioner to release confidential documents and make them accessible to federal financial institution regulatory agencies does not apply to the compliance self-critical analysis audit documents voluntarily submitted. To the extent the commissioner has the authority to compel the disclosure of a compliance self-critical analysis audit document under other provisions of applicable law, any report furnished to the commissioner may not be provided to any other person or entity and must be accorded the same confidentiality and other protections as provided above for voluntarily submitted documents. Any use of a compliance self-critical analysis audit document furnished as a result of a request of the commissioner, whether under a claim of authority to compel disclosure or not, is limited to determining whether any disclosed defects in a financial institution's policies or procedures or inappropriate treatment of customers has been remedied or that an

appropriate plan for their remedy is in place. The commissioner may not impose any type of administrative fine or penalty as to any area addressed or matter covered in a compliance self-critical analysis audit document furnished at the commissioner's request, except where there is clear and convincing evidence that the financial institution failed to undertake reasonable corrective action, eliminate inappropriate treatment of customers, or failed to implement an appropriate plan to rectify any noncompliance with state and federal statutes, rules, and orders.

2. A financial institution's compliance self-critical analysis audit document submitted to the commissioner remains subject to all applicable statutory or common-law privileges including the work product doctrine, attorney-client privilege, or the subsequent remedial measures exclusion. A compliance self-critical analysis audit document submitted to and in the possession of the commissioner remains the property of the financial institution and is not subject to any disclosure or production under section 44-04-18.
3. Disclosure of a compliance self-critical analysis audit document to a governmental agency, whether voluntary or pursuant to compulsion of law, does not constitute a waiver of the privilege with respect to any other person or any other government agency.

**SECTION 6. Waiver of privilege by financial institution - Grounds for determination of privilege - Civil, administrative, or criminal proceedings.**

1. The self-critical analysis privilege does not apply to the extent that it is expressly waived by the financial institution that prepared or caused to be prepared the compliance self-critical analysis audit document.
2. In a civil or administrative proceeding, a court of record, after an in-camera review, may require disclosure of material for which the privilege is asserted, if the court determines one of the following:
  - a. The privilege is asserted for a fraudulent purpose; or
  - b. The material is not subject to the privilege.
3. In a criminal proceeding, a court of record, after an in-camera review, may require disclosure of material for which the privilege is asserted, if the court determines one of the following:
  - a. The privilege is asserted for a fraudulent purpose;
  - b. The material is not subject to the privilege; or
  - c. The material contains evidence relevant to commission of a criminal offense, and all three of the following factors are present:
    - (1) The commissioner, state's attorney, or attorney general has a compelling need for the information;
    - (2) The information is not otherwise available; and

- (3) The commissioner, state's attorney, or attorney general is unable to obtain the substantial equivalent of the information by any other means without incurring prohibitive cost and delay.

#### **SECTION 7. Determination of privilege - Procedure.**

1. If a person seeks from a financial institution communications involving a compliance audit or any compliance self-critical analysis audit document during the course of a pending civil or criminal proceeding, the financial institution may assert the self-critical analysis privilege and provide the information set forth in subsection 6 during the course of those proceedings just as any other privilege is asserted in the courts of this state. If the court is required to make a determination as to the privilege, the court shall follow the procedure and conditions set forth in subsection 5.
2. If there is a pending administrative proceeding, or there is no pending civil or criminal proceeding, the commissioner, state's attorney, or attorney general may serve on a financial institution a written request by certified mail for disclosure of a compliance self-critical analysis audit document. Within thirty days after the commissioner, state's attorney, or attorney general serves on a financial institution a written request by certified mail for disclosure of a compliance self-critical analysis audit document, the financial institution that prepared or caused the document to be prepared may file with the appropriate court a petition requesting an in-camera hearing on whether the compliance self-critical analysis audit document or portions of the document are privileged under this chapter or subject to disclosure. The court has jurisdiction over a petition filed by a financial institution under this subsection requesting an in-camera hearing on whether the compliance self-critical analysis document or portions of the document are privileged or subject to disclosure. Failure by the financial institution to file a petition waives the privilege for only the specific request made.
3. A financial institution asserting the compliance self-critical analysis privilege in response to a request for disclosure under this section shall include in its request for an in-camera hearing all of the information set forth in subsection 6.
4. Upon the filing of a petition under this section, the court shall issue an order scheduling, within forty-five days after the filing of the petition, an in-camera hearing to determine whether the compliance self-critical analysis audit document or portions of the document are privileged under this chapter or subject to disclosure.
5. The court, after an in-camera review, may require disclosure of material for which the privilege is asserted if the court determines, based upon its in-camera review, that any one of the conditions set forth in subsection 2 of section 6 of this Act is applicable as to a civil or administrative proceeding or that any one of the conditions set forth in subsection 3 of section 6 of this Act is applicable as to a criminal proceeding. Upon making such determination, the court may only compel the disclosure of those portions of a compliance self-critical analysis document relevant to issues in dispute in the underlying proceeding. A compelled disclosure may not be considered to be a

public document or be deemed to be a waiver of the privilege for any other civil, criminal, or administrative proceeding. A financial institution unsuccessfully opposing disclosure may apply to the court for an appropriate order protecting the document from further disclosure.

6. A financial institution asserting the compliance self-critical analysis privilege in response to a request for disclosure under this section shall provide at the time of making and filing any objection to the disclosure all of the following information:
  - a. The date of the compliance self-critical analysis audit document;
  - b. The identity of the entity conducting the audit;
  - c. The general nature of the activities covered by the compliance audit; and
  - d. An identification of the portions of the compliance self-critical analysis audit document for which the privilege is being asserted.

**SECTION 8. Privilege - Burden of proof - Stipulation.** A financial institution asserting the compliance self-critical analysis privilege set forth in this chapter has the burden of demonstrating the applicability of the privilege. Once a financial institution has established the applicability of the privilege, a party seeking disclosure has the burden of proving that the privilege is asserted for a fraudulent purpose. The commissioner, state's attorney, or attorney general seeking disclosure of the privilege has the burden of proving the elements set forth in subdivisions a and c of subsection 3 of section 6 of this Act.

The parties may at any time stipulate in proceedings under sections 6 or 7 of this Act to entry of an order directing whether the specific information contained in a compliance self-critical analysis audit document is or is not subject to the privilege provided under this chapter. Any such stipulation may be limited to the instant proceeding and, absent specific language to the contrary, is not applicable to any other proceeding.

**SECTION 9. Nonapplication of privilege.** The self-critical analysis privilege set forth in this chapter does not extend to:

1. Documents, communications, data, reports, or other information expressly required to be collected, developed, maintained, or reported to a regulatory agency pursuant to this title, or other federal or state law;
2. Information obtained by observation or monitoring by any regulatory agency; or
3. Information obtained from a source independent of the compliance audit.

Approved March 19, 2001  
Filed March 19, 2001